

# BOARD BOOK OF OCTOBER 13, 2016



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

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

**A G E N D A  
9:00 AM  
October 13, 2016**

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

**CALL TO ORDER**

**ROLL CALL**

**J. Paul Oxer, Chairman**

**CERTIFICATION OF QUORUM**

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

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

**CONSENT AGENDA**

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

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

**LEGAL**

- a) Presentation, Discussion, and Possible Action regarding the adoption of an Agreed Final Order concerning Missouri Street Residence (HTC 93143/CMTS 1177)

**Jeff Pender**  
Deputy General Counsel

**BOND FINANCE**

- b) Presentation, Discussion, and Possible Action on Resolution No. 17-006 authorizing programmatic changes to the Single Family Taxable Mortgage Program FHA Streamline Refinance Program ("TMP-79 Refinance Program")

**Monica Galuski**  
Director

**MULTIFAMILY FINANCE**

- c) Presentation, Discussion, and Possible Action on Determination Notice for housing Tax Credits with another Issuer

**Marni Holloway**  
Director

16431	Northview Village	Brenham
16432	Oaks at Georgetown	Georgetown
16434	ThinkEAST Apartments	Austin
16408	Broadmoor at Western Hills	Fort Worth

- d) Presentation, Discussion and Possible Action on a Determination Notice for Housing Tax Credits with another Issuer and an Award of Direct Loan Funds

16403	Cross Creek Apartments	Austin
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- e) Presentation, Discussion and Possible Action on the Issuance of Determination Notice for Housing Tax Credits with another Issuer

16418	Pathways at Georgian Manor	Austin
16419	Pathways at Manchaca Village	Austin
16420	Pathways at North Loop	Austin
16421	Pathways at Northgate	Austin
16422	Pathways at Shadowbend Ridge	Austin



## ASSET MANAGEMENT

- f) Presentation, Discussion and Possible Action regarding material amendments to Housing Tax Credit Applications
- |       |                             |           |
|-------|-----------------------------|-----------|
| 13139 | Stonebridge at Plainview    | Plainview |
| 15285 | Residences at Earl Campbell | Tyler     |
- g) Presentation, Discussion and Possible Action regarding material amendment to the Housing Tax Credit Land Use Restriction Agreement
- |       |                       |             |
|-------|-----------------------|-------------|
| 99060 | Villas at Costa Brava | San Antonio |
|-------|-----------------------|-------------|

**Raquel Morales**  
Director

## COMMUNITY AFFAIRS

- h) Presentation, Discussion, and Possible Action on the Use of Program Year 2017 Community Services Block Grant (“CSBG”) Discretionary Funds
- i) Presentation, Discussion, and Possible Action on the Release of a Request for Applications for Continuum of Care Lead Agencies to Locally Manage the 2017/2018 Emergency Solutions Grants (“ESG”) Program Award Process

**Michael DeYoung**  
Director

## RULES

- j) Presentation, Discussion, and Possible Actions on: first, amendments to 10 TAC Chapter 1 Administration, Subchapter B, §1.201 (concerning Purpose), §1.202 (concerning Definitions), §1.203 (concerning General Certifications and Effect of Non Compliance, §1.204 (concerning Reasonable Accommodations, §1.205 (concerning Compliance with the Fair Housing Act), §1.206 (concerning Applicability of the Construction Standards for Compliance with §504 of the Rehabilitation Act of 1978); and, second, the proposed repeal of §1.208 (concerning Public and Common Use Areas in Multifamily Developments), §1.211 (concerning Additions of Units to Existing Multifamily Housing Developments), and §1.212 (concerning Resources) and directing that these be published for public comment in the *Texas Register*
- k) Presentation, Discussion and Possible Action on an Order Proposing the repeal of 10 TAC Chapter 21, Minimum Energy Efficiency Requirements for Single Family Construction Activities, and an Order Proposing new 10 TAC Chapter 21, Minimum Energy Efficiency Requirements for Single Family Construction Activities and directing that these be published for public comment in the *Texas Register*
- l) Presentation, Discussion, and Possible Action regarding the proposed repeal of 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules, and a proposed new 10 TAC Chapter 12, concerning the Multifamily Housing Revenue Bond Rules, and directing its publication for public comment in the *Texas Register*

**Stephanie Naquin**  
Director, Multifamily  
Compliance

**Homero Cabello**  
Director, Single Family  
Operations

**Marni Holloway**  
Director, Multifamily  
Finance

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

- a) TDHCA Outreach Activities, September 2016
- b) Report Regarding Status of Appeal Rights for 2016 Competitive Housing Tax Credit #16040 Parklane Villas
- c) Report Regarding Ranking of Applications in Region 2, Rural, from the 2016 Competitive Housing Tax Credit Application Cycle
- d) Report Regarding Amended and Restated Determination Notices for (#14425) Dwight D. Eisenhower Memorial Apartments and (#14427) Kennedy Brothers Communities in El Paso
- e) Report Regarding a Request for Proposal (“RFP”) for Underwriters issued by the Texas Department of Housing and Community Affairs (the “Department”)

**Michael Lyttle**  
Chief, External Affairs

**Marni Holloway**  
Director, Multifamily  
Finance

**Monica Galuski**  
Director, Bond Finance

## ACTION ITEMS

### ITEM 3: INTERNAL AUDIT

- a) Presentation, Discussion and Possible Action on approval of the Fiscal Year 2017 Internal Audit Work Plan
- b) Internal Audit: Review of Fair Housing Activities
- c) Report of the meeting of the Audit Committee

**Mark Scott**  
Director

**ITEM 4: REAL ESTATE ANALYSIS**

Presentation, Discussion, and Possible Action on Timely Filed Underwriting Appeals under the Departments' Multifamily Program Rules  
15273 Merritt Hill Country Dripping Springs

**Brent Stewart**  
Director

**ITEM 5: COMMUNITY AFFAIRS**

- a) Presentation, Discussion, and Possible Action to adopt an order to terminate the entity formerly known as Urban League of Greater Dallas and North Central Texas, now doing business as Urban Community Centers of North Texas, as a designated eligible entity under the Community Services Block Grant (“CSBG”) Act and to terminate contracts with that entity and further directing staff of the Department to initiate the necessary actions to identify a replacement eligible entity and to take such other measures as may be lawfully available to provide for delivery of Community Services Block Grant Services to eligible Texans in Dallas County
- b) Presentation, Discussion, and Possible Action regarding termination of the Program Year (“PY”) 2016 Low Income Home Energy Assistance Program (“LIHEAP”) Community Energy Assistance Program (“CEAP”) contract to Community Services Agency of South Texas (“CSA”); award of 24.99% of their PY 2016 CEAP contract for the specific service areas covered by CSA to alternate providers; 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 provider, through release and subsequent award of a Request for Application (“RFA”) or through a direct designation, to temporarily and permanently administer the CEAP in Dimmit, La Salle, and Maverick counties, the area served by CSA
- c) Presentation, Discussion, and Possible Action regarding approval to proceed in accordance with applicable state and federal law with termination of the Eligible Entity Status and the contract for Community Services Block Grant contract funds with Community Services Agency of South Texas
- d) Presentation, Discussion, and Possible Action regarding suspension of the Program Year (“PY”) 2016 Low Income Home Energy Assistance Program (“LIHEAP”) Community Energy Assistance Program (“CEAP”) contract to Community Services, Inc. (“CSI”); award of 24.99% of their PY 2016 CEAP contract for the specific service areas covered by CSI to alternate providers; the commencement of the 30-day notification period required by Tex. Gov’t Code §2105.203 and §2015.301; and the authorization of staff to identify a provider, through release and subsequent award of a Request for Application (“RFA”) or through a direct designation, to temporarily and permanently administer the CEAP in Anderson, Collin, Denton, Ellis, Henderson, Hunt, Kaufman, Navarro, Rockwall, and Van Zandt counties, the area served by CSI
- e) Presentation, Discussion, and Possible Action on waiver of 10 TAC §1.304(b) and appeal of Executive Award Review Advisory Committee recommendation not to make a 2017 Comprehensive Energy Assistance Program award to Community Services, Inc. and enter into a contract for same

**Michael DeYoung**  
Director

**Patricia Murphy**  
Chief of Compliance

**ITEM 6: RULES**

- a) Presentation, Discussion and Possible Action on proposed 10 TAC Chapter 13 concerning Multifamily Direct Loan Rule, and directing its publication for public comment in the *Texas Register*
- b) Presentation, Discussion and Possible Action on the proposed repeal of 10 TAC Chapter 10 Subchapter E concerning Post Award and Asset Management Requirements and a proposed new 10 TAC Chapter 10 Subchapter E and directing their publication for public comment in the *Texas Register*

**Marni Holloway**  
Director, Multifamily  
Finance

**Raquel Morales**  
Director, Asset  
Management

**ITEM 7: ASSET MANAGEMENT**

Presentation, Discussion, and Possible Action regarding material amendments to Housing Tax Credit Applications

**Raquel Morales**  
Director, Asset Management

15119	Liberty Square and Liberty Village	Groesbeck
15251	Casa Verde	Laredo

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

**EXECUTIVE SESSION**

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

**J. Paul Oxer**  
Chairman

1. The Board may go into Executive Session Pursuant to Tex. Gov't Code §551.074 for the purposes of discussing personnel matters including to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee;
2. Pursuant to Tex. Gov't Code §551.071(1) to seek the advice of its attorney about pending or contemplated litigation or a settlement offer;
3. Pursuant to Tex. Gov't Code §551.071(2) for the purpose of seeking the advice of its attorney about a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Tex. Gov't Code Chapter 551; including seeking legal advice in connection with a posted agenda item;
4. Pursuant to Tex. Gov't Code §551.072 to deliberate the possible purchase, sale, exchange, or lease of real estate because it would have a material detrimental effect on the Department's ability to negotiate with a third person; and/or
5. Pursuant to Tex. Gov't Code §2306.039(c) the Department's internal auditor, fraud prevention coordinator or ethics advisor may meet in an executive session of the Board to discuss issues related to fraud, waste or abuse.

**OPEN SESSION**

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

**ADJOURN**

To access this agenda and details on each agenda item in the board book, please visit our website at [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us) or contact Michael Lyttle, 512-475-4542, TDHCA, 221 East 11<sup>th</sup> Street, Austin, Texas 78701, and request the information.

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

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

Non-English speaking individuals who require interpreters for this meeting should contact Elena Peinado, 512-475-3814, at least three (3) days before the meeting so that appropriate arrangements can be made.

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

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

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

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

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

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

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

# CONSENT AGENDA

1a

**BOARD ACTION REQUEST**

**LEGAL DIVISION**

**MAY 26, 2016**

Presentation, Discussion, and Possible Action on Report to Board regarding the initiation of an administrative penalty contested case hearing concerning Missouri Street Residence (HTC 93143 / CTMS 1177) and the adoption of an Agreed Final Order

**RECOMMENDED ACTION**

**WHEREAS**, Missouri Street Residence, owned by Anistrum Investments, Ltd. (“Owner”), has uncorrected compliance findings relating to the applicable land use restriction agreement and the associated statutory and rule requirements;

**WHEREAS**, Anistrum Investments, Ltd. purchased the property from the original owner in 2004 without Department permission and is bound to the terms of the Land Use Restriction Agreement in accordance with Section 2 thereof;

**WHEREAS**, file monitoring violations were identified during a file monitoring review conducted June 24, 2015, and a deadline of November 16, 2015, was set for Owner to submit fully acceptable corrective documentation;

**WHEREAS**, unresolved compliance findings include: lease violations relating to required lease notices and an Affirmative Marketing Plan violation;

**WHEREAS**, an informal conference was held on April 29, 2016, but Owner failed to appear despite diligent efforts by the Department to ensure attendance in person;

**WHEREAS**, the Enforcement Committee voted to recommend, subject to Board approval, an Agreed Final Order assessing an administrative penalty of \$1,000, with \$500 to be paid within 30 days of signature and the remaining \$500 to be forgiven if all violations are resolved as specified in the Agreed Final Order on or before June 26, 2016;

**WHEREAS**, Owner did not agree with the recommendation and Texas Gov’t Code §2306.043 and 10 Tex. Admin. Code §2.302 require the Executive Director to issue a Report to the Board in order to initiate a contested case hearing before the State Office of Administrative Hearings (“SOAH”);

**WHEREAS**, an administrative penalty in the amount of \$1,000 is appropriate under the statutory factors at Texas Gov’t Code §2306.042 and the applicable administrative penalty matrix under 10 Tex. Admin. Code §2.302;

**WHEREAS**, consistent with direction from the Department’s Administrative Penalty Committee and the requirements of Tex. Gov’t. Code §2306.043, the Executive Director presents this Report to the Board; and

**WHEREAS**, Department staff will issue a Notice of Report to the Board to Owner and will do all things necessary to pursue correction of all unresolved violations and

the assessment of an administrative penalty in the recommended amount of \$1,000, including, if necessary, a contested case hearing;

**NOW, therefore, it is hereby**

**RESOLVED**, that the Board accepts and approves the issuance by the Executive Director of a Report to the Board relating to The David Yilmaz Living Trust and proposing an Agreed Final Order assessing an administrative penalty of \$1,000, subject to partial forgiveness if the Agreed Final Order is signed within the timeline provided, substantially in the form presented at this meeting in the attachment to the Notice of Violation, and authorizing any non-substantive technical corrections, which Order is hereby adopted as the order of this Board in the event that Owner chooses to settle the matter and avoid a contested case hearing.

### **BACKGROUND**

Anistrum Investments, Ltd. ("Owner") is the owner of Missouri Street Residence ("Property"), a low income apartment complex composed of 39 units, located in El Paso County. Records of the Texas Secretary of State list the General Partner as SYLDAVID, L.L.C., with Sylvia Davidson as its sole Director and General Manager. CMTS lists Sylvia Davidson as the primary contact for Owner. The property is managed by the Opportunity Center for the Homeless, and Gilbert Rodriguez and Norman Tomasko are listed as CMTS contacts for that organization. Also known to be associated with the property is Truman Davidson, husband of Sylvia Davidson.

The Property is subject to a Land Use Restriction Agreement ("LURA") signed by a prior owner in 1993 in consideration for a housing tax credit allocation in the annual amount of \$57,330 to acquire, rehabilitate and operate the Property. Current owner acquired the property in 2004 and did not receive prior Department approval, but the LURA remains in effect per Section 2 of the LURA which stipulates that its restrictions run with the land.

Owner was previously referred for an administrative penalty for reporting violations, file monitoring, violations, and UPCS violations, but referrals were closed informally when full corrections were received. Owner has been referred again and unacceptable corrective documentation has been submitted on multiple occasions, in response to correspondence from Compliance and the Enforcement Committee. Technical support has been provided by the Compliance and Legal Divisions, but owner representatives either do not understand or don't agree with TDHCA correspondence. Instead, they send their prior unacceptable corrective documentation in response to every contact from TDHCA.

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

1. Lease violations relating to failure to provide and execute required notices, including:
  - a. Failure to post the Tenant Rights and Resources Guide in a common area in the office; and



- b. Failure to execute the Tenant Rights and Resources Guide Acknowledgment for unit 9;
2. Failure to maintain an Affirmative Marketing Plan and evidence of associated marketing efforts.

Owner was offered an opportunity to participate in an informal conference with the Enforcement Committee at TDHCA headquarters on April 29, 2016, but did not appear despite diligent efforts by the Department to ensure attendance in person. After reviewing email replies from owner, the circumstances of the referral, the Owner's compliance history, and the relevant statutory factors at TEXAS GOV'T CODE §2306.042, the Enforcement Committee voted to consider an administrative penalty despite the owner's failure to appear. The Enforcement Committee voted to recommend a \$1,000 administrative penalty, subject to partial forgiveness as indicated below if Owner signs an Agreed Final Order with the following terms:

1. Owner must submit \$500 portion of the administrative penalty on or before June 26, 2016;
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 June 26, 2016;
3. If Owner complies with all requirements and addresses all violations as required, the remaining administrative penalty in the amount of \$500 will be forgiven; and
4. If Owner violates any provision of the Agreed Final Order, the full administrative penalty will immediately come due and payable.

Owner did not accept this initial settlement offer. Accordingly, TDHCA will proceed with a contested case hearing, but will make a second settlement offer in an effort to achieve faster compliance and avoid the time and expense of a formal hearing.

TDHCA statute and rules outline the procedure for initiating a contested case:

1. Executive Director issues Report to the Board: Required by TEXAS GOV'T CODE §2306.043 and 10 TEX. ADMIN. CODE §2.302(f).
2. Notice of Report to the Board, also known as a Notice of Violation, sent to Owner: Required by TEXAS GOV'T CODE §2306.043 and 10 TEX. ADMIN. CODE §2.302(g).
3. Owner has 20 days to accept the determination and recommended penalty or request a hearing.
4. If Owner requests a hearing or does not respond, TDHCA would cause a hearing to be docketed with the State Office of Administrative Hearings ("SOAH") in accordance with 10 TEX. ADMIN. CODE §1.13.

Consistent with direction from the Department's Enforcement Committee, an administrative penalty in the amount of \$1,000 is recommended, with a \$500 portion to be probated and forgiven if Owner signs the offered Agreed Final Order and submits acceptable corrective documentation as instructed in the Agreed Final Order within the allotted time periods. The Department will take all necessary steps to initiate a contested case hearing for the full \$1,000 recommended administrative penalty if Owner does not agree to the settlement. This will be a reportable item of consideration under previous participation for any new award to the principals of the owner.

ENFORCEMENT ACTION AGAINST  
OAK HOLLOW HOUSING, L.P. WITH  
RESPECT TO ROSEMONT OF OAK  
HOLLOW  
(HTC / BOND FILE # 1435000 / CMTS  
# 445)

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BEFORE THE  
TEXAS DEPARTMENT OF  
HOUSING AND  
COMMUNITY AFFAIRS

### **AGREED FINAL ORDER**

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

On this 26<sup>th</sup> day of May, 2016, the Governing Board ("Board") of the Texas Department of Housing and Community Affairs ("TDHCA") considered the matter of whether enforcement action should be taken against **OAK HOLLOW HOUSING, L.P.**, ("Respondent").

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

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

#### **WAIVER**

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

#### **FINDINGS OF FACT**

##### *Jurisdiction:*

1. During 1993, Alrosin Joint Venture ("Prior Owner") was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$57,330 to acquire, rehabilitate, and operate Rosemont of Oak Hollow ("Property") (HTC file No. 1435000 / CMTS No. 445 / LDLD No. 640).

2. Prior Owner signed a land use restriction agreement (“LURA”) regarding the Property. The LURA was effective December 27, 1993, and filed of record at Volume 2665, Page 1015 of the Official Public Records of Real Property of El Paso County, Texas (“Records”), as amended by a First Amendment executed on September 24, 2001, and filed in the Records at Volume 4129, Page 1388. In accordance with Section 2 of the LURA, the LURA is a restrictive covenant/deed restriction encumbering the property and binding on all successors and assigns for the full term of the LURA.
3. Respondent took ownership of the Property on December 1, 2004 and, although an Agreement to Comply was not signed, Respondent is bound to the terms of the LURA in accordance with Section 2 thereof.
4. Respondent is that is qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development that is subject to the regulatory authority of TDHCA.

Compliance Violations<sup>1</sup>:

5. An on-site monitoring review was conducted on June 23, 2015, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and a November 16, 2015, corrective action deadline was set, however, the following violations were not corrected before the corrective action deadline and remain uncorrected to date:
  - a. Respondent failed to provide a compliant affirmative marketing plan, a violation of 10 TEX. ADMIN. CODE §10.617 (Affirmative Marketing), which requires developments to maintain an affirmative marketing plan that meets minimum requirements and to distribute marketing materials to selected marketing organizations that reach groups identified as least likely to apply and to the disabled. A document labeled as an affirmative marketing plan was received multiple times in response to an administrative penalty informal conference notice, but the plan was not on an approved form as required by the rule, did not identify groups least likely to apply or the disabled, identified general marketing efforts only, and omitted the required marketing materials to prove that the development was carrying out marketing to those groups that are least likely to apply and to the disabled. The plan included what appeared to be tenant selection criteria and information about the property, rather than a plan to affirmatively market to groups least likely to apply and to the disabled;
  - b. Respondent failed to post a laminated copy of the Tenant Rights and Resources Guide in a common area of the leasing office, a violation of 10 TEX. ADMIN. CODE §10.613 (Lease Requirements), which requires owners to post a laminated copy of the Guide in a common area of the leasing office and provide a copy to each

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<sup>1</sup> Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 TEX. ADMIN. CODE, CHAPTERS 10 AND 60 refer to the versions of the code in effect at the time of the compliance monitoring reviews and/or inspections that resulted in recording each violation. All past violations remain violations under the current code and all interim amendments.

household during the application process and upon any subsequent change to common amenities, unit amenities, or services; and

- c. Respondent failed to provide a Tenant Rights and Resources Guide and get a signed Acknowledgment for unit 9, a violation of 10 TEX. ADMIN. CODE §10.613 (Lease Requirements), which requires owners to post a laminated copy of the Guide in a common area of the leasing office and provide a copy to each household during the application process and upon any subsequent change to common amenities, unit amenities, or services.
6. The following violations remain outstanding at the time of this order:
    - a. Affirmative marketing violation described in FOF #5.a;
    - b. Lease violation described in FOF #5.b;
    - c. Lease violation described in FOF #5.c;

### CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, and 10 TEX. ADMIN. CODE §2.
2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
3. Pursuant to IRC §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance.
4. Respondent violated 10 TEX. ADMIN. CODE §10.617 in 2015, by failing to provide a complete affirmative marketing plan and evidence of outreach efforts;
5. Respondent violated leasing requirements in 10 TEX. ADMIN. CODE §10.613 in 2015, by failing to post a laminated copy of the Tenant Rights and Resources Guide in a common area of the leasing office;
6. Respondent violated leasing requirements in 10 TEX. ADMIN. CODE §10.613 in 2015, by failing to provide a Tenant Rights and Resources Guide to unit 9 and have the household sign an acknowledgment form;
7. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules, the Board has personal and subject matter jurisdiction over Respondent pursuant to TEX. GOV'T CODE §2306.041 and §2306.267.
8. Because Respondent is a housing sponsor, TDHCA may order Respondent to perform or refrain from performing certain acts in order to comply with the law, TDHCA rules, or the terms of a contract or agreement to which Respondent and TDHCA are parties, pursuant to Tex. Gov't Code §2306.267.

9. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code Chapter 2306 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to TEX. GOV'T CODE §2306.041.
10. An administrative penalty of \$1,000 is an appropriate penalty in accordance with 10 TEX. ADMIN. CODE §2.

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

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

**IT IS FURTHER ORDERED** that Respondent shall pay and is hereby directed to pay a \$500 portion of the assessed administrative penalty by cashier's check payable to the "Texas Department of Housing and Community Affairs" on or before June 25, 2016.

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

**IT IS FURTHER ORDERED** that if Respondent timely and fully complies with the terms and conditions of this Agreed Final Order, correcting all violations as required, the satisfactory performance under this order will be accepted in lieu of the remaining assessed administrative penalty and the remaining amount of the administrative penalty will be deferred and forgiven.

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

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

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

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

*[Remainder of page intentionally blank]*

Approved by the Governing Board of TDHCA on \_\_\_\_\_, 2016.

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

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

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

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

(Seal)

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

THE STATE OF TEXAS §  
  §  
COUNTY OF TRAVIS §

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

(Seal)

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

STATE OF TEXAS

COUNTY OF El Paso

BEFORE ME, Melissa Delgado, a notary public in and for the State of Texas on this day personally appeared Sylvia Davidson, known to me or proven to me through Driver's License 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 Sylvia Davidson, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I hold the office of General Manager for Respondent. I am the authorized representative of Respondent, owner of the Property, which is subject to a Land Use Restriction Agreement monitored by the TDHCA in the State of Texas, and I am duly authorized by Respondent to execute this document.
3. Respondent knowingly and voluntarily enters into this Agreed Final Order, and agrees with and consents to the issuance and service of the foregoing Agreed Order by the Board of the Texas Department of Housing and Community Affairs."

**RESPONDENT:**

**ANISTRUM INVESTMENTS, LTD**, a Texas limited partnership

**SYLDAVID, L.L.C.**, a Texas limited liability company, its general partner

By: [Signature]

Name: Sylvia Davidson

Title: Director and General Manager

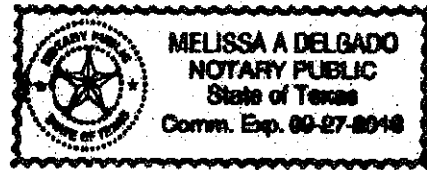
Given under my hand and seal of office this 26<sup>th</sup> day of September, 2016.

Melissa Delgado

Signature of Notary Public

Melissa Delgado

Printed Name of Notary Public



NOTARY PUBLIC IN AND FOR THE STATE OF Texas

My Commission Expires: 9-27-18



## Attachment 1

### **File Monitoring Violation Resources and Instructions**

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

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

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

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

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

Affirmative Marketing webinars: <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>

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

4. **Affirmative marketing plan –**

Reasons past submissions were unacceptable: Respondent submitted a document labeled as an Affirmative Marketing Plan on multiple occasions, however, it did not comply with minimum rule requirements under 10 TEX. ADMIN. CODE §10.617, a copy of which is enclosed at Attachment 2. Problems include, but are not limited to:

- Did not use HUD Form 935.2A;
- Did not identify populations “least likely to apply”. In general, those populations that are least likely to apply might include: African Americans, Native Americans, Alaskan Natives, Asians, Native Hawaiians, Other Pacific Islanders, Caucasians (non-Hispanic), Hispanics or Latinos, families with children, and the disabled;
- Did not identify organizations that are associated with groups that are least likely to apply. The only marketing identified was putting ads in Thrifty Nickel. This is general marketing, not affirmative marketing, because Thrifty Nickel serves all persons living in its distribution area;
- Did not include any evidence of special outreach efforts to those “least likely to apply” populations through specific media, organizations, or community contacts that work with “least likely to apply” populations or work in areas where “least likely to apply” populations live;
- Although not prohibited, the plan seemed to relate more to tenant selection criteria and marketing information about the property, rather than a plan for marketing strategies and documentation of outreach efforts to affirmatively market to groups least likely to apply and to the disabled.

#### To correct:

- a. Identify the appropriate housing market in which outreach efforts will be made;
- b. Determine the groups that are least likely to apply. The Affirmative Marketing Web Tool referenced at 10 TEX. ADMIN. CODE §10.617(d)(5) to determine groups that are least likely to apply is available online at:  
<http://www.tdhca.state.tx.us/pmcomp/forms.htm>.

Your property has under 40 units, so you must enter its census tract (48141001600) into the

right side of this tool rather than selecting the development name on the left side of the tool. Persons with disabilities must always be selected as a group least likely to apply.

- c. Identify specific organizations, media, and community contacts in the housing market to send marketing outreach materials. The organizations must specifically reach those groups designated as least likely to apply, including organizations that assist persons with disabilities. For example, a local housing authority serves the general public, not a specific racial or ethnic demographic; therefore, marketing to the housing authority is not affirmative marketing. The same is true for the Department Of Human Services, Texas Work Force Solutions, and Texas Neighborhood Service. A Hispanic Chamber of Commerce or Hispanic publication could be an avenue to market to the Hispanic population if that group is identified as one that is least likely to apply. Similarly, local groups that focus on helping the mentally disabled, physically disabled, disabled veteran affairs groups, etc, could be a way to market to the disabled community. Some examples of groups that focus on the disabled: Easter Seals, United Cerebral Palsy, American Council of the Blind, The Blinded Veterans Association.
- d. Complete and execute an affirmative marketing plan using any version of HUD Form 935.2A, including the groups and organizations identified above;
- e. Comply with all requirements of 10 TEX. ADMIN. CODE §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 10 TEX. ADMIN. CODE §10.617(f)(5). Submit all documentation to the Department via CMTS for review.

**5. Lease violations relating to the Tenant Rights and Resources Guide –**

Respondent submitted leases and lease addenda for multiple units on multiple occasions in response to this finding, but has not provided the requested documentation.

To correct: Implement the Tenants Rights and Resource Guide (“Guide”) as indicated at 10 TEX. ADMIN. CODE §10.613(k). The Guide and associated Acknowledgment form are available online at: <http://www.tdhca.state.tx.us/pmcomp/forms.htm>. Complete the fillable sections of the Guide. Post a laminated copy of the completed Guide in a common area of the leasing office. If there is no on-site leasing office, you should perform this action at the office for the Opportunity Center for the Homeless. Provide a copy of the completed Guide to the household in unit 9 and have them sign the Acknowledgment form. If the household moved out before signing, the finding is uncorrectable. Submit the following via CMTS for review:

- a. A copy of the Guide, with fillable sections completed;
- b. A letter indicating that a laminated copy of the Guide has been posted in a common area of the leasing office; and
- c. A copy of the signed acknowledgment for unit 9 – OR – if the household has vacated the unit before signing, a letter including the move-out date and acknowledging that the finding cannot be resolved.

## Attachment 2

### 10 TEX. ADMIN. CODE §10.617

#### Affirmative Marketing Requirements

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(a) Applicability. Effective April 1, 2015, compliance with this section is required for all Developments with five (5) or more total units to further the objectives of Title VIII of the Civil Rights Act of 1968 and Executive Order 13166.

(b) General. Owners of Developments with five (5) or more total units must affirmatively market their units to promote equal housing choice for prospective tenants, regardless of race, color, religion, sex, national origin, familial status, or disability and must develop and carry out an Affirmative Fair Housing Marketing Plan (or "Affirmative Marketing Plan") to provide for marketing strategies and documentation of outreach efforts to prospective applicants identified as "least likely to apply." In general, those populations that are least likely to apply may include: African Americans, Native Americans, Alaskan Natives, Asians, Native Hawaiians, Other Pacific Islanders, Caucasians (non-Hispanic), Hispanics or Latinos, and families with children. All Affirmative Marketing Plans must provide for affirmative marketing to persons with disabilities. Some Developments may be required by their LURAs to market units specifically to veterans or other populations.

(c) Plan format. Owners are encouraged to use any version of HUD Form 935.2A to meet Affirmative Marketing requirements. Owners participating in HUD funded programs administered by the Department must use the version required by the program. The Department may make additional forms or tools available for use.

(d) Determination of populations "least likely to apply." Owners must determine the populations "least likely to apply" (also "identified populations") using the methods identified in paragraphs (1) - (4) of this subsection. Owners may use the methods in paragraphs (1) and (2) of this subsection if the Development is not occupied, if the Development is in initial lease-up, if the Development is less than 40 total units, or the Owner determines that the demographic data on the tenant households and waiting list for the Development ("Tenant Pool") is not sufficiently complete to yield an accurate profile of the populations the Development is serving. Except in the cases of populations that must be the subject of affirmative marketing pursuant to LURA requirements and persons with disabilities, any populations that represent less than 1% of the total population of the county or MSA, as applicable, are not required to be considered "least likely to apply." To assist Owners in identifying least likely to apply populations, the Department shall make the tool described in paragraph (5) of this subsection available to Owners.

(1) New Developments located in Metropolitan Statistical Areas ("MSAs"). The Owner must compare the demographic data from the most recent decennial census for the census tract in which the development site is located to the demographic data of the entire MSA in which the development site is located. The comparison must be done for each of the populations identified in subsection (b) of this section using the percentage each group represents for the census tract and MSA. The Owner will identify any population in which the percentage representation in the census tract is more than 20% less than the same population's percentage representation in the MSA (*i.e.* a population is more than 20% underrepresented in the census tract as compared to the MSA as a whole).

(2) New Developments not located in MSAs. The Owner must compare the demographic data from the most recent decennial census for the census tract in which the development site is located to the demographic data of the county in which the development site is located. The comparison

must be done for each of the populations identified in subsection (b) of this section using the percentage each group represents for the census tract and county. The Owner will identify any population in which the percentage representation in the census tract is more than 20% less than the same population's percentage representation in the county (*i.e.*, a population is more than 20% underrepresented in the census tract as compared to the county as a whole). Example 617(1), County data shows 80% of the population in the County is Non-White Hispanic; the new development's census tract shows that 40% of the new development's census tract is Non-White Hispanic. The development must market to the Non-White Hispanic population because the 40% of Non-White Hispanics represented in the census tract shows an underrepresentation of more than 20% (*e.g.*, it is lower than 64%, which is 20% of 80%) when compared with the County percentage ( $80\% \times 20\% = 16\%$ ;  $80\% - 16\% = 64\%$ ). If the census tract showed evidence of 65% or more Non-White Hispanics in the area, the development would not market to the Non-White Hispanic population.

(3) Established Developments located in MSAs. The Owner must compare the demographic data of the Development's Tenant Pool to the demographic data of the MSA in which the development site is located. The comparison must be done for each of the populations identified in subsection (b) of this section using the percentage each group represents for the tenant pool and MSA. The Owner will identify any population in which the percentage representation in the Tenant Pool is more than 20% less than the same population's percentage representation in the MSA (*i.e.*, a population is more than 20% underrepresented in the tenant pool as compared to the MSA as a whole). *Example 617(2)*, the Owner's tenant pool shows that 5% of the population in the development is African American and that 8% of the population in the MSA is African American. The development must market to African American populations because the 5% of African Americans represented in the development shows an underrepresentation of more than 20% ( $8\% \times 20\% = 1.6\%$ ;  $8\% - 1.6\% = 6.4\%$ ). If the development showed evidence of 6.4% or more African Americans in the tenant pool, the development would not market to the African American population. In a development with 150 units in this scenario, at least 6.4% or 10 residents must be African American to show that the population is adequately represented and should not be selected as a "least likely to apply" group requiring special outreach and marketing.

(4) Established Developments not located in MSAs. The Owner must compare the demographic data of the Development's Tenant Pool to the demographic data of the county in which the development site is located. The comparison must be done for each of the populations identified in subsection (b) of this section using the percentage each group represents for the tenant pool and county. The Owner will identify any population in which the percentage representation in the tenant pool is more than 20% less than the same population's percentage representation in the county (*i.e.*, a population is more than 20% underrepresented in the tenant pool as compared to the county as a whole).

(5) The Department will develop and maintain an online tool for performing the comparisons required by paragraphs (1) - (4) of this subsection, and an Owner may rely on analysis required under paragraphs (1) - (4) (but not an analysis made pursuant to subsection (e) of this section) made correctly using this tool. The Department may update the tool more frequently than an Owner is required to review and/or revise their Affirmative Marketing Plan pursuant to subsection (g) of this section. Provided an Owner is in compliance with subsection (g), an Owner is not required to update their plan as updates to the Department's tool are made available.

(e) Other determinations of "least likely to apply." If the owner identifies other ethnic and/or religious groups that may be underrepresented and chooses to incorporate such group(s) into the Affirmative Marketing Plan, the Owner must perform and document a reasonable process by which

the groups were identified.

(f) Marketing and Outreach.

(1) The plan must include special outreach efforts to the "least likely to apply" populations through specific media, organizations, or community contacts that work with least likely to apply populations or work in areas where least likely to apply populations live.

(2) Developments must utilize methods of outreach throughout the MSA or, where subdivided into a Metropolitan Division, such Division (for Developments located in an MSA) or county (for Developments not located in an MSA). Efforts can be made beyond these areas at the discretion of the Owner. While these areas may be very large, in many instances outreach in areas located in another county or across town are necessary to effectively reach the identified populations.

(3) Developments must consider how Limited English Proficiency may affect populations least likely to apply, including ways it plans to mitigate language barriers related to advertising and community outreach. Such information should be included in the Affirmative Marketing Plan as an additional consideration or as an attachment to the Plan.

(4) Development Owners must allow applicants to submit applications via mail or at the Development site or leasing office; if the Development is electronically equipped, the Development may also allow applications to be submitted via email, website form, or fax. If the Development requires an application fee, the consideration of an application without payment may be deferred pending receipt of the fee. Applications must state available alternate means of submission and include address, email, or other necessary contact information on the form or its attached leasing criteria. If the development chooses to use an electronic application, prior approval from the Department is required to mitigate fraud, waste and abuse.

(5) Advertisements and/or marketing materials used must include the Fair Housing logo and give contact information that prospective tenants can access if reasonable accommodations are needed in order to complete the application process. The contact information must be in English and Spanish, at a minimum.

(g) Timeframes.

(1) An Owner must begin its affirmative marketing efforts for each of the identified populations at least six months prior to the anticipated date the first building is to be available for occupancy. As a condition of an award to a new Development, the Board may require affirmative marketing efforts to begin more than six (6) months prior to the anticipated date the first building is to be placed in service; and

(2) An Owner must update its Affirmative Marketing Plan and populations that are least likely to apply at least every two (2) years from the effective date of the current plan or, for HUD funded or USDA properties, as otherwise required by HUD or USDA.

(h) Biennial Plan Review. The plan must include how, and by whom, data will be collected and evaluated, how often the plan will be re-evaluated, and how the re-evaluation will be completed. The Owner must review demographic data and household characteristics from the Tenant Pool relative to the county or MSA. If any identified population is or remains underrepresented by more than 20%, the Owner should determine whether the percentage of change is greater or less than when the Affirmative Marketing Plan was last evaluated. If, upon review of the Tenant Pool, the Owner determines that there has been no change (including negative change) or only a limited amount of success, the Owner must:

(1) Complete an evaluation of efforts to date (including a review of current advertising, outreach, and networking strategies and what, if any of the strategies used, has been successful) and gather a list of existing and new community resources available for use in revising the current Affirmative Fair Housing Marketing Plan; and

(2) Revise the Affirmative Fair Housing Marketing Plan to include a wider distribution area and/or new strategies for outreach and/or more frequent outreach efforts.

(i) Record keeping. Owners must maintain records of each Affirmative Marketing Plan and specific outreach efforts completed for the greater of three years or the recordkeeping requirement identified in the LURA.

(j) Exception to Affirmative Marketing. If the Development has closed its waiting list, Affirmative Marketing is not required. Affirmative Marketing is required as long as the Owner is accepting applications, has an open waiting list, or is marketing prior to placement in service as required under paragraph (g)(1) of this section.

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**Source Note:** The provisions of this §10.617 adopted to be effective January 8, 2015, 40 TexReg 44

### Attachment 3:

#### **Texas Administrative Code**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



1b

BOARD ACTION REQUEST

BOND FINANCE DIVISION

OCTOBER 13, 2016

Presentation, Discussion, and Possible Action on Resolution No. 17-006 authorizing programmatic changes to the Single Family Taxable Mortgage Program FHA Streamline Refinance Program ("TMP-79 Refinance Program").

RECOMMENDED ACTION

See attached resolution.

BACKGROUND

In 2011, the Department implemented Program 77 through the issuance of multiple series of Residential Mortgage Revenue Bonds ("RMRB"). First lien mortgage loans were originated with mortgage interest rates ranging from 3.70% to 5.74%, and included down payment assistance of either 4 or 5 points (4% or 5% of the amount of the first mortgage loan). Under the terms of the Program 77 loan documents, a borrower that repays their second lien note prior to maturity is entitled to a mortgage rate reduction on their first lien mortgage loan of 0.15% for each point of down payment assistance that was provided by the Department. Borrowers that received 4 points of down payment assistance are entitled to a .60% mortgage rate reduction on their first lien note, and borrowers that received 5 points of down payment assistance are entitled to a .75% reduction. Over \$500 million in loans were originated through Program 77, the current outstanding balance is approximately \$300 million.

In 2015, the Board authorized the TMP-79 Refinance Program. This program enabled borrowers that financed their first and second lien mortgages through the Single Family Taxable Mortgage Program prior to January 26, 2015, to refinance their first mortgage loan to take advantage of a .50% reduction in FHA mortgage insurance premiums and potentially to realize additional savings, depending on the original and refinanced mortgage rates.

Staff is requesting Board authorization to expand the TMP-79 Refinance Program to include Program 77 borrowers that have repaid their Program 77 second lien note. These borrowers would be given a choice of receiving the .60% or .75% interest rate reduction offered under the original documents, or refinancing through the TMP-79 Refinance Program which would, for many Program 77 borrowers, provide greater interest savings than the Program 77 rate reduction. These borrowers can choose the option that best meets their overall financing needs.

The Department pays all costs associated with the Program 77 rate reduction, and would pay the refinance and associated costs should the Program 77 borrower select the Refinance Program. These costs would be paid by surplus funds held in the RMRB Trust Indenture.

The TMP-79 Refinance Program is currently suspended pending completion of the transition to the Department's new Master Servicer. We anticipate restating this program by the end of October 2016.

## **RESOLUTION NO. 17-006**

RESOLUTION APPROVING PROGRAM CHANGES AND RELATED AMENDMENTS OR SUPPLEMENTS TO PROGRAM DOCUMENTS FOR SINGLE FAMILY TAXABLE MORTGAGE REFINANCE PROGRAM; AUTHORIZING THE EXECUTION OF DOCUMENTS AND INSTRUMENTS RELATING TO THE FOREGOING; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT

WHEREAS, the Texas Department of Housing and Community Affairs (the "Department") has been duly created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code (the "Act"), as amended from time to time, for the purpose of providing a means of financing the costs of residential ownership, development and rehabilitation that will provide decent, safe and sanitary housing for individuals and families of low and very low income and families of moderate income (as described in the Act as determined by the Governing Board of the Department (the "Governing Board") from time to time) at prices they can afford; and

WHEREAS, the Act authorizes the Department (a) to purchase notes and other obligations evidencing loans or interests in loans for individuals and families of low and very low income and families of moderate income and (b) to sell, at public or private sale, with or without public bidding, a mortgage or other obligation held by the Department; and

WHEREAS, beginning in 2011, the Department issued multiple series of its residential mortgage revenue bonds under in the Residential Mortgage Revenue Bonds Trust Indenture dated as of November 1, 1987, between the Department's predecessor, the Texas Housing Agency, or the Department, as the case may be, and MTrust Corp or its successors as trustee, including The Bank of New York Mellon Trust Company, N.A. (as amended and supplemented from time to time, collectively the "RMRB Trust Indenture") that comprised Bond Program 77 ("Program 77"); and

WHEREAS, the terms of all Program 77 down payment assistance loans provided for the reduction of the interest rate on the first lien note upon repayment of the related second lien note, such reduction to be equal to 0.15% per point of down payment assistance provided to the borrower through Program 77; and

WHEREAS, pursuant to Resolution No. 13-003 adopted September 6, 2012, the Governing Board approved a taxable mortgage purchase program designated Program 79 ("TMP-79") to fund all or a portion of the Department's single family loan production; and

WHEREAS, pursuant to Resolution No. 15-016, the Governing Board authorized programmatic changes to TMP-79 to include refinancings of loans originally financed under TMP-79 to allow homebuyers to realize the benefit of the reduced FHA costs and implemented its "TMP-79 FHA Streamline Refinance Program"; and

WHEREAS, under the current TMP-79 guidelines, only mortgage loans originated through TMP-79 and closed before January 26, 2015, are eligible to refinance through the TMP-79 FHA Streamline Refinance Program;

WHEREAS, the Department desires to offer the option to borrowers that have repaid their Program 77 Down Payment Assistance Loans to refinance First Lien Notes through the TMP-79 FHA Streamline Refinance Program in lieu of the automatic interest rate reduction on their First Lien Note; and

WHEREAS, the Department further desires to reimburse certain refinancing fees and closing costs (other than FHA mortgage insurance premiums), such amounts to be paid from surplus funds held in the RMRB Trust Indenture;

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

## ARTICLE 1

### APPROVAL OF PROGRAM CHANGES, DOCUMENTS AND CERTAIN ACTIONS

Section 1.1 Authority to Include Certain Program 77 Refinancings in TMP-79 FHA Streamline Refinance Program. The inclusion of Program 77 first lien loans for which the associated second lien loan has been repaid as eligible for refinancing through the TMP-79 Streamline Finance Program and the reimbursement of certain refinancing fees and closing costs, to be paid from surplus funds held in the RMRB Trust Indenture, are hereby approved.

Section 1.2 Execution and Delivery of Documents. The Authorized Representatives each are hereby authorized to execute and deliver all agreements, certificates, contracts, documents, instruments, releases, financing statements, 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, including, without limitation, any amendment or supplement to any existing agreements and guidelines related to the TMP-79 FHA Streamline Refinance Program.

Section 1.3 Power to Revise Form of Documents. Notwithstanding any other provision of this Resolution, the Authorized Representatives are each hereby authorized to make or approve such revisions in documents related to the TMP-79 FHA Streamline Refinance Program as, in the judgment of such Authorized Representative, may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution or the refinancing of eligible Program 77 loans under the TMP-79 FHA Streamline Refinance Program, such approval to be evidenced by the delivery of such documents by the Authorized Representatives.

Section 1.4 Authorized Representatives. The following persons are hereby named as authorized representatives of the Department for purposes of executing, attesting, affixing the Department's seal to, and delivering the documents and instruments and taking the other actions referred to in this Article 1: the Chair or Vice Chair of the Governing Board, the Executive Director of the Department, the Chief Financial Officer of the Department, the Director of Bond Finance of the Department, the Director of Texas Homeownership of the Department, the Director of Multifamily Finance of the Department, and the Secretary or any Assistant Secretary to the Governing Board. Such persons are referred to herein collectively as the "Authorized Representatives." Any one of the Authorized Representatives is authorized to act individually as set forth in this Resolution.

Section 1.5 Waiver of Rules. The Governing Board hereby waives the requirements of Title 10, Chapter 28 of the Texas Administrative Code relating to the applicable median family income of borrowers and the purchase price limit on residences refinanced under the authority granted by this Resolution.

## ARTICLE 2

### GENERAL PROVISIONS

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

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

(EXECUTION PAGE FOLLOWS)

PASSED AND APPROVED this 13th day of October, 2016.

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Chair, Governing Board

ATTEST:

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Secretary to the Governing Board

(SEAL)

1c

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**OCTOBER 13, 2016**

Presentation, Discussion, and Possible Action on Determination Notices for Housing Tax Credits with another Issuer (#16431 Northview Village, Brenham)

**RECOMMENDED ACTION**

**WHEREAS**, a 4% Housing Tax Credit application for Northview Village, sponsored by the Washington County Housing Corporation, was submitted to the Department on July 29, 2016;

**WHEREAS**, the Certification of Reservation from the Texas Bond Review Board was issued on August 26, 2016, and will expire on January 23, 2017;

**WHEREAS**, the proposed issuer of the bonds is the Washington County Housing Corporation; and

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

**NOW, therefore, it is hereby**

**RESOLVED**, that the issuance of a Determination Notice of \$237,607 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 Northview Village is hereby approved as presented to this meeting.

**BACKGROUND**

*General Information:* Northview Village is located at 1904 Northview Circle and 1902 Pecan Circle, Brenham, Washington County, and consists of the acquisition and rehabilitation of 66 units, all of which will be rent and income restricted at 60% of the Area Median Family Income. The units are currently occupied and operating as public housing and are owned and managed by the Housing Authority of the City of Brenham. The subject property will be converted through HUD’s Rental Assistance Demonstration program. The development was originally constructed in 1984 and will serve a general population. The current zoning designation is for Mixed Residential Use and the ordinance allows multifamily developments to be on sites less than two acres. Northview Village is approximately 6.8 acres and considered an existing non-conforming use; however, the City of Brenham has grandfathered the site such that the multifamily use could continue. The census tract (1702.00) has a median household income of \$40,687, is in the fourth quartile and has a poverty rate of 14%.

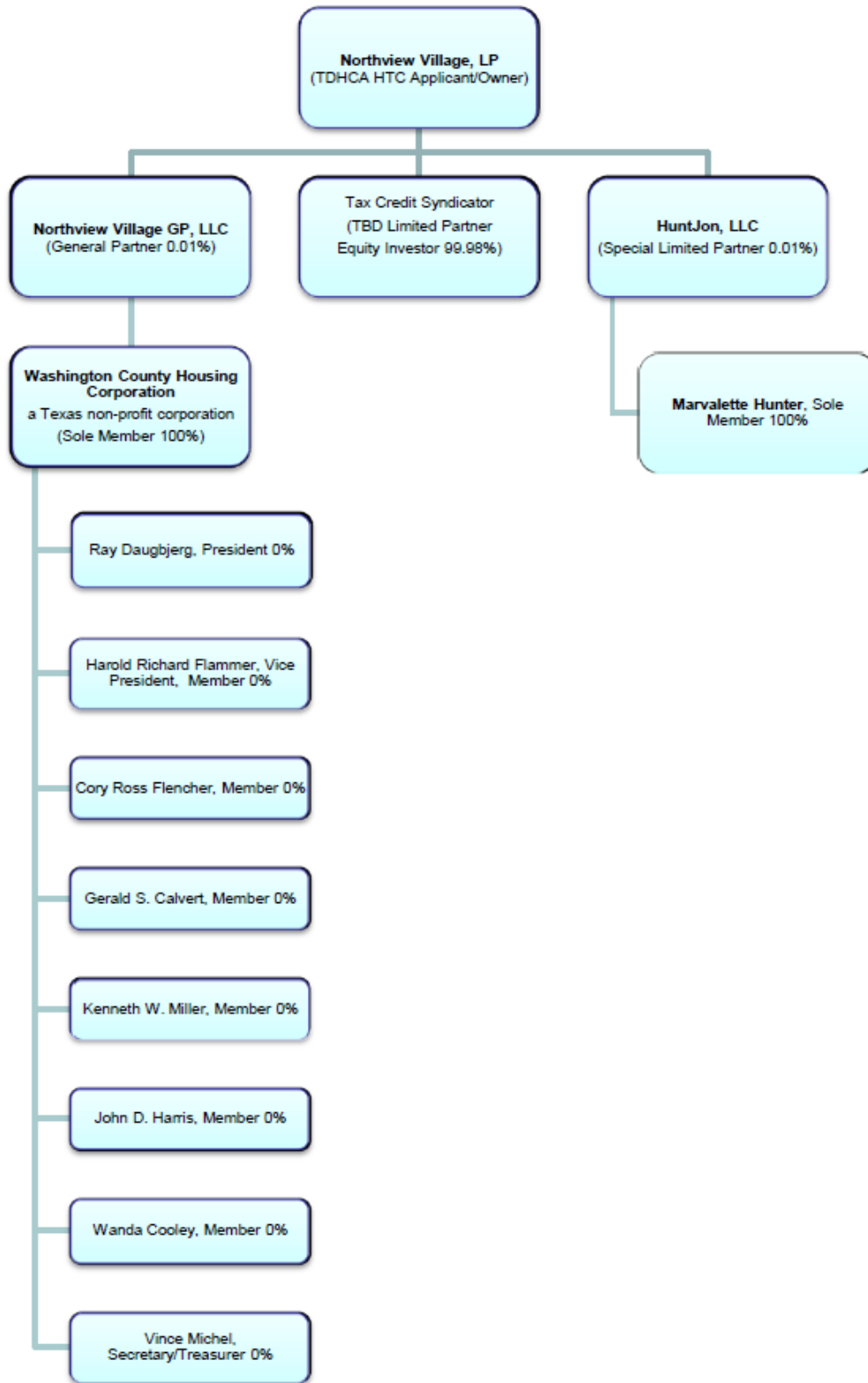
*Organizational Structure:* The Borrower is Northview Village, LP, and includes the entities and principals as illustrated in Exhibit A. The applicant is considered a small Category 3 portfolio and the previous

participation was deemed acceptable by EARAC on October 3, 2016, after review and discussion. EARAC also reviewed the proposed financing and the underwriting report, and recommends issuance of a Determination Notice.

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



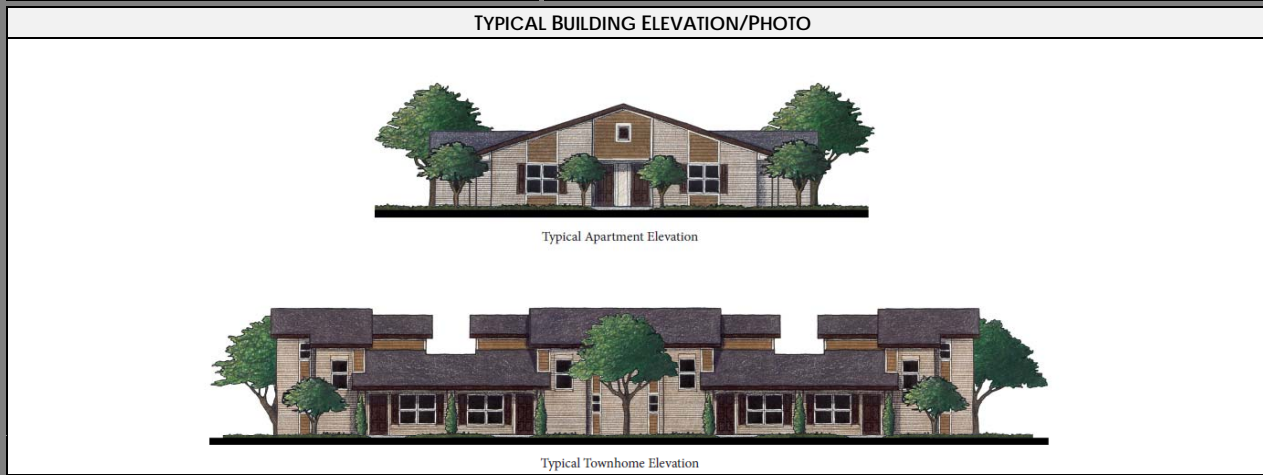
# EXHIBIT A



# APPLICATION SUMMARY

PROPERTY IDENTIFICATION		RECOMMENDATION				
Application #	16431	TDHCA Program	Request	Approved		
Development	Northview Village	LIHTC (4% Credit)	\$237,607	\$237,607	\$3,600/Unit	\$1.05
City / County	Brenham / Washington		Amount	Rate	Amort	Term
Region/Area	8 / Rural	Private Activity Bonds				
Population	General	MDLP (Repayable)				
Set-Aside	General	MDLP (Non-Repayable)				
Activity	Acquisition/Rehab (Built in 1984)	CHDO Expenses				

KEY PRINCIPAL / SPONSOR		
Brenham Housing Authority		
- Vince Michel, Contact		
Marvalette Hunter, Consultant		
Related-Parties	Contractor - No	Seller - Yes



UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	-	0%	30%	-	0%
1	6	9%	40%	-	0%
2	44	67%	50%	-	0%
3	12	18%	60%	66	100%
4	4	6%	MR	-	0%
<b>TOTAL</b>	<b>66</b>	<b>100%</b>	<b>TOTAL</b>	<b>66</b>	<b>100%</b>

PRO FORMA FEASIBILITY INDICATORS			
Pro Forma Underwritten		Applicant's Pro Forma	
Debt Coverage	1.16	Expense Ratio	63.0%
Breakeven Occ.	90.0%	Breakeven Rent	\$533
Average Rent	\$563	B/E Rent Margin	\$30
Property Taxes	Exempt	Exemption/PILOT	100%
Total Expense	\$4,153/unit	Controllable	\$2,982/unit



MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (30% Maximum)			2.3%
Highest Unit Capture Rate	7%	2 BR/60%	44
Dominant Unit Cap. Rate	7%	2 BR/60%	44
Premiums (↑60% Rents)	N/A		N/A
Rent Assisted Units	66	100% Total Units	

DEVELOPMENT COST SUMMARY			
Costs Underwritten		TDHCA's Costs - Based on PCA	
Avg. Unit Size	914 SF	Density	9.6/acre
Acquisition		\$27K/unit	\$1,800K
Building Cost	\$45.70/SF	\$42K/unit	\$2,756K
Hard Cost		\$52K/unit	\$3,417K
Total Cost		\$116K/unit	\$7,653K
Developer Fee	\$939K	(52% Deferred)	Paid Year: 13
Contractor Fee	\$435K	30% Boost	Yes

REHABILITATION COSTS / UNIT			
Site Work	\$4K	8%	Finishes/Fixtures \$9K 17%
Building Shell	\$26K	51%	Amenities \$1K 3%
HVAC	\$6K	11%	Total Exterior \$32K 67%
Appliances	\$1K	2%	Total Interior \$16K 33%

DEBT (Must Pay)					CASH FLOW DEBT / GRANT FUNDS					EQUITY / DEFERRED FEES	
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount
Davis Penn Mortgage	40/40	4.20%	\$2,273,200	1.31	Brenham Housing Authority (Seller Note)	0/0	0.00%	\$1,800,000	1.31	Raymond James	\$2,494,624
<b>TOTAL DEBT (Must Pay)</b>			<b>\$2,273,200</b>		<b>CASH FLOW DEBT / GRANTS</b>			<b>\$2,400,000</b>		Deferred Developer Fee	\$485,649
<b>TOTAL EQUITY SOURCES</b>											<b>\$2,980,273</b>
<b>TOTAL DEBT SOURCES</b>											<b>\$4,673,200</b>
<b>TOTAL CAPITALIZATION</b>											<b>\$7,653,473</b>

**CONDITIONS**

1 Receipt and acceptance with Determination Notice:  
a: Copy of the CHAP Agreement and all amendments.  
b: The recommendation assumes the Development will comply with the construction and accessibility requirements of the 2010 ADA standards with the exceptions listed in 79 Federal Register 29671, and further described in 10 TAC Chapter 1, Subchapter B. However, the Applicant must provide a revised scope of work and budget necessary to make the Development comply with the Department's requirements, and certification from an Architect that the revised scope of work includes items required to meet all Accessibility requirements including 2010 ADA.

2 Receipt and acceptance by Cost Certification:  
a: All appropriate abatement procedures for asbestos-containing materials and lead-based paint.  
b: Documentation confirming the source of the \$600K BHA funds are not federal, or and Attorney opinion validating federally sourced funds can be considered bona fide debt with a reasonable expectation that it will be repaid in full and further stating that the funds should not be deducted from eligible basis.

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

**BOND RESERVATION / ISSUER**

Issuer	Washington County Housing Corp
Expiration Date	1/23/2017
Bond Amount	\$6,000,000
BRB Priority	Priority 3
Expected Close	1/23/2017
Bond Structure	Cash Collateralized - Interim Construction Only

**RISK PROFILE**

**STRENGTHS/MITIGATING FACTORS**

- Low Capture Rates
- Minimal lease up risk
- Pro forma based on historical expenses
- Developer experience

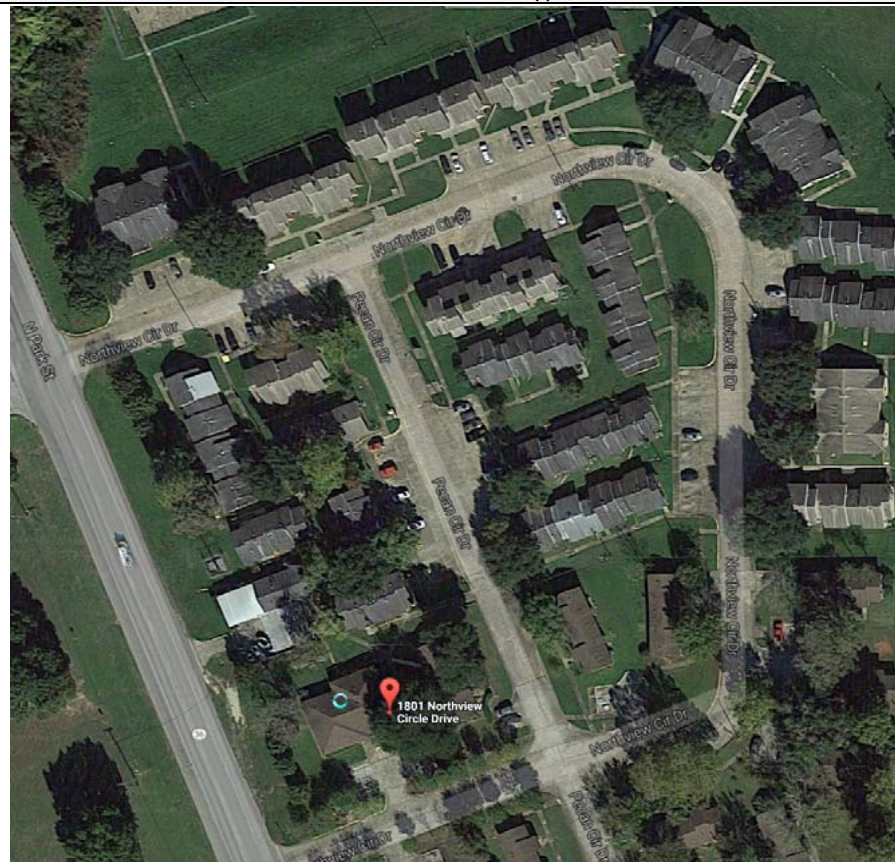
**WEAKNESSES/RISKS**

- Potential cost overruns associated with rehab projects
- Post rehab applicable fractions (due to over income tenants)

**AREA MAP**



**AERIAL PHOTOGRAPH(S)**



**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**OCTOBER 13, 2016**

Presentation, Discussion, and Possible Action on Determination Notices for Housing Tax Credits with another Issuer (#16432 Oaks at Georgetown, Georgetown)

**RECOMMENDED ACTION**

**WHEREAS**, a 4% Housing Tax Credit application for the Oaks at Georgetown, sponsored by Crossroads Housing Development Corporation, was submitted to the Department on July 29, 2016;

**WHEREAS**, the Certification of Reservation from the Texas Bond Review Board was issued on August 10, 2016, and will expire on January 7, 2017; and

**WHEREAS**, the proposed issuer of the bonds is the Capital Area Housing Finance Corporation;

**NOW, therefore, it is hereby**

**RESOLVED**, that the issuance of a Determination Notice of \$693,260 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 the Oaks at Georgetown is hereby approved as presented to this meeting.

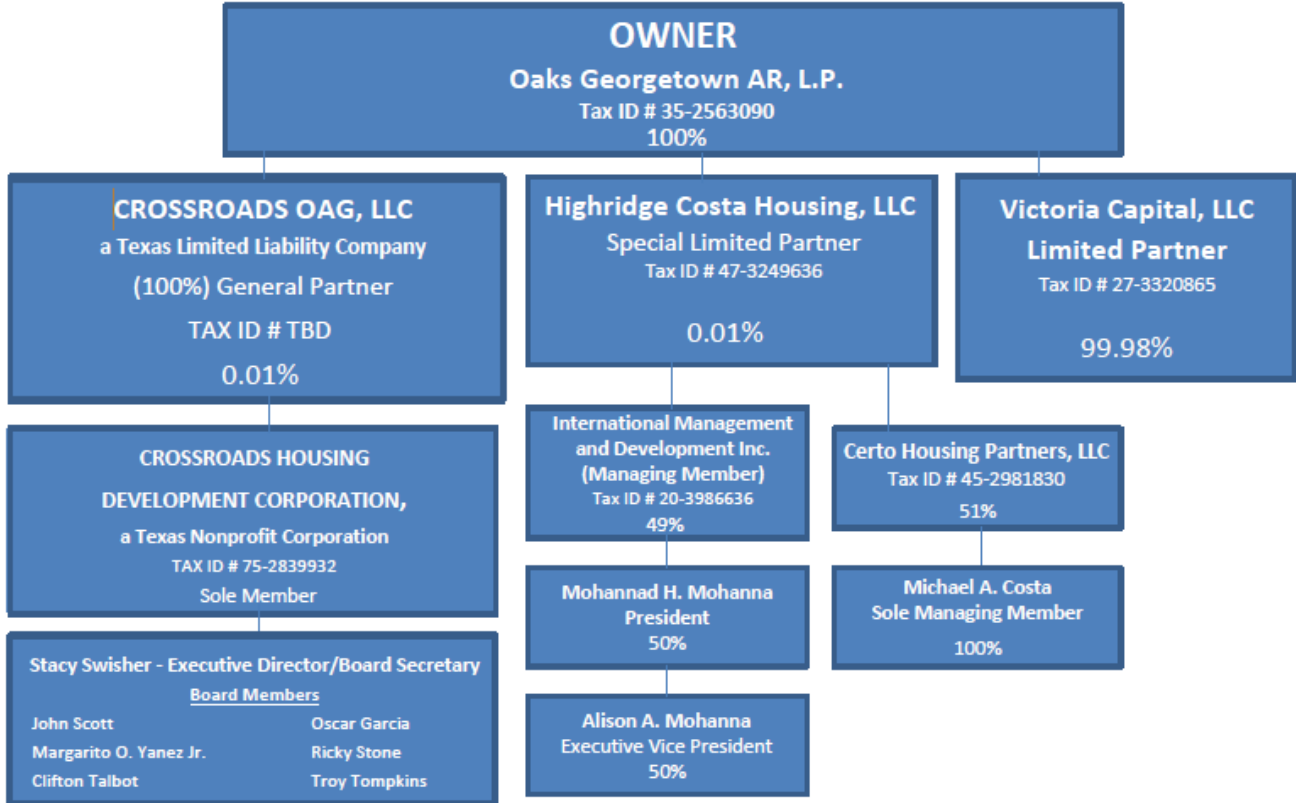
**BACKGROUND**

*General Information:* The Oaks at Georgetown is located at 550 W 22<sup>nd</sup> Street, Georgetown, Williamson County, and consists of the acquisition and rehabilitation of 192 units, 58 of which will be rent and income restricted at 50% of the Area Median Family Income ("AMFI") and the remaining 134 units will be rent and income restricted at 60% AMFI. The development is currently 96% occupied, was originally constructed in 1997, will serve a general population and conforms to current zoning. Oaks at Georgetown is an existing housing tax credit development (#96188) that received an allocation of competitive 9% credits in 1996. The existing LURA does not contain a Right of First Refusal provision. The census tract (0214.02) has a median household income of \$36,816, is in the fourth quartile and has a poverty rate of 27%.

*Organizational Structure:* The Borrower is Oaks Georgetown AR, LP, and includes the entities and principals as illustrated in Exhibit A. The applicant is considered a medium Category 2 portfolio and the previous participation was deemed acceptable by EARAC on October 3, 2016; without further review or discussion. EARAC also reviewed the proposed financing and the underwriting report, and recommends issuance of a Determination Notice.

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

**EXHIBIT A**





# APPLICATION SUMMARY

REAL ESTATE ANALYSIS DIVISION

January 1, 1900

PROPERTY IDENTIFICATION	
Application #	16432
Development	Oaks at Georgetown
City / County	Georgetown / Williamson
Region/Area	7 / Urban
Population	General
Set-Aside	General
Activity	Acquisition/Rehab (Built in 1997)

RECOMMENDATION					
TDHCA Program	Request	Approved			
LIHTC (4% Credit)	\$693,260	\$693,260	\$3,611/Unit	\$0.95	
	Amount	Rate	Amort	Term	Lien
Private Activity Bonds					
MDLP (Repayable)					
MDLP (Non-Repayable)					
CHDO Expenses					

KEY PRINCIPAL / SPONSOR		
General Partner(s)		
Certo Housing Partners, LLC- Developer, Limited Partner		
Crossroads Housing Development Corporation-GP		
Sara Reidy-Consultant		
Michael Costa-Developer, Limited Partner		
Related-Parties	Contractor - Yes	Seller - Yes

## TYPICAL BUILDING ELEVATION/PHOTO



UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	-	0%	30%	-	0%
1	48	25%	40%	-	0%
2	64	33%	50%	58	31%
3	80	42%	60%	131	69%
4	-	0%	MR	-	0%
<b>TOTAL</b>	<b>192</b>	<b>100%</b>	<b>TOTAL</b>	<b>189</b>	<b>98%</b>

PRO FORMA FEASIBILITY INDICATORS			
Pro Forma Underwritten		Applicant's Pro Forma	
Debt Coverage	1.15	Expense Ratio	50.4%
Breakeven Occ.	86.4%	Breakeven Rent	\$844
Average Rent	\$905	B/E Rent Margin	\$61
Property Taxes	\$896/unit	Exemption/PILOT	0%
Total Expense	\$5,164/unit	Controllable	\$3,189/unit

## SITE PLAN



MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (10% Maximum)	24.9%		
Highest Unit Capture Rate	155%	2 BR/60%	45
Dominant Unit Cap. Rate	113%	3 BR/60%	56
Premiums (↑60% Rents)	#DIV/0!	#DIV/0!	
Rent Assisted Units	N/A		

DEVELOPMENT COST SUMMARY			
Costs Underwritten	TDHCA's Costs - Based on PCA		
Avg. Unit Size	896 SF	Density	18.2/acre
Acquisition	\$88K/unit	\$16,900K	
Building Cost	\$14.31/SF	\$13K/unit	\$2,461K
Hard Cost	\$16K/unit		\$3,033K
Total Cost	\$125K/unit		\$23,939K
Developer Fee	\$584K	(14% Deferred)	Paid Year: 1
Contractor Fee	\$425K	30% Boost	Yes

REHABILITATION COSTS / UNIT			
Site Work	\$1K	6%	Finishes/Fixture: \$K 3%
Building Shell	\$8K	48%	Amenities \$1K 8%
HVAC			Total Exterior \$10K 66%
Appliances	\$5K	30%	Total Interior \$5K 34%

DEBT (Must Pay)					CASH FLOW DEBT / GRANT FUNDS					EQUITY / DEFERRED FEES	
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount
ATAX "A" Bonds	18/40	5.00%	\$14,270,000	1.15	Oaks at Georgetown, L.P. Seller L	35/35	4.50%	\$2,046,120	1.15	Victoria Capital	\$6,585,971
										Highridge Costa Housing LLC	\$80,000
					Operating Cash Flow	0/0	0.00%	\$957,236	1.15	Additional (Excess) Funds Req'd	(\$0)
										<b>TOTAL EQUITY SOURCES</b>	\$6,665,971
										<b>TOTAL DEBT SOURCES</b>	\$17,273,356
<b>TOTAL DEBT (Must Pay)</b>			\$14,270,000		<b>CASH FLOW DEBT / GRANTS</b>			\$3,003,356		<b>TOTAL CAPITALIZATION</b>	\$23,939,327

**CONDITIONS**

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

**BOND RESERVATION / ISSUER**

Issuer	bl Area Housing Finance Corporation
Expiration Date	1/7/2017
Bond Amount	\$20,000,000
BRB Priority	3
Expected Close	?
Bond Structure	Private Placement

**RISK PROFILE**

**STRENGTHS/MITIGATING FACTORS**

- High occupancy at property
- No tenant relocation needed
- No occupancy risk; 96% occupied rehab
- Low expense ratio

**WEAKNESSES/RISKS**

- 1.15 DCR in year one with reduced debt

**AERIAL PHOTOGRAPH(S)**



**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**OCTOBER 13, 2016**

Presentation, Discussion, and Possible Action on a Determination Notice for Housing Tax Credits with another Issuer (#16434 thinkEAST Apartments, Austin)

**RECOMMENDED ACTION**

**WHEREAS**, a 4% Housing Tax Credit application for thinkEAST Apartments, sponsored by the Housing Authority of the City of Austin, Atlantic Pacific Communities, LLC and Madhouse Development Services, Inc. was submitted to the Department on July 28, 2016;

**WHEREAS**, the Certificate of Reservation from the Texas Bond Review Board was issued on August 19, 2016, and will expire on January 16, 2017;

**WHEREAS**, the proposed issuer of the bonds is the Austin Affordable Public Facility Corporation;

**WHEREAS**, pursuant to 10 TAC §10.101(a)(4) of the Uniform Multifamily Rules related to Undesirable Neighborhood Characteristics, applicants are required to disclose to the Department the presence of certain characteristics of a proposed development site;

**WHEREAS**, the middle school for the attendance zone of the proposed development did not achieve a Met Standard rating in 2013, 2014, and 2015, based on the Accountability Ratings of the Texas Education Agency (“TEA”);

**WHEREAS**, a letter was submitted from Austin ISD Superintendent Paul Cruz attesting to the continued improvement of the school’s performance and based on the recently released 2016 Accountability Ratings of TEA, the middle school achieved Met Standard;

**WHEREAS**, based on the foregoing that sufficiently addresses the mitigation allowed under the rule, staff recommends the site be eligible under 10 TAC §10.101(a)(4) of the Uniform Multifamily Rules; and

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

**NOW, therefore, it is hereby**

**RESOLVED**, that the issuance of a Determination Notice of \$1,055,426 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 thinkEAST Apartments is hereby approved as presented to this meeting.



## BACKGROUND

*General Information:* thinkEAST Apartments, proposed to be located at 1143 Shady Lane in Austin, Travis County, involves the new construction of 182 units that will be rent and income restricted at 60% of Area Median Family Income. The development will serve the general population and is currently zoned appropriately. The census tract (0021.11) has a median household income of \$39,375, is in the fourth quartile and has a poverty rate of 33.90%.

*Site Analysis:* The proposed development is to be located within the Austin Independent School District ("ISD") and the middle school for the attendance zone of the proposed development, Martin Middle School, failed to achieve the 2015 Met Standard rating. From a historical perspective, Martin Middle School has had an Accountability Rating of Improvement Required for 2013, 2014, and 2015. A letter was submitted by Austin ISD Superintendent Paul Cruz, Ph.D. who explained that there are numerous initiatives dedicated to school improvement and that the middle school missed Met Standard by one point on Index 4 (relating to Post Secondary Readiness). Dr. Cruz affirmed his belief that Martin Middle School has demonstrated continued improvement and believes it will achieve a Met Standard rating by the time thinkEAST is placed into service. Staff notes that on August 15, 2016, the TEA released the 2016 Accountability Ratings and Martin Middle School did achieve Met Standard.

Other observations noted by staff associated with the proposed site include an active railroad track in proximity to the boundaries of the development site that could constitute an undesirable site feature and render the site ineligible. The entrance to the site is off Shady Lane and the railroad track runs parallel to this stretch of Shady Lane; however, the residential buildings and improvements will be set back from Shady Lane as reflected on the attached site plan. Through discussions with the applicant, it was represented that the partnership will only have rights to the entrance strip through a Joint Use Agreement among the City of Austin, the Housing Authority of the City of Austin, and the seller. The ground lease executed at closing will not include this strip of land as part of the development site and other than an access easement the partnership will have no other rights to the strip of land. The applicant indicated that the reason for this structure was because the seller wanted to maintain rights and access to the lots on either side of the strip. Based on the foregoing, staff does not believe the proximity of the railroad track constitutes an undesirable site feature that would cause the site to be ineligible.

Also worth noting is that on one of these lots adjacent to the strip there is a single family home that has been boarded up and not occupied. The applicant indicated that this home belongs to the seller who has not yet decided what he will do with the home and that the property taxes are current. The land otherwise surrounding the home has been maintained.

Under §10.101(a)(4) of the Uniform Multifamily Rules, there is a consideration for acceptable mitigation regarding the undesirable neighborhood characteristics on the basis that there is a factual determination that such characteristic is not of such a nature or severity that it should render the development site ineligible. Staff believes the recently released 2016 Accountability Ratings by TEA reflecting a Met Standard rating, combined with the letter from the Austin ISD, leads to a supported conclusion that the development site should be considered eligible under §10.101(a)(4) of the Uniform Multifamily Rules. Moreover, the one home, while it could conceivably be considered blight, is not of a magnitude that should render the site ineligible considering the taxes are current and the land around it has been maintained.

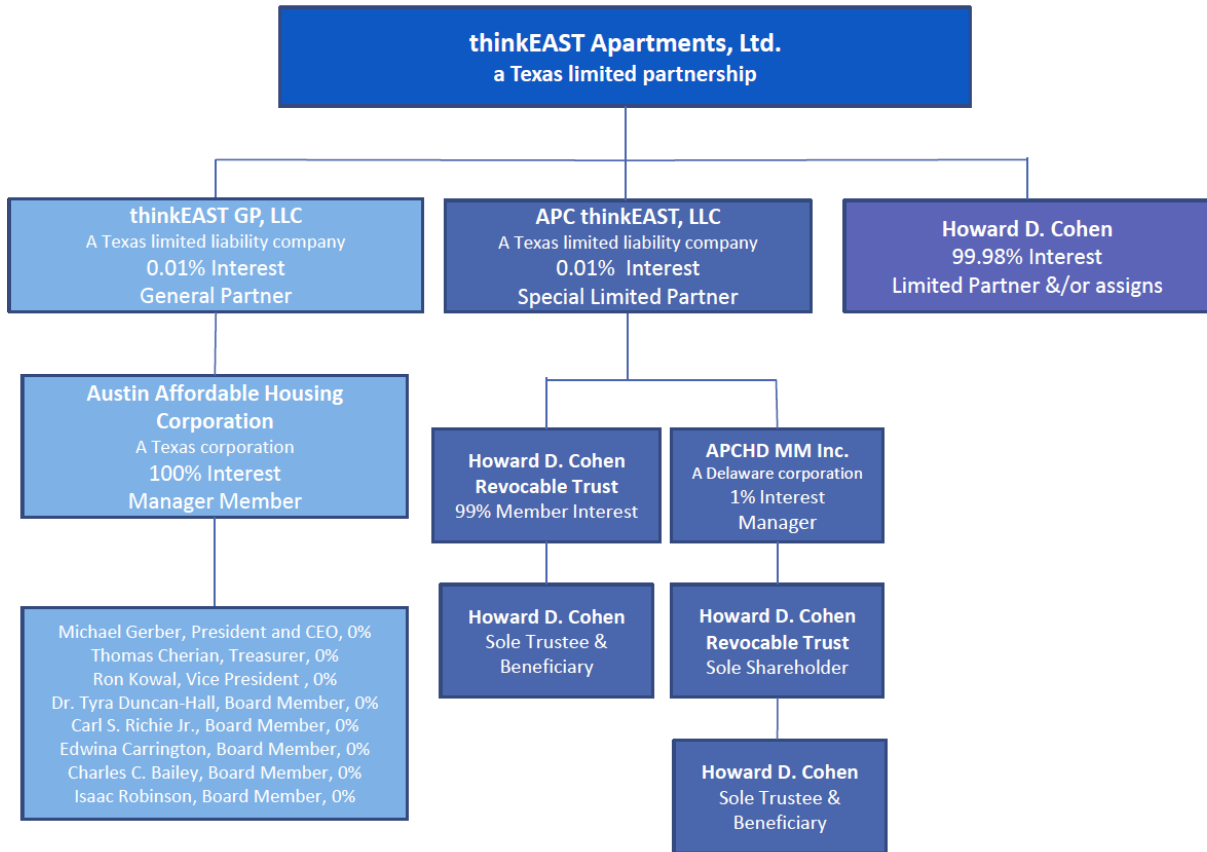
*Organizational Structure and Previous Participation:* The Borrower is thinkEAST Apartments, Ltd., and includes the entities and principals as illustrated in Exhibit A. The applicant is considered an Extra large Category 3

portfolio and the previous participation was deemed acceptable by EARAC without further review or discussion. EARAC also reviewed the proposed financing and the underwriting report, and recommends issuance of a Determination Notice.

*Public Comment:* No letters of support or opposition for this Development have been received.

# EXHIBIT A

## Organizational Chart of Owner



# APPLICATION SUMMARY

PROPERTY IDENTIFICATION	
Application #	16434
Development	thinkEAST Apartments
City / County	Austin / Travis
Region/Area	7 / Urban
Population	General
Set-Aside	General
Activity	New Construction

RECOMMENDATION						
TDHCA Program	Request	Approved				
LIHTC (4% Credit)	\$1,055,360	\$1,055,426	\$5,799/Unit	\$1.15		
		Amount	Rate	Amort	Term	Lien
Private Activity Bonds						
MDLP (Repayable)						
MDLP (Non-Repayable)						
CHDO Expenses						

KEY PRINCIPAL / SPONSOR		
Austin Affordable Housing Corporation		
- Michael Gerber (President)		
- Edwina Carrington (Board Member)		
Howard Cohen (Developer)		
Henry Flores (Co-Developer and Consultant)		
Related-Parties	Contractor - No	Seller - Yes

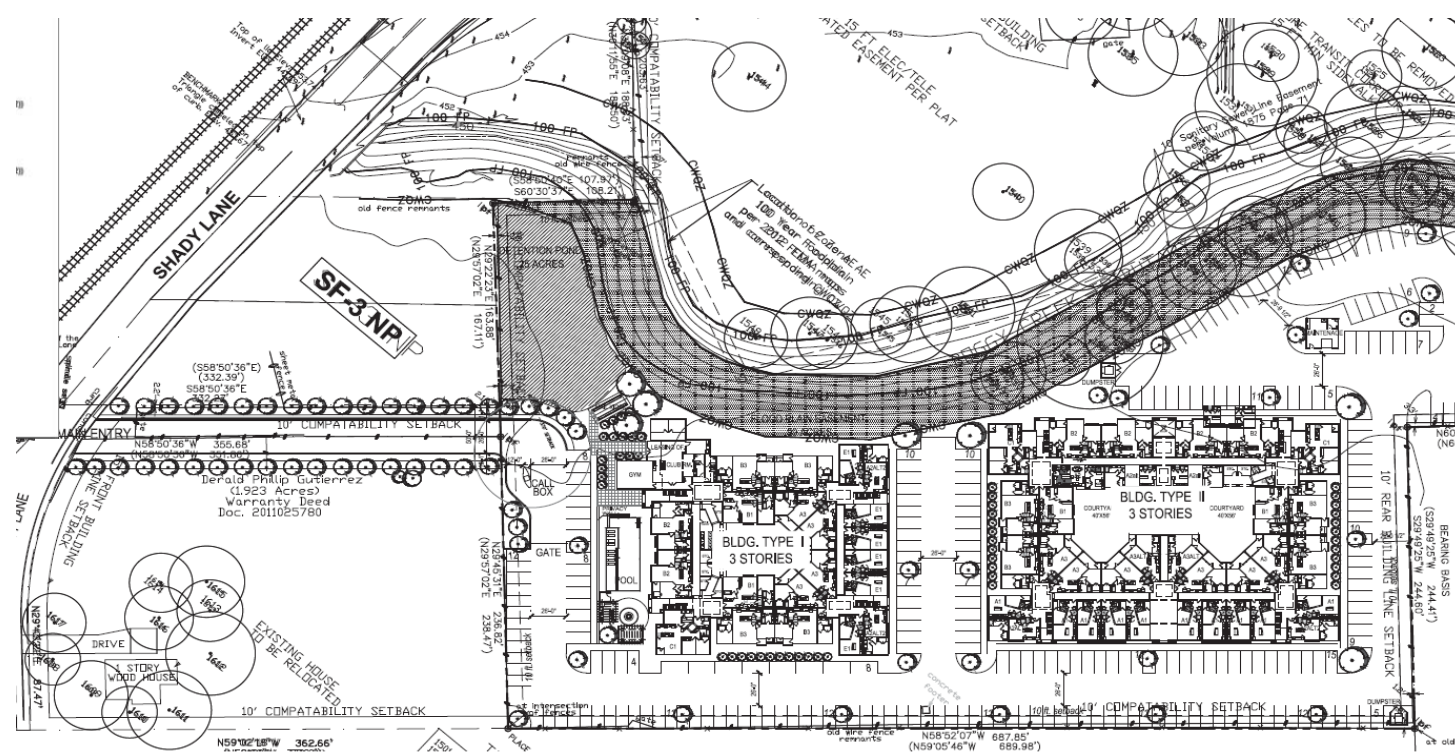
## TYPICAL BUILDING ELEVATION/PHOTO



UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	50	27%	30%	-	0%
1	65	36%	40%	-	0%
2	58	32%	50%	-	0%
3	9	5%	60%	182	100%
4	-	0%	MR	-	0%
<b>TOTAL</b>	<b>182</b>	<b>100%</b>	<b>TOTAL</b>	<b>182</b>	<b>100%</b>

PRO FORMA FEASIBILITY INDICATORS					
Pro Forma Underwritten			Applicant's Pro Forma		
Debt Coverage	1.19	Expense Ratio	41.5%		
Breakeven Occ.	84.0%	Breakeven Rent	\$788		
Average Rent	\$870	B/E Rent Margin	\$82		
Property Taxes	Exempt	Exemption/PILOT	100%		
Total Expense	\$4,100/unit	Controllable	\$2,898/unit		

## SITE PLAN



MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (10% Maximum)	5.5%		
Highest Unit Capture Rate	27%	3 BR/60%	9
Dominant Unit Cap. Rate	18%	1 BR/60%	65
Premiums (↑60% Rents)	N/A		N/A
Rent Assisted Units	N/A		

DEVELOPMENT COST SUMMARY			
Costs Underwritten		Applicant's Costs	
Avg. Unit Size	821 SF	Density	28.9/acre
Acquisition	\$11K/unit		\$2,000K
Building Cost	\$86.30/SF		\$12,893K
Hard Cost	\$87K/unit		\$15,886K
Total Cost	\$157K/unit		\$28,555K
Developer Fee	\$3,200K	(0% Deferred)	Paid Year: 1
Contractor Fee	\$2,224K	30% Boost	Yes



DEBT (Must Pay)					CASH FLOW DEBT / GRANT FUNDS					EQUITY / DEFERRED FEES		
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount	
Citi Community Capital	15/35	4.12%	\$16,419,290	1.19						Wells Fargo	\$12,135,426	
<b>TOTAL DEBT (Must Pay)</b>			<b>\$16,419,290</b>		<b>CASH FLOW DEBT / GRANTS</b>				<b>\$0</b>		<b>TOTAL EQUITY SOURCES</b>	<b>\$12,135,427</b>
											<b>TOTAL DEBT SOURCES</b>	<b>\$16,419,290</b>
											<b>TOTAL CAPITALIZATION</b>	<b>\$28,554,717</b>

**CONDITIONS**

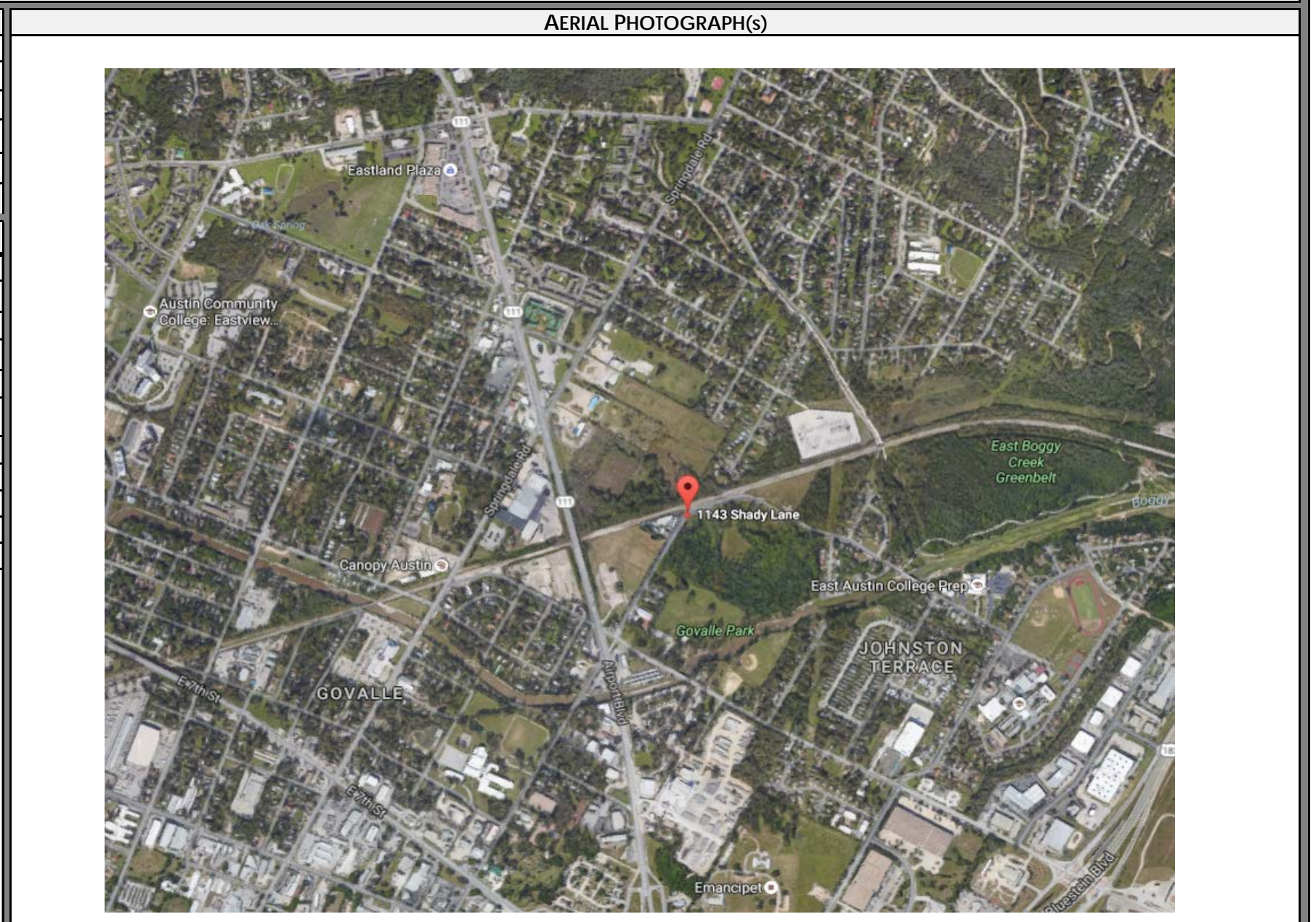
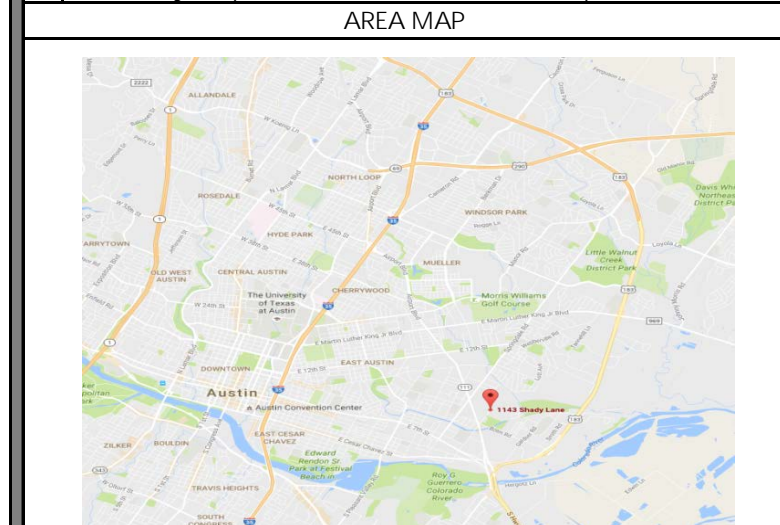
- 1 Receipt and acceptance before Determination Notice:
  - : Pursuant to §10.402(d)(7), a letter from Applicant's Attorney, "...identifying the statutory basis for the exemption and indicating that the exemption is reasonably achievable, subject to appraisal district review.
- 2 Documentation at Cost Certification clearing environmental issues identified in the ESA report, specifically:
  - a: Documentation that a noise study was completed and all noise assessment recommendations were implemented.
  - b: Documentation that soil and underground testing was completed to determine the hydrocarbon impacts to the subject property from the off-site bulk fuel storage facilities and that all recommendations from the testing were implemented.
  - c: An architect or engineer certification that no building is within the floodplain and that all drives, parking and amenities will be no more than 6 inches below the floodplain, or a Letter of Map Amendment ("LOMA") or Letter of Map Revision ("LOMR-F") indicating that the development is no longer within the 100 year floodplain.

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

BOND RESERVATION / ISSUER	
Issuer	Austin Affordable PFC, Inc
Expiration Date	1/16/2017
Bond Amount	\$25,000,000
BRB Priority	Priority 3
Expected Close	N/A
Bond Structure	

RISK PROFILE	
STRENGTHS/MITIGATING FACTORS	
▫ Experienced Developer	
▫ High occupancy	
▫ Low Expense Ratio resulting from tax exemption	
▫ Partnership with Austin Housing Finance Corp	
▫ Attractive architectural design	

WEAKNESSES/RISKS	
▫ Unit capture rates above 12% for all the units	
▫ Feasibility dependent on 100% tax exemption	





# Austin Independent School District

Office of Superintendent



August 8, 2016

Tim Irvine, Executive Director  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, TX 78711


Dear Mr. Irvine,

As District Superintendent of the Austin Independent School District, I can personally attest to our school district's commitment to providing a quality education to the children of our community. We have developed numerous initiatives dedicated to the improvement of school performance. I am familiar with the student data for Martin Middle School for the last five years. Unfortunately, in 2015 the school was slightly short of a Met Standard rating from the Texas Education Agency though its performance had improved steadily. Martin Middle School was only one point away from meeting the Index 4 standard which would have resulted in a Met Standard Rating in 2015. I am confident that the school plans that have been put into place will result in continued improvement.

I have reviewed the scope of the proposed 182-unit thinkEAST affordable housing community to be located near the intersection of Shady Lane and Airport Boulevard with the Austin Affordable Housing Corporation and I understand the timeline for placement in service under the Federal Tax Credit program. I am cognizant that construction is expected to commence on or about October of 2016 and conclude on or about December of 2017.

In my judgment, based upon all of the information described in this letter, I expect that Martin Middle School will have a Met Standard rating by the time the development is placed into service and that the school will continue to demonstrate consistent improvement during the 2016-17 school year.

Sincerely,

  
Paul Cruz, Ph.D.  
Superintendent

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**OCTOBER 13, 2016**

Presentation, Discussion, and Possible Action on a Determination Notice for Housing Tax Credits with another Issuer (#16408 Broadmoor at Western Hills, Fort Worth)

**RECOMMENDED ACTION**

**WHEREAS**, an application for 4% Housing Tax Credits, for Broadmoor at Western Hills, sponsored by NRP Investments, LLC and the Fort Worth Housing Finance Corporation (an instrumentality of the city of Fort Worth), was submitted to the Department on February 4, 2016;

**WHEREAS**, the Texas Bond Review Board (“BRB”) issued a Carryforward Designation Certificate on January 19, 2016, which will expire on December 31, 2018;

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

**WHEREAS**, pursuant to 10 TAC §10.101(a)(4) of the Uniform Multifamily Rules related to Undesirable Neighborhood Characteristics, applicants are required to disclose to the Department the presence of certain characteristics of a proposed development site;

**WHEREAS**, the applicant has disclosed the presence of such undesirable neighborhood characteristics, specifically that the proposed Development is located in a census tract where the rate of Part 1 violent crimes is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com;

**WHEREAS**, staff has conducted a further review of the proposed development site and surrounding neighborhood and based on the information provided by the Fort Worth Police Department, recommends the proposed site be found eligible under 10 TAC §10.101(a)(4) of the Uniform Multifamily Rules;

**WHEREAS**, in accordance with 10 TAC §1.301(d)(1), the compliance history is designated as an Extra Large Portfolio Category 3 and deemed acceptable, subject to conditions, by the Executive Award and Review Advisory Committee (“EARAC”) after review and discussion; and

**WHEREAS**, EARAC recommends the issuance of a Determination Notice with the condition that closing occur within 120 days (on or before February 10, 2017);

**NOW, therefore, it is hereby**

**RESOLVED**, that the issuance of a Determination Notice of \$1,522,365 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 Broadmoor at Western Hills is hereby approved as presented to this meeting and also conditioned upon the following:

1. During construction and continuing throughout the compliance period NRP and Fort Worth HFC will conduct monthly partner level calls and/or meetings to ensure timely response to all issues including compliance.
2. All Principals of the applicant group will review the listed webinars and provide a certification that this has been completed prior to December 31, 2016. The videos are available at <http://www.tdhca.state.tx.us/pmcomp/presentations.htm> and include: 2012 Income and Rent Limits Webinar Video; How to properly use the Income and Rent Tool; 2012 Supportive Services Webinar Video; How to identify and properly implement Supportive Services; Income Eligibility Presentation Video; 2013 Annual Owner's Compliance Report (AOCR) Webinar Video; 2015 Tenant Selection Criteria Webinar Video; 2015 Tenant Selection Criteria Presentation; 2015 Tenant Selection Criteria- Q and A's; §10.610 – Tenant Selection Criteria; 2015 Affirmative Marketing Requirements Webinar Video; 2015 Affirmative Marketing Requirements Presentation; 2015 Affirmative Marketing Requirements- Q and A's, and Fair Housing Webinars
3. Upon request, from the Department, NRP and Fort Worth HFC will provide documentation that reflects implementation of these measures.

**FURTHER RESOLVED**, that provided the Applicant has not closed on the bond financing on or before February 10, 2017, the Board authorizes EARAC to approve or deny extension of the Determination Notice date subject to an updated previous participation review, if necessary.

### **BACKGROUND**

*General Information:* Broadmoor at Western Hills, proposed to be located at 2900 Broadmoor Drive in Fort Worth, Tarrant County, involves the new construction of 324 units of which nine will be rent and income restricted at 50% of Area Median Family Income ("AMFI") and 300 will be rent and income restricted at 60% of AMFI. The remaining 15 units will be market rate with no rent and income restrictions. The development will serve the general population and is currently zoned appropriately. The census tract (1052.01) has a median household income of \$23,048, is in the fourth quartile, and has a poverty rate of 39%.

*Conditions to Award:* In addition to the conditions imposed based on the results of the Previous Participation Review, EARAC also recommended that closing on all sources of funds and the land must occur no later than February 10, 2017. This 120-day closing condition is generally consistent with the requirements of a bond transaction utilizing non-traditional carryforward. For non-traditional carryforward reservations, a statutory 150-day deadline from the date of the reservation is imposed and the Determination Notice for any associated 4% award expires if closing does not occur within this timeframe or if the financing structure or terms change.

*Site Analysis:* The applicant disclosed the presence of an undesirable neighborhood characteristic under §10.101(a)(4)(B) of the Uniform Multifamily Rules; specifically, that the proposed Development is located in



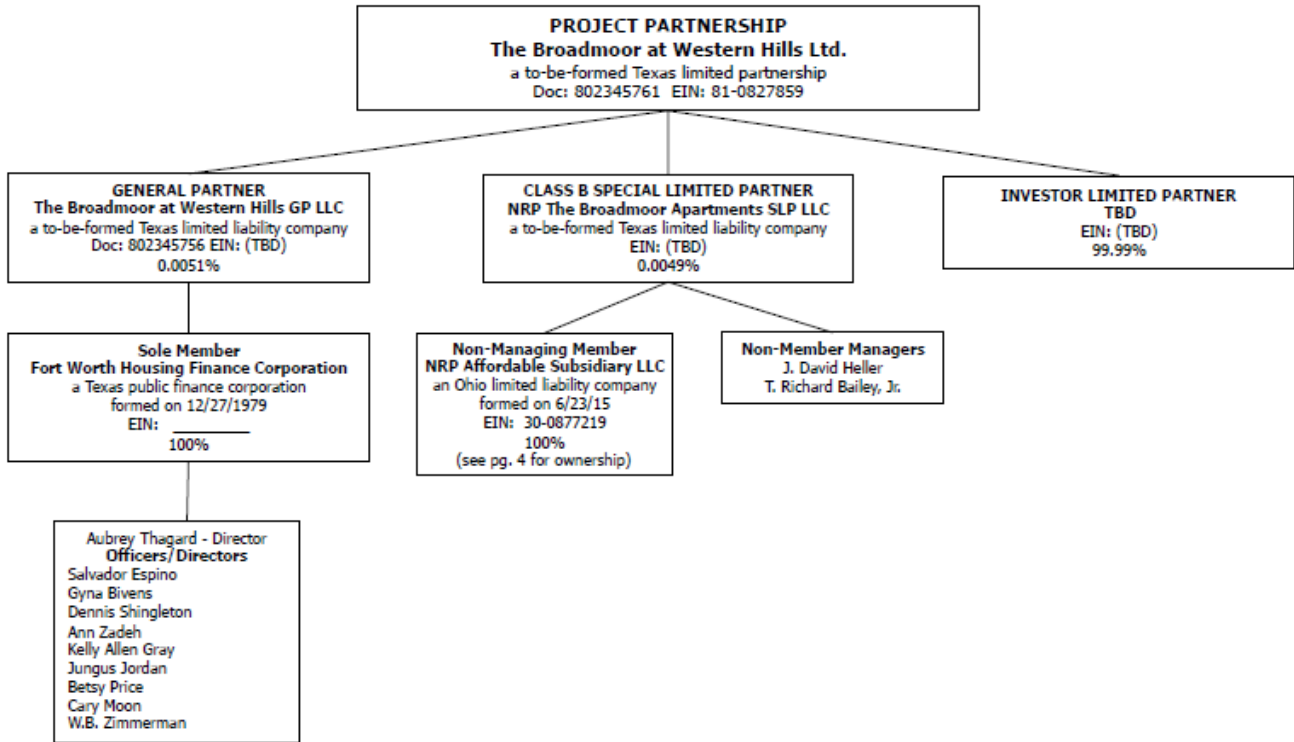
a census tract where the rate of Part 1 violent crimes is 22.09 per 1,000 persons (annually) as reported on neighborhoodscout.com. The applicant indicated that the Fort Worth Police Department does not publish crime by beat, but allows access to crime data via One Address that displays crime, code violations and other data for all parts of the city. Data obtained from One Address by the applicant indicated that since January 1, 2015, there have been 28 instances of crime near the proposed development site and of those, only 10 were Part I violent crimes. Information from Officer Sergio Martinez with the Fort Worth Police Department and who serves the beat for this proposed development, indicated that over the past four years that he has worked in this area, crime has declined each year. Officer Martinez indicated that he's developed a strong relationship with residents in the area and as a result criminal activity has sharply declined. Officer Martinez stated that there has been increased participation in the Citizens on Patrol program over the last few years, with more people volunteering each month, and in his opinion, believes they are continuing on the right path to making this area one of the best neighborhoods to reside.

Under §10.101(a)(4) of the Uniform Multifamily Rules, there is a consideration for the Board to find a development site eligible despite the presence of undesirable neighborhood characteristics on the basis that there is a factual determination that such characteristic is not of such a nature or severity that it should render the development site ineligible based on acceptable mitigation efforts identified in the rule. After reviewing the aforementioned information relating to instances of crime from the Fort Worth Police Department, staff believes it leads to a supported conclusion that the development site should be considered eligible under §10.101(a)(4) of the Uniform Multifamily Rules.

*Organizational Structure and Previous Participation:* The Borrower is The Broadmoor at Western Hills, Ltd., and includes the entities and principals as indicated in Exhibit A. The applicant is considered an Extra Large Category 3 portfolio and the previous participation was deemed acceptable, subject to conditions, by EARAC on October 3, 2016, after review and discussion. EARAC also reviewed the proposed financing and the underwriting report, and recommends issuance of a Determination Notice.

*Public Comment:* A letter of support from the Western Hills North Neighborhood Association was submitted. No letters of opposition have been received.

# EXHIBIT A

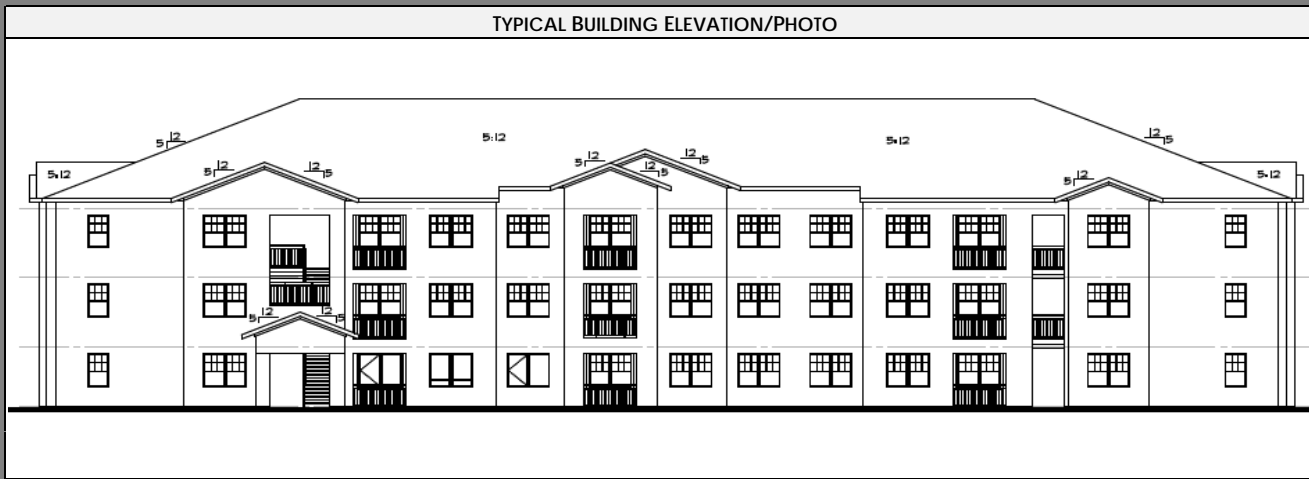


# APPLICATION SUMMARY

PROPERTY IDENTIFICATION	
Application #	16408
Development	Broadmoor at Western Hills
City / County	Fort Worth / Tarrant
Region/Area	3 / Urban
Population	General
Set-Aside	General
Activity	New Construction

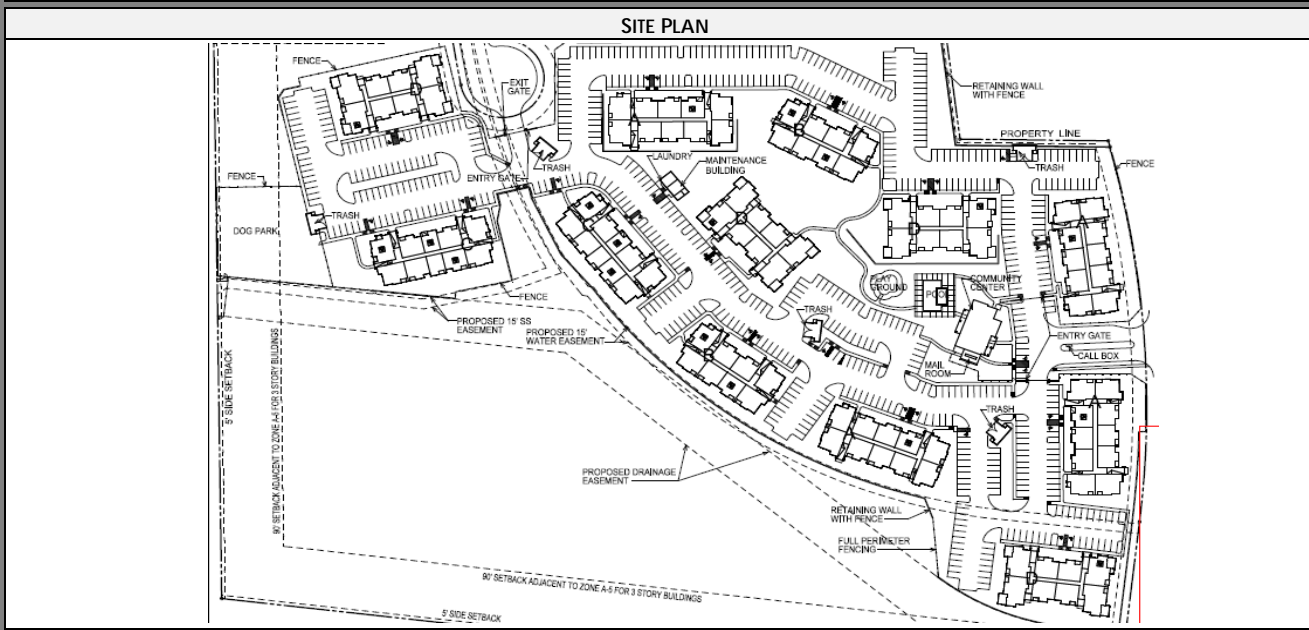
RECOMMENDATION				
TDHCA Program	Request	Approved		
LIHTC (4% Credit)	\$1,522,365	\$1,522,365	\$4,699/Unit	\$1.10

KEY PRINCIPAL(S) / SPONSOR(S)		
Fort Worth HFC (GP and Co-Developer)		
NRP (SLP and Developer)		
Sarah Andre (Consultant)		
Related-Parties	Contractor - Yes	Seller - No



UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	-	0%	30%	-	0%
1	12	4%	40%	-	0%
2	168	52%	50%	9	3%
3	128	40%	60%	300	93%
4	16	5%	MR	15	5%
<b>TOTAL</b>	<b>324</b>	<b>100%</b>	<b>TOTAL</b>	<b>324</b>	<b>100%</b>

PRO FORMA FEASIBILITY INDICATORS			
Pro Forma Underwritten	Applicant's Pro Forma		
Debt Coverage	1.26	Expense Ratio	42.5%
Breakeven Occ.	81.7%	Breakeven Rent	\$785
Average Rent	\$891	B/E Rent Margin	\$106
Property Taxes	Exempt	Exemption/PILOT	0%
Total Expense	\$4,262/unit	Controllable	\$3,001/unit



MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (10% Maximum)			5.9%
Highest Unit Capture Rate	66%	3 BR/60%	121
Dominant Unit Cap. Rate	35%	2 BR/60%	157
Premiums (↑60% Rents)	Yes		
Rent Assisted Units	N/A		

DEVELOPMENT COST SUMMARY			
Costs Underwritten		Applicant's Costs	
Avg. Unit Size	1,019 SF	Density	11.6/acre
Acquisition		\$08K/unit	\$2,650K
Building Cost	\$57.84/SF	\$59K/unit	\$19,088K
Hard Cost		\$79K/unit	\$25,696K
Total Cost		\$144K/unit	\$46,682K
Developer Fee	\$5,128K	(50% Deferred)	Paid Year: 6
Contractor Fee	\$3,379K	30% Boost	Yes

DEBT (Must Pay)					CASH FLOW DEBT / GRANT FUNDS					EQUITY / DEFERRED FEES		
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount	
JLL/ Freddie Mac	15/35	4.18%	\$26,720,000	1.28						Navistone	\$16,822,131	
City of Fort Worth	20/20	1.00%	\$559,481	1.26						NRP Lone Star Development, LLC	\$2,580,657	
<b>TOTAL DEBT (Must Pay)</b>			<b>\$27,279,481</b>		<b>CASH FLOW DEBT / GRANTS</b>				<b>\$0</b>		<b>TOTAL EQUITY SOURCES</b>	<b>\$19,402,788</b>
											<b>TOTAL DEBT SOURCES</b>	<b>\$27,279,481</b>
											<b>TOTAL CAPITALIZATION</b>	<b>\$46,682,269</b>

**CONDITIONS**

- 1 Receipt and acceptance with Determination Notice:
  - a: Pursuant to §10.402(d)(7), a letter from Applicant's Attorney, "...identifying the statutory basis for the exemption and indicating that the exemption is reasonably achievable, subject to appraisal district review.
  - b: Executed Term Sheet from Bank of America outlining the terms of the Bridge Loan.
  - c: A revised term sheet from permanent lender that acknowledges Supportive Services pursuant to §10.302(d)(2)(K)(ii)
- 2 Receipt and acceptance by Cost Certification:
  - a: Architect certification that noise study recommendations were successfully implemented in the completion of the Development.

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

**BOND RESERVATION / ISSUER**

Issuer	Tarrant County HFC
Expiration Date	12/31/2018
Bond Amount	\$28,000,000
BRB Priority	N/A
Expected Close	10/18/2016
Bond Structure	Freddie-Mac Unfunded-Forward TEL

**RISK PROFILE**

**STRENGTHS/MITIGATING FACTORS**

- Expense Ratio
- High DCR
- Long Term Cash Flow
- Feasible Using 60% Net Rents on Market Units
- Break Evens

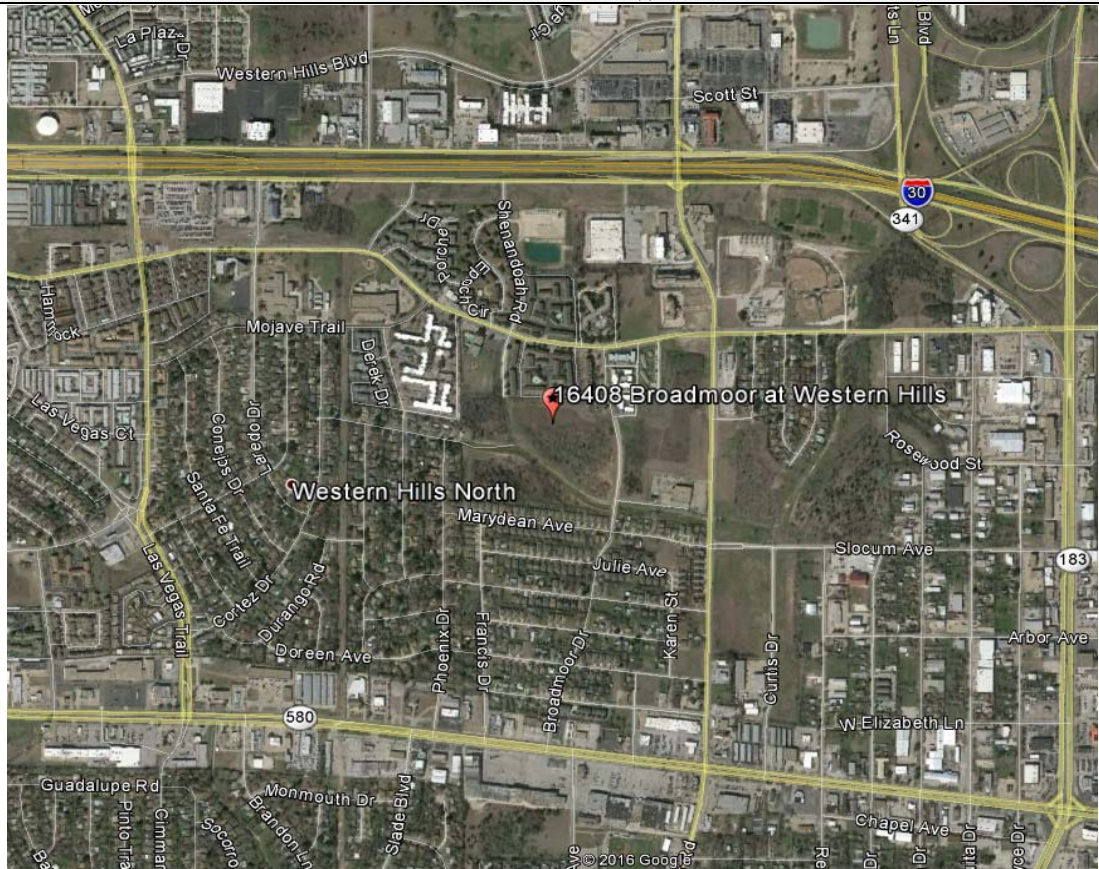
**WEAKNESSES/RISKS**

- High 60% 3BR Unit Capture Rates
- Infeasible w/o 100% Tax Exemption

**Area Map**



**AERIAL PHOTOGRAPH(S)**





February 4, 2016

Tim Irvine  
Texas Department of Housing and Community Affairs  
P.O. Box 13941  
Austin, TX 78711-3941

**RE: The Broadmoor Application to TDHCA - West Fort Worth, Crime & Safety**

Mr. Irvine,

Please accept this letter as my support for The Broadmoor – a proposed revitalization initiative in West Fort Worth that we feel will reduce vagrancy and crime in our community.

The Western Hills North neighborhood is a small community on the Westside of Fort Worth; our neighbors are close and our association is very active. In 2015, The NRP Group proposed an apartment community in Western Hills, to which we initially had strong apprehension. Our community has several apartment communities that have absentee ownership and poor management; over time, these apartments have become a nuisance and contributed to crime.

Our board and members have had the opportunity to visit NRP Group properties and meet management staff. The Neighborhood Police Officer Doug Gilfour for one of their communities in Fort Worth also visited us to discuss his experience working with The NRP Group. It was first hand interaction with NRPs staff and stakeholders that encouraged our community to work with their development group.

The lot NRP is looking to develop currently experiences vagrancy that is a detriment to the community and encourages crime. We are looking to make our community safer by encouraging development that helps eliminate vagrancy and reduces crime through active and on-site property management - which many surrounding apartment communities don't have.

The Western Hills North Neighborhood Association supports this development as it is an opportunity to provide a safer, quality community, where rents will compete with surrounding properties that don't provide the level of service that we've seen at NRP properties. We strongly urge you to support this application to help eliminate vagrancy and make our community safer by encouraging this development.

Sincerely,

James Gibson  
President – Western Hills North Neighborhood Association

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**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**OCTOBER 13, 2016**

Presentation, Discussion and Possible Action on a Determination Notice for Housing Tax Credits with another Issuer and an Award of Direct Loan Funds (#16403 Cross Creek Apartments, Austin)

**RECOMMENDED ACTION**

**WHEREAS**, an application for both 4% Housing Tax Credits and Direct Loan funds for Cross Creek Apartments, sponsored by The Mulholland Group, LLC and Noelle Affordable Housing Corporation, was submitted on February 9, 2016;

**WHEREAS**, the Direct Loan funds application was submitted under the 2016-1 Multifamily Direct Loan Notice of Funding Availability (“2016-1 NOFA”);

**WHEREAS**, the Certification of Reservation from the Texas Bond Review Board (“BRB”) was issued on June 22, 2016, and will expire on November 19, 2016;

**WHEREAS**, the proposed issuer of the bonds is the Austin Housing Finance Corporation and there is TDHCA Multifamily Direct Loan funding available to award the subject application under the 4% Housing Tax Credit Layered Set-Aside; and

**WHEREAS**, the Executive Award Review Advisory Committee (“EARAC”) recommends approval subject to the applicant meeting all of the requirements for compliance with TDHCA accessibility standards, including but not limited to, a third party review of the accessibility standards and that such accessibility review is acceptable to the Department, as well as submission of the relocation plan that was submitted and reviewed by the City of Austin;

**NOW, therefore, it is hereby**

**RESOLVED**, that the issuance of a Determination Notice of \$991,084 in 4% Housing Tax Credits and \$1,000,000 in Direct Loan funds, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department’s website for Cross Creek Apartments is hereby approved as presented to this meeting.

**BACKGROUND**

*General Information:* Cross Creek Apartments is located at 1124 Rutland Drive in Austin, Travis County, and consists of 200 units, 20 of which will be rent and income restricted at 30% of Area Median Family Income (“AMFI”) and the remaining 180 will be rent and income restricted at 60% AMFI under the HTC program. There will be five Direct Loan units restricted at 50% of AMFI and 15 Direct Loan units at 60% AMFI layered among the 200 HTC restricted units. The development was originally constructed in 1976, conforms to current zoning and will serve a general population. Of the units restricted at 30% of AMFI, 10 units will



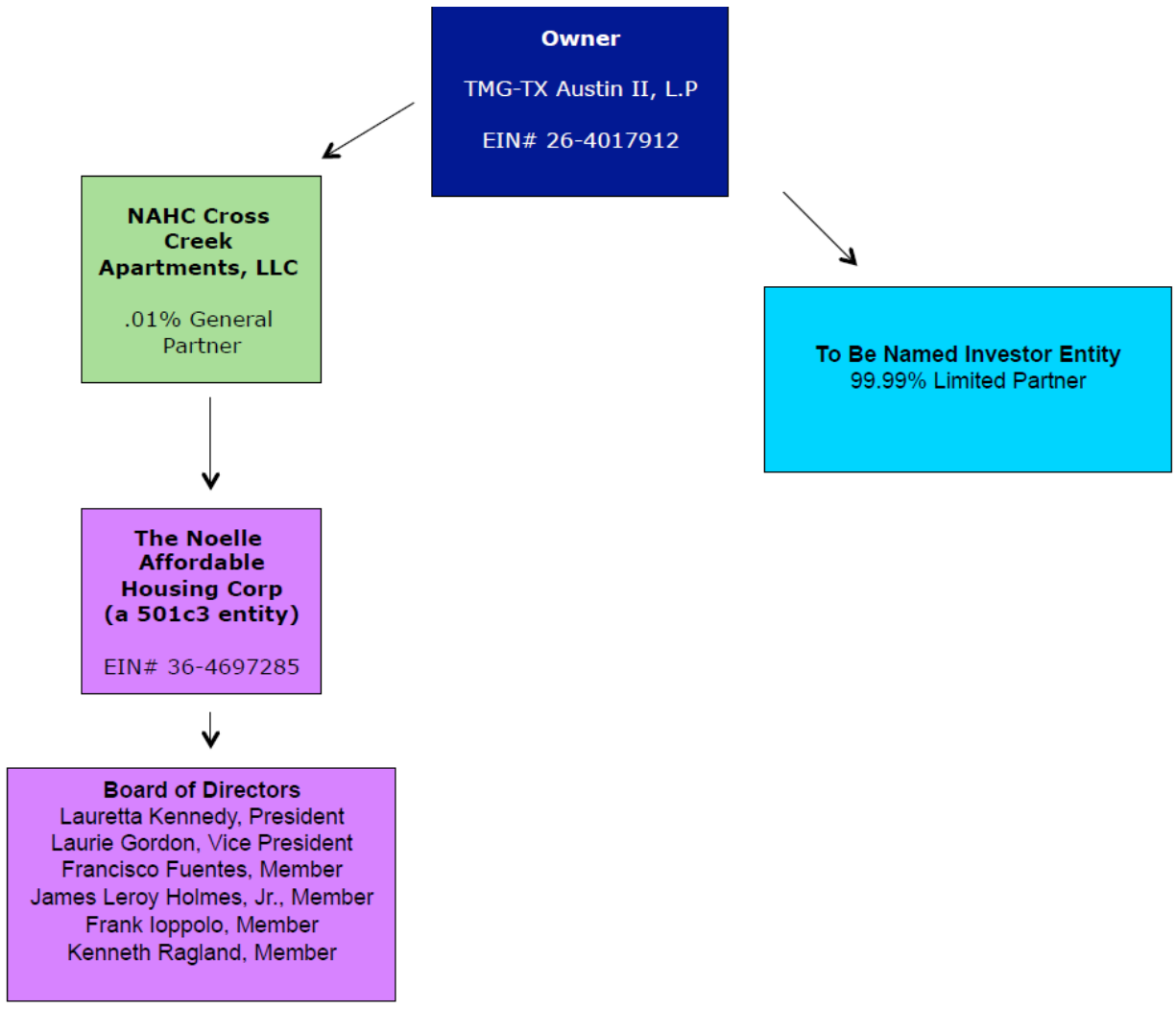
be reserved for permanent supportive housing tenants, who are eligible to receive services from Front Steps and Austin Travis County Integral Care. These entities are Austin area based organizations that serve the homeless population who suffer from mental illness or substance abuse. The census tract (0319.00) has a median household income of \$33,858, is in the fourth quartile, and has a poverty rate of 26.60%.

A portion of the property lies within the 100-year flood plain. According to §10.101(a)(1) of the Uniform Multifamily Rules, which states in part “...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.” A letter from the City of Austin Watershed Protection Department dated February 13, 2015, was submitted confirming that they are designing the Little Walnut Creek Flood Diversion Tunnel (“Tunnel”) and once completed will prevent nine buildings of the development from being inundated in the event of a 100-year storm. The Tunnel will consist of a 12 x 12 foot concrete passageway which will run from Quail Valley Boulevard to the Mearns Meadow Detention Pond in Quail Creek. Improvements will be made to the creek channel, Quail Valley Boulevard Bridge and to the park and trails. Documentation from Thuan Nguyen, Project Manager with the City of Austin Public Works Department dated April 28, 2016, indicated that construction is scheduled to begin in the fall of 2017 and is expected to be completed by summer of 2019. In the meantime and until the Tunnel is complete, the Real Estate Analysis Report reflects a condition for receipt of flood insurance covering the tenant’s contents on all first floor units in the floodplain.

*Organizational Structure and Previous Participation:* The Borrower is TMG-TX Austin II, L.P. and includes the entities and principals as illustrated in Exhibit A. The applicant is considered a Small Portfolio Category 1, and the previous participation was deemed acceptable by EARAC on October 3, 2016 without further review or discussion. EARAC also reviewed the proposed financing and the underwriting report, and recommends issuance of a Determination Notice and award of Direct Loan funds.

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



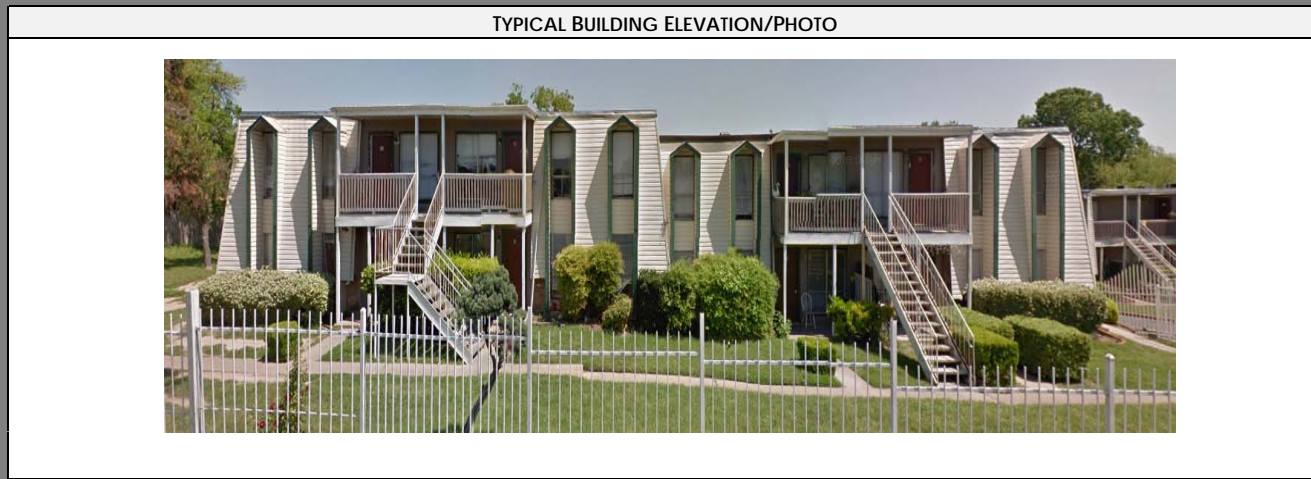


# APPLICATION SUMMARY

PROPERTY IDENTIFICATION	
Application #	16403
Development	Cross Creek Apartments
City / County	Austin / Travis
Region/Area	7 / Urban
Population	General
Set-Aside	General
Activity	Acquisition/Rehab (Built in 1976)

RECOMMENDATION						
TDHCA Program	Request	Approved				
LIHTC (4% Credit)	\$1,042,287	\$991,084	\$4,955/Unit	\$1.05		
	Amount	Rate	Amort	Term	Lien	
Private Activity Bonds						
MDLP (Repayable)	\$1,000,000	3.00%	35	15	2	
MDLP (Non-Repayable)						
CHDO Expenses						

KEY PRINCIPAL / SPONSOR		
Noelle Affordable Housing Corporation Cross Creek		
- Laurie Gordon, Vice President		
Sara Andre, Consultant		
Royce Mulholland, Developer		
Related-Parties	Contractor - No	Seller - No



UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	-	0%	30%	20	10%
1	140	70%	40%	-	0%
2	60	30%	50%	-	0%
3	-	0%	60%	180	90%
4	-	0%	MR	-	0%
<b>TOTAL</b>	<b>200</b>	<b>100%</b>	<b>TOTAL</b>	<b>200</b>	<b>100%</b>

**PRO FORMA FEASIBILITY INDICATORS**

Pro Forma Underwritten	Applicant's Pro Forma
Debt Coverage 1.17	Expense Ratio 53.3%
Breakeven Occ. 86.2%	Breakeven Rent \$765
Average Rent \$822	B/E Rent Margin \$57
Property Taxes \$1,050/unit	Exemption/PILOT 0%
Total Expense \$4,986/unit	Controllable \$2,929/unit



**MARKET FEASIBILITY INDICATORS**

Gross Capture Rate (10% Maximum)	4.3%
Highest Unit Capture Rate 20%	1 BR/60% 120
Dominant Unit Cap. Rate 20%	1 BR/60% 120
Premiums (↑60% Rents)	N/A
Rent Assisted Units	N/A

**DEVELOPMENT COST SUMMARY**

Costs Underwritten	TDHCA's Costs - Based on PCA	
Avg. Unit Size	790 SF	Density 20.0/acre
Acquisition	\$44K/unit	\$8,825K
Building Cost	\$54.70/SF	\$43K/unit \$8,644K
Hard Cost	\$57K/unit	\$11,439K
Total Cost	\$139K/unit	\$27,838K
Developer Fee	\$3,221K (43% Deferred)	Paid Year: 10
Contractor Fee	\$1,399K	30% Boost Yes

**REHABILITATION COSTS / UNIT**

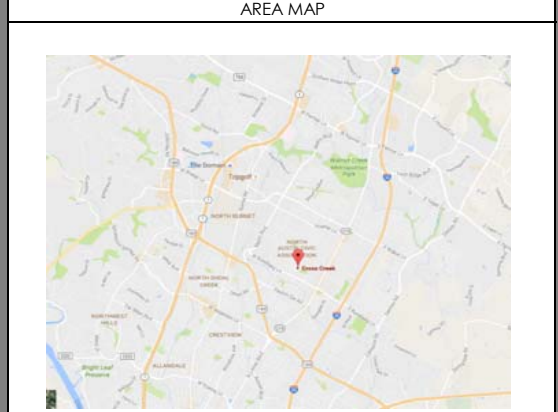
Site Work	\$8K 15%	Finishes/Fixtures	\$14K 24%
Building Shell	\$25K 43%	Amenities	\$1K 1%
HVAC	\$3K 6%	Total Exterior	\$34K 65%
Appliances	\$1K 2%	Total Interior	\$18K 35%

DEBT (Must Pay)					CASH FLOW DEBT / GRANT FUNDS					EQUITY / DEFERRED FEES	
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount
CITI Community Capital	15/35	3.91%	\$12,950,000	1.28	City of Austin SMART Housing	0/0	0.00%	\$55,000	1.17	Raymond James	\$10,405,338
TDHCA	15/35	3.00%	\$1,000,000	1.20						Mulholland Group (DDF)	\$1,427,583
Austin Housing Finance Corp	40/40	1.00%	\$2,000,000	1.17						<b>TOTAL EQUITY SOURCES</b>	\$11,832,921
<b>TOTAL DEBT (Must Pay)</b>			<b>\$15,950,000</b>		<b>CASH FLOW DEBT / GRANTS</b>			<b>\$55,000</b>		<b>TOTAL DEBT SOURCES</b>	\$16,005,000
<b>TOTAL CAPITALIZATION</b>											
<b>\$27,837,921</b>											
CONDITIONS											
<p>1 Receipt and acceptance before Direct Loan Closing</p> <p>a: Substantially final construction contract with Schedule of Values.</p> <p>b: Updated term sheets with substantially final terms from all lenders</p> <p>c: Substantially final draft of limited partnership agreement.</p> <p>d: Senior loan documents (and/or partnership documents) must contain a provision(s) that any stabilization resizing on the senior debt includes the debt service on the TDHCA MDL at a 1.15 aggregate DCR.</p> <p>e: Documentation identifying any required matching funds, and confirming that the source is eligible to be counted as matching funds under HUD and TDHCA requirements.</p> <p>f: TDHCA Direct Loan as 2nd lien position behind senior debt.</p>											
<p>2 Receipt and acceptance before Determination Notice:</p> <p>: Definitive statement from the ESA provider as to whether testing is necessary of drinking water in the existing buildings to identify the presence of lead sourced from the existing plumbing.</p>											
<p>3 Ninety (90) days after Closing:</p> <p>: Supply verification of flood insurance covering the Tenant's contents on all first floor units in the floodplain.</p>											
<p>4 Documentation at Cost Certification clearing environmental issues identified in the ESA report, specifically:</p> <p>a: Documentation that a noise study has been completed to assess compliance with HUD noise guidelines, and certification from the Architect that all recommendations from the noise study are incorporated into the development plans.</p> <p>b: Confirmation that asbestos testing was performed on existing structures on site prior to demolition, and if necessary, a certification that an asbestos abatement program was implemented by a qualified abatement company.</p> <p>c: Confirmation that a mold inspection was performed on the site to determine the extent and cause of microbial growth at the subject property, and if necessary, a certification that any mold remediation was performed in accordance with the State of Texas mold regulations.</p> <p>d: Receipt of a Letter of Map Amendment ("LOMA") or Letter of Map Revision ("LOMR-F") indicating that the development is no longer within the 100 year floodplain.</p>											
<p>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.</p>											



BOND RESERVATION / ISSUER	
Issuer	Austin Housing Finance Corporation
Expiration Date	11/19/2016
Bond Amount	\$16,000,000
BRB Priority	Priority 3
Expected Close	10/14/2016
Bond Structure	Private Placement

RISK PROFILE	
STRENGTHS/MITIGATING FACTORS	
▫	95% historical occupancy for past 2 years
▫	Applicant is currently operating another development nearby (The Palms on Lamar)
▫	Access to public transportation and major roadways
WEAKNESSES/RISKS	
▫	Flood plain issues
▫	Little Walnut Creek Flood Diversion Tunnel Project delays
▫	Multiple costs increases since application adds to risks for increased cost overruns



1e

**TO BE POSTED NOT LATER THAN THE  
THIRD DAY BEFORE THE DATE OF  
THE MEETING**

1f

**BOARD ACTION REQUEST**

**ASSET MANAGEMENT**

**OCTOBER 13, 2016**

Presentation, Discussion, and Possible Action regarding a material amendment to the Housing Tax Credit (“HTC”)/HOME Application for Stonebridge at Plainview (HTC #13139)

**RECOMMENDED ACTION**

**WHEREAS**, Stonebridge at Plainview (the “Development”) received an award of 9% Housing Tax Credits and HOME funds in 2013 and 2014 to construct 80 new units in Plainview;

**WHEREAS**, the Development Owner has requested approval for changes to the Application including an increase in the development site acreage which modifies the residential density by more than five percent, and a significant modification to the site plan that includes the relocation of the Development and a reduction to the number of residential buildings;

**WHEREAS**, Board approval is required for a modification of the residential density of at least five percent under Texas Gov’t Code §2306.6712 and 10 TAC §10.405(a)(3)(F) and for a significant modification of the site plan under 10 TAC §10.405(a)(3)(A), and the Owner has complied with the amendment requirements in 10 TAC §10.405(a); and,

**WHEREAS**, the changes to the site plan, the site acreage and the changes in residential density do not negatively affect the Development, impact the viability of the transaction, impact the scoring of the application or affect the amount of tax credits awarded;

**NOW, therefore, it is hereby**

**RESOLVED**, that the requested material application amendments for Stonebridge at Plainview are approved as presented to 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**

Stonebridge at Plainview was submitted and approved for a 9% HTC allocation during the 2013 competitive cycle to construct 80 new multifamily units in Plainview. Subsequent to the HTC award the same application was submitted and approved for a HOME award in 2014. The representative for the Development Owner, Jeffrey Spicer, has submitted a request seeking approval for an



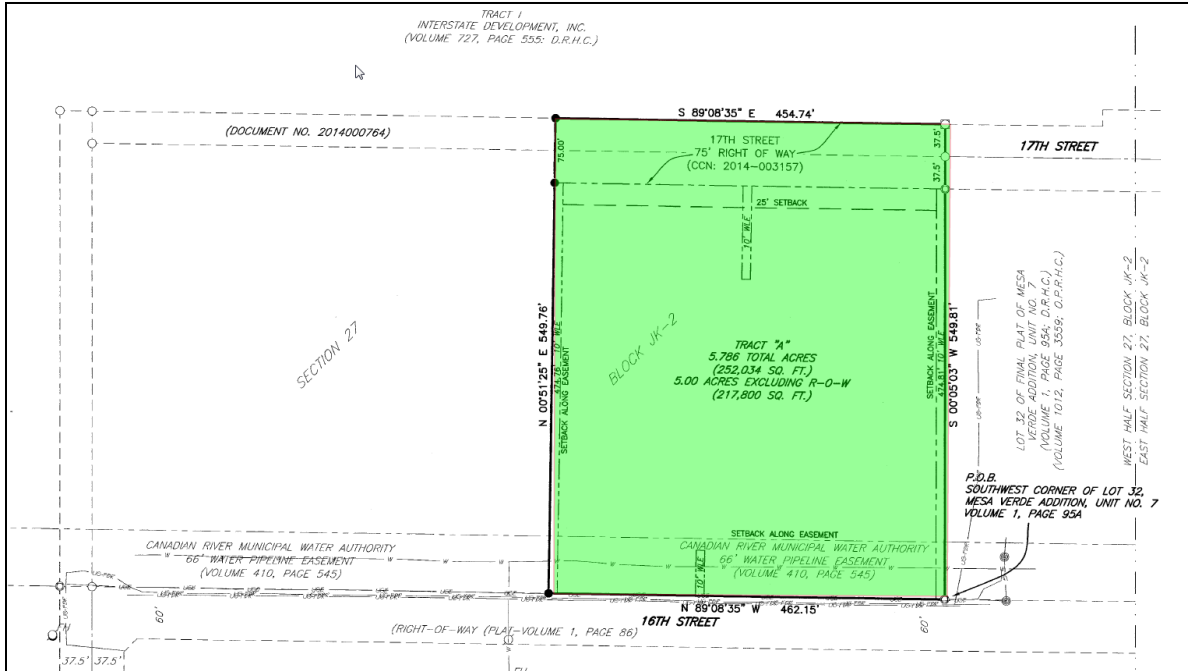
increase in the Development Site acreage that results in a modification of the residential density of at least five percent, and for approval of significant changes to the site plan.

Mr. Spicer explains that State Street Housing Development, LLC purchased an 11.71 acre tract and entered into a contract to sell a portion of that site to the Development Owner. Both the 2013 HTC Application and Underwriting Report dated August 28, 2013, reflect 5.09 acres would be acquired, but only 4.7 acres would be developed due to a 0.39 acre Right-of-Way (“ROW”) anticipated to the City of Plainview. As a result the residential density calculated based on the 4.7 acre proposed development site was 17 units per acre. The Application, original appraisal dated February 4, 2013, and survey dated February 27, 2013, further indicated that the Development would be located on the eastern side of the original 11.71 acre tract (see figure below).

### 2013 HTC Application



Subsequent to its receipt of a HTC award, in June 2014, the Development Owner applied for and was awarded a direct HOME loan in the amount of \$750,000. The Underwriting Report for this award, dated May 29, 2014, still noted that 5.09 acres would be acquired as originally proposed in the Application. However, a revised appraisal dated January 27, 2014, and the site plan provided in the HOME Application indicated that the site acreage was revised to 4.99 acres. Additionally, the appraisal indicated that the Development was relocated to the eastern side of the tract (see figure below). However, the narrative provided in the Application did not point out the relocation.



In conjunction with review of the cost certification for this Development, it was discovered that the final as-built survey identifies the total site as 5.786 acres with 5.0 acres representing the developed site due to a .786 ROW. Mr. Spicer was then asked about the changes to the acreage compared to the original Application and underwriting reports. After receiving his explanation and comparing the original HTC Application to the HOME Application, the relocation of the Development was made evident. Mr. Spicer states that it was collectively determined that the Development would be better served by relocating it to the eastern site of the original tract. Mr. Spicer also states that the relocation of the Development was discussed with the Multifamily Division. He indicates that the Multifamily Division advised him that the move would be allowed under the rules and that he should detail the relocation when submitting the HOME Application. As noted above, the revised appraisal identified the relocation of the Development but the information submitted in the HOME Application did not point out the change and there is no evidence that an amendment to the original Application was submitted for approval prior to the submission of the cost certification.

The final as-built survey reflects the Development Site size to be a total of 5.00 acres versus the 4.7 acres proposed at Application. While this difference is minimal (0.30 acres), it does result in a residential density that is more than five percent different, thereby triggering a material alteration under Texas Gov't Code §2306.6712 and 10 TAC §10.405(a)(3)(F) of the Department's Uniform Multifamily Rules.

Additionally, at cost certification it was discovered that there were more changes to the site plan design than what was originally proposed and approved. The project was originally designed with five two-story residential buildings. The Development as built includes four residential buildings consisting of two three-story buildings and two two-story buildings. According to Mr. Spicer the design change resulted in construction cost savings required to keep the project within the original budget. The owner also explained that there were unforeseen issues associated with the location of the project. Because Plainview is not located closely to a larger city, there were difficulties in finding vendors and skilled laborers. The General Contractor is a related party to the owner and therefore,

the contractor fees were also significantly reduced to keep the project within the original budget. Finally, the owner states that other benefits to the reduction in the number of buildings on the site include an increase in size of the community building from 1,500 to 2,083 square feet, an increase in the amount of green space, and improvement of site drainage. The as-built site plan indicates there were also changes in the amenities represented in the original design plan. For example, the tot lot and barbeque grills with a picnic table were not provided on the Development. However, the cost certification review indicates the Development does include a sufficient amount of common amenities to meet the required points awarded at application. The relocation of the development and design changes are significant modifications of the site plan triggering a material alteration under Texas Gov't Code §2306.6712 and 10 TAC §10.405(a)(3)(A). A table summarizing the changes between Application and Amendment is included on the next page:

**Material Alterations as defined in Texas Government Code §2306.6712(d) and 10 TAC §10.405(a)(3)**

**Application**

**Amendment**

**Modification of the residential density of at least 5 percent and Significant modification to the site plan**

Site acreage = 4.7 acres  
Density = 17 units/acre

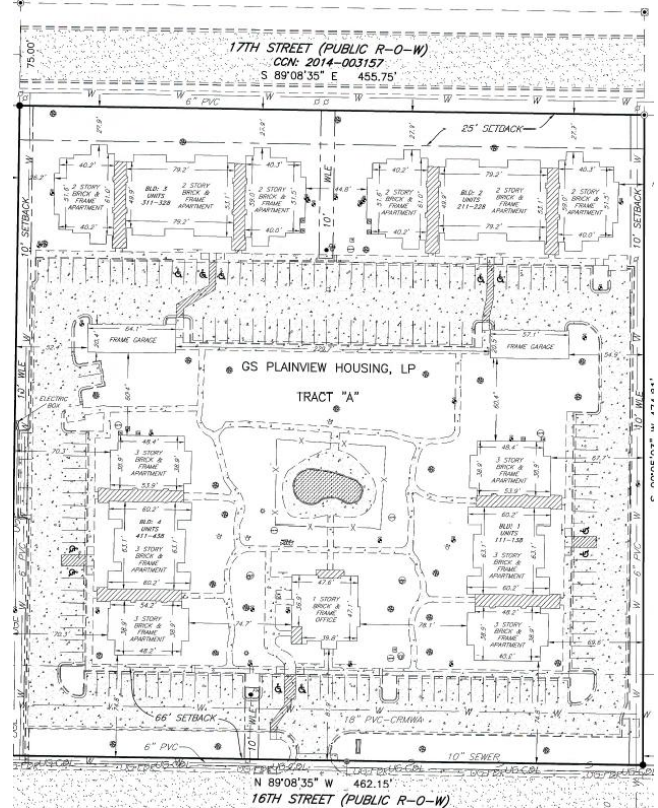
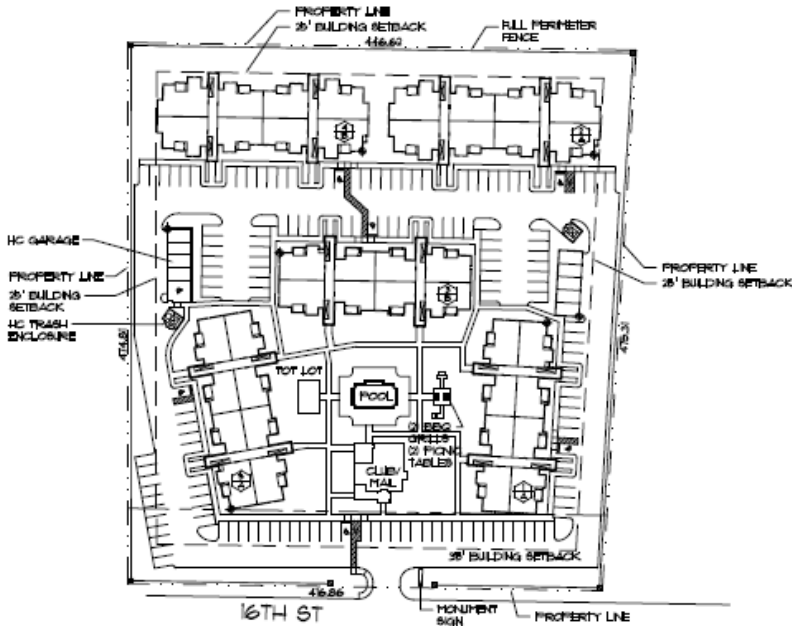
5 Residential Buildings  
80 Units  
75,960 Net Rentable SF

Site acreage = 5 acres  
Density = 16 units/acre (-5.9% difference)

4 Residential Buildings  
80 Units  
75,960 Net Rentable SF

**Original Site Plan**

**As-built Site Plan**



**Common Amenities Identified on Original Design Plan  
(10 Points Required)**

- Tot Lot
- Pool
- Two Barbeque Grills with Picnic Tables
- Clubhouse

**As-built Amenities  
(10 Points Provided)**

- Common area WI-Fi – 1 point
- Dog Park Area – 1 point
- Enclosed community sun porch or covered community porch/patio – 1 point
- Equipped Business Center – 2 points
- Furnished Community Room – 2 points
- Swimming Pool – 3 points

Staff has reviewed the original Application and underwriting report and has concluded that the increase in the site acreage and the design changes would not have affected the Application score and does not negatively impact the tax credit allocation awarded.

Staff recommends approval of the material amendments as presented.



May 25, 2016

Ms. Lee Ann Chance  
Texas Department of Housing & Community Affairs  
P.O. Box 13941  
Austin, TX 78711-3941

RE: Stonebridge at Plainview - Request for Development Change

Ms. Chance,

GS Plainview Housing, LP owner of Stonebridge at Plainview (TDHCA #13139), requests the following changes to the development:

1. Site Acreage

We have increased the site acreage from 4.70 acres (5.09 per site control) to 5.0 per the as-built survey and 5.786 per the architects site plan. Note that the site plan includes city right-of-way.

2. Number of Residential Buildings

We have decreased the number of residential buildings from five to four. The application originally had five two story buildings. In order to achieve the required construction cost savings, we changed the plan to build two three-story buildings and two two-story building. This kept all unit sizes and footprints the same. The reduced number of building had several benefits including greater available common area green space and improved site drainage.

Enclosed is a check for \$2,500.00 for the development change request fee. If you have any questions you may contact me at 214.346.0707 or JSpicer@statestreethousing.com.

Respectfully,

A handwritten signature in cursive script that reads "Jeffrey Spicer".

Jeffrey S. Spicer  
Authorized Representative

A large, stylized handwritten mark or signature, possibly initials, located to the right of the typed name.

Lee Ann,

To answer your question regarding the changes in the size of the site we have detailed the events below.

1. On 11/16/2012 State Street Housing Development, LP purchased an 11.71 acre site. The approximate site is attached. (see exhibit 1)
2. The purchase contract in the application was for up to 6.7 acres out of the 11.71 acre site with the exact location not described.
3. The 2013 tax credit application showed a site plan of 4.70 acres. (see exhibit 2)
4. The legal in the title commitment detailed 5.09 acres which included approximately .39 acres to be dedicated as right of way.
5. After award we began the annexation process and worked with the city. During This process, it was cooperatively determined that the development and city would both be better served if the site were moved to the eastern side of the overall acreage. We asked if we could move the site to the eastern side of the site. We had discussed this with Cameron Dorsey who said the move was allowed under the rules and should be detailed when we submitted a HOME funding application to facilitate additional financing.
6. The HOME application showed the developed site as 4.99 acres. (see exhibit 3)
7. A depiction of the change from the tax credit to the HOME application as a result of the city's request is attached. (see exhibit 4)
8. In order to finalize the annexation plat, the city required both sides of the 75 foot right of way to be annexed. Since we did not own the other ½ (37.5 feet) of right of way, it was dedicated to the city by separate instrument. This makes up the approximate .39 acre additional right of way shown on the platted site that was not originally contemplated. The attached shows the right of way deeded to the city. (see exhibit 5)



**A. Settlement Statement**

<b>B. Type of Loan</b>			6. File Number	7. Loan Number	8. Mortgage Ins Case Number
1. <input type="checkbox"/> FHA	2. <input type="checkbox"/> FmHA	3. <input checked="" type="checkbox"/> Conv Unins	201215254	1717651-59410	
4. <input type="checkbox"/> VA	5. <input type="checkbox"/> Conv Ins.	6. <input type="checkbox"/> Seller Finance			

**C. Note:** This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. Name and Address of Borrower State Street Housing Development L.P. 7110 Baxtershire Drive Dallas, TX 75230	E. Name, Address, and Tax ID Number of Seller Jerry Wofford, Inc. 4424 Olton Road Plainview, TX 79072 Tax ID: 75-1665925	F. Name and Address of Lender Happy State Bank 3110 Olton Rd Plainview, TX 79072
--	--	---

G. Property Location (Complete address, including legal description, if necessary)  Block JK-2, Section 27, 12.5 acres No. 25, Hale County 16th Street Plainview, TX 79072	H. Settlement Agent Name, Address and Tax ID Number Hale County Abstract Company P. O. Drawer 1149 512 Ash Street Plainview, TX 79073-1149 Tax ID: 26-3022114  Place of Settlement Hale County Abstract Company P. O. Drawer 1149 512 Ash Street Plainview, TX 79073-1149	I. Settlement Date 11/16/2012 Fund:
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J. Summary of Borrower's Transaction		K. Summary of Seller's Transaction	
<b>100. Gross Amount Due from Borrower</b>		<b>400. Gross Amount Due to Seller</b>	
101. Contract Sales Price	\$425,000.00	401. Contract Sales Price	\$425,000.00
102. Personal Property		402. Personal Property	
103. Settlement Charges to borrower	\$5,124.66	403.	
104.		404.	
105.		405.	
<b>Adjustments for items paid by seller in advance</b>		<b>Adjustments for items paid by seller in advance</b>	
106. City property taxes		406. City property taxes	
107. County property taxes 11/17/12 thru 12/31/12	\$9.22	407. County property taxes	
108. Annual assessments		408. Annual assessments	
109. School property taxes		409. School property taxes	
110. MUD taxes		410. MUD taxes	
111. Other taxes		411. Other taxes	
112.		412.	
113.		413.	
114.		414.	
115.		415.	
116.		416.	
<b>120. Gross Amount Due From Borrower</b>	<b>\$430,133.88</b>	<b>420. Gross Amount Due to Seller</b>	<b>\$425,000.00</b>
<b>200. Amounts Paid By Or in Behalf Of Borrower</b>		<b>500. Reductions in Amount Due to Seller</b>	
201. Deposit or earnest money	\$57,000.00	501. Excess Deposit	
202. Principal amount of new loan(s)	\$212,500.00	502. Settlement Charges to Seller (line 1400)	\$28,376.00
203. Existing loan(s) taken subject to		503. Existing Loan(s) Taken Subject to	
204. Commitment fee		504. Payoff of first mortgage loan	
205.		505. Payoff of second mortgage loan	
206.		506.	
207.		507.	
208.		508. Funds Paid in Advance	\$57,000.00
209.		509.	
<b>Adjustments for items unpaid by seller</b>		<b>Adjustments for items unpaid by seller</b>	
210. City property taxes		510. City property taxes	
211. County property taxes		511. County property taxes 01/01/12 thru 11/16/12	\$65.78
212. Annual assessments		512. Annual assessments	
213. School property taxes		513. School property taxes	
214. MUD taxes		514. MUD taxes	
215. Other taxes		515. Other taxes	
216.		516. Remaining 2012 Property Taxes	\$1,439.54
217.		517.	
218.		518.	
219.		519.	
<b>220. Total Paid By/For Borrower</b>	<b>\$269,500.00</b>	<b>520. Total Reduction Amount Due Seller</b>	<b>\$86,881.32</b>
<b>300. Cash At Settlement From/To Borrower</b>		<b>600. Cash At Settlement To/From Seller</b>	
301. Gross Amount due from borrower (line 120)	\$430,133.88	601. Gross Amount due to seller (line 420)	\$425,000.00
302. Less amounts paid by/for borrower (line 220)	\$269,500.00	602. Less reductions in amt. due seller (line 520)	\$86,881.32
<b>303. Cash From Borrower</b>	<b>\$160,633.88</b>	<b>603. Cash To Seller</b>	<b>\$338,118.68</b>



GFNo: 201215254


Page 2

L. Settlement Charges				Paid From	Paid From
700. Total Sales/Broker's Commission based on price	\$425,000.00	@ % =	\$0.00		
Division of Commission (line 700) as follows:					
701.	to				
702.	to				
703. Commission Paid at Settlement				\$0.00	\$0.00
<b>800. Items Payable in Connection with Loan</b>					
801. Loan Origination Fee %	to	Happy State Bank		\$530.00	
802. Loan Discount %	to				
803. Appraisal Fee	to				
804. Credit Report	to				
805. Lender's Inspection Fee	to				
806. Mortgage Insurance Application	to				
807. Assumption Fee	to				
808. Broker's Opinion	to	Keith Billington		\$375.00	
<b>900. Items Required by Lender To Be Paid in Advance</b>					
901. Interest from	11/16/2012	to	12/1/2012 @ \$0/day		
902. Mortgage Insurance Premium for	months	to			
903. Hazard Insurance Premium for	years	to			
<b>1000. Reserves Deposited With Lender</b>					
1001. Hazard insurance	months @	per month		\$0.00	
1002. Mortgage insurance	months @	per month		\$0.00	
1003. City property taxes	months @	per month		\$0.00	
1004. County property taxes	months @	per month		\$0.00	
1005. Annual assessments	months @	per month		\$0.00	
1006. School property taxes	months @	per month		\$0.00	
1007. MUD taxes	months @	per month		\$0.00	
1008. Other taxes	months @	per month		\$0.00	
1011. Aggregate Adjustment					
<b>1100. Title Charges</b>					
1101. Settlement or closing fee	to				
1102. Abstract or title search	to				
1103. Title examination	to				
1104. Title insurance binder	to				
1105. Document preparation	to	Miller Gutzmer Attorneys At Law			\$85.00
1106. Notary fees	to				
1107. Attorney's fees	to				
(includes above items numbers: )					
1108. Title insurance	to	Hale County Abstract Company		\$249.40	\$2,579.00
(includes above items numbers: )					
1109. Lender's coverage	\$212,500.00/\$249.40				
1110. Owner's coverage	\$425,000.00/\$2,579.00				
1111. Escrow fee	to	Hale County Abstract Company		\$200.00	\$200.00
1112. Tax certificates	to	Hale County Abstract Company			\$10.00
1113. State of Texas Policy Guaranty Fee	to	Hale County Abstract Company		\$2.00	\$2.00
<b>1200. Government Recording and Transfer Charges</b>					
1201. Recording Fees	Deed \$24.00 ; Mortgage \$80.00 ; Releases			\$104.00	
1202. City/county tax/stamps	Deed ; Mortgage to				
1203. State tax/stamps	Deed ; Mortgage to				
<b>1300. Additional Settlement Charges</b>					
1301. Survey	to	AMD Engineering, L.L.C		\$3,664.26	
1302. Pest Inspection	to				
1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)				\$5,124.66	\$2,876.00

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a completed copy of pages 1, 2 and 3 of this HUD-1 Settlement Statement.

State Street Housing Development L.P.

Jerry Wofford, Inc.

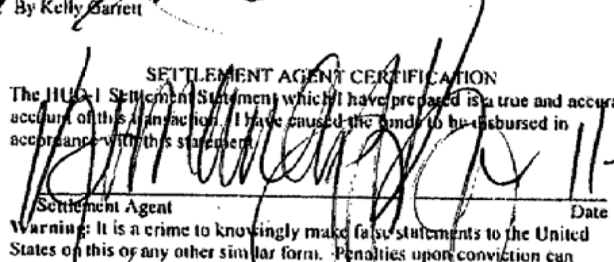
By  Jeffrey S. Street


By Jerry Wofford

By  Kelly Garret

**Seller's Taxpayer Identification Number Solicitation and Certification**  
 You are required by law to provide the Settlement Agent named above with your correct taxpayer identification number. If you do not provide the Settlement Agent with your correct taxpayer identification number, you may be subject to civil or criminal penalties imposed by law. Under Penalties of perjury, I certify that the number shown on this statement is my correct taxpayer identification number.

**SETTLEMENT AGENT CERTIFICATION**  
 The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused the funds to be disbursed in accordance with this statement.

 Settlement Agent Date

 Seller's Signature Date

Warning: It is a crime to knowingly make false statements to the United States or this or any other similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.



L. Settlement Charges				Paid From	Paid From
700. Total Sales/Broker's Commission based on price	\$425,000.00	@6 % = \$25,500.00			
Division of Commission (line 700) as follows:					
701. \$25,500.00	to	Rick Canup--Coldwell Bankers Realtors			
702.	to				
703. Commission Paid at Settlement			\$0.00		\$25,500.00
<b>800. Items Payable in Connection with Loan</b>					
801. Loan Origination Fee %	to	Happy State Bank	\$530.00		
802. Loan Discount %	to				
803. Appraisal Fee	to				
804. Credit Report	to				
805. Lender's Inspection Fee	to				
806. Mortgage Insurance Application	to				
807. Assumption Fee	to				
808. Broker's Opinion	to	Keith Billington	\$375.00		
<b>900. Items Required by Lender To Be Paid in Advance</b>					
901. Interest from 11/16/2012 to 12/1/2012 @ \$0/day					
902. Mortgage Insurance Premium for months	to				
903. Hazard Insurance Premium for years	to				
<b>1000. Reserves Deposited With Lender</b>					
1001. Hazard insurance	months @	per month	\$0.00		
1002. Mortgage insurance	months @	per month	\$0.00		
1003. City property taxes	months @	per month	\$0.00		
1004. County property taxes	months @	per month	\$0.00		
1005. Annual assessments	months @	per month	\$0.00		
1006. School property taxes	months @	per month	\$0.00		
1007. MUD taxes	months @	per month	\$0.00		
1008. Other taxes	months @	per month	\$0.00		
1011. Aggregate Adjustment					
<b>1100. Title Charges</b>					
1101. Settlement or closing fee	to				
1102. Abstract or title search	to				
1103. Title examination	to				
1104. Title insurance binder	to				
1105. Document preparation	to	Miller Gutzmer Attorneys At Law			\$85.00
1106. Notary fees	to				
1107. Attorney's fees	to				
(includes above items numbers:		)			
1108. Title insurance	to	Hale County Abstract Company	\$249.40		\$2,579.00
(includes above items numbers:		)			
1109. Lender's coverage	\$212,500.00/\$249.40				
1110. Owner's coverage	\$425,000.00/\$2,579.00				
1111. Escrow fee	to	Hale County Abstract Company	\$200.00		\$200.00
1112. Tax certificates	to	Hale County Abstract Company			\$10.00
1113. State of Texas Policy Guaranty Fee	to	Hale County Abstract Company	\$2.00		\$2.00
<b>1200. Government Recording and Transfer Charges</b>					
1201. Recording Fees	Deed \$24.00 ; Mortgage \$80.00 ; Releases		\$104.00		
1202. City/county tax/stamps	Deed ; Mortgage to				
1203. State tax/stamps	Deed ; Mortgage to				
<b>1300. Additional Settlement Charges</b>					
1301. Survey	to	AMD Engineering, LLC	\$3,664.26		
1302. Pest Inspection	to				
<b>1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)</b>			\$5,124.66		\$28,376.00

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a completed copy of pages 1, 2 and 3 of this HUD-1 Settlement Statement.

State Street Housing Development L.P.

Jerry Wofford, Inc.

By Jeffrey S. Spicer

By Jerry Wofford

**SETTLEMENT AGENT CERTIFICATION**

The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused the funds to be disbursed in accordance with this statement.

Settlement Agent \_\_\_\_\_ Date 11-16-10

Warning: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

**Seller's Taxpayer Identification Number Solicitation and Certification**

You are required by law to provide the Settlement Agent named above with your correct taxpayer identification number. If you do not provide the Settlement Agent with your correct taxpayer identification number, you may be subject to civil or criminal penalties imposed by law. Under Penalties of perjury, I certify that the number shown on this statement is my correct taxpayer identification number.

Seller's Signature \_\_\_\_\_

Date \_\_\_\_\_

## Development Narrative

### 1. The proposed Development is: *(Check all that apply)*

<input checked="" type="checkbox"/>	New Construction		
<input type="checkbox"/>	Rehabilitation	Including Acquisition?	<input type="checkbox"/>
<input type="checkbox"/>	Reconstruction	# of Units Demolished:	<input type="checkbox"/> # of Units Reconstructed: <input type="checkbox"/>
<input type="checkbox"/>	Adaptive Reuse	Previous use of Buildings (i.e. Hotel, or school)	<input type="checkbox"/>
<input type="checkbox"/>	Additional Phase to existing development	TDHCA#	<input type="checkbox"/>
<input type="checkbox"/>	Scattered Site	Number of Non-Contiguous Sites:	<input type="checkbox"/> Number of Census tracts: <input type="checkbox"/>

### 2. The Target Population will be:

#### General

Unit Composition		
Type of Unit	# of Designated Units	% of Total Units in Development
Migrant Farm Workers		0%
Victims of Domestic Violence		0%
Persons with Disabilities	8	10%
Homeless Populations		0%
Persons with alcohol and/or drug addictions		0%
Persons with HIV/AIDS		0%
Colonia Resident		0%
Other: (Specify)		0%

*NOTE: The population percentages above are anticipated at the time of Application submission and the Applicant will not be held to this representation long-term, unless required by TDHCA Program rules and federal Regulations.*

### 3. Staff Determinations regarding definitions of development activity obtained?

If a determination under §10.3(b) of the Uniform Multifamily Rules was made prior to Application submission, provide a copy of such determination behind this form.

### 4. Narrative

Briefly describe the proposed Development, including any relevant information not already identified above.

Stonebridge of Plainview will be an 80-unit new construction development for families located in the western portion of Plainview, Hale County, Texas.

The development is set on approximately 4.7 acres and will comprise of 5 residential buildings and 1 non-residential building. Each building will be a 2 story; garden style building. The Stonebridge of Plainview development will target families with income between 30% and 60% of the area median income with a market rate component as well.

## Site Information Form Part II

Self Score Total: **114**

### 1. Site Acreage

Please identify site acreage as listed in each of the following exhibits/documents.

Site Control: **5.09** Site Plan: **4.7** Appraisal: **4.7** ESA: **4.7**

Please provide an explanation of any discrepancies in site acreage below:

Site Control is currently 5.09 due to the purchase of an existing Dedicated Right-of-Way (ROW) to the City of Plainview for the extension of 17th St. The Site Plan, Appraisal and ESA indicate 4.7 due to the removal of that ROW because that portion of the land will ultimately not be in the overall Development.

### 2. Site Control

The current owner of the Development Site is (If scattered site, & more than one owner, refer to Scattered Site Info. Tab.):

State Street Housing Development, LP	Kelly Garrett	11/16/2012	
Entity Name	Contact Name	Date of Last Sale	
7110 Baxtershire Dr.	Dallas	TX	75230
Address	City	State	Zip

Is the seller affiliated with the Applicant, Principal, sponsor, or any Development Team member?

**Yes**

If "Yes," please explain: **One of the Principals of the Seller is a spouse of the Principal of the Applicant**

Did the seller acquire the property through foreclosure or deed in lieu of foreclosure?

**No**

#### Applicant or Applicant Representative Reminder:

Identify all of the sellers of the proposed Property for the 36 months prior to the first day of the Application Acceptance Period and their relationship, if any, to members of the Development Team:

State Street Housing Development, LP - A Principal of the Seller is a spouse of the Principal of the Applicant. Owned property from 11/16/2012 - Present; Jerry Wofford, Inc. - No relationship to the Applicant. Owned property from 10/7/2003-11/16/2012.

Site Control is in the form of:

- Contract for sale.
- Recorded Warranty Deed with corresponding executed closing/settlement statement.
- Contract for lease.

Expiration of Contract or Option: **12/31/2013**

Anticipated Closing Date: **12/31/2013**

### 3. Title Commitment/Policy

Pursuant to §10.204(11) of the Uniform Multifamily Rules, a Title Commitment or Policy must be provided.

- A Title Commitment in the name of the Development Owner as the proposed insured and lists the seller or lessor as the current owner of the Development Site.
- A title policy that shows the ownership (or leasehold) of the Development Site is vested in the name of the Development Owner.

### 4. 30% increase in Eligible Basis "Boost" (9% and 4% HTC Only)

Development qualifies for the boost for:

- Qualified Census tract
- Rural Development (Competitive HTC only)
- Development is Supportive Housing (Competitive HTC Only)
- Development meets the criteria for the Opportunity Index as identified in §11.9(c)(4) of the Qualified Allocation Plan (Competitive HTC only)
- Development is non-Qualified Elderly not located in a QCT and is targeted under a Community Revitalization Plan. (Competitive HTC only)



## DEED OF TRUST

## RECORDATION REQUESTED BY:

Happy State Bank  
Plainview Branch  
3110 Olton Road  
PO Box 1950  
Plainview, TX 79072

## WHEN RECORDED MAIL TO:

Happy State Bank  
Plainview Branch  
3110 Olton Road  
PO Box 1950  
Plainview, TX 79072

## SEND TAX NOTICES TO:

Happy State Bank  
Plainview Branch  
3110 Olton Road  
PO Box 1950  
Plainview, TX 79072

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY



THIS DEED OF TRUST is dated November 16, 2012, among STATE STREET HOUSING DEVELOPMENT, L.P., whose address is 7110 BAXTERSHIRE DR, DALLAS, TX 75230 ("Grantor"); Happy State Bank, whose address is Plainview Branch, 3110 Olton Road, PO Box 1950, Plainview, TX 79072 (referred to below sometimes as "Beneficiary"); and David Norris, whose address is 701 S TAYLOR, LB 120, AMARILLO, TX 79101 (referred to below as "Trustee").

**CONVEYANCE AND GRANT.** For valuable consideration, Grantor conveys to Trustee in trust, with power of sale, for the benefit of Lender as Beneficiary, the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; and all easements, rights of way, and appurtenances; all water and water rights; and all other rights, royalties, and profits relating to the real property, including without limitation such rights as Grantor may have in all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in HALE County, State of Texas:

See EXHIBIT A, which is attached to this Deed of Trust and made a part of this Deed of Trust as if fully set forth herein.

The Real Property or its address is commonly known as 16TH STREET, PLAINVIEW, TX 79072.

**CROSS-COLLATERALIZATION.** In addition to the Note, this Deed of Trust secures all obligations, debts and liabilities, plus interest thereon, of Grantor to Lender, or any one or more of them, as well as all claims by Lender against Grantor or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated, whether Grantor may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise. However, this Deed of Trust shall not secure, and the "indebtedness" shall not include, any obligations arising under Subchapters E and F of Chapter 342 of the Texas Finance Code, as amended.

Grantor hereby absolutely assigns to Lender (also known as Beneficiary in this Deed of Trust) all of Grantor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

**THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:**

**PAYMENT AND PERFORMANCE.** Except as otherwise provided in this Deed of Trust, Grantor shall pay to Lender all amounts secured by this Deed of Trust as they become due, and shall strictly and in a timely manner perform all of Grantor's obligations under the Note, this Deed of Trust, and the Related Documents.

**VENDOR'S LIEN.** The debt evidenced by the Note is in part or total payment of the purchase price of the Property; the debt is secured by both this Deed of Trust and by a vendor's lien on the Property, which is expressly retained in the deed of the Property to Grantor. This Deed of Trust does not waive the vendor's lien, and the two liens and the rights created by this instrument shall be cumulative. Lender may elect to foreclose under either of the liens without waiving the other or may foreclose under both. The deed wherein the vendor's lien is retained is incorporated into this Deed of Trust.

**POSSESSION AND MAINTENANCE OF THE PROPERTY.** Grantor agrees that Grantor's possession and use of the Property shall be governed by the following provisions:

**Possession and Use.** Until the occurrence of an Event of Default, Grantor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property.

**Duty to Maintain.** Grantor shall maintain the Property in tenantable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

**Compliance With Environmental Laws.** Grantor represents and warrants to Lender that: (1) During the period of Grantor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property; (2) Grantor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (a) any breach or violation of any Environmental Laws, (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (3) Except as previously disclosed to and acknowledged by Lender in writing, (a) neither Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation all Environmental Laws. Grantor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Grantor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Deed of Trust. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other person. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Property for Hazardous Substances. Grantor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws; and (2) agrees to indemnify, defend, and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Deed of Trust or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Grantor's ownership or interest in the Property, whether or not the same was or should have been known to Grantor. The provisions of this section of the Deed of Trust, including the obligation to indemnify and defend, shall survive the payment of the Indebtedness and the satisfaction and reconveyance of the lien of this Deed of Trust and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

**Nuisance, Waste.** Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to





**DEED OF TRUST  
(Continued)**

Loan No: 59410

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the Property or any portion of the Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent. This restriction will not apply to rights and easements (such as gas and oil) not owned by Grantor and of which Grantor has informed Lender in writing prior to Grantor's signing of this Deed of Trust.

**Removal of Improvements.** Grantor shall not demolish or remove any Improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any Improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such Improvements with Improvements of at least equal value.

**Lender's Right to Enter.** Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Grantor's compliance with the terms and conditions of this Deed of Trust.

**Compliance with Governmental Requirements.** Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans With Disabilities Act. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

**Duty to Protect.** Grantor agrees neither to abandon or leave unattended the Property. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

**DUE ON SALE - CONSENT BY LENDER.** Lender may, at Lender's option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property, whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. If any Grantor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of such Grantor. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by Texas law.

**TAXES AND LIENS.** The following provisions relating to the taxes and liens on the Property are part of this Deed of Trust

**Payment.** Grantor shall pay when due (and in all events prior to delinquency) all taxes, special taxes, assessments, charges (including water and sewer), fines and impositions levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of all liens having priority over or equal to the interest of Lender under this Deed of Trust, except for the lien of taxes and assessments not due and except as otherwise provided in this Deed of Trust.

**Right to Contest.** Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and Lender's reasonable attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Grantor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

**Evidence of Payment.** Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

**Notice of Construction.** Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialmen's lien, or other lien could be asserted on account of the work, services, or materials. Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

**PROPERTY DAMAGE INSURANCE.** The following provisions relating to insuring the Property are a part of this Deed of Trust.

**Maintenance of Insurance.** Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a fair value basis for the full insurable value covering all improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender. Grantor shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Lender may request with Trustee and Lender being named as additional insureds in such liability insurance policies. Additionally, Grantor shall maintain such other insurance, including but not limited to hazard, business interruption, and boiler insurance, as Lender may reasonably require. Policies shall be written in form, amounts, coverages and basis reasonably acceptable to Lender, with losses made payable to Lender. GRANTOR MAY FURNISH THE REQUIRED INSURANCE WHETHER THROUGH EXISTING POLICIES OWNED OR CONTROLLED BY GRANTOR OR THROUGH EQUIVALENT INSURANCE FROM ANY INSURANCE COMPANY AUTHORIZED TO TRANSACT BUSINESS IN THE STATE OF TEXAS. If Grantor fails to provide any required insurance or fails to continue such insurance in force, Lender may, but shall not be required to, do so at Grantor's expense, and the cost of the insurance will be added to the Indebtedness. If any such insurance is procured by Lender, Grantor will be so notified, and Grantor will have the option of furnishing equivalent insurance through any insurer authorized to transact business in Texas. Grantor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least thirty (30) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Property be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance, if available, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

**Application of Proceeds.** Grantor shall promptly notify Lender of any loss or damage to the Property. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the Indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Deed of Trust. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Deed of Trust, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the Indebtedness. If Lender holds any proceeds after payment in full of the Indebtedness, such proceeds shall be paid to Grantor as Grantor's interests may appear.

**Grantor's Report on Insurance.** Upon request of Lender, however not more than once a year, Grantor shall furnish to Lender a report on each existing policy of insurance showing: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured, the then current replacement value of such property, and the manner of determining that value; and (5) the expiration date of the policy. Grantor shall, upon request of Lender, have an independent appraiser satisfactory to Lender determine the cash value replacement cost of the Property.

**LENDER'S EXPENDITURES.** If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Grantor fails to comply with any provision of this Deed of Trust or any Related Documents, including but not limited to Grantor's failure to discharge or





pay when due any amounts Grantor is required to discharge or pay under this Deed of Trust or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures paid by Lender for such purposes will then bear interest at the Note rate from the date paid by Lender to the date of repayment by Grantor. To the extent permitted by applicable law, all such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Deed of Trust also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

**WARRANTY; DEFENSE OF TITLE.** The following provisions relating to ownership of the Property are a part of this Deed of Trust:

**Title.** Grantor warrants that: (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Deed of Trust, and (b) Grantor has the full right, power, and authority to execute and deliver this Deed of Trust to Lender.

**Defense of Title.** Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Trustee or Lender under this Deed of Trust, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

**Compliance With Laws.** Grantor warrants that the Property and Grantor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

**Survival of Representations and Warranties.** All representations, warranties, and agreements made by Grantor in this Deed of Trust shall survive the execution and delivery of this Deed of Trust, shall be continuing in nature, and shall remain in full force and effect until such time as Grantor's indebtedness shall be paid in full.

**CONDEMNATION, JUDGMENTS AND AWARDS.** The following provisions relating to condemnation proceedings, judgments, decrees and awards for injury to the Property are a part of this Deed of Trust:

**Proceedings.** If any proceeding in condemnation is filed, Grantor shall promptly notify Lender in writing, and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Grantor will deliver or cause to be delivered to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

**Application of Net Proceeds.** To the extent permitted by applicable law, all judgments, decrees and awards for injury or damage to the Property, or any part of the Property, and awards pursuant to proceedings for condemnation of the Property, are hereby absolutely assigned to Lender, and if all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the Indebtedness or the repair or restoration of the Property. The net proceeds of the award, judgment or decree shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Trustee or Lender in connection with the condemnation.

**SECURITY AGREEMENT; FINANCING STATEMENTS.** The following provisions relating to this Deed of Trust as a security agreement are a part of this Deed of Trust:

**Security Agreement.** This instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

**Security Interest.** Upon request by Lender, Grantor shall take whatever action is requested by Lender to perfect and continue Lender's security interest in the Rents and Personal Property. In addition to recording this Deed of Trust in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Deed of Trust as a financing statement. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall not remove, sever or detach the Personal Property from the Property. Upon default, Grantor shall assemble any Personal Property not affixed to the Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

**Addresses.** The mailing addresses of Grantor (debtor) and Lender (secured party) from which information concerning the security interest granted by this Deed of Trust may be obtained (each as required by the Uniform Commercial Code) are as stated on the first page of this Deed of Trust.

**FURTHER ASSURANCES; ATTORNEY-IN-FACT.** The following provisions relating to further assurances and attorney-in-fact are a part of this Deed of Trust:

**Further Assurances.** At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refilled, or rerecorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Grantor's obligations under the Note, this Deed of Trust, and the Related Documents, and (2) the liens and security interests created by this Deed of Trust as first and prior liens on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or Lender agrees to the contrary in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

**Attorney-in-Fact.** If Grantor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

**FULL PERFORMANCE.** If Grantor pays all the Indebtedness when due, and otherwise performs all the obligations imposed upon Grantor under this Deed of Trust, Lender shall execute and deliver to Grantor a release of this Deed of Trust lien and suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Personal Property. However, it is agreed that the payment of all the Indebtedness and performance of such obligations shall not terminate this Deed of Trust unless the liens and interests created hereby are released by Lender by a proper recordable instrument. Any filing fees required by law shall be paid by Grantor, if permitted by applicable law.

**EVENTS OF DEFAULT.** Each of the following, at Lender's option, shall constitute an Event of Default under this Deed of Trust:

**Payment Default.** Grantor fails to make any payment when due under the Indebtedness.

**Other Defaults.** Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Deed of Trust or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Grantor.

**Compliance Default.** Failure to comply with any other term, obligation, covenant or condition contained in this Deed of Trust, the Note or in any of the Related Documents.

**Default on Other Payments.** Failure of Grantor within the time required by this Deed of Trust to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.





**DEED OF TRUST  
(Continued)**

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**False Statements.** Any warranty, representation or statement made or furnished to Lender by Grantor or on Grantor's behalf under this Deed of Trust or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

**Defective Collateralization.** This Deed of Trust or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

**Death or Insolvency.** The dissolution or termination of Grantor's existence as a going business or the death of any partner, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

**Creditor or Forfeiture Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against any property securing the indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

**Breach of Other Agreement.** Any breach by Grantor under the terms of any other agreement between Grantor and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness or other obligation of Grantor to Lender, whether existing now or later.

**Events Affecting Guarantor.** Any of the preceding events occurs with respect to any Guarantor of any of the indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness.

**Adverse Change.** A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

**Insecurity.** Lender in good faith believes itself insecure.

**RIGHTS AND REMEDIES ON DEFAULT.** If an Event of Default occurs under this Deed of Trust, at any time thereafter, Trustee or Lender may exercise any one or more of the following rights and remedies:

**Election of Remedies.** Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Deed of Trust, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

**Accelerate Indebtedness.** Lender may declare the unpaid principal balance of the Indebtedness due and payable. In no event will Grantor be required to pay any unearned interest.

**Foreclosure.** If Lender invokes the power of sale, Trustee, at the request of Lender, may sell all or any portion of the Property at public auction to the highest bidder for cash at the location within the courthouse designated by the County Commissioners Court, or if no such area has been designated, at the area designated in the notice of sale within the courthouse, between the hours of 10:00 A.M. and 4:00 P.M. on the first Tuesday of any month, after the Trustee or its agent has given notice of the time and place of sale and of the property to be sold as required by the Texas Property Code, as then amended.

**UCC Remedies.** With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

**Collect Rents.** As additional security for the payment of the Indebtedness, Grantor hereby assigns to Lender all Rents as defined in the Definitions section of this Deed of Trust. Lender shall have the right at any time, and even though no Event of Default shall have occurred under this Deed of Trust, to collect and receive the Rents. Lender shall provide any notice required by applicable law with regard to such enforcement of its right to collect and receive the Rents. In addition, if the Property is vacant, Lender may rent or lease the Property. Lender shall not be liable for its failure to rent the Property, to collect any Rents, or to exercise diligence in any matter relating to the Rents; Lender shall be accountable only for Rents actually received. Lender neither has nor assumes any obligation as lessor or landlord with respect to any occupant of the Property. Rents so received shall be applied by Lender first to the remaining unpaid balance of the Indebtedness, in such order or manner as Lender shall elect, and the residue, if any, shall be paid to the person or persons legally entitled to the residue.

**Trustee's Powers.** Grantor hereby jointly and severally authorizes and empowers Trustee to sell all or any portion of the Property together or in lots or parcels, as Trustee may deem expedient, and to execute and deliver to the purchaser or purchasers of such Property good and sufficient deeds of conveyance of fee simple title, or of lesser estates, and bills of sale and assignments, with covenants of general warranty made on Grantor's behalf. In no event shall Trustee be required to exhibit, present or display at any such sale any of the Property to be sold at such sale. The Trustee making such sale shall receive the proceeds of the sale and shall apply the same as provided below. Payment of the purchase price to Trustee shall satisfy the liability of the purchaser at any such sale of the Property, and such person shall not be bound to look after the application of the proceeds.

**Appoint Receiver.** Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

**Tenancy at Sufferance.** If Grantor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (1) pay a reasonable rental for the use of the Property, (2) vacate the Property immediately upon the demand of Lender, or (3) if such tenants refuse to surrender possession of the Property upon demand, the purchaser shall be entitled to institute and maintain the statutory action of forcible entry and detainer and procure a writ of possession thereunder, and Grantor expressly waives all damages sustained by reason thereof.

**Other Remedies.** Trustee or Lender shall have any other right or remedy provided in this Deed of Trust or the Note or available at law or in equity.

**Sale of the Property.** To the extent permitted by applicable law, Grantor hereby waives any and all rights to have the Property marshalled. In exercising its rights and remedies, the Trustee or Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property. Trustee may convey all or any part of the Property to the highest bidder for cash with a general warranty binding Grantor, subject to prior liens and to other exceptions to conveyance and warranty. Grantor waives all requirements of appraisal, if any. The affidavit of any person having knowledge of the facts to the effect that proper notice as required by the Texas Property Code was given shall be prima facie evidence of the fact that such notice was in fact given. Recitals and statements of fact in any notice or in any conveyance to the purchaser or purchasers of the Property in any foreclosure sale under this Deed of Trust shall be prima facie evidence of the truth of such facts, and all prerequisites and requirements necessary to the validity of any such sale shall be presumed to have been performed. Any sale under the powers granted by this Deed of Trust shall be a perpetual bar against Grantor, Grantor's heirs, successors, assigns and legal representatives.

**Proceeds.** Trustee shall pay the proceeds of any sale of the Property (a) first, to the expenses of foreclosure, including reasonable fees or charges paid to the Trustee, including but not limited to fees for enforcing the lien, posting for sale, selling, or releasing the Property, (b) then to Lender the full amount of the Indebtedness, (c) then to any amount required by law to be paid before payment to Grantor, and (d) the balance, if any, to Grantor.

**Attorneys' Fees; Expenses.** If Lender institutes any suit or action to enforce any of the terms of this Deed of Trust, Lender shall be entitled to recover such sum as the court may adjudge reasonable as Lender's attorneys' fees at trial and upon any appeal. Whether or not any cost action is brought, and to the extent not prohibited by law, all reasonable expenses, including those of Lender's attorneys, incurred by Lender in connection with the enforcement of this Deed of Trust shall be paid by Grantor.





**DEED OF TRUST  
(Continued)**

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Page 5

necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's reasonable attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including Lender's reasonable attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law. In the event of foreclosure of this Deed of Trust, Lender shall be entitled to recover from Grantor Lender's reasonable attorneys' fees and actual disbursements that Lender necessarily incurs in pursuing such foreclosure.

**POWERS AND OBLIGATIONS OF TRUSTEE.** The following provisions relating to the powers and obligations of Trustee are part of this Deed of Trust.

**Powers of Trustee.** In addition to all powers of Trustee arising as a matter of law, Trustee shall have the power to take the following actions with respect to the Property upon the written request of Lender and Grantor: (a) join in preparing and filing a map or plat of the Real Property, including the dedication of streets or other rights to the public; (b) join in granting any easement or creating any restriction on the Real Property; and (c) join in any subordination or other agreement affecting this Deed of Trust or the interest of Lender under this Deed of Trust.

**Obligations to Notify.** Trustee shall not be obligated to notify any other lienholder of the Property of the commencement of a foreclosure proceeding or of the commencement of any other action to which Lender may avail itself as a remedy, except to the extent required by applicable law or by written agreement.

**Trustee.** In addition to the rights and remedies set forth above, with respect to all or any part of the Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

**Substitute Trustee.** Lender, at Lender's option, from time to time, and more than once, may appoint in writing a successor or substitute trustee, with or without cause, including the resignation, absence, death, inability, refusal or failure to act of the Trustee. The successor or substitute trustee may be appointed without ever requiring the resignation of the former trustee and without any formality except for the execution and acknowledgment of the appointment by the beneficiary of this Deed of Trust. The successor or substitute trustee shall then succeed to all rights, obligations, and duties of the Trustee. This appointment may be made on Lender's behalf by the President, any Vice President, Secretary, or Cashier of Lender.

**NOTICES.** Any notice required to be given under this Deed of Trust, including without limitation any notice of default and any notice of sale shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Deed of Trust. Any party may change its address for notices under this Deed of Trust by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Deed of Trust:

**Amendments.** This Deed of Trust, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Deed of Trust. No alteration of or amendment to this Deed of Trust shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**Annual Reports.** If the Property is used for purposes other than Grantor's residence, Grantor shall furnish to Lender, upon request, a certified statement of net operating income received from the Property during Grantor's previous fiscal year in such form and detail as Lender shall require. "Net operating income" shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.

**Caption Headings.** Caption headings in this Deed of Trust are for convenience purposes only and are not to be used to interpret or define the provisions of this Deed of Trust.

**Merger.** There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

**Governing Law.** This Deed of Trust will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Texas without regard to its conflicts of law provisions. This Deed of Trust has been accepted by Lender in the State of Texas.

**Choice of Venue.** If there is a lawsuit, and if the transaction evidenced by this Deed of Trust occurred in Hale County, Grantor agrees upon Lender's request to submit to the jurisdiction of the courts of Hale County, State of Texas.

**No Waiver by Lender.** Lender shall not be deemed to have waived any rights under this Deed of Trust unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Deed of Trust shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Deed of Trust. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Deed of Trust, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

**Severability.** If a court of competent jurisdiction finds any provision of this Deed of Trust to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If possible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Deed of Trust. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Deed of Trust shall not affect the legality, validity or enforceability of any other provision of this Deed of Trust.

**Successors and Assigns.** Subject to any limitations stated in this Deed of Trust on transfer of Grantor's interest, this Deed of Trust shall be binding upon and more to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Deed of Trust and the indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Deed of Trust or liability under the indebtedness.

**Time is of the Essence.** Time is of the essence in the performance of this Deed of Trust.

**Waive Jury.** All parties to this Deed of Trust hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

**DEFINITIONS.** The following capitalized words and terms shall have the following meanings when used in this Deed of Trust. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Deed of Trust shall have the meanings attributed to such terms in the Uniform Commercial Code:

**Beneficiary.** The word "Beneficiary" means Happy State Bank, and its successors and assigns.

**Borrower.** The word "Borrower" means STATE STREET HOUSING DEVELOPMENT, L.P. and includes all co-signers and co-makers signing the Note and all their successors and assigns.

**Deed of Trust.** The words "Deed of Trust" mean this Deed of Trust among Grantor, Lender, and Trustee, and includes without limitation all



**DEED OF TRUST  
(Continued)**

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assignment and security interest provisions relating to the Personal Property and Rents.

**Default.** The word "Default" means the Default set forth in this Deed of Trust in the section titled "Default".

**Environmental Laws.** The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

**Event of Default.** The words "Event of Default" mean any of the events of default set forth in this Deed of Trust in the events of default section of this Deed of Trust.

**Grantor.** The word "Grantor" means STATE STREET HOUSING DEVELOPMENT, L.P..

**Guarantor.** The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Indebtedness.

**Guaranty.** The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

**Hazardous Substances.** The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

**Improvements.** The word "Improvements" means all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

**Indebtedness.** The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses incurred by Trustee or Lender to enforce Grantor's obligations under this Deed of Trust, together with interest on such amounts as provided in this Deed of Trust. Specifically, without limitation, Indebtedness includes all amounts that may be indirectly secured by the Cross-Collateralization provision of this Deed of Trust.

**Lender.** The word "Lender" means Happy State Bank, its successors and assigns.

**Note.** The word "Note" means the promissory note dated November 16, 2012, in the original principal amount of \$212,500.00 from Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement.

**Personal Property.** The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

**Property.** The word "Property" means collectively the Real Property and the Personal Property.

**Real Property.** The words "Real Property" mean the real property, interests and rights, as further described in this Deed of Trust.

**Related Documents.** The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

**Rents.** The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property. The word "Rents" shall also mean all "Rents" as defined in Chapter 54 of the Texas Property Code.

**Trustee.** The word "Trustee" means David Norris, whose address is 701 S TAYLOR, LB 120, AMARILLO, TX 79101 and any substitute or successor trustees.

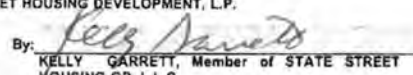
GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS DEED OF TRUST, AND GRANTOR AGREES TO ITS TERMS.

GRANTOR:

STATE STREET HOUSING DEVELOPMENT, L.P.

STATE STREET HOUSING GP, L.L.C., General Partner of STATE STREET HOUSING DEVELOPMENT, L.P.

By:   
JEFFREY S. SPICER, Member of STATE STREET HOUSING GP, L.L.C.

By:   
KELLY GARRETT, Member of STATE STREET HOUSING GP, L.L.C.





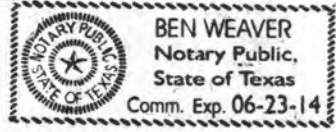
DEED OF TRUST  
(Continued)

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PARTNERSHIP ACKNOWLEDGMENT

STATE OF Texas )  
 ) SS  
COUNTY OF Dallas )



This instrument was acknowledged before me on November 14th, 2012 by JEFFREY S. SPICER, Member of STATE STREET HOUSING GP, L.L.C., General Partner of STATE STREET HOUSING DEVELOPMENT, L.P. and KELLY GARRETT, Member of STATE STREET HOUSING GP, L.L.C., General Partner of STATE STREET HOUSING DEVELOPMENT, L.P., partners on behalf of STATE STREET HOUSING DEVELOPMENT, L.P., a partnership.

B. Weaver  
Notary Public, State of Texas

Escrow File No: 201215254

## EXHIBIT "A"

A 11.71 acre (509,877 Sq. Ft.) tract or parcel of land out of and part of the West One-half of Section 27, Block JK-2, Hale County, Texas, and being out of a remaining portion of that property described as Tract 1, being 232.855 acres in that deed to Interstate Development, Inc. found recorded in Volume 727, page 555 of the Deed Records of Hale County, Texas; the said 11.71 acres being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2" iron rod with a surveyors cap (RPLS-2120), found in the North right-of-way line of 16th Street, a dedicated public roadway (60' R.O.W.), as per the subdivision plat for Wal-Mart Supercenter Addition recorded in Volume 1, page 88 of the Hale County Plat Records and Volume 1002, page 4678 of the Official Public Records of Hale County, Texas, same being a South line of the above referenced 232.855 acres tract, and being the Southwest corner of Lot 32, of the Final Plat of Mesa Verde Addition, Unit No. 7, a subdivision plat of record as Volume 1, page 95A of the Hale County Plat Records and Volume 1012, page 3559 of the Official Public Records of Hale County, Texas; said point bears N.89°08'35" W. a distance of 222.67 feet from the most Easterly Southeast corner of the said 232.855 acres; said point also being in the South line of that certain 66 foot wide Easement granted to the Canadian River Municipal Water Authority by that instrument found recorded in Volume 937, page 766 of the said Deed Records;

THENCE, N. 89°08'35"W. going across the West 1/2 of the said Section 27, Block JK-2, going along the North line of the said 16th Street right-of-way, same being a South line of the above referenced 232.855 acre tract and the South line of the 66 foot wide easement, a distance of 995.03 feet to a 1/2" iron rod with a surveyors cap (AMD Engineering) set for the Southwest corner of the tract described herein;

THENCE leaving the North line of the said 16th Street right-of-way, being the South line of the above referenced 232.855 acre tract, some also being the South line of the above mentioned 66 foot easement, going over, across and through the said 232.855 acre tract, and continuing across the said Section 27, Block JK-2, along the West and North lines of the tract described herein, the following two (2) courses and distances;

1) N. 00°00'52" E. a distance of 512.32 feet to a 1/2" iron rod with a surveyors cap (AMD Engineering) set for the Northwest corner of, and being an exterior ell corner of the tract described herein; and,

2) S. 89°08'35" E. parallel to the North line of said 16th Street, a distance of 995.65 feet to a 1/2" iron rod with a surveyors cap (AMD Engineering), found for the point of intersection with the West line of the Westerly terminus of that portion of 17th Street, a dedicated public roadway (75' R.O.W.) as per the above referenced subdivision plat for the said Mesa Verde Addition, Unit No. 7, same being the Northeast corner of and being an exterior ell corner of the tract described herein, from said point, a distance (bent) 1/2" iron rod found for the Northwest corner of the said Westerly terminus of 17th Street, same being the Northwest corner of the referenced subdivision plat for Mesa Verde Addition Unit No. 7, bears N. 00°03'46" E., a distance of 37.46 feet;

THENCE S. 00°05'03"W. containing over, across and through the said 232.855 acre tract, and continuing across the said Section 27, Block JK-2, going along the West line of the said subdivision plat for Mesa Verde Addition, Unit No. 7, passing at a distance of 37.50 feet, a 1/2" iron rod, found for the Southwest corner of the Westerly terminus of the said 17th Street continuing for a total distance of 512.31 feet to the POINT OF BEGINNING containing 11.71 acres of land area, more or less with these metes and bounds.

NOTE: The Company is prohibited from insuring the area or quantity of the land described herein. Any statement in the above legal description of the area or quantity of land is not a representation that such area or quantity is correct, but is made only for informational and/or identification purposes and does not override Item 2 of Schedule B hereof.

**REAL ESTATE CONTRACT OF SALE**

STATE OF TEXAS           §  
                                      §       KNOW ALL MEN BY THESE PRESENTS:  
COUNTY OF DALLAS     §

THIS AGREEMENT is entered into by and between STATE STREET HOUSING DEVELOPMENT, LP, a Texas limited partnership ("Seller"), and GS PLAINVIEW HOUSING, LP, a Texas limited partnership ("Purchaser").

**W I T N E S S E T H :**

FOR AND IN CONSIDERATION of the promises, undertakings, and mutual covenants of the parties herein set forth, Seller hereby agrees to sell and Purchaser hereby agrees to purchase and pay for all that certain property hereinafter described in accordance with the following terms and conditions:

**ARTICLE I**  
**PROPERTY**

The conveyance by Seller to Purchaser shall be of all the following described real property, together with all right, title and interest of Seller in and to any and all strips or gores, roads, easements, streets, and ways bounding said property, and all rights of ingress and egress thereto, and shall include all improvements and fixtures located or to be located on said property:

6.474 acres of land, more or less, located out of a portion of 232.855 acres of Section 27, Block JK-2 and described further in Exhibit "A" attached hereto and made a part hereof for all purposes.

Hereinafter the aforesaid real property is referred to as the "Subject Property."

Initials: Seller: \_\_\_\_\_



Initials: Purchaser: \_\_\_\_\_



**ARTICLE II**  
**PURCHASE PRICE**

The purchase price to be paid by Purchaser to Seller for the Subject Property shall be the sum of Two Hundred Forty-Five Thousand and No/100 Dollars (\$245,000.00). The purchase price is to be paid all in cash at the closing.

**ARTICLE III**  
**TITAL COMPANY**

Hexter-Fair/First American Title Company, LLC, 8333 Douglas Avenue, Suite 1550, Dallas, Texas 75225, Attn: Carol Erick (the "Title Company").

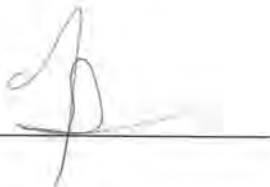
**ARTICLE IV**  
**CLOSING**

The closing hereunder shall take place at the offices of the Title Company. The closing shall occur on or before December 31, 2013. Purchaser and Seller shall agree upon the exact time and date of closing at least five (5) days in advance thereof. Purchaser shall have the right to extend the deadline for closing of this Contract, by delivering written notice of such extension to Seller.

**ARTICLE V**  
**PURCHASER'S OBLIGATIONS AT CLOSING**

At the closing, Purchaser shall deliver to Seller the purchase price in cash, and pay for all taxes, holding and title cost from the date of this contract.

Initials: Seller: \_\_\_\_\_



Initials: Purchaser: \_\_\_\_\_





**ARTICLE VI**  
**ENTRY ON PROPERTY**

Purchaser, Purchaser's agents, employees, servants, or nominees, are hereby granted the right to enter upon the Subject Property at any time prior to closing for the purpose of inspecting the Subject Property and conducting such engineering and mechanical tests as Purchaser may deem necessary or advisable, any such inspections and tests to be made at Purchaser's sole expense. Purchaser agrees to indemnify and hold Seller harmless from and against any physical damage to property incurred by Seller as a result of any inspections or tests made by Purchaser.

**ARTICLE VII**  
**POSSESSION OF PROPERTY**

Possession of the Subject Property free and clear of all uses and encroachments, except the Permitted Exceptions, shall be delivered to Purchaser at closing.

**ARTICLE VIII**  
**NOTICES**

All notices, demands, or other communications of any type given by the Seller to the Purchaser, or by the Purchaser to the Seller, whether required by this Contract or in any way related to the transaction contracted for herein, shall be void and of no effect unless given in accordance with the provisions of this paragraph. All notices shall be in writing and delivered to the person to whom the notice is directed, either in person, by facsimile transmission, or by United States Mail, as a registered or certified item, return receipt requested. Facsimile notices shall be deemed to be received upon confirmation of receipt. Notices delivered by mail shall be deemed given when deposited in a post office or other depository under the care or custody of the United States Postal

Initials: Seller:



Initials: Purchaser:





Service, enclosed in a wrapper with proper postage affixed, addressed as follows:

Seller: State Street Housing Development, LP  
7110 Baxtershire Dr.  
Dallas, Texas 75230  
Attn: Jeffrey S. Spicer  
Telephone No.: (214) 346-0707  
Facsimile No.: (214) 346-0713

Purchaser: GS Plainview Housing, LP  
Attn: Victoria W. Spicer  
7110 Baxtershire Dr.  
Dallas, Texas 75230  
Telephone No.: (214) 346-0707  
Fax No.: (214) 346-0713

**ARTICLE IX**  
**ASSIGNMENT**

Purchaser shall have the right to assign this Contract or any of its rights hereunder without the prior written consent of Seller provided that any such assignee assumes all of the obligations of Purchaser hereunder. Upon any such assignment, the assignee shall succeed to all the rights and obligations of Purchaser hereunder and shall, for the purpose hereof, be substituted as and be the Purchaser hereunder.

**ARTICLE X**  
**INTERPRETATION AND APPLICABLE LAW**

This Agreement shall be construed and interpreted in accordance with the laws of the State of Texas. Where required for proper interpretation, words in the singular shall include the plural; the masculine gender shall include the neuter and the feminine, and vice versa. The terms "successors and assigns" shall include the heirs, administrators, executors, successors, and permitted assigns, as applicable, of any party hereto.

Initials: Seller:



Initials: Purchaser:



**ARTICLE XI**  
**AMENDMENT**

This Contract may not be modified or amended, except by an agreement in writing signed by the Seller and the Purchaser. The parties may waive any of the conditions contained herein or any of the obligations of the other party hereunder, but any such waiver shall be effective only if in writing and signed by the party waiving such conditions and obligations.

**ARTICLE XII**  
**AUTHORITY**

Each person executing this Contract warrants and represents that he has the full right, authority and capacity to execute and perform this Contract.

**ARTICLE XIII**  
**ENTIRE AGREEMENT**

This Contract (and the items to be furnished in accordance herewith) constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the parties in connection therewith. No representation, warranty, covenant, agreement, or condition not expressed in this Contract shall be binding upon the parties hereto or shall affect or be effective to interpret, change, or restrict the provisions of this Contract.

Initials: Seller: \_\_\_\_\_



Initials: Purchaser: \_\_\_\_\_



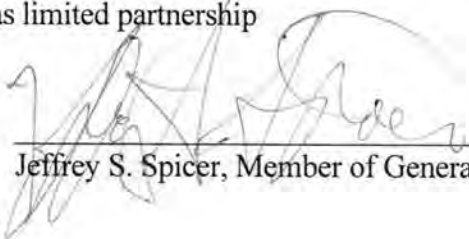
**ARTICLE XIV**  
**MULTIPLE ORIGINALS ONLY**

Numerous copies of this Contract may be executed by the parties hereto. Each such executed copy shall have the full force and effect of an original executed instrument.

EXECUTED on this the 5<sup>th</sup> day of January, 2013.


**SELLER:**


**STATE STREET HOUSING DEVELOPMENT,  
LP,**  
a Texas limited partnership

By:   
Jeffrey S. Spicer, Member of General Partner

EXECUTED on this the 5<sup>th</sup> day of January, 2013.

**PURCHASER:**  
**GS PLAINVIEW HOUSING, LP,**  
a Texas limited partnership

By:   
Victoria W. Spicer, Managing Member of  
General Partner

Initials: Seller: 

Initials: Purchaser: 

# STONEBRIDGE OF PLAINVIEW

PLAINVIEW, TEXAS

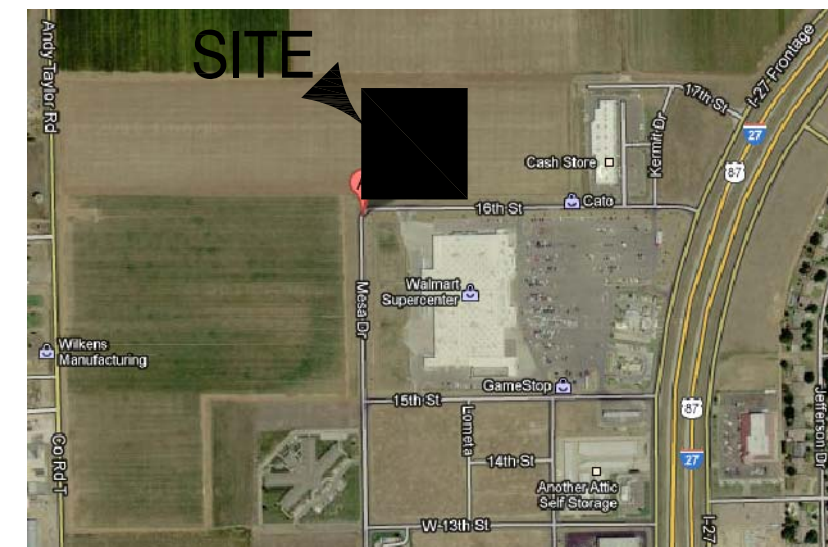
80 UNITS



## SHEET INDEX

A0.0	COVER SHEET
A1.0	SITE PLAN
A2.0	A1 UNIT PLAN
A2.1	B1 UNIT PLAN
A2.2	C1 UNIT PLAN
A3.0	BUILDING 'A' - FIRST FLOOR PLAN
A3.1	BUILDING 'A' - SECOND FLOOR PLAN
A3.2	BUILDING 'A' - ELEVATION
A4.0	BUILDING 'B' - FIRST FLOOR PLAN
A4.1	BUILDING 'B' - SECOND FLOOR PLAN
A4.2	BUILDING 'B' - ELEVATION
A5.0	CLUBHOUSE - PLAN
A5.1	CLUBHOUSE - ELEVATION

## VICINITY MAP



STONEBRIDGE OF PLAINVIEW  
PLAINVIEW, TEXAS

COVER  
SHEET

## FIRST AMENDMENT TO CONTRACT OF SALE

This First Amendment to Contract of Sale is made and entered into effective as of the 27<sup>th</sup> day of February, 2013, by and between State Street Housing Development, LP (“Seller”) and GS Plainview Housing, LP (“Buyer”);

Whereas, the parties hereto entered into that certain Contract of Sale effective January 5, 2013 for the purchase of approximately 6.474 acres in the City of Plainview, Hale County, Texas (the “Contract”); and


Whereas, Article I of the Contract with respect to Property states “6.474 acres of land, more or less, located out of a portion of 232.855 acres of Section 27, Block JK-2 and described further in Exhibit “A” attached hereto and made a part hereof for all purposes”;

Now therefor, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, the parties agree as follows:

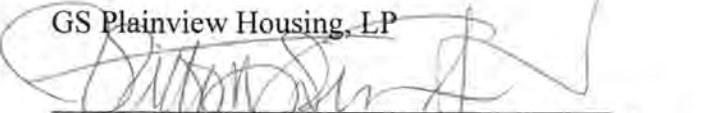
1. Subject Property is Amended to be approximately 5.09 acre of land, more or less, located out of a portion of 232.855 acres of Section 27, Block JK-2 and described further in “Description” attached hereto and made a part hereof for all purposes.
2. All other terms and conditions of the Contract shall remain in full force and effect.

Executed effective this 27<sup>th</sup> day of February, 2013.

State Street Housing Development, LP:

  
Jeffrey S. Spicer, Member of General Partner

GS Plainview Housing, LP

  
Victoria W. Spicer, Managing Member of GP



## SECOND AMENDMENT TO CONTRACT OF SALE

This Second Amendment to Contract of Sale is made and entered into effective as of the 27<sup>th</sup> day of February, 2013, by and between State Street Housing Development, LP (“Seller”) and GS Plainview Housing, LP (“Buyer”);

Whereas, the parties hereto entered into that certain Contract of Sale effective January 5, 2013 for the purchase of approximately 6.474 acres in the City of Plainview, Hale County, Texas (the “Contract”); and


Whereas, Article II of the Contract with respect to Property states “The purchase price to be paid by Purchaser to Seller for the Subject Property shall be the sum of Two Hundred Forty-Five Thousand and No/100 Dollars (\$245,000.00). The purchase price is to be paid all in cash at the closing.”

Now therefor, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, the parties agree as follows:

1. The purchase price listed in Article II shall amended to \$230,208.00.
2. All other terms and conditions of the Contract shall remain in full force and effect.

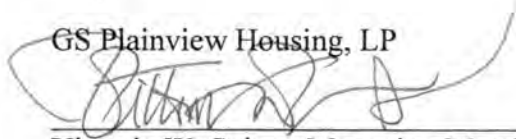
Executed effective this 27<sup>th</sup> day of February, 2013.

State Street Housing Development, LP:



\_\_\_\_\_  
Jeffrey S. Spicer, Member of General Partner

GS Plainview Housing, LP



\_\_\_\_\_  
Victoria W. Spicer, Managing Member of GP

**THIRD AMENDMENT & EXTENSION TO CONTRACT OF SALE**

This Third Amendment to Contract of Sale is made and entered into effect as of the 31<sup>st</sup> day of December, 2013, by and between State Street Housing Development, LP ("Seller") and GS Plainview Housing, LP ("Buyer");

Whereas, the parties hereto entered into that certain Contract of Sale effective January 5, 2013 for the purchase of approximately 6.474 acres in the City of Plainview, Hale County, Texas (the "Contract"); and

Whereas, the First Amendment to the Contract dated the 27<sup>th</sup> day of February, 2013 with respect to Property states "the Subject Property is Amended to be approximately 5.09 acres of land, more or less, located out of a portion of 232.855 acres of Section 27, Block JK-2";


Now therefor, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, the parties agree as follows:

1. Subject Property is amended to be approximately 4.99 acre of land, more or less, located out of a portion of 232.855 acres of Section 27, Block JK-2.

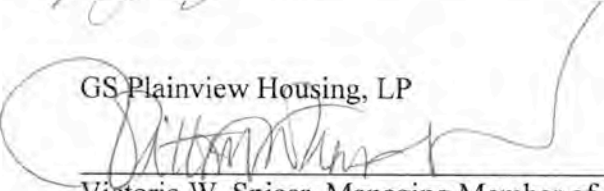
Pursuant to Article IV of the Contract with respect to Closing, the Buyer requests to extend the Closing Date from December 31, 2013 to April 30, 2014.

Executed effective this 31<sup>st</sup> day of December, 2013.

State Street Housing Development, LP:

  
\_\_\_\_\_  
Jeffrey S. Spicer, Member of General Partner

GS Plainview Housing, LP

  
\_\_\_\_\_  
Victoria W. Spicer, Managing Member of GP



**Development Narrative**

**1. The proposed Development is: (Check all that apply)**

Yes New Construction  
 Rehabilitation Including Acquisition?   
 Reconstruction # of Units Demolished:  # of Units Reconstructed:   
 Adaptive Reuse Previous use of Buildings (i.e. Hotel, or school)   
 Additional Phase to existing development TDHCA#   
 Scattered Site Number of Non-Contiguous Sites:  Number of Census tracts:

**2. The Target Population will be:**

**General**

Unit Composition		
Type of Unit	# of Designated Units	% of Total Units in Development
Migrant Farm Workers		0%
Victims of Domestic Violence		0%
Persons with Disabilities	8	10%
Homeless Populations		0%
Persons with alcohol and/or drug addictions		0%
Persons with HIV/AIDS		0%
Colonia Resident		0%
Other: (Specify)		0%

NOTE: The population percentages above are anticipated at the time of Application submission and the Applicant will not be held to this representation long-term, unless required by TDHCA Program rules and federal Regulations.

**3. Staff Determinations regarding definitions of development activity obtained?**

If a determination under §10.3(b) of the Uniform Multifamily Rules was made prior to Application submission, provide a copy of such determination behind this form.

**4. Narrative**

Briefly describe the proposed Development, including any relevant information not already identified above.

Stonebridge of Plainview will be an 80-unit new construction development for families located in the western portion of Plainview, Hale County, Texas.

The development is set on approximately 5 acres and will comprise of 5 residential buildings and 1 non-residential building. Each building will be a 2 story; garden style building. The Stonebridge of Plainview development will target families with income between 30% and 60% of the area median income with a market rate component as well.

## Site Information Form Part II

Self Score Total: **114**

### 1. Site Acreage

Please identify site acreage as listed in each of the following exhibits/documents.

Site Control: 4.99      Site Plan: 4.99      Appraisal: 4.99      ESA: 4.99

Please provide an explanation of any discrepancies in site acreage below:

### 2. Site Control

The current owner of the Development Site is (If scattered site, & more than one owner, refer to Scattered Site Info. Tab.):

<u>State Street Housing Development, LP</u>	<u>Kelly Garrett</u>	<u>11/16/2012</u>	
Entity Name	Contact Name	Date of Last Sale	
<u>7110 Baxtershire Dr.</u>	<u>Dallas</u>	<u>TX</u>	<u>75230</u>
Address	City	State	Zip

Is the seller affiliated with the Applicant, Principal, sponsor, or any Development Team member? Yes

If "Yes," please explain: One of the Principals of the Seller is a spouse of the Principal of the Applicant

Did the seller acquire the property through foreclosure or deed in lieu of foreclosure? No

#### Applicant or Applicant Representative Reminder:

Identify all of the sellers of the proposed Property for the 36 months prior to the first day of the Application Acceptance Period and their relationship, if any, to members of the Development Team:

State Street Housing Development, LP - A Principal of the Seller is a spouse of the Principal of the Applicant. Owned property from 11/16/2012 - Present; Jerry Wofford, Inc. - No relationship to the Applicant. Owned property from 10/7/2003-11/16/2012.

Site Control is in the form of:

- Contract for sale.
- Recorded Warranty Deed with corresponding executed closing/settlement statement.
- Contract for lease.

Expiration of Contract or Option: 4/30/2014      Anticipated Closing Date: 4/30/2014

### 3. Title Commitment/Policy

Pursuant to §10.204(11) of the Uniform Multifamily Rules, a Title Commitment or Policy must be provided.

- A Title Commitment in the name of the Development Owner as the proposed insured and lists the seller or lessor as the current owner of the Development Site.
- A title policy that shows the ownership (or leasehold) of the Development Site is vested in the name of the Development Owner.

### 4. 30% increase in Eligible Basis "Boost" (9% and 4% HTC Only)

Development qualifies for the boost for:

- Qualified Census tract
- X Rural Development (Competitive HTC only)
- Development is Supportive Housing (Competitive HTC Only)
- X Development meets the criteria for the Opportunity Index as identified in §11.9(c)(4) of the Qualified Allocation Plan (Competitive HTC only)
- Development is non-Qualified Elderly not located in a QCT and is targeted under a Community Revitalization Plan. (Competitive HTC only)



**blosser appraisal**

*A Division of the Gerald A. Teel Company, Inc.*

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February 25, 2013

Mr. Dru Childre  
*GS Plainview Housing, LP and TDHCA*  
7110 Baxtershire Dr  
Dallas, TX 75230

Re: Self Contained Appraisal Report  
Vacant Land  
NEC of Mesa Dr. & 16th St  
Plainview, Hale County, Texas

Dear Mr. Childre:

In fulfillment of the agreement outlined in the letter of engagement dated January 25, 2013, this letter is to transmit the attached report. The as is date of value is February 4, 2013. The report sets forth supporting data and reasoning which form the basis of our opinion of the market value.

The value opinion reported is qualified by certain definitions, limiting conditions, and certifications which are set forth within this report. The reader should review all General Assumptions, General Limiting Conditions, Extraordinary Assumptions, and Hypothetical Conditions which may affect the final opinion of value.

This report was prepared for and invoiced to State Street Housing. It is intended only for use by State Street Housing and TDHCA. It may not be distributed to or relied upon by other persons or entities without our written permission.

The property was inspected by Marty Cleckler, and the appraisal was developed by Tim N. Treadway, MAI, CCIM, Michael G. Divin, and Marty Cleckler. If you have any questions concerning the report, please contact our office.

This appraisal has been prepared in accordance with Federal Regulation 12 CFR, 34 dated April 7, 1994, the appraisal guidelines of the Financial Institution Reform, Recovery, and Enforcement Act of 1989 (FIRREA), and the Uniform Standard of Professional Appraisal Practice (USPAP) as adopted by the Appraisal Foundation.

Blosser Appraisal appreciates the opportunity to provide these real estate valuation and consultation services. We look forward to working with you in the future.

BLOSSER APPRAISAL, A Division of The Gerald A. Teel Company, Inc.

BY: \_\_\_\_\_

Tim N. Treadway, MAI, CCIM  
Texas Certification No. TX-1323331-G

**Executive Summary**

Property Name:	Vacant Land	
Address	NEC of Mesa Dr & 16th St Plainview, Texas, 79072	
Land Area:	4.700 Acres	204,732 Sq.Ft.
Zoning:	None, outside city limits	
Shape:	Rectangular	
Flood Zone:	Zone X - Flood Insurance is Optional Per FEMA	

<u>Market Value Indications</u>	<u>As Is</u>
Cost Approach:	N/A
Income Approach - Direct Capitalization:	N/A
Income Approach - Discounted Cash Flow:	N/A
Sales Comparison Approach:	\$193,000

<b>Final Opinion of Value:</b>	<b>\$193,000</b> <b>\$41,064 /Acre</b>
--------------------------------	---

Date of Value - As Is:	February 4, 2013
Date of Report:	February 25, 2013

**SIGNIFICANT ISSUES**

1. The subject tract is located in northwest Plainview at the northwest edge of development. It is adjacent to a Walmart Supercenter and other retail developments.
2. The majority of the subject is located outside the city limits; however, a 66' utility easement runs along its southern boundary at 16<sup>th</sup> St. This easement is located within the city limits.
3. The original purchase contract for the subject which was filed with the TDHCA was for 6.46 acres out of the parent tract. The subject size has been adjusted to 4.70 net acres and will now be located along the parent tract's western edge
4. One of Plainview's largest employers, Cargill Meat Solutions, announced January 11, 2013 that it is closing operations and labeling the plant as "idle." They employed 2,000 people and represented 20% of the workforce. They do not plan on selling the plant at this time. The drought of 2011 reduced the number of cattle in the area and the plant was no longer profitable according to Cargill officials. This event will have a significant short term negative impact on the local economy. However, Lubbock is the largest city in west Texas and is a short commute for those wishing to remaining in Plainview and commute.

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**ADDENDA**

Additional Subject Photos  
Land Comparables



**CERTIFICATION**

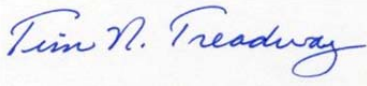
We certify that, to the best of our knowledge and belief...

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions, and is our personal, impartial, and unbiased professional analyses, opinions and conclusions.
- We have no present or prospective interest in the property that is the subject of this report, and no personal interest with respect to the parties involved.
- We have performed no services, as an appraiser or in any other capacity, regarding the subject property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.
- We have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- Our engagement in this assignment was not contingent upon developing or reporting predetermined results.
- Our compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal
- Our analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the *Uniform Standards of Professional Appraisal Practice*, and the requirements of the Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute.
- The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- As of the date of this report, Tim N. Treadway, MAI, CCIM has completed the requirements of the continuing education program of the Appraisal Institute.
- As of the date of this report, Michael G. Divin and Marty Cleckler have completed the Standards and Ethics Education requirement of the Appraisal Institute for Associate Members.
- Marty Cleckler has made a personal inspection of the property that is the subject of this report.
- No one provided significant professional real estate appraisal assistance to the persons signing this report.

**Blosser Appraisal**

A Division of the Gerald A Teel Company, INC.

BY:



\_\_\_\_\_  
Tim N. Treadway, MAI, CCIM  
TX-1323331-G



\_\_\_\_\_  
Michael G. Divin, Managing Partner  
TX-1320831-G



\_\_\_\_\_  
Marty H. Cleckler  
TX-1380173-G

**EXTRAORDINARY ASSUMPTIONS**

An extraordinary assumption is defined by the *Uniform Standards of Professional Appraisal Practice* 2010-2011 Edition, (The Appraisal Foundation, page U-3) as “an assumption, directly related to a specific assignment, as of the effective date of the assignment results, which, if found to be false, could alter the appraiser’s opinions or conclusions. Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis.”

1. There are no extraordinary assumptions for this appraisal report.

**HYPOTHETICAL CONDITIONS**

A hypothetical condition is defined by the *Uniform Standards of Professional Appraisal Practice* 2010-2011 Edition, (The Appraisal Foundation, page U-3) as “a condition, directly related to a specific assignment, which is contrary to what is known by the appraiser to exist on the effective date of the assignment results, but is used for the purpose of analysis. Hypothetical conditions are contrary to known facts about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis.”

1. There are no hypothetical conditions for this report.

**GENERAL ASSUMPTIONS**

This appraisal report has been made with the following general assumptions:

1. No responsibility is assumed for the legal description or for matters including legal or title considerations. Title to the property is assumed to be good and marketable unless otherwise stated.
2. The property is assumed to be free and clear of any or all liens or encumbrances unless otherwise stated. All taxes are assumed to be current. In specific cases, at the request of the client, the appraisers may present data on past due ad valorem taxes. However, this data is not certified and is only a verbal confirmation by the tax authority. This data should not be relied upon by the client and has no effect on the conclusion herein.
3. The property is assumed to be under responsible, adequately capitalized ownership and competent property management.
4. The information furnished by others is believed to be reliable. However, no warranty is given for its accuracy.
5. All engineering is assumed to be correct. The plot plans and illustrative material in this report are included only to assist the reader in visualizing the property.
6. It is assumed that there are no hidden or unapparent conditions of the property, subsoil or structures that render it more or less valuable. No responsibility is assumed for such conditions or for arranging for engineering studies that may be required to discover them.
7. It is assumed that there is full compliance with all applicable federal, state and local environmental regulations and laws unless noncompliance is stated, defined and considered in the appraisal report.
8. It is assumed that all applicable zoning and use regulations and restrictions have been complied with unless a non-conformity has been stated, defined and considered in the appraisal report.
9. It is assumed that all required licenses, certificates of occupancy, consents or other legislative or administrative authority from any local, state or national government or private entity or organization have been or can be obtained or renewed for any use on which the value estimate contained in this report is based.
10. It is assumed that the utilization of the land and improvements is within the boundaries or property lines of the property described, and that there is no encroachment or trespass unless noted in the report.

**GENERAL LIMITING CONDITIONS**

The appraiser will not be required to give testimony or appear in court because of having made this appraisal with reference to the property in question, unless arrangements have been previously made thereof.

Possession of this report, or a copy thereof, does not carry with it the right of publication. It may not be used for any purpose by any person other than the party to whom it is addressed without the written consent of the appraiser and, in any event, only with proper written qualification and only in its entirety.

In the case where an improvement is considered, the distribution of the total valuation between land and improvements applies only under the reported highest and best use of the property. The allocations of value for land and improvements must not be used in conjunction with any other appraisal and are invalid if so used.

Disclosure of the contents of this report is governed by the By-Laws and Regulations of the Appraisal Institute. Neither all nor any part of the contents of this report, or copy thereof, shall be conveyed to the public through advertising, public relations, news, sales or any other media without written consent and approval of the appraiser. Nor shall the appraiser, firm or professional organization of which the appraiser is a member be identified without prior written consent of the appraiser.

SUBJECT PHOTOGRAPHS



View of subject property from 16<sup>th</sup> St facing northeast



View of Walmart Supercenter located to the subject's south

**SCOPE OF THE APPRAISAL**

An appraisal cannot be guaranteed nor can it be proved. However, the opinion of value can be substantiated and justified, and the final opinion of value is the result of a professional analysis of a considerable quantity of physical and economic facts. An appraisal must not be considered absolute, but should be used as a basis of negotiation between concerned parties, whatever their interest.

**Interest Appraised/Valuation Scenarios**

The scope of this appraisal is concerned with developing a self contained appraisal report to form an opinion of the market value of the subject property under the following scenarios.

1. As is market value of the fee simple estate

**Approaches to Value**

The standard appraisal process considers three approaches: cost approach, income approach, and sales comparison approach. The approaches to value offer alternative ways of analyzing market behavior affecting the value of a particular property. Value estimates are based on the most likely outcome perceived if the property were exposed to the open market.

*Cost Approach*

The subject effectively represents vacant land and as a result, the cost approach is not relevant in our analysis.

*Income Approach*

The subject effectively represents vacant land and as a result, the income approach is not relevant in our analysis.

*Sales Comparison Approach*

The subject effectively represents vacant land and as a result, only the sales comparison approach is has been utilized in our analysis.

**Research and Analysis**

During the course of this appraisal, we undertook the following steps in our research and analysis of the subject property:

- Physical visit of the subject property.
- Contacted Dru Childre, the current owner's representative.



We requested and received the following items for the property:

- Legal description
- Survey
- Site plan
- Purchase contract

We requested, but did not receive the following items from the property owner or the client:

- Title policy
- Environmental assessment

We obtained demographic and economic information regarding the regional economy, immediate neighborhood and municipality.

For the sales comparison approach – land only, we researched land sales through local deed records, third-party sources and our company database. This process included telephone interviews with sellers, buyers, and brokers.

The appraisers reserve the right to reconsider the opinions expressed in this report based upon any additional data which may be provided or discovered in the future. With the foregoing in mind, the reader is invited to review the following report that sets forth the data and reasoning leading to the opinion of value of the property under appraisal.

#### **INTENDED USE OF THE APPRAISAL**

The intended use of this appraisal is to assist State Street Housing and TDHCA in the evaluation of the property being appraised for internal management purposes.

#### **INTENDED USER OF THE APPRAISAL**

State Street Housing and TDHCA.

#### **CLIENT IDENTIFICATION**

State Street Housing and TDHCA

#### **PROPERTY RIGHTS APPRAISED**

The fee simple title is regarded as an estate without limitations or restrictions. Anything less than the complete estate results from partial interests that are created by selling, leasing or otherwise limiting the bundle of rights in a fee simple estate. An assignment may require the appraisal of fee simple title or a partial interest such as a leasehold estate or an easement. The three most common types of property rights involved in the appraisal process are defined below.

Fee simple estate - "Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power and escheat".<sup>1</sup>

Leased fee interest - "An ownership interest held by a landlord with the rights of use and occupancy conveyed by lease to others. The rights of lessor (the leased fee owner) and leased fee are specified by contract terms contained within the lease".<sup>2</sup>

Leasehold interest - "The interest held by the lessee (the tenant or renter) through a lease conveying the rights of use and occupancy for a stated term under certain conditions".<sup>3</sup>

The property right of ownership being appraised in this report is the fee simple estate.

## DEFINITION OF MARKET VALUE

Market value is the major focus of most real property appraisal assignments. Both economic and legal definitions of market value have been developed and refined. Continual refinement is essential to the growth of the appraisal profession. The current economic definition of market value can be stated as follows:

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale with the buyer and seller each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. buyer and seller are typically motivated;
2. both parties are well informed or well advised, and acting in what they consider their own best interest;
3. reasonable time is allowed for exposure in the open market;
4. payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
5. the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.<sup>4</sup>

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<sup>1</sup> *The Dictionary of Real Estate Appraisal*, Fifth Edition, Appraisal Institute, 2010, P. 113

<sup>2</sup> *Ibid*, P. 161

<sup>3</sup> *Ibid*, P. 162

**EXPOSURE TIME**

Exposure time may be defined as: “the estimated length of time the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal. Exposure time is a retrospective opinion based on an analysis of past events assuming a competitive and open market.”<sup>5</sup>

Considering the value conclusions and type of property being appraised, an approximate 9-12 month exposure period is considered reasonable based on the investment activity for similar type properties in the subject area and taking the subject’s location into consideration. This time period is also based on discussions with knowledgeable individuals in the marketplace including real estate appraisers, brokers and investors.

**LEGAL DESCRIPTION**

4.70 acres (net of 17<sup>th</sup> Street ROW) out of 5.09 acres (221,726 square feet) of land out of and part of the west ½ of Section 27, Block JK-2, Hale County, Texas.

**HISTORY OF THE PROPERTY**

The subject property is currently under the ownership of State Street Housing Development, LP which purchased an 11.71 acre tract, that includes the subject, for \$425,000 or \$36,294 per acre on November 16, 2012. There is a current contract for 6.46 acres out of the 11.71 acre tract at a purchase price of \$245,000 or \$37,926 per acre. It is our understanding that this contract will be amended to the subject size of 4.70 acres. We are unaware of any other contracts on the subject or the remaining acres of the parent tract.

**COMPETENCY OF THE APPRAISERS**

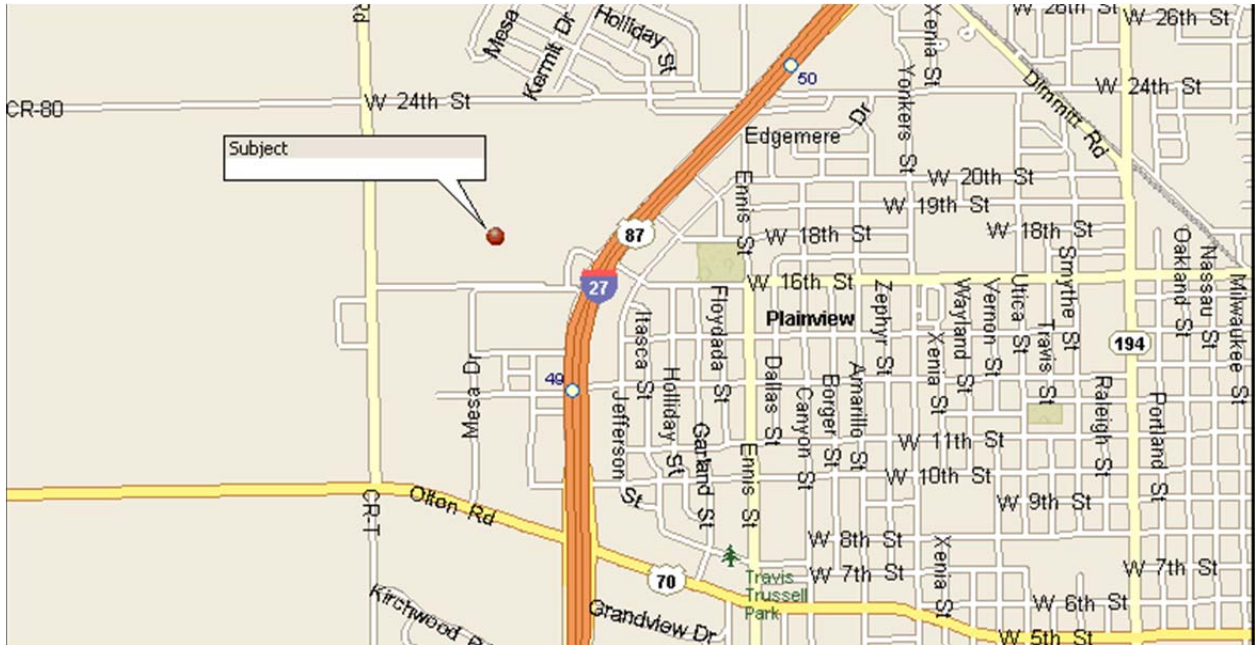
Tim N. Treadway, MAI, CCIM, Michael G. Divin and Marty Cleckler are competent to appraise the subject property, having appraised several similar properties. The educational program followed by the firm is developed by the Appraisal Institute in order to remain abreast of current and future trends in the real estate market and the appraisal profession.

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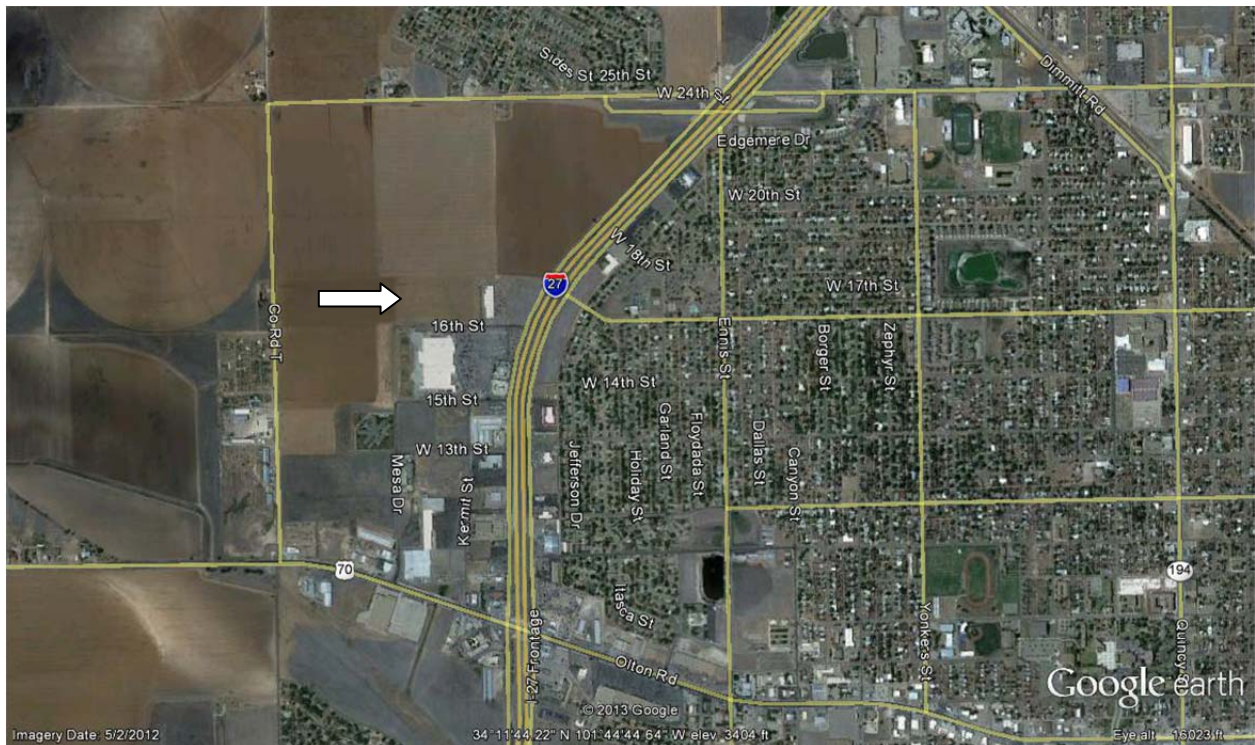
<sup>4</sup> Market Value Definition Per Financial Institution Reform, Recovery and Enforcement Act of 1989 (FIRREA), effective August 24, 1990.

<sup>5</sup> *Uniform Standards of Professional Appraisal Practice*, 2010-2011, Page U-89

Neighborhood Map



Neighborhood Aerial Photograph



**NEIGHBORHOOD ANALYSIS**

A neighborhood is defined as “a grouping of complimentary land uses affected by similar operations of the social, economic, governmental and environmental forces that affect property value. The area most closely surrounding the subject property, whether it contains residential property only or a mixture of commercial and residential property is called a neighborhood.”

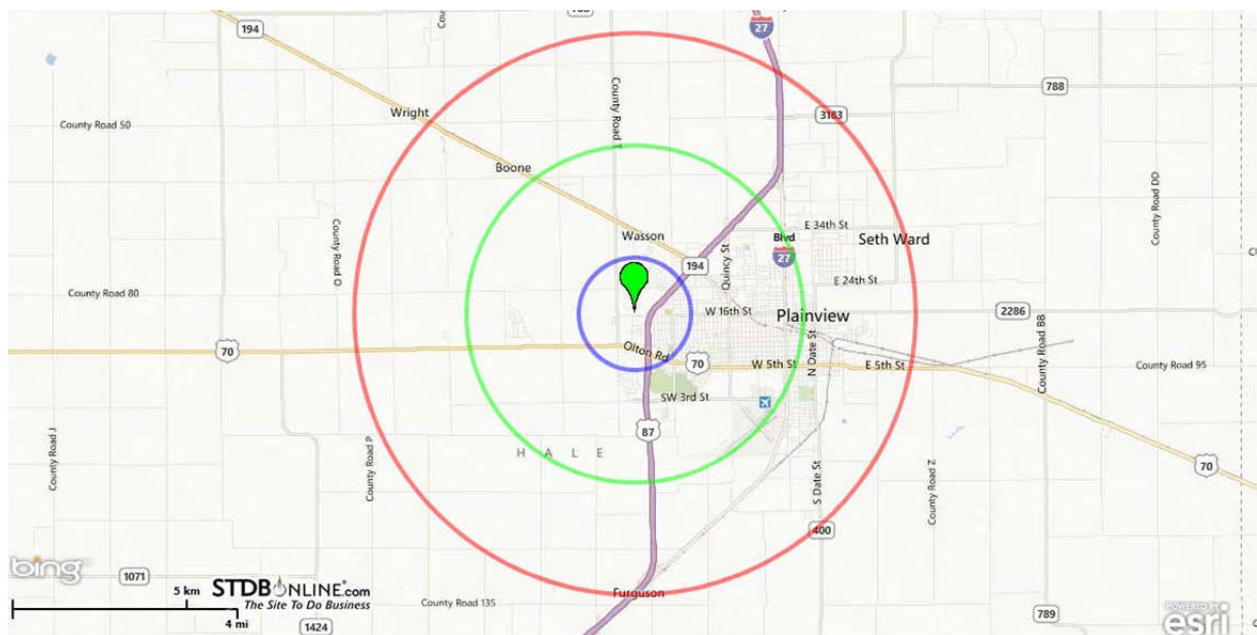
**Delineation**

The immediate confines of the subject neighborhood are defined as follows:

- North → W 24<sup>th</sup> St
- East → Ennis St
- South → Olton Rd
- West → County Rd T

**Demographics**

Selected neighborhood demographics for a one, three, and five-mile radius of the subject property are illustrated on the following charts. The data was obtained from the CCIM Site-To-Do-Business (STDB) online web site.



**Population Trends**

	1-Mile Radius	% Ann Change	3-Mile Radius	% Ann Change	5-Mile Radius	% Ann Change
2010 Census	3,686		19,599		25,654	
2012 Estimate	3,704	0.0%	19,372	-0.1%	25,521	-0.1%
2017 Projection	3,730	0.1%	19,280	-0.1%	25,513	0.0%

Source: STDBOnline, CCIM Website

**Household Trends**

	1-Mile Radius	% Ann Change	3-Mile Radius	% Ann Change	5-Mile Radius	% Ann Change
2010 Census	1,417		6,767		8,725	
2012 Estimate	1,420	0.0%	6,675	-0.1%	8,658	-0.1%
2017 Projection	1,437	0.2%	6,679	0.0%	8,697	0.1%

Source: STDBOnline, CCIM Website

**Neighborhood Income Figures**

Radius	1-Mile	3-Miles	5-Miles
2012 Avg HH Inc.	\$57,454	\$45,446	\$43,654
2012 Median HH Inc.	\$50,445	\$33,934	\$32,083
2012 Per Capita Inc.	\$22,899	\$16,198	\$15,281

Source: STDBOnline, CCIM Website

Overall, growth has been average to other similar west Texas communities over the past ten years. The income level of the neighborhood is below the 2010 state median household income of \$51,960.

**Accessibility**

The major roadway in the area is Interstate 27 which extends northward from Lubbock and terminates in Amarillo. East west thoroughfares include Olton Rd to the south of the subject and W 24<sup>th</sup> St to the north of the subject. These are the only east/west roadways that extend east and west of IH 27.

**Predominant Development**

The subject neighborhood is made up of a mix of retail and residential development. This is the northwest portion of the city, which is largely undeveloped in the subject’s immediate area and even less developed as you move westward. This area provides many of the restaurants and retail venues catering to IH 27 traffic.

**Stage of Development**

The subject neighborhood is approximately 30% developed at this time. The neighborhood is in the early stage of its life cycle. There is ample land available for development.

**Conclusions**

To our knowledge, there are no current development trends, which would either alter or impair the continued desirability of the neighborhood.

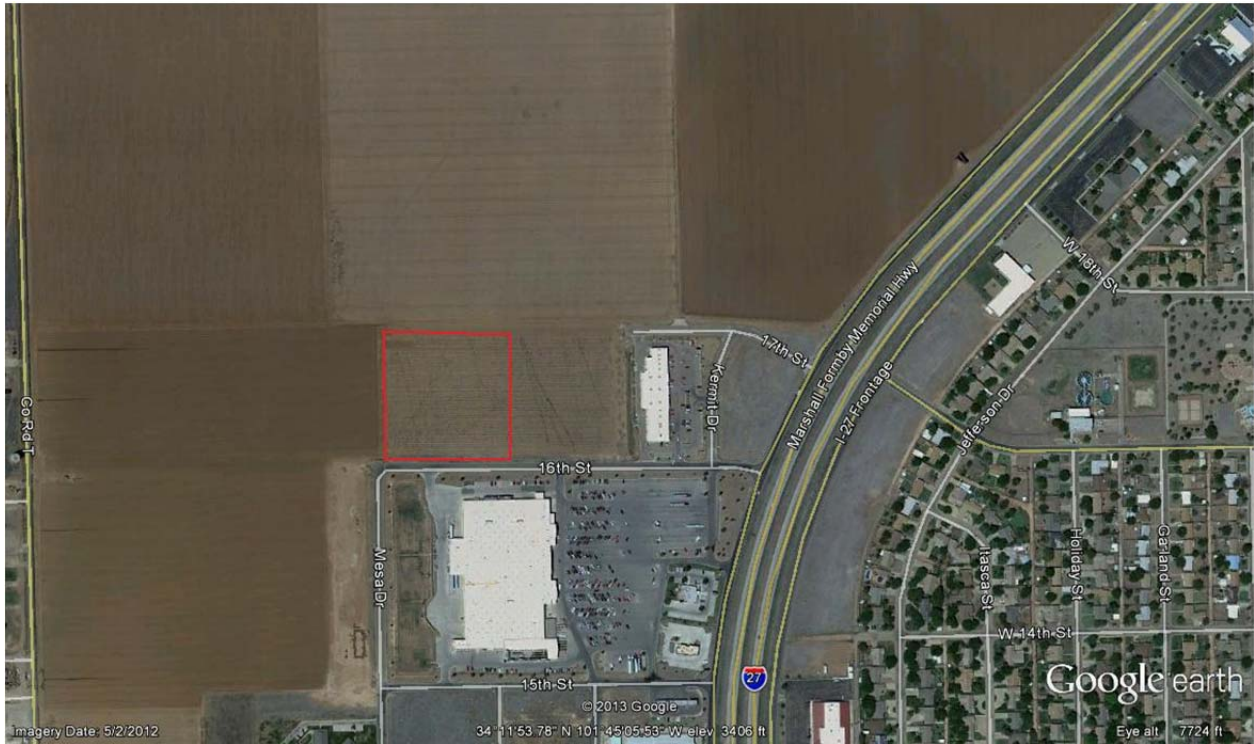


**SITE ANALYSIS**

This description of the subject site is based on the following:

- Site visit
- Survey

An aerial photograph of the subject property follows. The subject site is outlined in red.



The following table summarizes the basic site information:

**Vacant Land**

**Site Description**

Land Size:	4,700 Acres (204,732 Square Feet)
Primary Street:	16th Street
Frontage:	417 Front Feet
Description:	Asphalt paved - 2 way; 2 lanes with concrete curbs & gutters
Zoning:	None, outside city limits
Restrictions/Easements:	There is a 66' water utility easement located on the southern edge of the tract along 16th St. It does not hinder or restrict the potential development of the site.
Corner Location:	Yes but Mesa Dr does not extend northward beyond intersection at this time
Signal Controlled:	No
Shape:	Rectangular
Topography:	Level at road grade
Flood Zone:	Zones C and X (unshaded) are flood insurance rate zones used for areas outside the 0.2-percent-annual-chance floodplain. No Base Flood Elevations (BFEs) or depths are shown in this zone, and insurance purchase is not required.
Water Provider:	City of Plainview
Sewer Provider:	City of Plainview
School District:	Plainview ISD

**Location**

The subject site is located on the north side of 16th Street at what will eventually become the northeast corner of Mesa Dr and 16<sup>th</sup> St. Mesa Dr does not extend northward beyond 16<sup>th</sup> St at this time. The site lies west of Interstate 27 and on the northern edge of development for this area. The majority of the subject site is outside the city limits of Plainview but the southern 66' utility easement is located within the city.

**Accessibility/Visibility**

The subject site is visible and accessible from 16th Street. Overall, visibility to the subject site is average, and access is average. Access will improve when Mesa Dr is extending northward beyond 16<sup>th</sup> St.

**Adjacent Land Use**

The subject site is located in northwest Plainview with new development in recent years including a Walmart Supercenter, shadow anchored retail center, and several home sites. Surrounding uses are as follows:

North → Farm

West → Farm

East → Retail

South → Walmart and Other National Retailer (McDonald's, Chilis, JC Penney)

**Zoning**

The majority of the subject property is located outside the jurisdiction of the city of Plainview, which adheres to a comprehensive zoning ordinance. The southern 66' utility easement is within the city limits of Plainview. The subject is not zoned and currently has an ag exemption with HCAD. Plainview has M-1 and M-2 multifamily zoning. M-1 limits the number of stories and number of units per building. It is most likely that M-2 multifamily zoning will allow for the maximum development of the site and conversations with city officials indicated that this zoning would be achievable and advantageous to their long term city plans.

**Conclusion**

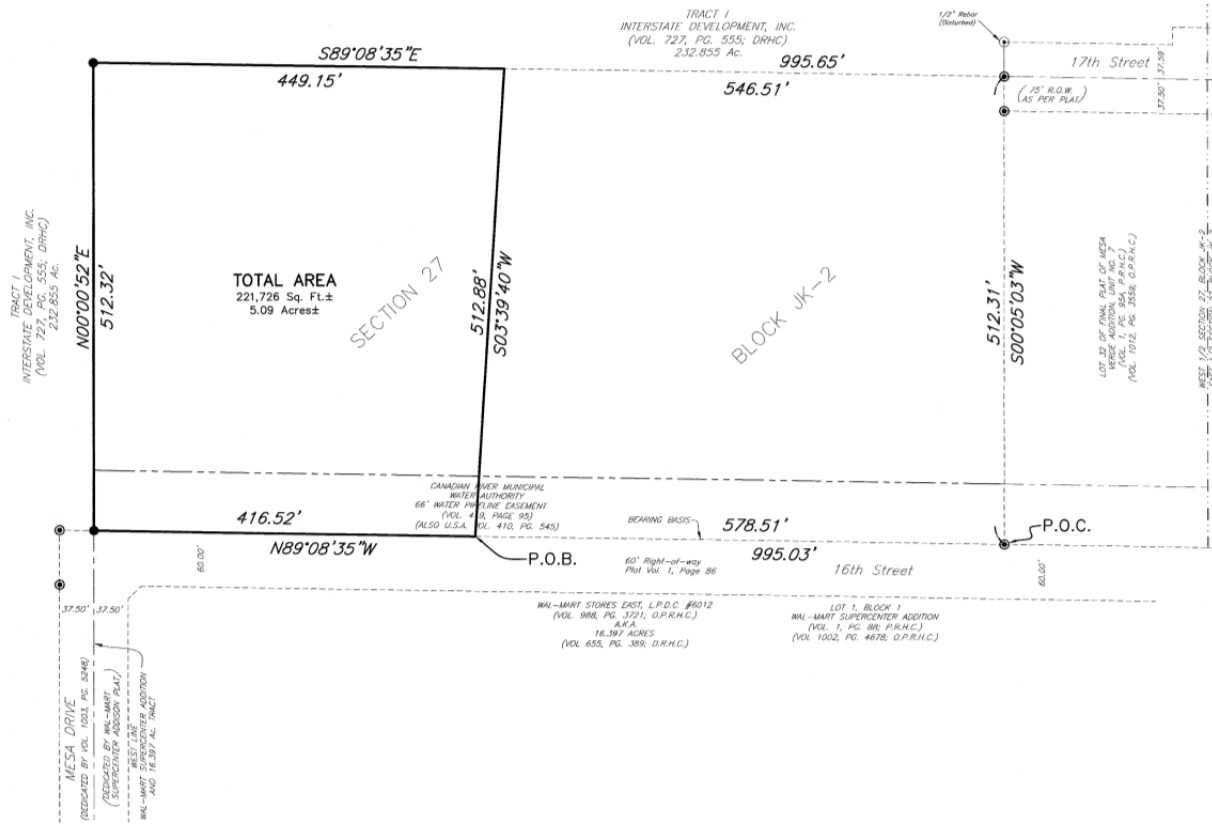
The subject site is located in northwest Plainview. The site is 100% located outside the 100-year flood plain. Access and visibility are average and the overall size and shape of the subject site is not restrictive.

County Plat

The subject will be a smaller tract out of an 11.71 acre tract and anticipated to be as drawn below in red.



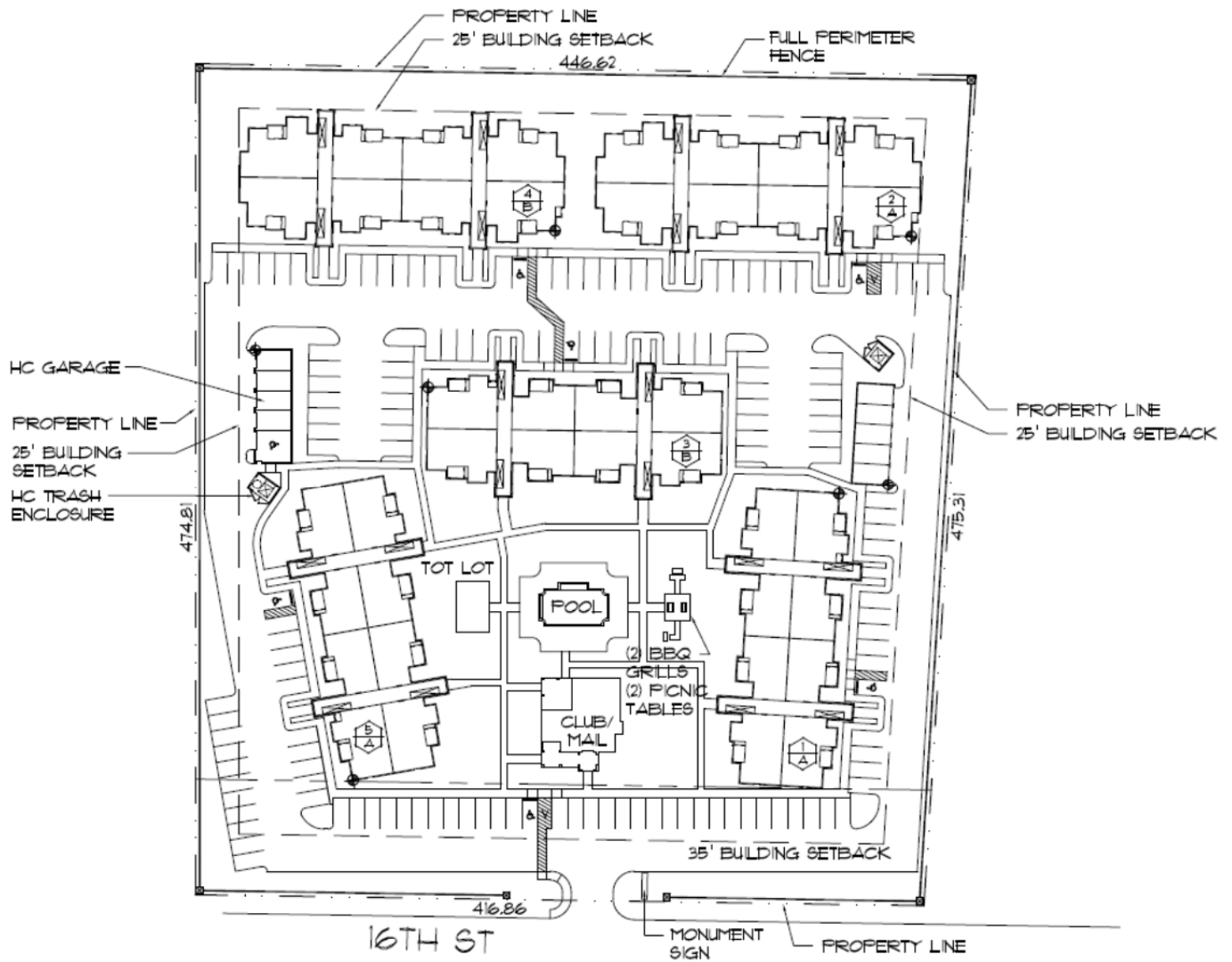
Tract Survey



N

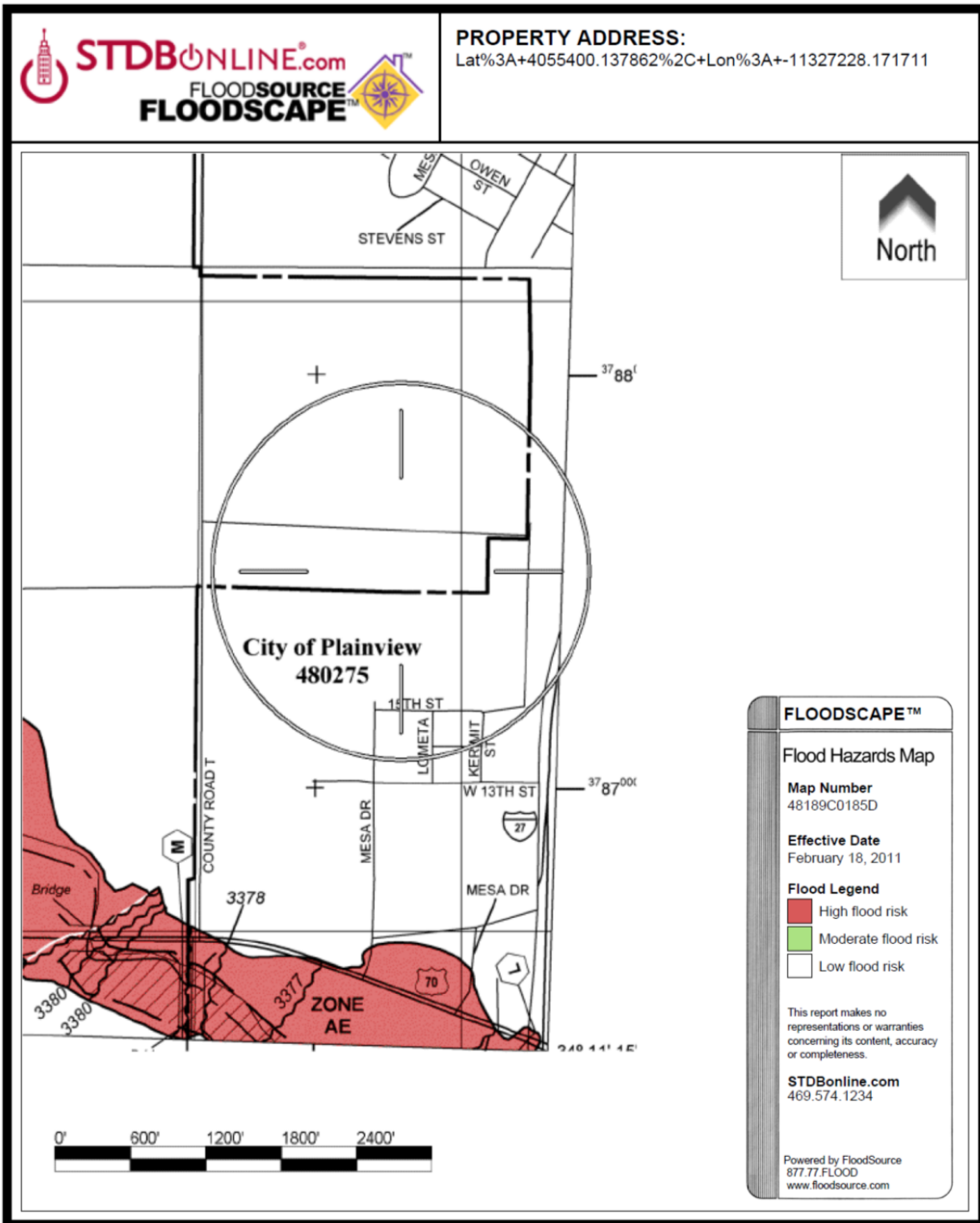


Proposed Site Plan





Flood Map



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**AD VALOREM TAX ANALYSIS**

The assessed value for the subject property is determined by the Hale County Appraisal District. The basis for property assessment or taxable value in this jurisdiction is 100% of appraised/market value. The subject property is currently under the ownership of State Street Housing Development, LP and is not tax exempt.

The parent tract of 11.71 acres was purchased in 2012 out of a large farm tract. The 2013 assessment for the 11.71 acres has not been determined at this time but the appraisal district does have an ag exemption in place for the parent site. The parent tract has a property account number of 109670. The subject site will have a new account number after closing.

**HIGHEST AND BEST USE**

Highest and best use may be defined as “the reasonably probable and legal use of land and improved property that is physically possible, appropriately supported, financially feasible, and that results in the highest value.”<sup>6</sup>

**As Vacant***Legally Permissible*

The majority of the subject site (except the 66’ utility easement) is located outside the city of Plainview and is not subject to a comprehensive zoning ordinance. It is most likely that an M-2 Multifamily zoning would be achieved for the subject site which allows for the proposed use.

Further, there are no known restrictions or easements that would adversely affect the overall development potential or market value of the site. The subject does have a 66’ utility easement running along its southern edge but this area does not hinder development. The proposed Mesa Dr running along the subject’s western line will increase access and visibility.

*Physically Possible*

The subject site is basically rectangular in shape and consists of 4.700 acres of land. The site is located within zone x, which is outside the 100-year flood plain. Utilities are provided to the tract by City of Plainview.

It is our opinion the use of the subject site should generally conform to surrounding uses. Surrounding tracts are developed with retail buildings. Access and visibility are average and the overall size and shape of the subject site is conducive to a range of developments.

*Financially Feasible*

In determining which uses are legally permissible and physically possible, an appraiser eliminates some uses from consideration. The uses that meet the first two criteria are then analyzed further. If the uses are income-producing, the analysis will study which are likely to produce an income, or return equal to or greater than the amount needed to satisfy operating expenses, financial obligations and capital amortization. All uses that are expected to produce a positive return are regarded as financially feasible.

Overall, speculative new development within the immediate market has not occurred as rents do not support such development. However, build-to-suit or owner-occupied construction is feasible.

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<sup>6</sup> *The Dictionary of Real Estate Appraisal*, 5<sup>th</sup> Edition, The Appraisal Institute, 2010, Page 93

*Maximally Productive*

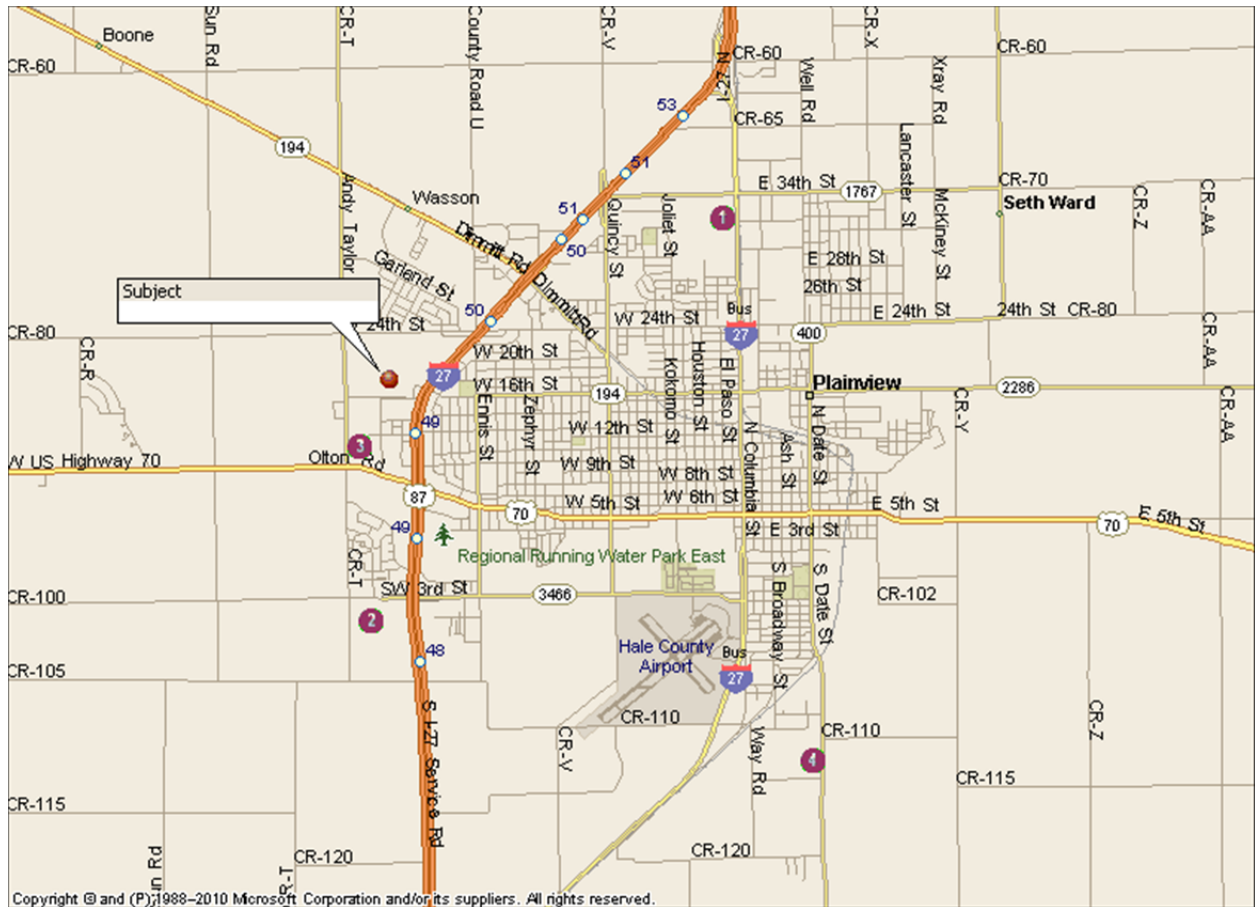
The maximally productive use of the subject site would be to hold for development as demand warrants.

**SALES COMPARISON APPROACH – AS VACANT**

The sales comparison approach is a direct approach to estimating the value of the real property. It involves comparing the prices paid for similar properties by certain common denominators or units of comparison.

In this case, we have used four comparable sales to form an opinion of market value of the fee simple estate of the subject site – as vacant. The following map illustrates the location of the land sales utilized; a detailed description of each sale is located in the Addenda.

**Sales Map**



**Land Sales Summary**

Sale No.	Date of Sale	Acres	Location	Actual Price Per Acre	Adjusted Price Per Acre	LS Ref. #
1	Aug/12	3.000 Acs.	3503 N Columbia St	\$46,667	\$46,667	28943
2	Jul/12	20.430 Acs.	1871 CR 100	\$32,061	\$32,061	28938
3	Apr/11	5.000 Acs.	7105 Olton Rd	\$40,000	\$40,000	28939
4	Nov/10	12.080 Acs.	1322 FM 400	\$31,043	\$31,043	28944

**RECONCILIATION OF SALES COMPARISON APPROACH – AS VACANT**

The land sales adjustment grid lists the details for the various adjustments made to the comparable sales. The adjusted sales prices developed a value range from which the opinion of value of the subject tract was derived.

**Adjustment Categories***Financing*

Sales involving terms of financing that are not at or near market terms, require adjustments for cash equivalency to reflect typical market terms. A cash equivalency procedure discounts the atypical mortgage terms to provide an indication of value at cash equivalent terms. All of the sales were cash transactions and did not require adjustment.

*Conditions of Sale*

The condition of sale adjustment takes into consideration the motivation of the buyer and the seller at the time of sale. A review of the sales did not indicate any condition of sale adjustments to be warranted.

*Market Conditions (Date of Sale/Time)*

Due to increasing demand and inflation, property values tend to increase with time. As a test to indicate whether an adjustment for time is necessary, a number of considerations have been made. All sales have occurred since the economic downturn and no adjustments are warranted.

*Location*

Location is one of the most difficult adjustments to quantify as locations are influenced by numerous factors. Sale 1 is located within the city in a more developed area and it was adjusted downward. Sales 2 and 4 are located just beyond current development and adjusted upward. Sale 3 is located on the west side of the city just within the city limits and similar to the subject and did not warrant an adjustment.

*Size*

In general, a smaller property will command a premium price in the open market due to the lower capital outlay requirements. The market of potential purchasers is significantly larger on a smaller tract of land. Paired comparisons among comparables (not necessarily included in this report) revealed consistent trends and patterns amongst price and size.

We have applied an adjustment factor of approximately 10% per doubling to each sale.

*Shape/Depth*

All sales have a similar shape and depth when compared to the subject and no adjustment is necessary.



*Utilities*

The subject's southern edge has a 66' utility easement which will provide utilities to the subject site. Sale 1 and 3 had public utilities and were not adjusted. All other sales were sold without public utilities available and adjusted upward.

**SALES COMPARISON APPROACH – AS VACANT CONCLUSION****Sales Price per Square Foot**

The land comparables indicate an unadjusted range of \$31,043 to \$46,667 per acre. However, after applying the preceding adjustments, the range is narrowed to \$38,804 to \$43,282 per acre with a mean of \$41,021 per acre and a median of \$41,000 per acre.

Based on these adjusted prices and the most comparable sales, a unit value for the subject site is in the middle of the adjusted range, or \$41,000 per acre.

Applying this unit value to subject's land area indicates the following *as-vacant* market value of the fee simple estate of \$193,000

<b>Land Sales Adjustment Grid</b>													
<b>Vacant Land</b>													
<b>Plainview, Texas</b>													
<b>4.7000 Acres</b>													
	<u>Sale # 1</u>	<u>Sale # 2</u>	<u>Sale # 3</u>	<u>Sale # 4</u>	<u>Subject</u>								
Date Of Sale	Aug/12	Jul/12	Apr/11	Nov/10	Feb/13								
Size (Acres)	3.000 Acres	20.430 Acres	5.000 Acres	12.080 Acres	4.700 Acres								
<u>Actual Sale Price Per Acre</u>	<u>\$46,667</u>	<u>\$32,061</u>	<u>\$40,000</u>	<u>\$31,043</u>									
Cash Equivalent/Adjusted Price (Acre)	\$46,667	\$32,061	\$40,000	\$31,043									
<b><u>MULTIPLIED FACTORS</u></b>													
Elapsed Time (Years)	0.4 years	0.5 years	1.8 years	2.2 years									
Market Cond. (Time) Adjustment	0.0%	0.0%	0.0%	0.0%									
Condition of Sale Adjustment	<u>0.0%</u>	<u>0.0%</u>	<u>0.0%</u>	<u>0.0%</u>									
Total Time / Cond. Adj	0.0%	0.0%	0.0%	0.0%									
Time / Cond. Adjusted, Cash - Equivalent Price (\$/Acre)	<b>\$46,667</b>	<b>\$32,061</b>	<b>\$40,000</b>	<b>\$31,043</b>									
<b><u>ADDED FACTORS</u></b>													
Physical Characteristics:													
Location	-10.0%	10.0%	0.0%	10.0%									
Size	0.0%	20.0%	0.0%	10.0%									
Shape/Depth	0.0%	0.0%	0.0%	0.0%									
Utilities	<u>0.0%</u>	<u>5.0%</u>	<u>0.0%</u>	<u>5.0%</u>									
Net Physical Adjustments	-10.0%	35.0%	0.0%	25.0%									
<b><u>Adjusted Price / Acre</u></b>	<b>\$42,000</b>	<b>\$43,282</b>	<b>\$40,000</b>	<b>\$38,804</b>									
<table border="1"> <tr> <td>Minimum Adjusted Price:</td> <td>\$38,804 /Acre</td> </tr> <tr> <td>Maximum Adjusted Price:</td> <td>\$43,282 /Acre</td> </tr> <tr> <td>Median Adjusted Price:</td> <td>\$41,000 /Acre</td> </tr> <tr> <td>Mean Adjusted Price:</td> <td>\$41,021 /Acre</td> </tr> </table>						Minimum Adjusted Price:	\$38,804 /Acre	Maximum Adjusted Price:	\$43,282 /Acre	Median Adjusted Price:	\$41,000 /Acre	Mean Adjusted Price:	\$41,021 /Acre
Minimum Adjusted Price:	\$38,804 /Acre												
Maximum Adjusted Price:	\$43,282 /Acre												
Median Adjusted Price:	\$41,000 /Acre												
Mean Adjusted Price:	\$41,021 /Acre												
<b>Indicated Value Range:</b>													
4.700 Acres	x		\$40,000 /Acre	=	\$188,000								
4.700 Acres	x		\$42,000 /Acre	=	\$197,400								
<b>Site Land - Market Value Opinion:</b>													
4.700 Acres	x		\$41,000 /Acre	=	<b>(Rounded)</b> \$193,000								

**RECONCILIATION AND FINAL OPINION OF VALUE**

The subject property consists of a vacant tract of land. The cost and income approaches are not typically applicable indicators of value for vacant tracts of land. Therefore, the sales comparison approach was the only approach utilized. However, we have applied a limited cost approach to the site improvements to add some contributory value of them to the underlying land value.

After completing an analysis of the property as reflected in the attached report, it is our opinion the as is market value of the fee simple estate of the subject property, subject to the extraordinary assumptions and/or hypothetical conditions and general assumptions and limiting conditions attached, as of February 4, 2013 is:

**ONE HUNDRED NINETY THREE THOUSAND DOLLARS**

**(\$193,000)**

**QUALIFICATIONS OF THE APPRAISERS**

## QUALIFICATIONS OF TIM N. TREADWAY, MAI, CCIM

### Professional Affiliations

Texas Real Estate Broker's License  
MAI - Member of the Appraisal Institute #9789  
CCIM – Certified Commercial Investment Member #8706  
State Certified - General Real Estate Appraiser - TX-1323331-G  
State Certified - General Real Estate Appraiser – OK – 12939CGA  
State Certified – General Real Estate Appraiser – LA - G1172

### Employment

2001 – present: General Partner / Campbell Property Services  
1996 - present: The Gerald A. Teel Company, Inc.  
Self Employed: Home builder since 1989  
1994 - 1995: Independent Contractor in the Appraisal Industry  
1986 - 1994: Minority owner, The Appraisal Group  
1984 - 1986: Joseph B. Muller Appraisals - Residential Valuations

### Clients and Types of Property Appraised:

In connection with above employment, clients include pension funds, advisors, corporations, condemnation authorities, financial institutions, attorneys, individuals, and courts. In this capacity, appraisals and consultation services have been provided on commercial properties, subdivisions, farms, ranches, residences, apartments, industrial properties, and a wide variety of special purpose properties including salt dome storage facilities, Low Income & Senior housing facilities, partial undivided interest, etc.

### Education

Graduate - Guitar Institute of Technology, Hollywood, California  
Home building and Inspector courses at Houston Community College  
Society of Real Estate Appraisers - Courses 101 and 102 in residential valuation  
Capitalization Theory and Technique Classes A & B - American Institute of Real Estate Appraisers  
Case Studies - American Institute of Real Estate Appraisers  
Standards and Ethics - American Institute of Real Estate Appraisers  
Report Writing and Comprehensive Real Estate Review - Appraisal Institute  
FIRREA Seminar - Appraisal Institute  
FHA Appraisals - Appraisal Institute  
Understanding Limited Appraisals - Appraisal Institute  
Ranch Valuation - Appraisal Institute  
Certified Commercial Investment Member Course 101 – Financial Analysis  
Certified Commercial Investment Member Course 102 – Market Analysis

## **QUALIFICATIONS OF TIM N. TREADWAY, MAI, Cont.**

Certified Commercial Investment Member Course 104 – Investment Analysis

### **Other**

1995 Chairman of the Demonstration Verification Report Committee - Houston Chapter of the Appraisal Institute

Taught Residential Valuation - guest speaker at San Jacinto College

Developed and analyzed retail shopping center and various projects – Including Restaurant with Houston developer David Cottrell

Tenant Representation Office/Retail/Warehouse

Brokerage Services various properties

Property Management multi-tenant storage facility

Qualified as expert witness Commissioners court, Harris County, Chambers County

Qualified as expert witness Federal Court

Contributing author to the Houston Business Journal

Invited by TDHCA to participate in 2000/2001 round table discussions to help determine policy/guidelines

HUD Certified / MAP Program



You may wish to laminate the pocket identification card to preserve it.

TIM NEAL TREADWAY  
974 CAMPBELL RD SUITE 204  
HOUSTON, TX 77024

The person named on the reverse is licensed by the Texas Appraiser Licensing and Certification Board.

Inquiry as to the status of this license may be made to:

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P.O. Box 12188  
Austin, Tx 78711-2188  
www.talcb.texas.gov  
(512) 936-3001  
Fax:(512) 936-3899

**Texas Appraiser Licensing and Certification Board**  
P.O. Box 12188 Austin, Texas 78711-2188

**Certified General Real Estate Appraiser**

Number#: **TX 1323331 G**

Issued: **07/27/2012** Expires: **07/31/2014**

Appraiser: **TIM NEAL TREADWAY**

Having provided satisfactory evidence of the qualifications required by the Texas Appraiser Licensing and Certification Act, Texas Occupations Code, Chapter 1103, is authorized to use this title, Certified General Real Estate Appraiser.

  
Douglas E. Oldmixon  
Commissioner

**Texas Appraiser Licensing and Certification Board**

P.O. Box 12188 Austin, Texas 78711-2188

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Douglas E. Oldmixon  
Commissioner

## QUALIFICATIONS OF MICHAEL G. DIVIN

### PROFESSIONAL AFFILIATIONS:

Texas Real Estate Salesman License # 332890  
State Certified - General Real Estate Appraiser (Texas) TX-1320831-G  
State Certified – General Real Estate Appraiser (New Mexico) 03160-G  
MAI Candidate - Appraisal Institute - M92015

### PROFESSIONAL QUALIFICATIONS:

2-3 - Standards of Professional Practice - AIREA Sponsored  
1A1 - Real Estate Appraisal Principles - University of Colorado-Boulder  
1A2 - Basic Valuation Procedures - University of North Carolina - Chapel Hill  
1BA - Capitalization Theory and Techniques, Part A - University of Houston  
1BB - Capitalization Theory and Techniques, Part B - University of Central Florida –  
Cocoa Beach, Florida  
2-1 - Case Studies in Real Estate Valuation - University of Houston  
11540 - Report Writing and Valuation Analysis - University of Houston  
Adjunct Professor – Texas Tech University teaching “Fundamentals of Real Estate  
Appraising”, Finance 4333.

### APPRAISAL EXPERIENCE:

*Appraisal Assignments* - banks, savings and loans, law firms, brokerage and insurance companies and various government agencies. The majority of the assignments have been for the purpose of condemnation, foreclosure, acquisition, disposition, investment analysis and portfolio management.

*Narrative Appraisals* - includes valuation of various ownership interests in office buildings, condominiums and townhouses, residential and industrial subdivisions, retail centers, apartment complexes, restaurants and multiple tracts of vacant land.

### EDUCATION:

Bachelor Degree in Business Administration - Sam Houston State University, Huntsville, Texas - 1983

### PROFESSIONAL EXPERIENCE:

8/97 - Partner - The Gerald A. Teel Company, Inc. & Managing Director – Blosser Appraisal.  
9/95 - 7/97 Associate Appraiser - Realty Information Services  
10/91 - 9/95 Vice President - Haginas & Company, Real Estate Appraisers and Consultants  
9/86 - 10/91 Senior Commercial Appraiser - Stanley Chapman and Company  
3/84 - 8/86 Commercial Consultant/Appraiser - First Franklin Appraisal Company

You may wish to laminate the pocket identification card to preserve it.

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Number#: **TX 1320831 G**

Issued: **05/03/2011**

Expires: **05/31/2013**

Appraiser: **MICHAEL GLEN DIVIN**

Having provided satisfactory evidence of the qualifications required by the Texas Appraiser Licensing and Certification Act, Texas Occupations Code, Chapter 1103, is authorized to use this title, Certified General Real Estate Appraiser.

  
Douglas E. Oldmixon  
Commissioner

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**Certified General Real Estate Appraiser**

Number: **TX 1320831 G**

Issued: **05/03/2011**

Expires: **05/31/2013**

Appraiser: **MICHAEL GLEN DIVIN**

Having provided satisfactory evidence of the qualifications required by the Texas Appraiser Licensing and Certification Act, Texas Occupations Code, Chapter 1103, is authorized to use this title, Certified General Real Estate Appraiser.

  
Douglas E. Oldmixon  
Commissioner

## **QUALIFICATIONS OF MARTY H. CLECKLER**

### **PROFESSIONAL LICENSES**

Texas Licensed Real Estate Appraiser TX-1380173-G  
Texas Real Estate Broker's License TX—0421600

### **EMPLOYMENT**

2009-present: Appraiser, Blosser Appraisal, a division of the Gerald A. Teel Company  
2003-2009: Multifamily Brokerage, Partner, Lonestar Commercial  
1999-2001: Guest Professor, Rawls School of Business, Texas Tech University, FIN 4346 Urban Land Development  
1998-present: Investments, General Partner, Cleckler Investments, LC  
1996-2001: Brokerage & Management, Westar Commercial Realty  
1995-1996: Brokerage & Leasing, Coldwell Banker Commercial  
1993-1995: Appraiser, Real Estate Research Corporation (RERC)

### **CLIENTS AND TYPES OF PROPERTY APPRAISED**

In connection with the above employment, clients included pension funds, corporations, financial institutions, attorneys, and individuals. Assignments have included LIHTC, Section 8 and HUD apartment appraisals and market studies, warehouses, office, shopping centers, farms, ranches and vacant land.

### **EDUCATION**

Texas Tech University, Bachelor's of Business Administration, Business Economics  
Texas A&M University, Master's of Real Estate and Land Economics

### **COURSEWORK**

Real Estate Finance, Texas Tech  
Real Estate Fundamentals, Texas Tech  
Farm & Ranch Appraisals, Texas Tech  
Land Economics, Texas A&M  
Real Property Valuations, Texas A&M  
Urban Economics, Texas A&M  
Real Estate Development Analysis, Texas A&M  
Marketing Development Resource Theory, Texas A&M  
Building Construction Practices, Texas A&M  
Analysis of Real Estate Decisions, Texas A&M  
Basic Appraisal Procedures, Appraisal Institute  
National USPAP, Appraisal Institute  
Residential Market Analysis & Highest and Best Use, Appraisal Institute  
Residential Appraiser Site Valuation & Cost Approach, Appraisal Institute  
Residential Sales Comparison & Income Approaches, Appraisal Institute  
Residential Report Writing & Case Studies, Appraisal Institute

You may wish to laminate the pocket identification card to preserve it.

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**Texas Appraiser Licensing and Certification Board**  
P.O. Box 12188 Austin, Texas 78711-2188

**Certified General Real Estate Appraiser**

Number#: **TX 1380173 G**

Issued: **08/29/2012** Expires: **08/31/2014**

Appraiser: **MARTY HEATH CLECKLER**

Having provided satisfactory evidence of the qualifications required by the Texas Appraiser Licensing and Certification Act, Texas Occupations Code, Chapter 1103, is authorized to use this title, Certified General Real Estate Appraiser.

  
Douglas E. Oldmixon  
Commissioner

**Texas Appraiser Licensing and Certification Board**

P.O. Box 12188 Austin, Texas 78711-2188

**Certified General Real Estate Appraiser**

Number: **TX 1380173 G**

Issued: **08/29/2012** Expires: **08/31/2014**

Appraiser: **MARTY HEATH CLECKLER**

Having provided satisfactory evidence of the qualifications required by the Texas Appraiser Licensing and Certification Act, Texas Occupations Code, Chapter 1103, is authorized to use this title, Certified General Real Estate Appraiser.

  
Douglas E. Oldmixon  
Commissioner

**ADDENDA**

Additional Subject Photos  
Land Comparables



**ADDITIONAL SUBJECT PHOTOS**



View of 16<sup>th</sup> St facing east



View of 16<sup>th</sup> St facing west



View of what will be Mesa Dr when it extends northward from the intersection of 16<sup>th</sup> St and Mesa Dr



View of 16<sup>th</sup> St facing west from eastern edge of subject

## **LAND COMPARABLES**

### Comparable 1

---

**Date of Sale:** August 31, 2012                      **Map Ref:**                      *Hal*  
**Location:** 3503 N Columbia St  
  
**City:** Plainview    **County:** Hale  
**Legal Description:** 3.0 acres being AB 30 BLK JK-2 SEC 37 S/2 OF N /2 OF SE/4,  
Plainview, Hale County, Texas

**Grantor:** LD Williams  
**Grantee:** Fiberto Polanco  
**Recording Data:** 2012-24193  
**Financing:** Cash to Seller

**Land Area:** 3.000                      Acres                      130,680                      Square Feet  
**Sale Price:** \$140,000                      \$46,666.67                      per acre

<b>Total Cost:</b>	\$140,000	Not Modified
<b>Cost per Unit:</b>	\$46,666.67                      per acre	

**Frontage:** 300 FF Columbia  
**Utilities:** Public Available    **Shape:** Rectangular  
**100 Yr. Flood Zone:** No    **Zoning:** Yes  
**Proposed Use:** Speculative

**Remarks:**  
This tract is located in northern Plainview within the city limits. It was purchased for future speculative development.

## Comparable 2

---

**Date of Sale:** July 24, 2012                      **Map Ref:**                      *Hal*  
**Location:**                      1871 CR 100  
  
**City:**                      Plainview                      **County:**                      Hale  
**Legal Description:**                      20.43 acres being AB 1729 BLK JK-2 SEC 20 OUT OF N/PT TRACTS 15&16, Hale County, Texas

**Grantor:**                      Jeff Novotny  
**Grantee:**                      Michael Farr  
**Recording Data:**                      2012-3549  
**Financing:**                      Cash to Seller

**Land Area:**                      20.430                      Acres                      889,931                      Square Feet  
**Sale Price:**                      \$655,000                      \$32,060.70                      per acre

<b>Total Cost:</b>	\$655,000	Not Modified
<b>Cost per Unit:</b>	\$32,060.70                      per acre	

**Frontage:**                      1,200 FF on CR 100  
**Utilities:**                      Well & Septic                      **Shape:**                      Rectangular  
**100 Yr. Flood Zone:**                      No                      **Zoning:**                      No  
**Proposed Use:**                      Speculative

**Remarks:**

This tract is located in southwest Plainview outside the city limits. It was purchased for future speculative development.

### Comparable 3

---

**Date of Sale:** April 26, 2011                      **Map Ref:**                      *Hal*  
**Location:** 7105 Olton Rd  
**City:** Plainview                                      **County:** Hale  
**Legal Description:** 5.0 acres being AB 2241 BLK JK-2 SEC 16 OUT OF NW PT OF NE/4, Plainview, Hale County, Texas

**Grantor:** Federal Home Loan Mortgage Corp

**Grantee:** Kevin Kuriyama

**Recording Data:** 2011-72858

**Financing:** Cash to Seller

**Land Area:** 5.000                      Acres                      217,800                      Square Feet

**Sale Price:** \$200,000                      \$40,000.00                      per acre

<b>Total Cost:</b>	\$200,000	Not Modified
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<b>Cost per Unit:</b>	\$40,000.00	per acre
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**Frontage:** 400 FF on Olton Rd

**Utilities:** Public Available                      **Shape:** Rectangular

**100 Yr. Flood Zone:** No                      **Zoning:** Yes

**Proposed Use:** Speculative

**Remarks:**

This tract is located in western Plainview within the city limits. It was purchased for future speculative development. The tract was an REO but the transaction was considered at market.



### Comparable 4

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**Date of Sale:** November 22, 2010      **Map Ref:** *Hal*  
**Location:** 1322 FM 400  
**City:** Plainview      **County:** Hale  
**Legal Description:** 12.08 acres being AB 1467 BLK D-6 SEC 22 PT OFF E SIDE OF NE/4, Hale County, Texxas

**Grantor:** Brent Hamilton

**Grantee:** Nathaniel Pochucha

**Recording Data:** 2012-24193

**Financing:** Cash to Seller

**Land Area:** 12.080      Acres      526,205      Square Feet

**Sale Price:** \$375,000      \$31,043.05      per acre

<b>Total Cost:</b>	\$375,000	Not Modified
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<b>Cost per Unit:</b>	\$31,043.05      per acre
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**Frontage:** 600 FF FM 400

**Utilities:** Well No Septic      **Shape:** Rectangular

**100 Yr. Flood Zone:** No      **Zoning:** No

**Proposed Use:** Speculative

**Remarks:**

This tract is located in south Plainview outside the city limits. It was purchased for future speculative development.

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**PHASE I  
ENVIRONMENTAL SITE ASSESSMENT**

Property:

**Stonebridge of Plainview – Approximate 4.70-Acre Tract**  
Northeast Corner (NEC) of 16<sup>th</sup> Street and Mesa Drive  
Plainview, Texas

February 25, 2013  
SWG Project No. 0212002A

Prepared for:

**Texas Department of Housing and Community Affairs**  
and  
**GS Plainview, LP**  
7110 Baxtershire Drive  
Dallas, Texas 75230  
Attention: Mr. Dru Childre

Prepared by:

**Southwest**  
GEOSCIENCE

2351 W. Northwest Hwy., Suite 3321  
Dallas, Texas 75220  
Ph: (214) 350-5469  
Fax: (214) 350-2914

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**PHASE I  
ENVIRONMENTAL SITE ASSESSMENT**

Property:

**Stonebridge of Plainview – Approximate 11.71-Acre Tract**  
Northeast Corner (NEC) of 16<sup>th</sup> Street and Mesa Drive  
Plainview, Hale County, Texas

December 17, 2013  
SWG Project No. 0212C002B

Prepared for:

**Texas Department of Housing and Community Affairs**  
and  
**GS Plainview, LP**  
7110 Baxtershire Drive  
Dallas, Texas 75230  
Attention: Mr. Dru Childre

Prepared by:

**Southwest**  
GEOSCIENCE

2351 W. Northwest Hwy., Suite 3321  
Dallas, Texas 75220  
Ph: (214) 350-5469  
Fax: (214) 350-2914

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## EXECUTIVE SUMMARY

Southwest Geoscience (SWG) conducted a Phase I Environmental Site Assessment (ESA) of the approximate 11.71-acre property located at the northeast corner (NEC) of the intersection of 16<sup>th</sup> Street and Mesa Drive in Plainview, Hale County, Texas (hereinafter, the "Site"). The Site is vacant tract of land that was previously utilized as farmland. This Phase I ESA was based on a visual survey, off-site reconnaissance of adjoining properties, interviews with owner/occupants about the Site, a regulatory record review and a review of Site use history. This Phase I ESA has been authorized by Mr. Dru Childre on December 5, 2013. The December 12, 2013 visual survey was conducted by Ms. Heather K. Holthaus of SWG.

The Phase I ESA was performed in general accordance with the consensus document known as ASTM E 1527-13, a guide for conducting Phase I ESAs, and with the Texas Department of Housing and Community Affairs (TDHCA) Real Estate Rules and Guidelines. SWG has read §10.305.Environmental Site Assessment Rules and Guidelines and understands the requirements therein. SWG will not materially benefit from the Site in any way other than receiving a fee for performing this ESA, and the fee is in no way contingent upon the outcome of the assessment. The purpose of the ESA is to assist the client in developing information to identify recognized environmental conditions (RECs) in connection with the Site, as reflected by the scope of SWG's proposal.

We declare that, to the best of our professional knowledge and belief, we meet the definition of *Environmental Professional* as defined in §312.10 of 40 CFR 312.

We have the specific qualifications based on education, training, and experience to assess a property of the nature, history, and setting of the subject property. We have developed and performed the all appropriate inquiries in conformance with the standards and practices set forth in 40 CFR Part 312.

- Site Description: The Site consists of approximately 11.71-acres of vacant land that was previously utilized as farmland.
- Surrounding Area: The Site is bounded on the north by unimproved farmland; bounded on the east by a commercial retail strip center; bounded on the south by 16<sup>th</sup> Street followed by a Wal-Mart Supercenter; and bounded on the west by unimproved farmland.
- Site Observations: During the Site reconnaissance, SWG did not observe evidence of existing/former underground storage tanks (USTs) and/or aboveground storage tanks (ASTs); hazardous substances and/or petroleum products; release indicators (e.g., spills, sumps, drums, staining, etc.); and/or wastewater/effluent discharges (e.g., oil/water separators, wells, septic tanks, exterior pipe discharges, etc.).
- Historical On-Site Characteristics: No RECs in connection with the historical use of the Site were identified from SWG's review of historical topographic maps, historical aerial photographs, and historical city directories.

TRACT 1  
INTERSTATE DEVELOPMENT, INC.  
(VOL. 727, PG. 555; DRHC)  
232.855 Ac.

TRACT 1  
INTERSTATE DEVELOPMENT, INC.  
(VOL. 727, PG. 555; DRHC)  
232.855 Ac.

1/2" Rebar  
(Disturbed)

DESCRIPTION

ON A 5.09 ACRE (221,726 SQ. FT.) TRACT OR PARCEL OF LAND OUT OF AND PART OF THE WEST ONE-HALF OF SECTION 27, BLOCK JK-2, HALE COUNTY, TEXAS, AND BEING OUT OF A REMAINING PORTION OF THAT PROPERTY DESCRIBED AS TRACT 1 232.855 ACRES, IN THAT DEED TO INTERSTATE DEVELOPMENT, INC., FOUND RECORDED IN VOLUME 727, PAGE 555 OF THE DEED RECORDS OF HALE COUNTY, TEXAS; THE SAID 5.09 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at a 1/2 inch iron rod with a surveyors cap (RPLS-2120), found in the North right-of-way line of 16th Street, a dedicated public roadway (60' R.O.W.), as per the subdivision plat for Wal-Mart Supercenter Addition, recorded as Volume 1, Page 88 of the Hale County Plat Records, and Volume 1002, Page 4678 of the Official Public Records of Hale County, Texas, same being a South line of the above referenced 232.855 acre tract, and being the Southwest corner of Lot 32, of the Final Plat of Mesa Verde Addition, Unit No. 7, a subdivision plat of record as Volume 1, Page 95A of the Hale County Plat Records, and Volume 1012, Page 3559 of the Official Public Records of Hale County, Texas; said point bears N89°08'35"W, a distance of 222.67 feet from the most Easterly, Southeast corner of the said 232.855 acres; said point also being in the South line of that certain 66 foot wide Easement granted to the Canadian River Municipal Water Authority by that instrument found recorded in Volume 937, Page 766 of the said Deed Records;

THENCE N89°08'35"W, continuing along the North Right-of-Way line of said 16th Street, the South line of said 232.855 acre tract and the South line of said 66' foot wide easement, a distance of 578.51 feet to a point for the Southeast corner and Point of Beginning for this description;

THENCE, N89°08'35"W, going across the West 1/2 of the said Section 27, Block JK-2, going along the North line of the said 16th Street right-of-way, same being a South line of the above referenced 232.855 acre tract, and the South line of the 66 foot wide easement, a distance of 416.52 feet to a 1/2 inch iron rod with a surveyors cap (AMD Engineering) found for the Southwest corner of the tract described herein;

THENCE, leaving the North line of the said 16th Street right-of-way, being the South line of the above referenced 232.855 acre tract, same also being the South line of the above mentioned 66 foot easement, going over, across and through the said 232.855 acre tract, and continuing across the said Section 27, Block JK-2, along the West and North lines of the tract described herein, the following two (2) courses and distances;

- 1) N00°00'52"E, a distance of 512.32 feet to a 1/2 inch iron rod with a surveyors cap (AMD Engineering), found for the Northwest corner of, and being an exterior ell corner of the tract described herein; and,
- 2) S89°08'35"E, parallel to the North line of said 16th Street, a distance of 449.15 feet to a point for the Northeast corner of this tract;

THENCE, S03°39'40"W, continuing over, across and through the said 232.855 acre tract, and continuing across the said Section 27, Block JK-2, a distance of 512.88 feet to the POINT OF BEGINNING.

Containing 5.09 Acres of land, more or less, within these metes and bounds.

Surveyors Report:

This plat was prepared for the exclusive use of the individual and/or institutions named on this survey. It is non-transferable to additional institutions or individuals without expressed recertification by AMD Engineering, LLC.

This plat is the property of AMD Engineering, LLC. Reproduction of this plat for any purpose is expressly forbidden without the written consent of an authorized agent of AMD Engineering, LLC.

This survey is subject to any facts which may be disclosed by a full and accurate title search.

Record documents other than those shown may affect this tract.

Visible evidence of conditions affecting this tract is as shown on this plat.

Monuments indicated as found by this survey are not "physical monuments of record dignity" unless so noted.

Found monuments are accepted by this surveyor as controlling evidence due to substantial agreement with record documents.

Heavy lines indicate plat limits.

The basis of bearing of this survey being the North line of the 16th Street right-of-way, dedicated as shown on the Wal-Mart Supercenter Addition Subdivision Plat, recorded in Volume 1, Page 88 of the plat records of Hale County, Texas, as found monumented on the ground, and shown hereon.

I, Charles Lynn Sawyer, Registered Professional Land Surveyor, do hereby certify that this plat and description was prepared from an actual survey of the property and that the information hereon represents the findings of this survey to the best of my knowledge and belief.

*Charles Lynn Sawyer*  
Charles Lynn Sawyer  
Registered Professional Land Surveyor #5809  
Survey Date: 2-27-13

CIVIL ENGINEERING  
LAND SURVEYING



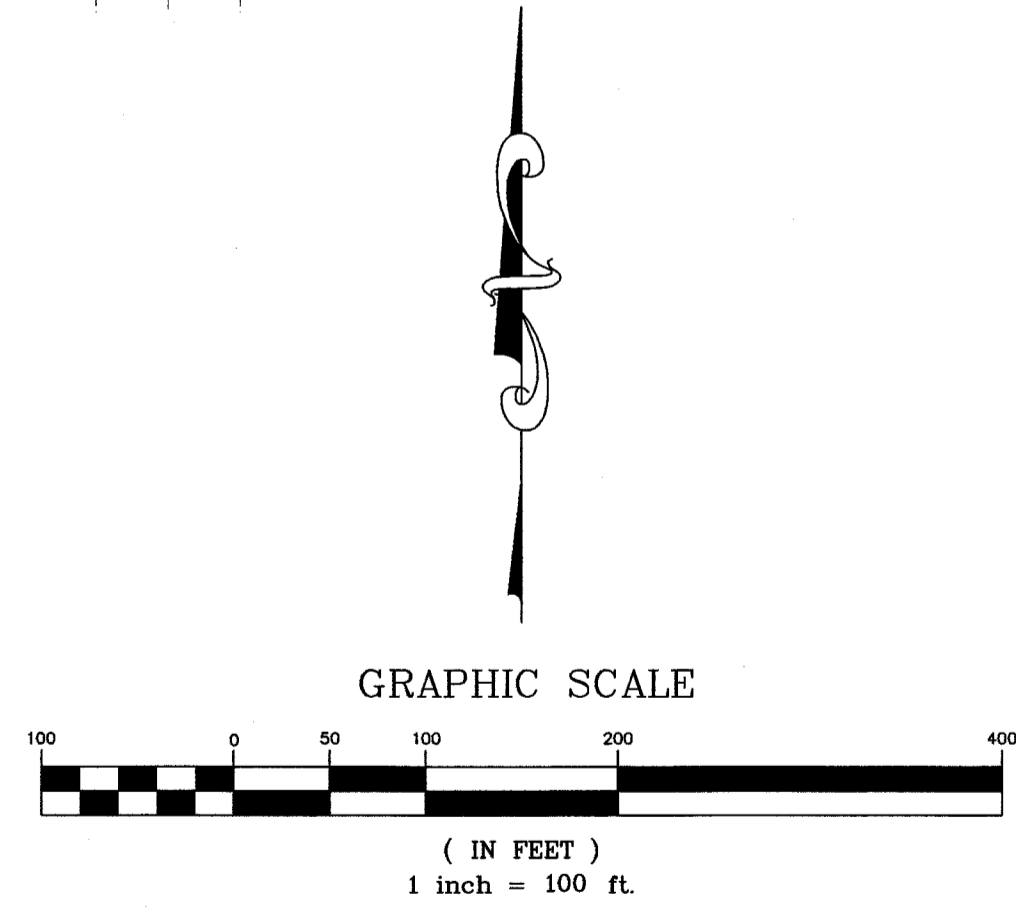
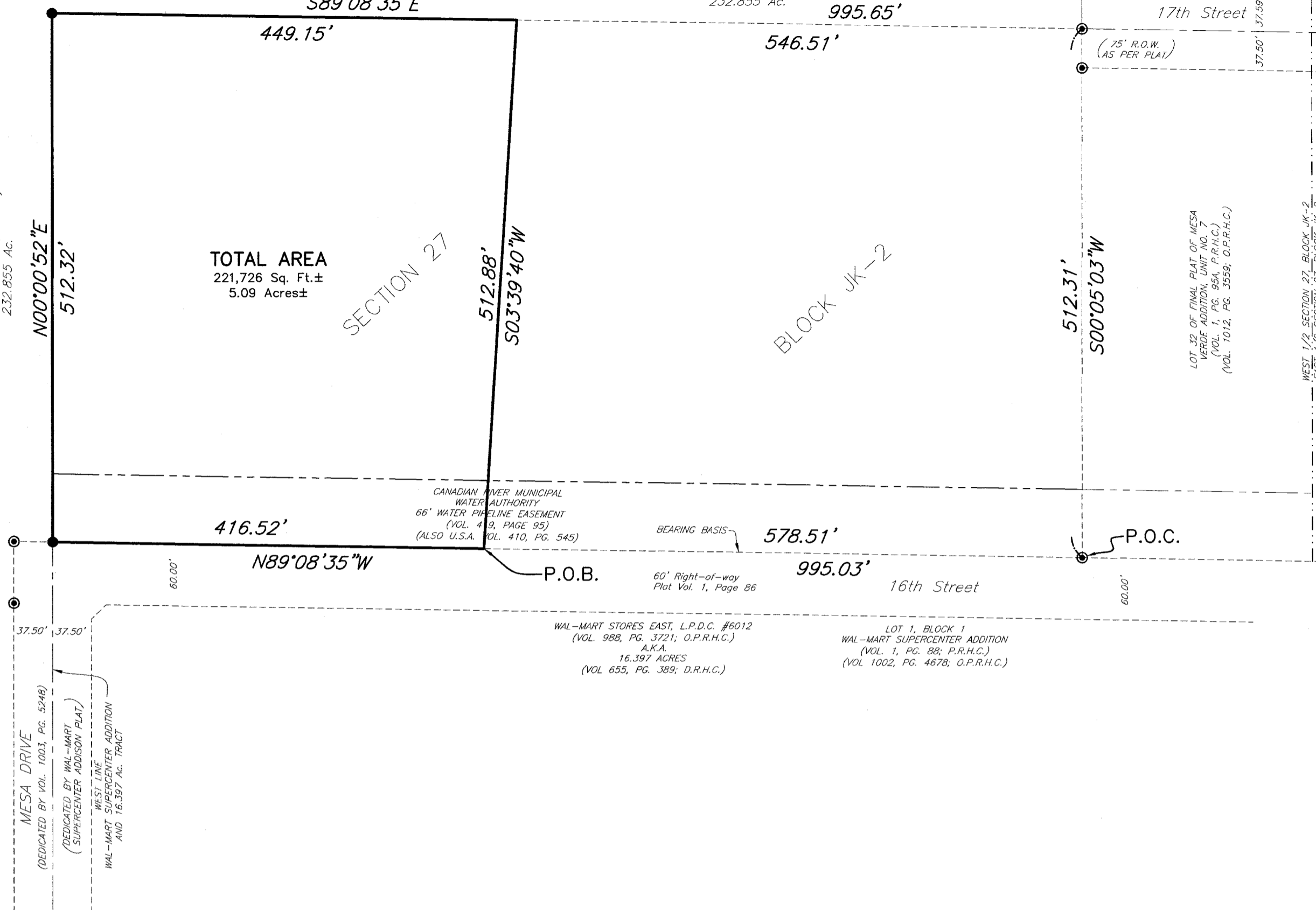
AMD Engineering, LLC  
2807 74th Street, Suite 8  
Lubbock, TX 79423  
Phone: 806-771-5976  
Fax: 806-771-7625

Accuracy - Efficiency - Integrity

PLAT OF SURVEY  
OF A 5.09 ACRE TRACT OUT OF SECTION 27, BLOCK JK-2, HALE COUNTY, TEXAS

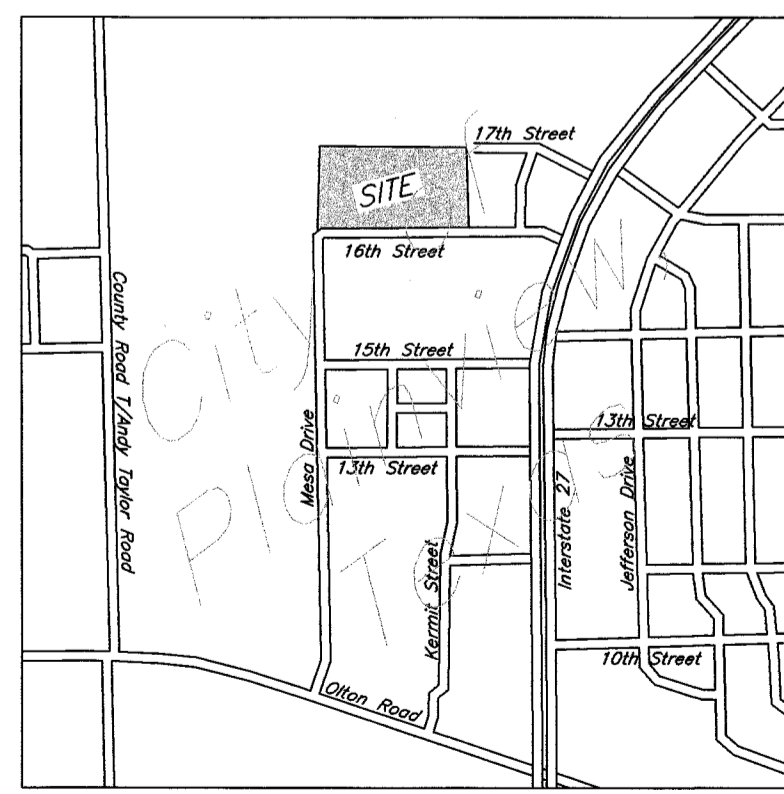
PREPARED FOR: STATE  
STREET HOUSING

DRAWN BY: ELL  
CHECKED BY: CLS  
JOB No. 12007

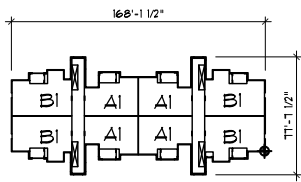


LEGEND

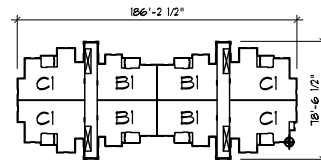
●	FOUND IRON ROD W/CAP...C.M.	(xxx)	RECORD INFORMATION
○	FOUND IRON ROD	P.R.H.C.	PLAT RECORDS OF HALE COUNTY
●	SET 1/2" REBAR W/CAP (AMD ENGINEERING)	D.R.H.C.	DEED RECORDS OF HALE COUNTY
●	P.O.B.	O.P.R.H.C.	OFFICIAL PUBLIC RECORDS OF HALE COUNTY
●		P.O.C.	POINT OF COMMENCEMENT



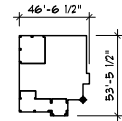
Vicinity Map  
Not to Scale



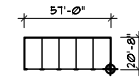
BUILDING "A" 2 STORY



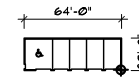
BUILDING "B" 2 STORY



CLUBHOUSE 1 STORY



GARAGE 5 BAY 1 STORY



GARAGE 5 BAY HC 1 STORY

BUILDING KEY:



**SITE DATA**

- TOTAL ACRES: 4.70 ACRES
- NO DETENTION AREA PER CITY
- NO FLOOD PLAIN PER FEMA F.I.R.M.

**PARKING COUNT**

PARKING SPACES	155
TOTAL	155

**UNIT TABULATION**

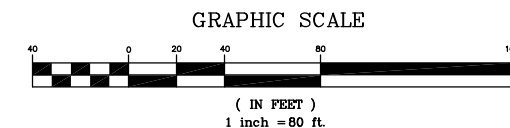
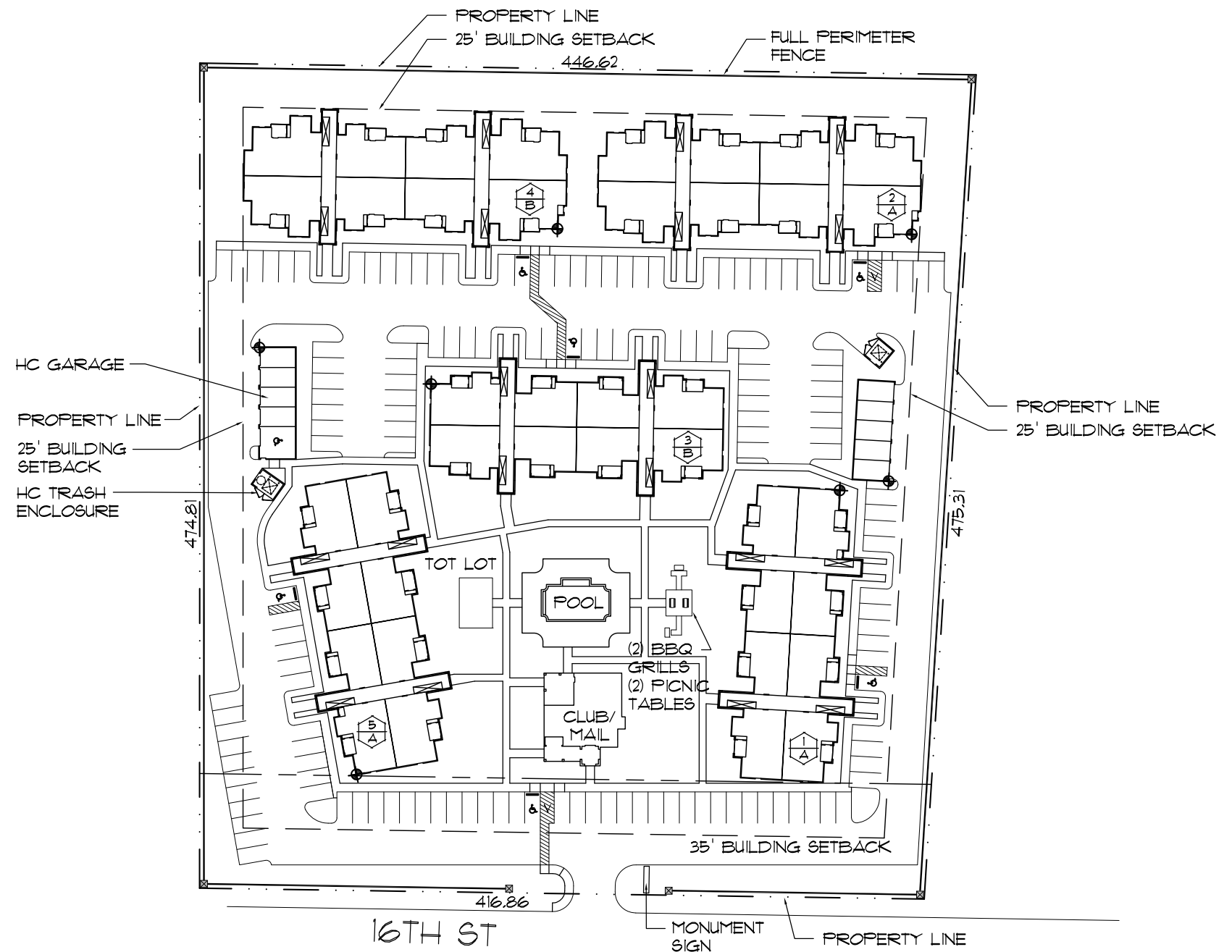
TYPE	S.F. PER UNIT	# OF UNITS	NET TOTAL
A1 - ONE BEDROOM, ONE BATH	750	24	18,000 S.F.
B1 - TWO BEDROOM, ONE BATH	983	40	39,320 S.F.
C1 - THREE BEDROOM, TWO BATH	1,165	16	18,640 S.F.
TOTAL		80	75,960 S.F.

**BUILDING TABULATION**

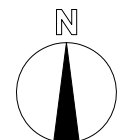
TYPE	# OF BLDG.	# OF UNITS PER BLDG.	UNIT TYPES	S.F. PER BLDG.	NET TOTAL
A	3	16	A1-B, B1-B	13,864 S.F.	41,592 S.F.
B	2	16	B1-B, C1-B	17,184 S.F.	34,368 S.F.
TOTAL	5				75,960 S.F.
			CLUBHOUSE		1300 S.F.
			TOTAL WITH CLUBHOUSE		77,460 S.F.

**SITE AMENITIES**

- (2) TWO BARBEQUE GRILLS & PICNIC TABLES
- TOT LOT
- SWIMMING POOL
- FULL PERIMETER FENCING



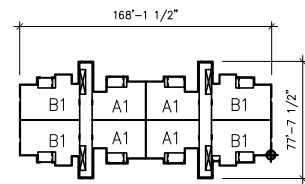
1 SITE PLAN  
1" = 80'



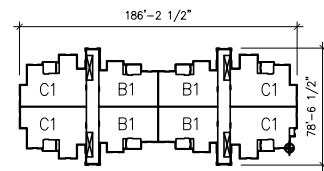
**STONEBRIDGE OF PLAINVIEW  
PLAINVIEW, TEXAS**

**A1.0  
SITE  
PLAN**

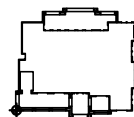




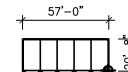
BUILDING "A" 2 STORY



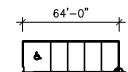
BUILDING "B" 2 STORY



CLUBHOUSE 1 STORY

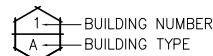


GARAGE 5 BAY 1 STORY



GARAGE 5 BAY HC 1 STORY

BUILDING KEY:



SITE

TOTAL ACRES: 4.694 ACRES

PARKING COUNT

PARKING SPACES	155
TOTAL	155

UNIT TABULATION

TYPE	UNIT #
A1 - ONE BED, ONE BATH	24
B1 - TWO BED, TWO BATH	40
C1 - THREE BED, TWO BATH	16
TOTAL	80

BUILDING TABULATION

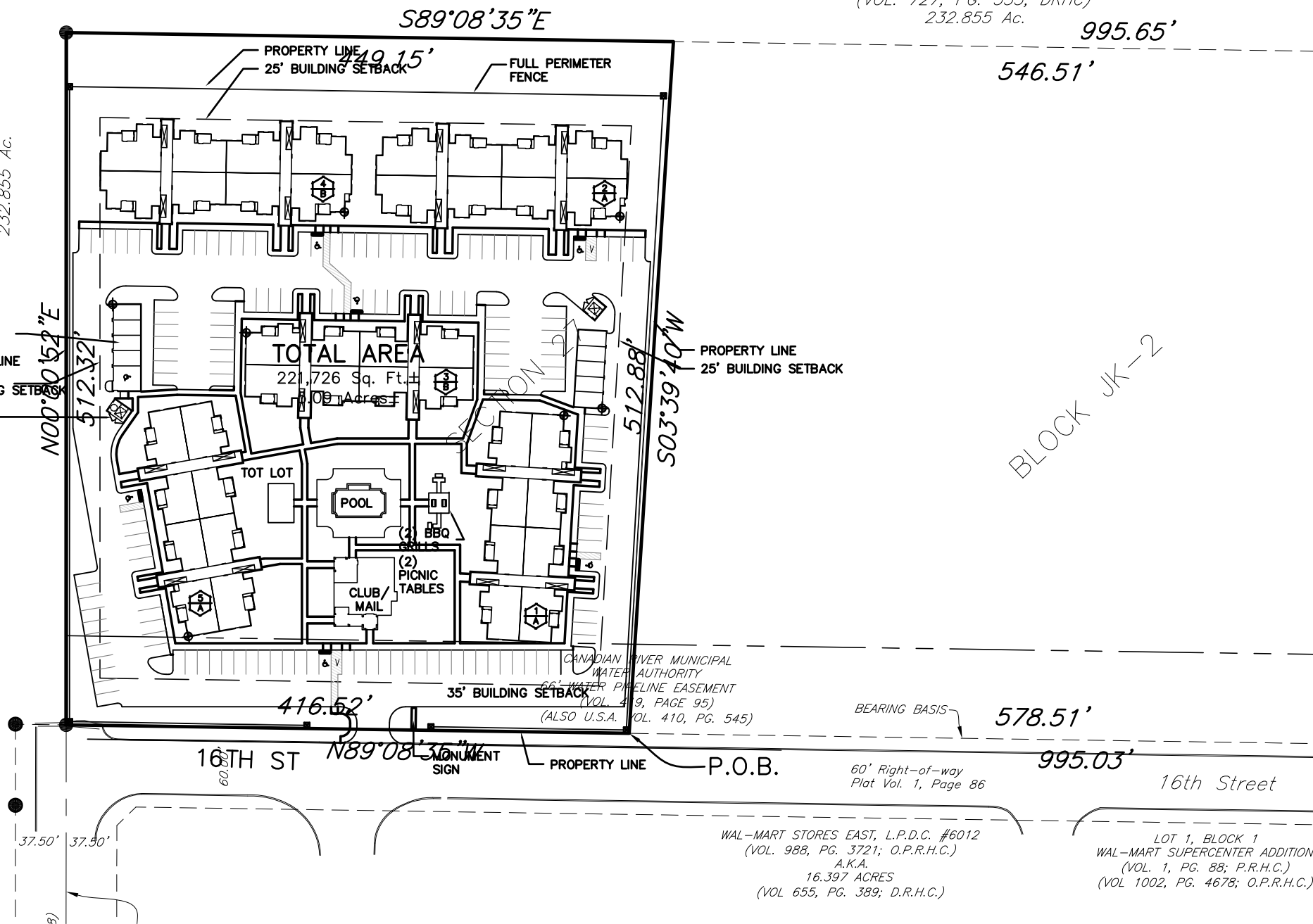
TYPE	# OF BLDGS.	# OF UNITS /BLDG.	UNIT TYPES
A	1	16	A1-8, B1-8
B	3	16	B1-8, C1-8
TOTAL	4		

SITE AMENITIES

- (2) TWO BARBEQUE GRILLS & PICNIC TABLES
- TOT LOT
- SWIMMING POOL
- FULL PERIMETER FENCING

TRACT 1  
INTERSTATE DEVELOPMENT, INC.  
(VOL. 727, PG. 555; DRHC)  
232.855 Ac.

HC GARAGE  
PROPERTY LINE  
25' BUILDING SETBACK  
HC TRASH ENCLOSURE



TRACT 1  
INTERSTATE DEVELOPMENT, INC.  
(VOL. 727, PG. 555; DRHC)  
232.855 Ac.

995.65'

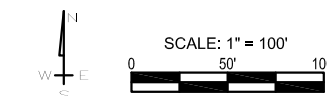
546.51'

BLOCK JK-2

CANADIAN RIVER MUNICIPAL WATER AUTHORITY  
66' WATER PIPELINE EASEMENT  
(VOL. 419, PAGE 95)  
(ALSO U.S.A. VOL. 410, PG. 545)

WAL-MART STORES EAST, L.P.D.C. #6012  
(VOL. 988, PG. 3721; O.P.R.H.C.)  
A.K.A.  
16.397 ACRES  
(VOL. 655, PG. 389; D.R.H.C.)

LOT 1, BLOCK 1  
WAL-MART SUPERCENTER ADDITION  
(VOL. 1, PG. 88; P.R.H.C.)  
(VOL. 1002, PG. 4678; O.P.R.H.C.)



SITE PLAN  
STONEBRIDGE OF PLAINVIEW  
A PROPOSED DEVELOPMENT IN PLAINVIEW, TX

No.	DATE	REVISIONS

FIGURE 3



January 27, 2014

Mr. Dru Childre  
GS Plainview Housing, LP  
7110 Baxtershire Drive  
Dallas, Texas 75230

&

TDHCA

RE: Addendum letter for vacant land located on the north line of 16<sup>th</sup> Street east of Mesa Drive, Plainview, Hale County, Texas.

Dear Mr. Childre,

Per your request, this letter is to serve as an addendum to our previously prepared appraisal report (Blosser Appraisal, A Division of the Gerald A. Teel Company, Inc. / Valbridge Property Advisors File # B13024) dated February 25, 2013. That report was for a 4.70 acre vacant tract of land at the northeast corner of Mesa Drive and 16<sup>th</sup> Street in Plainview, Hale County, Texas located within a parent tract that totaled 11.71 acres.

In the original report the subject of the appraisal was 4.70 acres on the western side of the 11.71 acre parent tract. The owner's had a plan to construct a multifamily development on that portion of the parent tract. As of the date of this update, **the plan has shifted for development to begin on the eastern edge of the tract on a site that will contain 4.99 acres.**

This letter cannot be fully understood without referencing the previous report, which contained exhibits and discussions that would aid the reader. This letter should serve as an addendum to the previously referenced report. This letter will serve to recertify the unit value from the previous appraisal and develop a new conclusion of value of the modified subject site.

## **SCOPE OF WORK**

In preparing this update, we have completed the following:

- Looked at the Plainview market to determine if the value provided in our February 2013 appraisal is still relative. This included a search for new sales and conversations with informed parties (real estate brokers).
- Reviewed updated site data.

## **INTENDED USE OF THE APPRAISAL**

The intended use of this appraisal is to assist GS Plainview Housing, LP / State Street Housing and TDHCA in the evaluation of the property being appraised for internal management purposes.

## **INTENDED USER OF THE APPRAISAL**

GS Plainview Housing, LP / State Street Housing and TDHCA.

## **CLIENT IDENTIFICATION**

GS Plainview Housing, LP / State Street Housing and TDHCA.

## **LEGAL DESCRIPTION**

4.99 acres of land out of and part of the west ½ of Section 27, Block JK-2, Hale County, Texas.

## **HISTORY OF THE PROPERTY**

The subject property is currently under the ownership of State Street Housing Development, LP which purchased an 11.71 acre tract (parent tract), that includes the subject, for \$425,000 or \$36,294 per acre on November 16, 2012. There will be an internal transaction for the subject property within the parent tract, this contract was not provided. We are unaware of any other contracts on the subject or the remaining acres of the parent tract.

## **UNIT VALUE CONCLUSION/CERTIFICATION**

A search for land sales indicated there has not been any recent commercial land sales similar to the subject outside of the data included in the previous appraisal. Due to the lack of new data, we surveyed two commercial brokers in the Plainview market.

Our first survey was with Johnny and Kim Street of Street Real Estate. They indicated they were unaware of any sales or trends that would change the market from early 2013.

Our second survey was with David Kopp of ERA Real Estate / Roberts and Wilkins Realtors. Mr. Kopp, indicated he thought the overall market had remained flat despite the closing of the Cargill Plant which many thought would have a negative impact on commercial real estate. He went on to discuss recent activity has excluded vacant land transactions. Mr. Kopp has Interstate 27 frontage tracts listed to the east of the subject in front of the neighboring strip center. They are asking \$10.00 per square foot for single acre parcels on the frontage road.



Our research indicated there is no new information in the market that would change our opinion of the unit value of the subject land at this time.

The date of inspection for the addendum letter is January 24, 2014. The property appears to be unchanged from our previous inspection and remains vacant land. The change of the exact location and size of the subject tract within the parent tract are the only alterations from the previous appraisal.

The unit value conclusion from our original report was \$41,000 per acre as of February 25, 2013. Note, due to rounding of the whole dollar amount of the value conclusion, the final unit value was \$41,064 per acre.

Applying the unit value of \$41,000 to the 4.99 acre updated subject parcel size, indicates a preliminary value of \$204,590. When rounded, the value is \$205,000 or \$41,082 per acre as of January 24, 2014.

**TWO HUNDRED FIVE THOUSAND DOLLARS  
(\$205,000)**

The following pages illustrate the new executive summary and new value indication table based on the new size of 4.99 acres. Additionally, the new site plan and current subject photos are presented.

## UPDATED EXECUTIVE SUMMARY

### Executive Summary

---

Property Name:	Vacant Land	
Address	N/L of 16th Street east of Mesa Drive Plainview, Texas, 79072	
Land Area:	4.990 Acres	217,364 Sq.Ft.
Zoning:	None, outside city limits	
Shape:	Rectangular	
Flood Zone:	Zone X - Flood Insurance is Optional Per FEMA	

<b><u>Market Value Indications</u></b>	<b><u>As Is</u></b>
Cost Approach:	N/A
Income Approach - Direct Capitalization:	N/A
Income Approach - Discounted Cash Flow:	N/A
Sales Comparison Approach:	\$205,000
<b>Final Opinion of Value:*</b>	<b>\$205,000</b>
	<b>\$41,082 /Acre</b>

Date of Value - As Is:	January 24, 2014
Date of Report:	January 27, 2014

## Land Sales

**Comparable 1**


---

<b>Date of Sale:</b>	August 31, 2012	<b>Map Ref:</b>	<i>Hal</i>
<b>Location:</b>	3503 N Columbia St		
<b>City:</b>	Plainview	<b>County:</b>	Hale
<b>Legal Description:</b>	3.0 acres being AB 30 BLK JK-2 SEC 37 S/2 OF N /2 OF SE/4, Plainview, Hale County, Texas		

<b>Grantor:</b>	LD Williams		
<b>Grantee:</b>	Fiberto Polanco		
<b>Recording Data:</b>	2012-24193		
<b>Financing:</b>	Cash to Seller		
<b>Land Area:</b>	3.000	Acres	130,680 Square Feet
<b>Sale Price:</b>	\$140,000	\$46,666.67	per acre

<b>Total Cost:</b>	\$140,000	Not Modified
<b>Cost per Unit:</b>	\$46,666.67	per acre

<b>Frontage:</b>	300 FF Columbia		
<b>Utilities:</b>	Public Available	<b>Shape:</b>	Rectangular
<b>100 Yr. Flood Zone:</b>	No	<b>Zoning:</b>	Yes
<b>Proposed Use:</b>	Speculative		

**Remarks:**

This tract is located in northern Plainview within the city limits. It was purchased for future speculative development.

**Comparable 2**


---

<b>Date of Sale:</b>	July 24, 2012	<b>Map Ref:</b>	<i>Hal</i>
<b>Location:</b>	1871 CR 100		
<b>City:</b>	Plainview	<b>County:</b>	Hale
<b>Legal Description:</b>	20.43 acres being AB 1729 BLK JK-2 SEC 20 OUT OF N/PT TRACTS 15&16, Hale County, Texas		

<b>Grantor:</b>	Jeff Novotny		
<b>Grantee:</b>	Michael Farr		
<b>Recording Data:</b>	2012-3549		
<b>Financing:</b>	Cash to Seller		
<b>Land Area:</b>	20.430	Acres	889,931 Square Feet
<b>Sale Price:</b>	\$655,000		\$32,060.70 per acre

<b>Total Cost:</b>	\$655,000	Not Modified
<b>Cost per Unit:</b>	\$32,060.70	per acre

<b>Frontage:</b>	1,200 FF on CR 100		
<b>Utilities:</b>	Well & Septic	<b>Shape:</b>	Rectangular
<b>100 Yr. Flood Zone:</b>	No	<b>Zoning:</b>	No
<b>Proposed Use:</b>	Speculative		

**Remarks:**

This tract is located in southwest Plainview outside the city limits. It was purchased for future speculative development.



**Comparable 3**


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<b>Date of Sale:</b>	April 26, 2011	<b>Map Ref:</b>	<i>Hal</i>
<b>Location:</b>	7105 Olton Rd		
<b>City:</b>	Plainview	<b>County:</b>	Hale
<b>Legal Description:</b>	5.0 acres being AB 2241 BLK JK-2 SEC 16 OUT OF NW PT OF NE/4, Plainview, Hale County, Texas		

<b>Grantor:</b>	Federal Home Loan Mortgage Corp		
<b>Grantee:</b>	Kevin Kuriyama		
<b>Recording Data:</b>	2011-72858		
<b>Financing:</b>	Cash to Seller		
<b>Land Area:</b>	5.000	Acres	217,800 Square Feet
<b>Sale Price:</b>	\$200,000	\$40,000.00	per acre

<b>Total Cost:</b>	\$200,000	Not Modified
<b>Cost per Unit:</b>	\$40,000.00	per acre

<b>Frontage:</b>	400 FF on Olton Rd		
<b>Utilities:</b>	Public Available	<b>Shape:</b>	Rectangular
<b>100 Yr. Flood Zone:</b>	No	<b>Zoning:</b>	Yes
<b>Proposed Use:</b>	Speculative		

**Remarks:**

This tract is located in western Plainview within the city limits. It was purchased for future speculative development. The tract was an REO but the transaction was considered at market.



#### Comparable 4

<b>Date of Sale:</b>	November 22, 2010	<b>Map Ref:</b>	<i>Hal</i>
<b>Location:</b>	1322 FM 400		
<b>City:</b>	Plainview	<b>County:</b>	Hale
<b>Legal Description:</b>	12.08 acres being AB 1467 BLK D-6 SEC 22 PT OFF E SIDE OF NE/4, Hale County, Texas		

<b>Grantor:</b>	Brent Hamilton		
<b>Grantee:</b>	Nathaniel Pochucha		
<b>Recording Data:</b>	2012-24193		
<b>Financing:</b>	Cash to Seller		
<b>Land Area:</b>	12.080	Acres	526,205 Square Feet
<b>Sale Price:</b>	\$375,000		\$31,043.05 per acre

<b>Total Cost:</b>	\$375,000	Not Modified
<b>Cost per Unit:</b>	\$31,043.05	per acre

<b>Frontage:</b>	600 FF FM 400		
<b>Utilities:</b>	Well No Septic	<b>Shape:</b>	Rectangular
<b>100 Yr. Flood Zone:</b>	No	<b>Zoning:</b>	No
<b>Proposed Use:</b>	Speculative		

**Remarks:**

This tract is located in south Plainview outside the city limits. It was purchased for future speculative development.

## UPDATED LAND ADJUSTMENT GRID

### Land Sales Adjustment Grid

#### Vacant Land

#### Plainview, Texas

#### 4.9900 Acres

	<u>Sale # 1</u>	<u>Sale # 2</u>	<u>Sale # 3</u>	<u>Sale # 4</u>	<u>Subject</u>
Date Of Sale	Aug/12	Jul/12	Apr/11	Nov/10	Jan/14
Size (Acres)	3.000 Acres	20.430 Acres	5.000 Acres	12.080 Acres	4.990 Acres
<u>Actual Sale Price Per Acre</u>	<u>\$46,667</u>	<u>\$32,061</u>	<u>\$40,000</u>	<u>\$31,043</u>	
Cash Equivalent/Adjusted Price (Acre)	\$46,667	\$32,061	\$40,000	\$31,043	
<b>MULTIPLIED FACTORS</b>					
Elapsed Time (Years)	0.4 years	0.5 years	1.8 years	2.2 years	
Market Cond. (Time) Adjustment	0.0%	0.0%	0.0%	0.0%	
Condition of Sale Adjustment	<u>0.0%</u>	<u>0.0%</u>	<u>0.0%</u>	<u>0.0%</u>	
Total Time / Cond. Adj	0.0%	0.0%	0.0%	0.0%	
Time / Cond. Adjusted, Cash - Equivalent Price (\$/Acres)	<b>\$46,667</b>	<b>\$32,061</b>	<b>\$40,000</b>	<b>\$31,043</b>	
<b>ADDED FACTORS</b>					
Physical Characteristics:					
Location	-10.0%	10.0%	0.0%	10.0%	
Size	0.0%	20.0%	0.0%	10.0%	
Shape/Depth	0.0%	0.0%	0.0%	0.0%	
Utilities	<u>0.0%</u>	<u>5.0%</u>	<u>0.0%</u>	<u>5.0%</u>	
Net Physical Adjustments	-10.0%	35.0%	0.0%	25.0%	
<b>Adjusted Price / Acre</b>	<b>\$42,000</b>	<b>\$43,282</b>	<b>\$40,000</b>	<b>\$38,804</b>	

Minimum Adjusted Price:	\$38,804 /Acre
Maximum Adjusted Price:	\$43,282 /Acre
Median Adjusted Price:	\$41,000 /Acre
Mean Adjusted Price:	\$41,021 /Acre

#### Indicated Value Range:

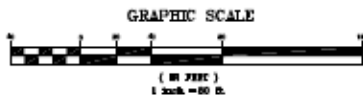
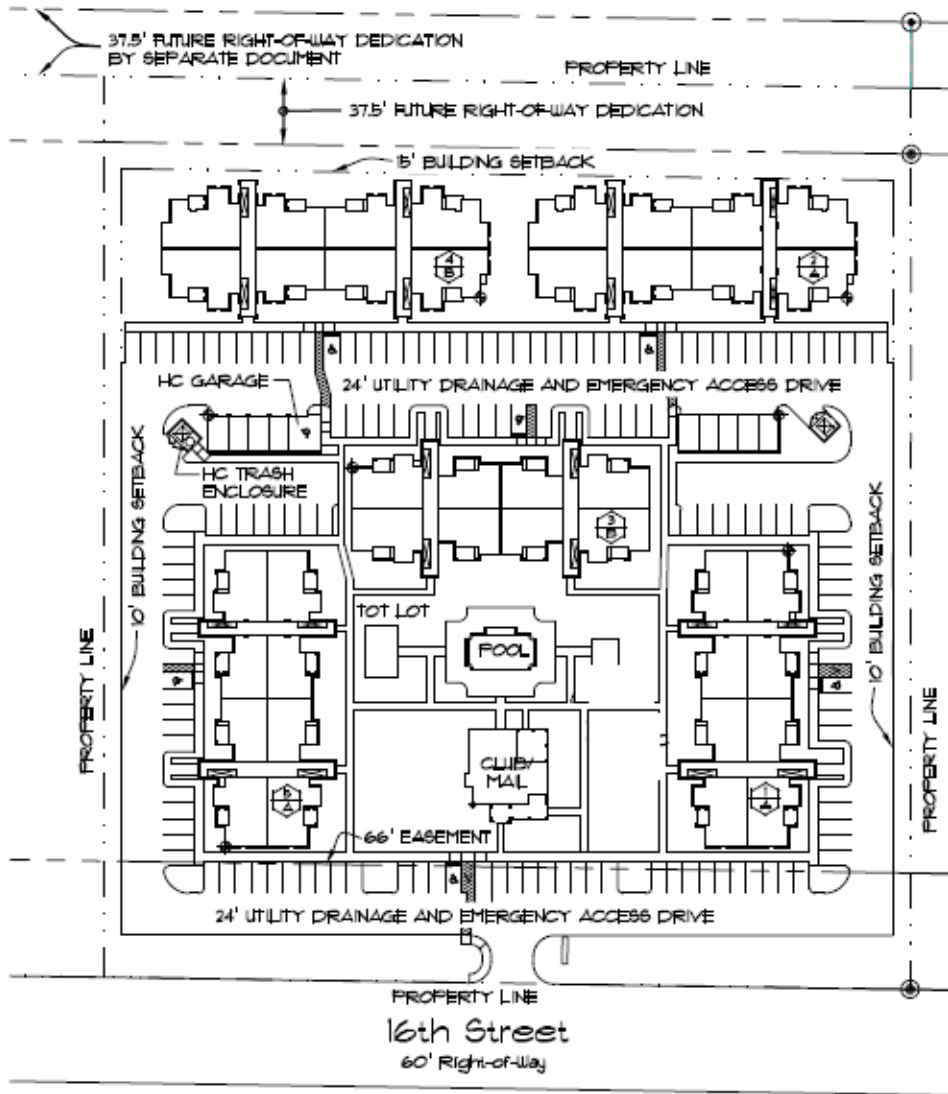
4.990 Acres	x	\$40,000 /Acre	=	\$199,600
4.990 Acres	x	\$42,000 /Acre	=	\$209,580

#### Site Land - Market Value Opinion:

4.990 Acres	x	\$41,000 /Acre	=	<b>(Rounded)</b> \$205,000
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### UPDATED SITE PLAN



1 SITE PLAN  
1" = 50'



STONEBRIDGE OF PLAINVIEW  
PLAINVIEW, TEXAS

A1.0  
SITE PLAN



**UPDATED SUBJECT PHOTOGRAPHS**



View of subject site looking north



View of 16<sup>th</sup> St facing east



View of 16<sup>th</sup> St facing west



View of Wal-Mart looking south from subject





Valbridge Property Advisors appreciates the opportunity to provide these real estate valuation and consultation services. We look forward to working with you in the future.

Sincerely,

Valbridge Property Advisors

A handwritten signature in blue ink that reads "Tim N. Treadway".

Tim N. Treadway  
Senior Managing Director  
Certified General Real Estate Appraiser  
State License #1323331  
[ttreadway@valbridge.com](mailto:ttreadway@valbridge.com)

A handwritten signature in blue ink that reads "Michael G. Divin".

Michael G. Divin  
Senior Managing Director  
Certified General Real Estate Appraiser  
State License # 1320831  
[mdivin@valbridge.com](mailto:mdivin@valbridge.com)

A handwritten signature in blue ink that reads "Mark Luna".

Mark Luna  
Managing Director  
Certified General Real Estate Appraiser  
State License #1380067  
[mluna@valbridge.com](mailto:mluna@valbridge.com)

**Certification**

We certify that, to the best of my/our knowledge and belief:

1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my/our personal, impartial, and unbiased professional analyses, opinions, and conclusions.
3. We have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
4. We have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
5. Our engagement in this assignment was not contingent upon developing or reporting predetermined results.
6. Our compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
7. The reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.
8. Tim N. Treadway, MAI, CCIM and Michael G. Divin did not make a personal inspection of the property that is the subject of this report. Mark Luna made a personal inspection of the property that is the subject of this report.
9. No one provided significant real property appraisal assistance to the person/people signing this certification.
10. The reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute, which include the Uniform Standards of Professional Appraisal Practice.
11. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.





12. As of the date of this report, Tim N. Treadway, MAI, CCIM has completed the continuing education program of the Appraisal Institute.

13. As of the date of this report, Michael G. Divin and Mark Luna completed the Standards and Ethics Education Requirement of the Appraisal Institute for Associate Members.

A handwritten signature in blue ink that reads "Tim N. Treadway".

Tim N. Treadway  
Senior Managing Director  
Certified General Real Estate Appraiser  
State License #1323331  
[ttreadway@valbridge.com](mailto:ttreadway@valbridge.com)

A handwritten signature in blue ink that reads "Michael G. Divin".

Michael G. Divin  
Senior Managing Director  
Certified General Real Estate Appraiser  
State License # 1320831  
[mdivin@valbridge.com](mailto:mdivin@valbridge.com)

A handwritten signature in blue ink that reads "Mark Luna".

Mark Luna  
Managing Director  
Certified General Real Estate Appraiser  
State License #1380067  
[mluna@valbridge.com](mailto:mluna@valbridge.com)

## General Assumptions & Limiting Conditions

This appraisal is subject to the following limiting conditions:

1. The legal description – if furnished us – is assumed to be correct.
2. No responsibility is assumed for matters legal in character, nor is any opinion rendered by us to title which is assumed to be marketable. All existing liens and encumbrances have been disregarded and the property is appraised as though free and clear, under responsible ownership and competent management unless otherwise noted.
3. Unless otherwise noted, it is assumed there are no encroachments, zoning violations or restrictions existing in the subject property.
4. The appraiser is not required to give testimony or attendance in court by reason of this appraisal, unless previous arrangements have been made.
5. Unless expressly specified in this Agreement, the fee for this appraisal does not include the attendance or giving of testimony by Appraiser at any court, regulatory or other proceedings, or any conferences or other work in preparation for such proceeding. If any partner or employee of GATCO Lubbock LLC, dba Blosser Appraisal is asked or required to appear and/or testify at any deposition, trial, or other proceeding about the preparation, conclusions or any other aspect of this assignment, client shall compensate Appraiser for the time spent by the partner or employee in appearing and/or testifying and in preparing to testify according to the Appraiser's then current hourly rate plus reimbursement of expenses.
6. The values for land and/or improvements, as contained in this report, are constituent parts of the total value reported and neither is (or are) to be used in making a summation appraisal of a combination of values created by another appraiser. Either is invalidated if so used.
7. The dates of value to which the opinions expressed in this report apply are set forth in this report. We assume no responsibility for economic or physical factors occurring at some point at a later date, which may affect the opinions stated herein. The forecasts, projections, or operating estimates contained herein are based on current market conditions and anticipated short-term supply and demand factors and are subject to change with future conditions.
8. The sketches, maps, plats and exhibits in this report are included to assist the reader in visualizing the property. The appraiser has made no survey of the property and assumed no responsibility in connection with such matters.



9. The information, estimates and opinions which were obtained from sources outside of this office, are considered reliable. However, no liability for them can be assumed by the appraiser.
10. The Valbridge Property Advisors office responsible for the preparation of this report is independently owned and operated by GATCO Lubbock LLC, dba Blosser Appraisal. Valbridge Property Advisors, Inc. has not been engaged to provide this report, does not provide valuation services, and has taken no part in the preparation of this report.
11. Possession of this report, or a copy thereof, does not carry with it the right of publication. Neither all, nor any part of the content of the report, or copy thereof (including conclusions as to property value, the identity of the appraisers, professional designations, reference to any professional appraisal organization or the firm with which the appraisers are connected), shall be disseminated to the public through advertising, public relations, news, sales, or other media without prior written consent and approval.
12. No claim is intended to be expressed for matters of expertise which would require specialized investigation or knowledge beyond that ordinarily employed by real estate appraisers. We claim no expertise in areas such as, but not limited to, legal, survey, structural, environmental, pest control, mechanical, etc.
13. This appraisal was prepared for the sole and exclusive use of the client. Any party who is not the client or intended user identified in the appraisal or engagement letter is not entitled to rely upon the contents of the appraisal without express written consent of by GATCO Lubbock LLC, dba Blosser Appraisal and Client. The appraiser assumes no liability for unauthorized use of the appraisal report by a third party.
14. This appraisal shall be considered in its entirety. No part thereof shall be used separately or out of context.
15. The value opinion provided herein is subject to any and all predications set forth in this report.
16. If required by governmental authorities, any environmental impact statement prepared for the subject property will be favorable and will be approved.
17. Unless otherwise noted in the body of this report, this appraisal assumes that the subject property does not fall within the areas where mandatory flood insurance is effective. Unless otherwise noted, we have not completed nor have we contracted to have completed an investigation to identify and/or quantify the presence of nontidal wetland conditions on the subject property. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.



18. If the appraisal is for mortgage loan purposes 1) we assume satisfactory condition of improvements if construction is not complete, 2) no consideration has been given rent loss during rent-up unless otherwise noted in the body of this report, and 3) occupancy at levels consistent with our "Income & Expense Projection" are anticipated.
19. It is assumed that there are no hidden or unapparent conditions of the property, subsoil, or structures which would render it more or less valuable. No responsibility is assumed for such conditions or for engineering which may be required to discover them.
20. Our inspection included an observation of the land and improvements thereon only. It was not possible to observe conditions beneath the soil or hidden structural components within the improvements. We inspected the buildings involved, and reported damage (if any) by termites, dry rot, wet rot, or other infestations as a matter of information, and no guarantee of the amount or degree of damage (if any) is implied. Condition of heating, cooling, ventilation, electrical and plumbing equipment is considered to be commensurate with the condition of the balance of the improvements unless otherwise stated.
21. This appraisal does not guarantee compliance with building code and life safety code requirements of the local jurisdiction. It is assumed that all required licenses, consents, certificates of occupancy or other legislative or administrative authority from any local, state or national governmental or private entity or organization have been or can be obtained or renewed for any use on which the value conclusion contained in this report is based unless specifically stated to the contrary.
22. When possible, we have relied upon building measurements provided by the client, owner, or associated agents of these parties. In the absence of a detailed rent roll, reliable public records, or "as-built" plans provided to us, we have relied upon our own measurements of the subject improvements. We follow typical appraisal industry methods; however, we recognize that some factors may limit our ability to obtain accurate measurements including, but not limited to, property access on the day of inspection, basements, fenced/gated areas, grade elevations, greenery/shrubbery, uneven surfaces, multiple story structures, obtuse or acute wall angles, immobile obstructions, etc. Professional building area measurements of the quality, level of detail, or accuracy of professional measurement services are beyond the scope of this appraisal assignment.
23. We have attempted to reconcile sources of data discovered or provided during the appraisal process, including assessment department data. Ultimately, the measurements that are deemed by us to be the most accurate and/or reliable are used within this report. While the measurements and any accompanying sketches are considered to be reasonably accurate and reliable, we cannot guarantee their accuracy. Should the client desire a greater level of measuring detail, they are urged to retain the measurement services of a qualified professional (space planner, architect or building engineer). We reserve the right to use an alternative source of building size and amend the analysis,



narrative and concluded values (at additional cost) should this alternative measurement source reflect or reveal substantial differences with the measurements used within the report.

24. In the absence of being provided with a detailed land survey, we have used assessment department data to ascertain the physical dimensions and acreage of the property. Should a survey prove this information to be inaccurate, we reserve the right to amend this appraisal (at additional cost) if substantial differences are discovered.
25. If only preliminary plans and specifications were available for use in the preparation of this appraisal, then this appraisal is subject to a review of the final plans and specifications when available (at additional cost) and we reserve the right to amend this appraisal if substantial differences are discovered.
26. This appraisal is not intended to be used, and may not be used, on behalf of or in connection with a real estate syndicate or syndicates. A real estate syndicate means a general or limited partnership, joint venture, unincorporated association or similar organization formed for the purpose of, and engaged in, an investment or gain from and interest in real property, including, but not limited to a sale or exchange, trade or development of such real property, on behalf of others, or which is required to be registered with the United States Securities and Exchange Commission or any state regulatory agency which regulates investments made as a public offering. It is agreed that any user of this appraisal who uses it contrary to the prohibitions in this section indemnifies the appraiser and the appraiser's firm and holds them harmless of and from all claims, including attorney's fees, arising from said use.
27. Unless otherwise stated in this report, the existence of hazardous material, which may or may not be present on the property, was not observed by the appraiser. The appraiser has no knowledge of the existence of such materials on or in the property. The appraiser, however, is not qualified to detect such substances. The presence of substances such as asbestos, urea-formaldehyde foam insulation or other potentially hazardous materials may affect the value of the property. The value conclusion is predicted on the assumption that there is no such material on or in the property that would cause a loss in value. No responsibility is assumed for any such conditions, or for any expertise or engineering knowledge required to discover them. The client is urged to retain an expert in this field, if desired.
28. We have not made a specific compliance survey of the property to determine if it is in conformity with the various requirements of the Americans with Disabilities Act ("ADA") which became effective January 26, 1992. It is possible that a compliance survey of the property, together with an analysis of the requirements of the ADA, could reveal that the property is not in compliance with one or more of the requirements of the Act. If so, this could have a negative effect on the value of the property. Since we have



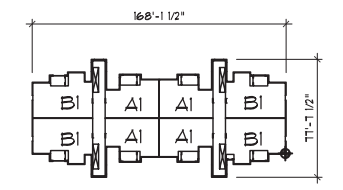
no direct evidence relating to this issue, we did not consider possible noncompliance with the requirements of ADA in developing an opinion of value.

29. This appraisal applies to the land and building improvements only. The value of trade fixtures, furnishings, and other equipment, or subsurface rights (minerals, gas, and oil) were not considered in this appraisal unless specifically stated to the contrary.
30. If any claim is filed against any of Valbridge Property Advisors, Inc. a Florida Corporation, its affiliates, officers or employees, or the firm providing this report, in connection with, or in any way arising out of, or relating to, this report, or the engagement of the firm providing this report, then (1) under no circumstances shall such claimant be entitled to consequential, special or other damages, except only for direct compensatory damages and (2) the maximum amount of such compensatory damages recoverable by such claimant shall be the amount actually received by the firm engaged to provide this report.
31. No changes in any federal, state or local laws, regulations or codes (including, without limitation, the Internal Revenue Code) are anticipated, unless specifically stated to the contrary.
32. Any income and expense estimates contained in the appraisal report are used only for the purpose of estimating value and do not constitute prediction of future operating results. Furthermore, it is inevitable that some assumptions will not materialize and that unanticipated events may occur that will likely affect actual performance.
33. Any estimate of insurable value, if included within the scope of work and presented herein, is based upon figures developed consistent with industry practices. However, actual local and regional construction costs may vary significantly from our estimate and individual insurance policies and underwriters have varied specifications, exclusions, and noninsurable items. As such, we strongly recommend that the Client obtain estimates from professionals experienced in establishing insurance coverage. This analysis should not be relied upon to determine insurance coverage and we make no warranties regarding the accuracy of this estimate.
34. It is your responsibility to read the report and to inform the appraiser of any errors or omissions of which you are aware, prior to utilizing the report.
35. This report and any associated work files are subject to evaluation by Valbridge Property Advisors, Inc. for quality control purposes.
36. All disputes shall be settled by binding arbitration in accordance with then then-existing commercial arbitration rules of the American Arbitration Association (the "AAA").

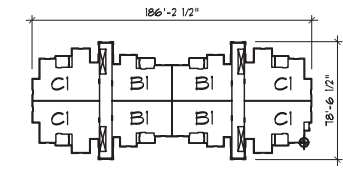


37. Acceptance of and/or use of this appraisal report constitutes acceptance of the foregoing general assumptions and limiting conditions.

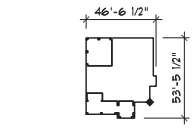




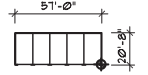
BUILDING "A" 2 STORY



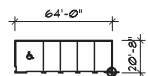
BUILDING "B" 2 STORY



CLUBHOUSE 1 STORY



GARAGE 5 BAY 1 STORY



GARAGE 5 BAY HC 1 STORY

BUILDING KEY:



SITE DATA

- TOTAL ACRES: 4.99 ACRES
- NO DETENTION AREA PER CITY
- NO FLOOD PLAIN PER FEMA F.I.R.M.

PARKING COUNT

PARKING SPACES	155
TOTAL	155

UNIT TABULATION

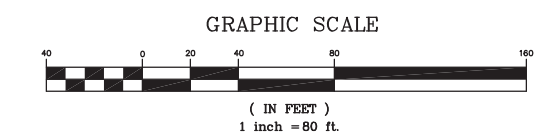
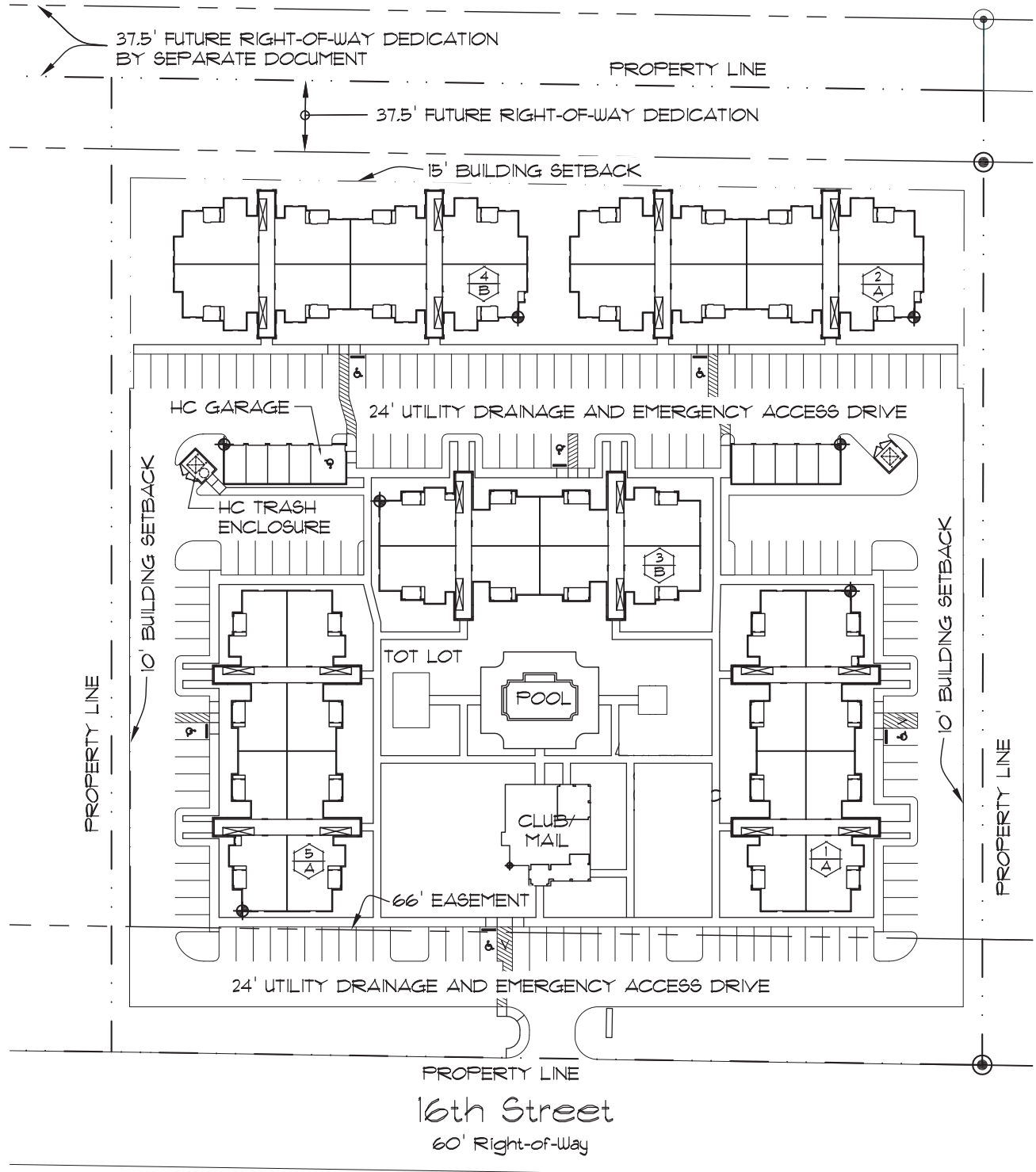
TYPE	S.F. PER UNIT	# OF UNITS	NET TOTAL
A1 - ONE BEDROOM, ONE BATH	750	24	18,000 S.F.
B1 - TWO BEDROOM, ONE BATH	983	40	39,320 S.F.
C1 - THREE BEDROOM, TWO BATH	1,165	16	18,640 S.F.
TOTAL		80	75,960 S.F.

BUILDING TABULATION

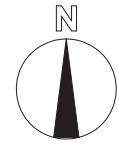
TYPE	# OF BLDG.	# OF UNITS PER BLDG.	UNIT TYPES	S.F. PER BLDG.	NET TOTAL
A	3	16	A1-B, B1-B	13,864 S.F.	41,592 S.F.
B	2	16	B1-B, C1-B	17,184 S.F.	34,368 S.F.
TOTAL	5				75,960 S.F.
			CLUBHOUSE		1,500 S.F.
			TOTAL WITH CLUBHOUSE		77,460 S.F.

SITE AMENITIES

- TOT LOT
- SWIMMING POOL
- FULL PERIMETER FENCING

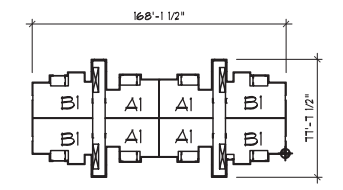


1 SITE PLAN  
1" = 80'

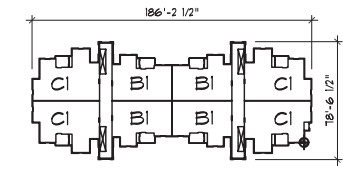


STONEBRIDGE OF PLAINVIEW  
PLAINVIEW, TEXAS

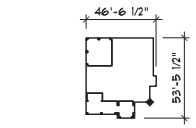
A1.0  
SITE PLAN



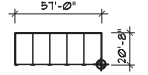
BUILDING "A" 2 STORY



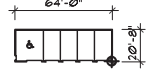
BUILDING "B" 2 STORY



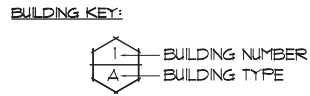
CLUBHOUSE 1 STORY



GARAGE 5 BAY 1 STORY



GARAGE 5 BAY HC 1 STORY



SITE DATA

- TOTAL ACRES: 4.99 ACRES
- NO DETENTION AREA PER CITY
- NO FLOOD PLAIN PER FEMA F.I.R.M.

4.694 acres per site design & feasibility report

PARKING COUNT

PARKING SPACES	155
TOTAL	155

UNIT TABULATION

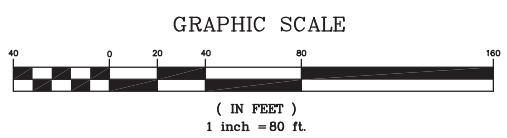
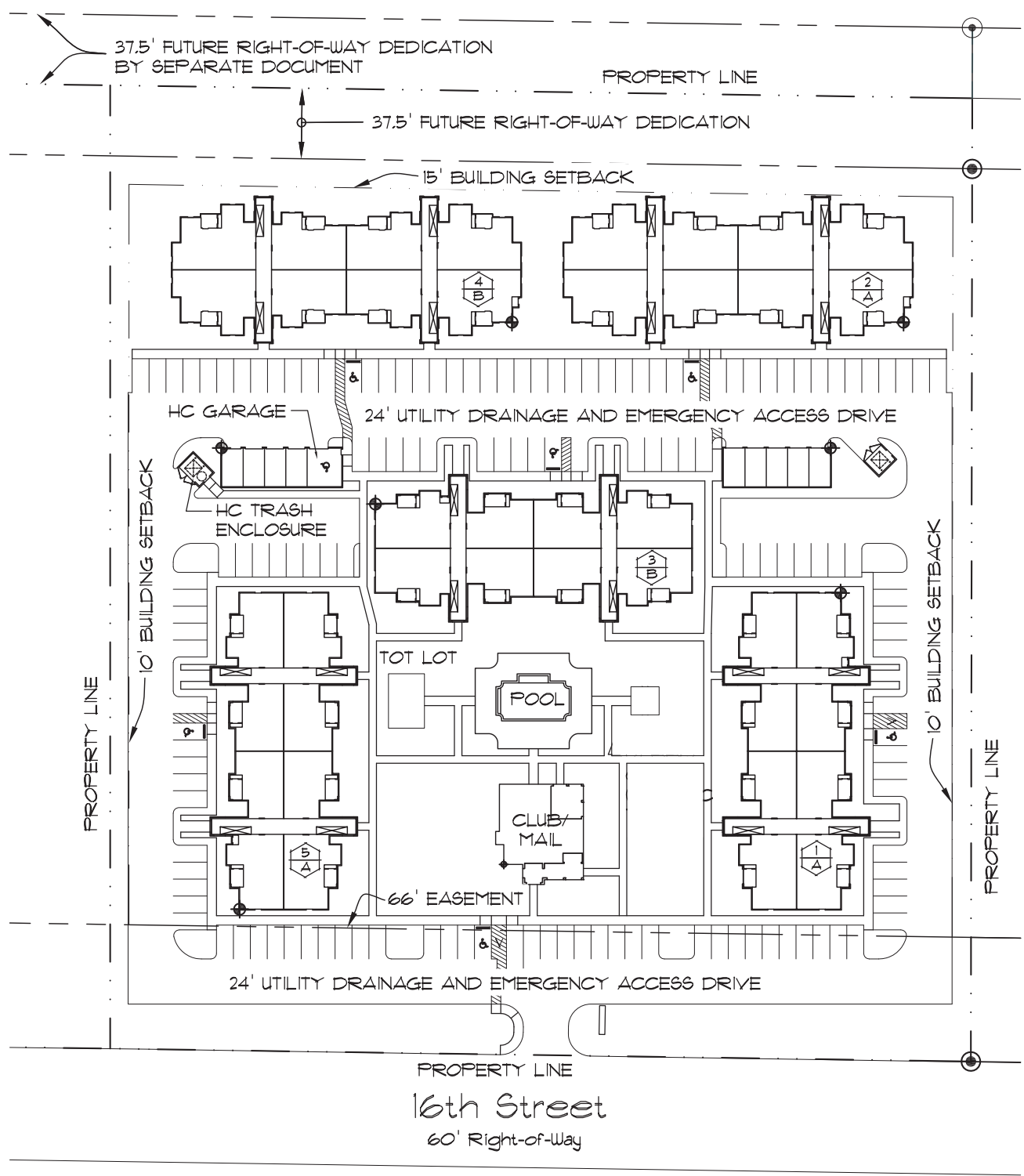
TYPE	S.F. PER UNIT	# OF UNITS	NET TOTAL
A1 - ONE BEDROOM, ONE BATH	750	24	18,000 S.F.
B1 - TWO BEDROOM, ONE BATH	983	40	39,320 S.F.
C1 - THREE BEDROOM, TWO BATH	1,165	16	18,640 S.F.
TOTAL		80	75,960 S.F.

BUILDING TABULATION

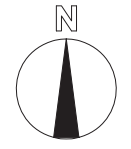
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1 SITE PLAN  
1" = 80'



STONEBRIDGE OF PLAINVIEW  
PLAINVIEW, TEXAS

A1.0  
SITE PLAN



**DEVELOPMENT IDENTIFICATION**

TDHCA Application #: **13139** Program(s): **9% LIHTC**

**Stonebridge of Plainview**

Address/Location: NE corner of Mesa Dr. and 16th St.

City: Plainview County: Hale Zip: 79072

Population: Family Program Set-Aside: Rural Area: Rural

Activity: New Construction Building Type: Garden (Up to 3-story) Region: 1

Analysis Purpose: New Application - Initial Underwriting

**ALLOCATION**

TDHCA Program	REQUEST				RECOMMENDATION				
	Amount	Interest Rate	Amort	Term	Amount	Interest Rate	Amort	Term	Lien
LIHTC (Annual)	\$647,000				\$647,000				

**CONDITIONS**

- 1 Receipt and acceptance by Commitment:
  - Evidence of final zoning that was proposed or needed to be changed pursuant to the Development plan.
- 2 Receipt and acceptance by September 28, 2013:
  - Updated term sheet from Lender confirming the rates and terms of the proposed debt.
- 3 Receipt and acceptance by October 12, 2013:
  - MAP Invitation Letter for FHA 221(d)(4) loan, or firm commitment from Lender indicating the date that HUD concept meeting was held, and Lender's intent to proceed with HUD application.
- 4 Receipt and acceptance by Cost Certification:
  - Documentation clearing environmental issues contained in the ESA report, specifically:
    - \* Evidence that the recommendations of the ESA provider with regard to radon gas have been implemented, and verification that radon levels within the finished development are acceptable.
- 5 Should any terms of the proposed capital structure change, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

**SET-ASIDES**

TDHCA SET-ASIDES for HTC LURA		
Income Limit	Rent Limit	Number of Units
30% of AMI	30% of AMI	5
40% of AMI	40% of AMI	0
50% of AMI	50% of AMI	12
60% of AMI	60% of AMI	36

## RISK PROFILE

STRENGTHS/MITIGATING FACTORS	
▫	Property adjacent to Super Wal Mart
▫	HA committed 6 Section 8 vouchers for first five years.
▫	Only two affordable communities built since 2000.
▫	
▫	
▫	
▫	

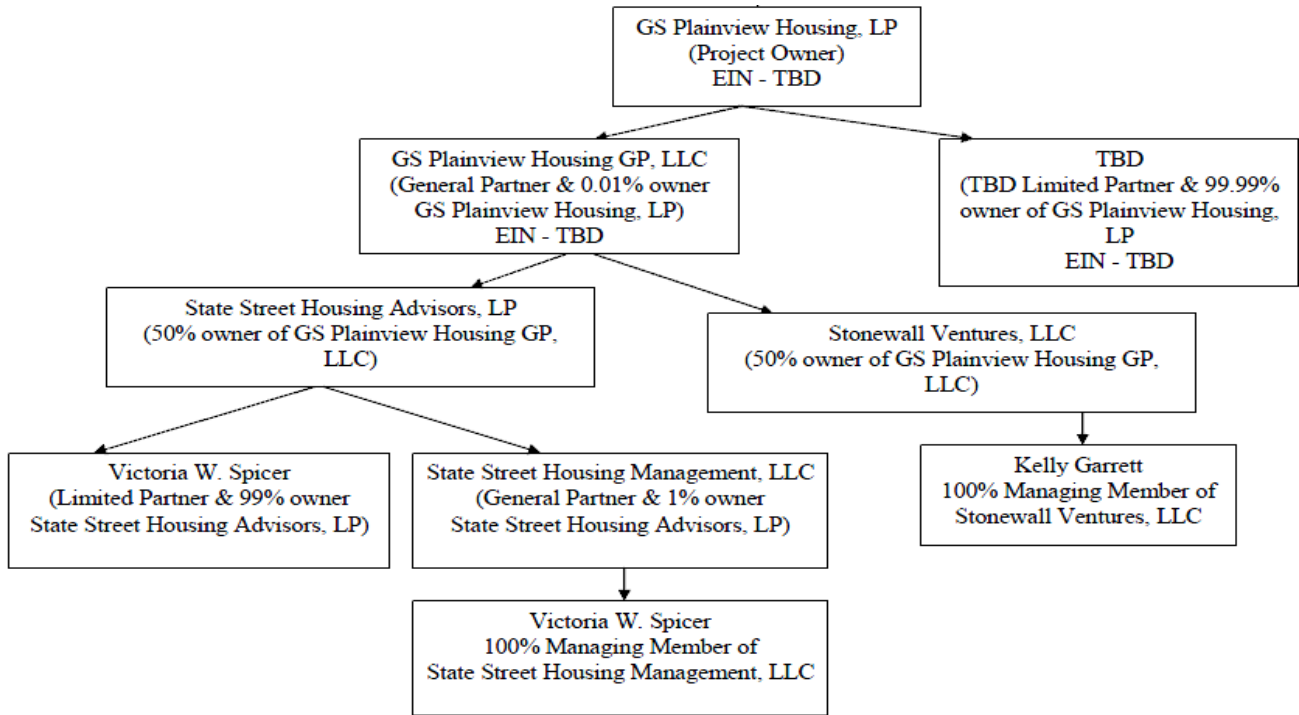
WEAKNESSES/RISKS	
▫	Declining population from 2000 to 2010
▫	1.15 DCR dependent on \$140 premium over 60% AMI rents for market rate units
▫	1.15 DCR dependent on favorable debt terms (3.5% interest and 40-year amortization)
▫	Largest employer in County closing resulting in 2,000 jobs being lost or 12.5% of total employment
▫	PMA occupancy is 88.3%
▫	Capture rates >14% on 60% AMI units
▫	Market rental rate exposure on 79% of the units (63 units)

## DEVELOPMENT TEAM

### PRIMARY CONTACTS

Name: <u>Victoria Spicer</u> <u>vspicer@statestreethousing.com</u> Phone: <u>(214) 346-0707</u> Relationship: <u>Developer</u>	Name: <u>Dru Childre</u> <u>dru@statestreethousing.com</u> Phone: <u>(214) 346-0707</u> Relationship: <u>Developer</u>	Name: _____ _____ Phone: _____ Relationship: _____
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## OWNERSHIP STRUCTURE

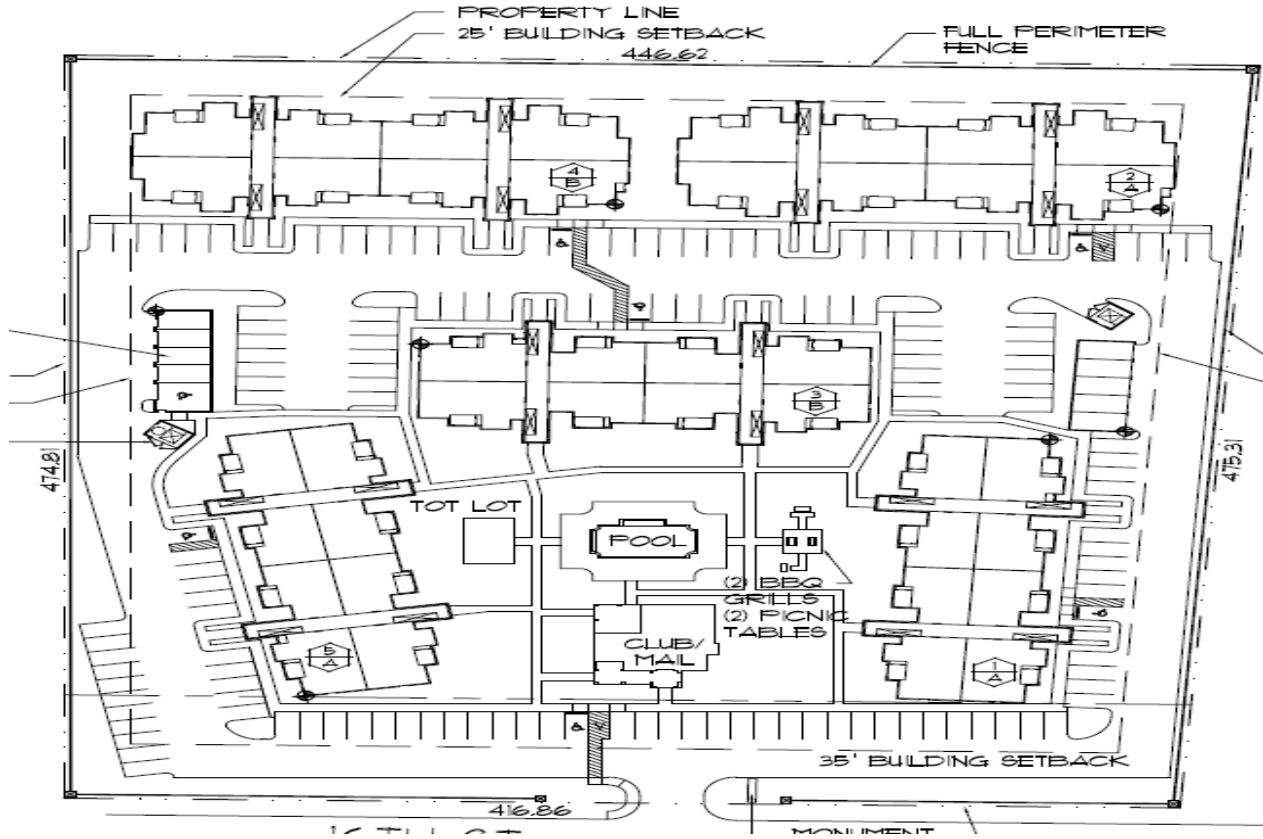


Related-Party Seller/Identity of Interest: Yes

- The Applicant, Developer, and General Contractor are related entities.

## DEVELOPMENT SUMMARY

### SITE PLAN



### BUILDING ELEVATION



### BUILDING CONFIGURATION

Building Type	A	B																		Total Buildings	
Floors/Stories	2	2																			
Number of Bldgs	3	2																			5
Units per Bldg	16	16																			
<b>Total Units</b>	48	32																			80
																			Net Rentable SF	75,960	
																			Common Area SF	1,500	

**GENERAL INFORMATION**

Total Size: 4.7 acres  
 Flood Zone: X  
 Zoning: Ag  
 Density: 17.0 units/acre

Scattered Site?  Yes  No  
 Within 100-yr floodplain?  Yes  No  
 Re-Zoning Required?  Yes  No  N/A  
 Utilities at Site?  Yes  No  
 Title Issues?  Yes  No

Surrounding Uses:  
 Unimproved farmland, vacant land, commercial strip center, and Wal-Mart Supercenter.

**HIGHLIGHTS of ENVIRONMENTAL REPORTS**

Provider: Southwest Geoscience Date: 3/28/2013

Recognized Environmental Conditions (RECs) and Other Concerns:

- None

Comments:

"Based on a review of The Texas Indoor Radon Survey 1994, prepared by the TDH, Bureau of Radiation Control, the mean residential radon measurement from the survey for Hale County is between 2 to 4 picoCuries of radon per liter of air (pCi/l). The EPA recommends a guideline "action level" of 4.0 pCi/l for annual average indoor radon concentrations. Based on the information obtained from the 1994 survey, the Site is considered to have a moderate potential for elevated levels of radon gas. However, radon testing would need to be conducted to evaluate Site specific radon concentrations." (p. 18)

**MARKET ANALYSIS**

Provider: Apartment MarketData, LLC Date: 3/8/2013  
 Contact: Darrell G. Jack Phone: 210.530.0040  
 Number of Revisions: None Date of Last Applicant Revision: N/A

Primary Market Area (PMA): 437 sq. miles 12 mile equivalent radius

The Primary Market Area is defined by six census tracts. Plainview is in the center of the census tracts in Hale County.

ELIGIBLE HOUSEHOLDS BY INCOME								
Hale County Income Limits								
HH size	30% of AMI		40% of AMI		50% of AMI		60% of AMI	
	min	max	min	max	min	max	min	max
1	\$9,737	\$10,620	---	---	\$16,217	\$17,700	\$19,474	\$21,240
2	\$9,737	\$12,120	---	---	\$16,217	\$20,200	\$19,474	\$24,240
3	\$11,691	\$13,650	---	---	\$19,474	\$22,750	\$23,383	\$27,300
4	---	---	---	---	\$22,491	\$25,250	\$27,017	\$30,300
5	---	---	---	---	\$22,491	\$27,300	\$27,017	\$32,760
6	---	---	---	---	---	---	---	---

AFFORDABLE HOUSING INVENTORY in PRIMARY MARKET AREA					
File #	Development	Type	Target Population	Comp Units	Total Units
Proposed, Under Construction, and Unstabilized Comparable Developments					
	None			0	
Other Affordable Developments in PMA since 2009					
	None			n/a	
Stabilized Affordable Developments in PMA ( pre-2009 )					
Total Properties ( pre-2009 )		2	Total Units		176

Proposed, Under Construction, and Unstabilized Comparable Supply:  
None.

OVERALL DEMAND ANALYSIS				
	Market Analyst		Underwriter	
Total Households in the Primary Market Area	9,444		9,444	
Potential Demand from the Primary Market Area	742		741	
Potential Demand from Other Sources	0			
<b>GROSS DEMAND</b>	<b>742</b>		<b>741</b>	
Subject Affordable Units	53		53	
Unstabilized Comparable Units	0		0	
<b>RELEVANT SUPPLY</b>	<b>53</b>		<b>53</b>	
<b>Relevant Supply ÷ Gross Demand = GROSS CAPTURE RATE</b>	<b>7.1%</b>		<b>7.2%</b>	

Demand Analysis:

"The largest employer in Hale County, Cargill Meat Solutions, is closing its Plainview beef processing facility. With the county losing 2,000 jobs, or about 12.5% of its total employment, the Plainview economy is going to shrink and likely suffer further job losses." (p. 69) The Market Analyst calculated a reduction of 477 households from income-qualified demand resulting from the reduced employment. This reduction has been factored into the demand analysis.

The maximum Gross Capture Rate for rural developments targeting family households is 30%; the analysis indicates sufficient demand to support the proposed development.

UNDERWRITING ANALYSIS of PMA DEMAND by UNIT TYPE								
Unit Type	Market Analyst				Underwriter			
	Demand	Subject Units	Comp Units	Unit Capture Rate	Demand	Subject Units	Comp Units	Unit Capture Rate
1 BR/30%	79	2	0	3%	41	2	0	5%
1 BR/50%	117	4	0	3%	61	4	0	7%
1 BR/60%	88	9	0	10%	60	9	0	15%
2 BR/30%	55	3	0	5%	44	3	0	7%
2 BR/50%	86	6	0	7%	76	6	0	8%
2 BR/60%	120	17	0	14%	94	17	0	18%
3 BR/50%	140	2	0	1%	60	2	0	3%
3 BR/60%	82	10	0	12%	71	10	0	14%

Primary Market Occupancy Rates:

Overall occupancy is 88% for all projects including market rate properties. However, only 3 of the 10 developments surveyed by the Market Analyst reported occupancies below 96%. (p. 10) The Market Analyst states occupancy for rent restricted properties is 99%. (p. 110) The most recent data that the Department has shows that the older of the two rent-restricted developments is at 91% occupancy while the newer one (built in 2006) is at 97%.

Absorption Projections:

No available data on recent absorption of rent-restricted units. Only two affordable housing developments have been built since 2000. The Market Analyst estimates a lease-up of 6 units per month upon construction completion resulting in a 100% occupancy within 18 months of construction start. (p. 53)



Market Impact:

As the affordable family projects have high occupancy, the additional units will not have a detrimental effect on the balance of supply and demand in this market. (p. 12)

Comments:

The site would be newer in age than the other existing projects in the PMA with more attractively designed units. (p. 4)

Market Analyst indicates that the closure of the Cargill plant will reduce overall market demand, but could also add to demand for affordable housing due to reduced household incomes. Nevertheless, the closure raises concern over the market's ability to absorb a new development.

**OPERATING PRO FORMA**

SUMMARY- AS UNDERWRITTEN (TDHCA's Pro forma)					
NOI:	\$205,287	Avg. Rent:	\$578	Expense Ratio:	61.0%
Debt Service:	\$178,964	B/E Rent:	\$551	Controllable Expenses:	\$2,558
Net Cash Flow:	\$26,323	Occupancy:	92.50%	Property Taxes/Unit:	\$377
Aggregate DCR:	1.15:1	B/E Occupancy:	87.88%	Program Rent Year:	2013

53 restricted units at maximum HTC rents. 27 units (34% of total) are market rate. Applicant proposes market rents that are \$194-\$236 higher than 60% rents. Underwritten pro forma includes market premiums between \$135-\$147.

Applicant's gross income is 3% higher than underwriting estimate, and operating expenses are 7% higher, resulting in 2% lower NOI.

Average Rent is \$27/unit above break-even rent with break-even occupancy at 10 vacant units. If applicant provides a 1 month concession on all 60% and market units, average rent will be \$14/unit below Breakeven. If market units can only achieve 60% rents, DCR falls to 0.92.

Number of Revisions: 1 Date of Last Applicant Revision: 7/1/2013

**ACQUISITION INFORMATION**

**SITE CONTROL**

Type: Contract of Sale Acreage: 5.09

Acquisition Cost: \$230,208 Contract Expiration: 12/31/2013

Cost Per Unit: \$2,878

Seller: State Street Housing Development LLI Related to Development Team?  Yes  No

Buyer: GS Plainview Housing, LP

Comments:

Applicant closed on property on 11/16/2012. Applicant purchased land for \$425,000 before signing contract with single asset entity.

Site Control states 5.09 acres due to the purchase of an existing Dedicated Right-of-Way (ROW) to the City of Plainview for the extension of 17th St. The Site Plan, Appraisal and ESA indicate 4.7 acres due to the removal of that ROW because that portion of the land will ultimately not be in the overall Development.

## DEVELOPMENT COST EVALUATION

### SUMMARY- AS UNDERWRITTEN (Applicant's Costs)

Acquisition	\$45,228/ac	\$2,878/unit	<b>\$230,208</b>	Contractor Fee	<b>\$748,335</b>
Offsite + Sitework		14587.5	<b>\$1,167,000</b>	Developer Fee	<b>\$1,088,745</b>
Building Cost	\$55.01/sf	\$52,228/unit	<b>\$4,178,250</b>	Soft Cost	<b>\$1,197,679</b>
Contingency	5.00%	\$3,341/unit	<b>\$267,263</b>	Reserves	<b>\$298,690</b>
<b>Total Development Cost</b>			<b>\$9,176,170</b>		\$114,702/unit

**Acquisition:**

Acquisition cost (\$230,000) satisfies the identity of interest rule because the stated cost is less than the original acquisition cost (\$425,000).

**Sitework**

Includes \$125,000 in landscaping, \$85,000 for pool, and \$80,000 for perimeter fence. Site work costs of \$10,500/unit expense is high given the fact that this is a flat site with little grading and no on-site retention.

**Building Cost:**

Two-story walk-up, average construction quality, 25% brick veneer exterior, shutters on some of the windows and 5:12 roof pitch.

**Ineligible Costs:**

Tenants will be charged a fee for the use of garages. Cost has been excluded from eligible basis.

**Conclusion:**

Eligible cost of \$8,347,042 would support a tax credit allocation of \$647,000.

COST SCHEDULE Number of Revisions: 0 Date of Last Applicant Revision: NA

## UNDERWRITTEN CAPITALIZATION

# Applicant Revisions: 1 Last Update: 7/1/2013

### INTERIM SOURCES

Funding Source	Description	Amount	Rate	LTC
Dougherty Mortgage LLC	FHA 221 (d) 4	\$3,510,000	3.50%	38%
RBC Capital Markets	HTC	\$4,295,650	\$0.83	47%
Stonewall Ventures, LLC	Deferred Developer	\$979,745		11%
Deferred Operating Reserve		\$390,775		4%

<b>\$9,176,170</b>	<b>Total Sources</b>
--------------------	----------------------

**Comments:**

221(d)(4) loan carries 0.45% MIP in addition to stated interest rate.

**PERMANENT SOURCES**

Debt Source	PROPOSED				UNDERWRITTEN				
	Amount	Interest Rate	Amort	Term	Amount	Interest Rate	Amort	Term	LTC
Dougherty Mortgage LLC	\$3,510,000	3.50%	40	40	\$3,510,000	3.50%	40	40	38%
<b>Total</b>	<b>\$3,510,000</b>				<b>\$3,510,000</b>				

Equity & Deferred Fees	PROPOSED			UNDERWRITTEN			
	Amount	Rate	% Def	Amount	Rate	% TC	% Def
RBC Capital Markets	\$5,369,563	\$0.83		\$5,369,564	\$0.83	59%	
Stonewall Ventures, LLC	\$296,607		27%	\$296,606		3%	27%
<b>Total</b>	<b>\$5,666,170</b>			<b>\$5,666,170</b>			
				<b>\$9,176,170</b>		<b>Total Sources</b>	

Comments:

Pro forma is at the minimum 1.15 debt coverage with debt at a very low interest rate and 40-year amortization. If the actual terms of the debt are less favorable, the project must be re-evaluated and would likely be considered infeasible.

\$0.83 equity price is low in the current market. Deal is infeasible if equity price falls under \$0.81. Credit amount will be reduced if pricing is above \$0.88.

**CONCLUSIONS**

Recommended Financing Structure:

The total development cost estimate of \$9,176,170 less the permanent loan of \$3,510,000 leaves a gap of \$5,666,170.

The three possible tax credit allocations are:

Allocation determined by eligible basis:	<b>\$647,000</b>
Allocation limited by gap in financing:	<b>\$682,739</b>
Allocation requested by the Applicant:	<b>\$647,000</b>

A tax credit allocation of \$647,000 (as determined by eligible basis) is recommended. At the credit price of \$0.83 this allocation provides \$5,369,564 in total equity proceeds.

The underwritten capital structure indicates the need to defer \$296,606 of the developer fee. This amount can be repaid from cash flow within 10 years of stabilized operations.

Underwriter: Eric Weiner

Manager of Real Estate Analysis: Thomas Cavanagh

Director of Real Estate Analysis: Brent Stewart

**UNIT MIX/RENT SCHEDULE**  
**Stonebridge of Plainview, Plainview, 9% LIHTC #13139**

LOCATION DATA	
CITY:	Plainview
COUNTY:	Hale
PROGRAM REGION:	1
PIS Date:	On or After 1/18/2013
IREM REGION:	

UNIT DISTRIBUTION						
# Beds	# Units	% Total		Income	# Units	% Total
Eff				30%	5	6.3%
1	24	30.0%		40%		
2	40	50.0%		50%	12	15.0%
3	16	20.0%		60%	36	45.0%
4				MR	27	33.8%
<b>TOTAL</b>	<b>80</b>	<b>100.0%</b>		<b>TOTAL</b>	<b>80</b>	<b>100.0%</b>

Applicable Programs
9% Housing Tax Credits

Pro Forma ASSUMPTIONS	
Revenue Growth	2.00%
Expense Growth	3.00%
Basis Adjustment	130%
Applicable Fraction	66.25%
APP % Acquisition	
APP % Construction	9.00%
Average Unit Size	950 sf

UNIT MIX / MONTHLY RENT SCHEDULE																			
HTC		Unit Mix				APPLICABLE PROGRAM RENT			APPLICANT'S PRO FORMA RENTS				TDHCA PRO FORMA RENTS				MARKET RENTS		
Type	Gross Rent	# Units	# Beds	# Baths	NRA	Gross Rent	Tenant Pd UA's (Verified)	Max Net Program Rent	Delta to Max Program	Rent per NRA	Net Rent per Unit	Total Monthly Rent	Total Monthly Rent	Rent per Unit	Rent per NRA	Delta to Max Program	Market Rent	Rent per NRA	TDHCA Savings to Market
TC30%	\$284	2	1	1	750	\$284	\$86	\$198	(\$1)	\$0.26	\$197	\$394	\$396	\$198	\$0.26	\$0	\$624	0.83	\$426
TC50%	\$473	4	1	1	750	\$473	\$86	\$387	(\$1)	\$0.51	\$386	\$1,544	\$1,548	\$387	\$0.52	\$0	\$624	0.83	\$237
TC60%	\$568	9	1	1	750	\$568	\$86	\$482	(\$1)	\$0.64	\$481	\$4,329	\$4,338	\$482	\$0.64	\$0	\$624	0.83	\$142
MR		9	1	1	750	\$0	\$86		NA	\$0.90	\$675	\$6,075	\$5,616	\$624	\$0.83	NA	\$624	0.83	\$0
TC30%	\$341	3	2	2	983	\$341	\$105	\$236	(\$0)	\$0.24	\$236	\$708	\$708	\$236	\$0.24	\$0	\$724	0.74	\$488
TC50%	\$568	6	2	2	983	\$568	\$105	\$463	(\$0)	\$0.47	\$463	\$2,778	\$2,779	\$463	\$0.47	\$0	\$724	0.74	\$261
TC60%	\$682	17	2	2	983	\$682	\$105	\$577	(\$0)	\$0.59	\$577	\$9,809	\$9,811	\$577	\$0.59	\$0	\$724	0.74	\$147
MR		14	2	2	983	\$0	\$105		NA	\$0.79	\$775	\$10,850	\$10,136	\$724	\$0.74	NA	\$724	0.74	\$0
TC50%	\$656	2	3	2	1,165	\$656	\$124	\$532	(\$0)	\$0.46	\$532	\$1,064	\$1,065	\$532	\$0.46	\$0	\$799	0.69	\$267
TC60%	\$788	10	3	2	1,165	\$788	\$124	\$664	(\$0)	\$0.57	\$664	\$6,640	\$6,643	\$664	\$0.57	\$0	\$799	0.69	\$135
MR		4	3	2	1,165	\$0	\$124		NA	\$0.77	\$900	\$3,600	\$3,196	\$799	\$0.69	NA	\$799	0.69	\$0
<b>TOTALS/AVERAGE</b>		<b>80</b>			<b>75,960</b>				<b>(\$0)</b>	<b>\$0.63</b>	<b>\$597</b>	<b>\$47,791</b>	<b>\$46,236</b>	<b>\$578</b>	<b>\$0.61</b>	<b>\$0</b>	<b>\$709</b>	<b>\$0.75</b>	<b>\$131</b>

<b>ANNUAL POTENTIAL GROSS RENT:</b>		<b>\$573,492</b>	<b>\$554,826</b>
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**STABILIZED PRO FORMA**

**Stonebridge of Plainview, Plainview, 9% LIHTC #13139**

STABILIZED FIRST YEAR PRO FORMA												
	COMPARABLES		APPLICANT			TDHCA			VARIANCE			
	Database	Plainview Comps	% EGI	Per SF	Per Unit	Amount	Amount	Per Unit	Per SF	% EGI	%	\$
<b>POTENTIAL GROSS RENT</b>				\$0.63	\$597	\$573,492	\$554,826	\$578	\$0.61		-3.4%	(\$18,666)
garages					\$6.25	\$6,000					0.0%	(6,000)
application, pet, late, and NSFFees					\$6.25	\$6,000					0.0%	(6,000)
telephone, cable, vending					\$2.50	\$2,400					0.0%	(2,400)
Underwriter's Total Secondary Income							\$14,400	\$15.00			100.0%	14,400
<b>POTENTIAL GROSS INCOME</b>		\$ -				\$587,892	\$569,226				-3.3%	(\$18,666)
Vacancy & Collection Loss					7.5% PGI	(44,092)	(42,692)	7.5% PGI			-3.3%	1,400
Non-Rental Units/Concessions						-					0.0%	-
<b>EFFECTIVE GROSS INCOME</b>		\$ -				\$543,800	\$526,534				-3.3%	(\$17,266)

General & Administrative	\$26,045	\$326/Unit	24,373	4.62%	\$0.33	\$314	\$25,100	\$24,373	\$305	\$0.32	4.63%	3.0%	727
Management	\$26,804	5.3% EGI	21,835	5.00%	\$0.36	\$340	\$27,190	\$26,327	\$329	\$0.35	5.00%	3.3%	863
Payroll & Payroll Tax	\$86,687	\$1,084/Unit	87,352	17.81%	\$1.28	\$1,211	\$96,875	\$87,352	\$1,092	\$1.15	16.59%	10.9%	9,523
Repairs & Maintenance	\$45,523	\$569/Unit	65,021	5.78%	\$0.41	\$393	\$31,445	\$44,000	\$550	\$0.58	8.36%	-28.5%	(12,555)
Electric/Gas	\$19,335	\$242/Unit	12,382	2.21%	\$0.16	\$150	\$12,000	\$12,382	\$155	\$0.16	2.35%	-3.1%	(382)
Water, Sewer, & Trash	\$41,895	\$524/Unit	56,822	5.98%	\$0.43	\$406	\$32,500	\$36,530	\$457	\$0.48	6.94%	-11.0%	(4,030)
Property Insurance	\$18,625	\$0.25 /sf	20,488	4.41%	\$0.32	\$300	\$24,000	\$24,000	\$300	\$0.32	4.56%	0.0%	-
Property Tax 1.6896	\$43,856	\$548/Unit	17,351	10.30%	\$0.74	\$700	\$56,000	\$30,163	\$377	\$0.40	5.73%	85.7%	25,837
Reserve for Replacements	\$13,957	\$174/Unit	833	5.15%	\$0.37	\$350	\$28,000	\$28,000	\$350	\$0.37	5.32%	0.0%	-
Cable TV			1,689	0.00%	\$0.00	\$0	\$0	\$0	\$0	\$0.00	0.00%	0.0%	-
Supportive service contract fees				1.10%	\$0.08	\$75	\$6,000	\$6,000	\$75	\$0.08	1.14%	0.0%	-
TDHCA Compliance fees			4,737	0.59%	\$0.04	\$40	\$3,200	\$2,120	\$27	\$0.03	0.40%	50.9%	1,080
TDHCA Bond Administration Fees (TDHCA as Bond)			279	0.00%	\$0.00	\$0	\$0	\$0	\$0	\$0.00	0.00%	0.0%	-
Security			155	0.00%	\$0.00	\$0	\$0	\$0	\$0	\$0.00	0.00%	0.0%	-
<b>TOTAL EXPENSES</b>			<b>\$ 313,318</b>	<b>62.95%</b>	<b>\$4.51</b>	<b>\$4,279</b>	<b>\$ 342,310</b>	<b>\$ 321,247</b>	<b>\$4,016</b>	<b>\$4.23</b>	<b>61.01%</b>	<b>6.6%</b>	<b>\$ 21,063</b>
<b>NET OPERATING INCOME ("NOI")</b>				<b>37.05%</b>	<b>\$2.65</b>	<b>\$2,519</b>	<b>\$201,490</b>	<b>\$205,287</b>	<b>\$2,566</b>	<b>\$2.70</b>	<b>38.99%</b>	<b>-1.8%</b>	<b>(\$3,797)</b>

<b>CONTROLLABLE EXPENSES</b>	\$2,744/Unit	\$3,074/Unit		\$2,474/Unit		\$2,558/Unit
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LONG TERM OPERATING PRO FORMA												
	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 10	YEAR 15	YEAR 20	YEAR 25	YEAR 30	YEAR 35	YEAR 40
<b>EFFECTIVE GROSS INCOME</b>	\$526,534	\$537,065	\$547,806	\$558,762	\$569,937	\$629,257	\$694,750	\$767,061	\$846,897	\$935,043	\$1,032,363	\$1,139,812
LESS: TOTAL EXPENSES	321,247	330,621	340,271	350,206	360,432	416,267	480,831	555,498	641,857	741,751	857,313	991,011
<b>NET OPERATING INCOME</b>	<b>\$205,287</b>	<b>\$206,443</b>	<b>\$207,535</b>	<b>\$208,557</b>	<b>\$209,505</b>	<b>\$212,990</b>	<b>\$213,919</b>	<b>\$211,563</b>	<b>\$205,040</b>	<b>\$193,291</b>	<b>\$175,050</b>	<b>\$148,800</b>
LESS: DEBT SERVICE	178,964	178,964	178,964	178,964	178,964	178,964	178,964	178,964	178,964	178,964	178,964	178,964
<b>NET CASH FLOW</b>	<b>\$26,323</b>	<b>\$27,479</b>	<b>\$28,571</b>	<b>\$29,592</b>	<b>\$30,541</b>	<b>\$34,026</b>	<b>\$34,955</b>	<b>\$32,599</b>	<b>\$26,076</b>	<b>\$14,327</b>	<b>(\$3,914)</b>	<b>(\$30,164)</b>
<b>CUMULATIVE NET CASH FLOW</b>	\$26,323	\$53,802	\$82,373	\$111,965	\$142,506	\$306,558	\$480,634	\$649,820	\$795,108	\$892,568	\$912,360	\$817,582
<b>DEFERRED DEVELOPER FEE BALANCE</b>	\$270,283	\$242,803	\$214,233	\$184,640	\$154,099	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>DCR ON UNDERWRITTEN DEBT (Must-Pay)</b>	1.15	1.15	1.16	1.17	1.17	1.19	1.20	1.18	1.15	1.08	0.98	0.83
<b>EXPENSE/EGI RATIO</b>	61.01%	61.56%	62.12%	62.68%	63.24%	66.15%	69.21%	72.42%	75.79%	79.33%	83.04%	86.95%

**CAPITALIZATION / TOTAL DEVELOPMENT BUDGET / ITEMIZED BASIS**

*Stonebridge of Plainview, Plainview, 9% LIHTC #13139*

DEBT / GRANT SOURCES															
APPLICANT'S PROPOSED DEBT/GRANT STRUCTURE								AS UNDERWRITTEN DEBT/GRANT STRUCTURE							
DEBT (Must Pay)	MIP	Cumulative DCR		Pmt	Rate	Amort	Term	Principal	Principal	Term	Amort	Rate	Pmt	Cumulative	
		UW	App											DCR	LTC
Dougherty Mortgage LLC	0.45%	1.15	1.13	\$178,964	3.50%	40	40	\$3,510,000	\$3,510,000	40	40	3.50%	178,964	1.15	38.3%
<b>TOTAL DEBT / GRANT SOURCES</b>				<b>\$178,964</b>				<b>\$3,510,000</b>	<b>\$3,510,000</b>				<b>\$178,964</b>		<b>38.3%</b>

<b>NET CASH FLOW</b>	\$26,323	\$22,526	<b>NET OPERATING INCOME</b>	\$205,287	\$26,323	<b>NET CASH FLOW</b>
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EQUITY SOURCES																
APPLICANT'S PROPOSED EQUITY STRUCTURE						AS UNDERWRITTEN EQUITY STRUCTURE										
EQUITY / DEFERRED FEES	DESCRIPTION	% Cost	Annual Credit	Credit Price	Amount	Amount	Credit Price	Annual Credit	% Cost	Annual Credits per Unit						
												RBC Capital Markets	LIHTC Equity	58.5%	\$647,000	0.83
Stonewall Ventures, LLC	Deferred Developer Fees	3.2%	(27% Deferred)		\$296,607	\$296,606	(27% Deferred)		3.2%		<b>Total Developer Fee:</b>					
Additional (Excess) Funds Req'd		0.0%			(\$1)	\$0			0.0%		<b>15-Year Cash Flow:</b>					
<b>TOTAL EQUITY SOURCES</b>											61.7%	\$5,666,170	\$5,666,170	61.7%	<b>Cash Flow after Deferred Fee:</b>	<b>\$184,028</b>
<b>TOTAL CAPITALIZATION</b>						<b>\$9,176,170</b>	<b>\$9,176,170</b>									

DEVELOPMENT COST / ITEMIZED BASIS													
APPLICANT COST / BASIS ITEMS						TDHCA COST / BASIS ITEMS						COST VARIANCE	
	Eligible Basis		Total Costs		Total Costs	Eligible Basis		Total Costs		%	\$		
	Acquisition	New Const. Rehab				New Const. Rehab	Acquisition						
Land Acquisition			\$2,878 / Unit	\$230,208	\$230,208	\$2,878 / Unit				0.0%	\$0		
Building Acquisition	\$0		\$ / Unit	\$0	\$0	\$ / Unit			\$0	0.0%	\$0		
Off-Sites			\$ / Unit	\$0	\$0	\$ / Unit				0.0%	\$0		
Sitework		\$843,000	\$10,538 / Unit	\$843,000	\$843,000	\$10,538 / Unit	\$843,000			0.0%	\$0		
Site Amenities		\$324,000	\$4,050 / Unit	\$324,000	\$324,000	\$4,050 / Unit	\$324,000			0.0%	\$0		
Building Costs		\$4,138,250	\$55.01 /sf	\$52,228/Unit	\$4,178,250	\$57,848/Unit	\$60.92 /sf	\$4,587,304		-9.7%	(\$449,574)		
Contingency		\$265,263	5.00%	5.00%	\$267,263	\$267,263	4.61%	4.61%	\$265,263	0.0%	\$0		
Contractor's Fees		\$742,735	13.33%	13.33%	\$748,335	\$748,335	12.34%	12.34%	\$742,735	0.0%	\$0		
Indirect Construction	0	\$700,050	\$9,626 / Unit	\$770,050	\$770,050	\$9,626 / Unit	\$700,050	\$0		0.0%	\$0		
Developer's Fees	\$0	\$1,088,745	15.00%	14.91%	\$1,088,745	\$1,088,745	14.05%	14.13%	\$1,088,745	\$0	0.0%	\$0	
Financing	0	\$245,000	\$5,345 / Unit	\$427,629	\$427,629	\$5,345 / Unit	\$245,000	\$0		0.0%	\$0		
Reserves			\$3,734 / Unit	\$298,690	\$218,882	\$2,736 / Unit				36.5%	\$79,808		
<b>UNADJUSTED BASIS / COST</b>		<b>\$0</b>	<b>\$8,347,043</b>	<b>\$114,702 / Unit</b>	<b>\$9,176,170</b>	<b>\$9,545,936</b>	<b>\$119,324 / Unit</b>	<b>\$8,796,097</b>	<b>\$0</b>	<b>-3.9%</b>	<b>(\$369,766)</b>		
Acquisition Cost for Identity of Interest Seller				\$0									
Contingency		\$0											
Contractor's Fee		\$0											
Interim Interest		\$0											
Developer's Fee	\$0	(\$0)		\$0									
<b>ADJUSTED BASIS / COST</b>		<b>\$0</b>	<b>\$8,347,042</b>	<b>\$114,702/unit</b>	<b>\$9,176,170</b>	<b>\$9,545,936</b>	<b>\$119,324/unit</b>	<b>\$8,796,097</b>	<b>\$0</b>	<b>-3.9%</b>	<b>(\$369,766)</b>		
<b>TOTAL UNDERWRITTEN COSTS (Applicant's Uses are within 5% of TDHCA Estimate):</b>					<b>\$9,176,170</b>								



**CAPITALIZATION / DEVELOPMENT COST BUDGET / ITEMIZED BASIS ITEMS**

*Stonebridge of Plainview, Plainview, 9% LIHTC #13139*

**CREDIT CALCULATION ON QUALIFIED BASIS**

	Applicant		TDHCA	
	Acquisition	Construction Rehabilitation	Acquisition	Construction Rehabilitation
	<b>ADJUSTED BASIS</b>	\$0	\$8,347,042	\$0
Deduction of Federal Grants	\$0	\$0	\$0	\$0
<b>TOTAL ELIGIBLE BASIS</b>	\$0	\$8,347,042	\$0	\$8,796,097
High Cost Area Adjustment		130%		130%
<b>TOTAL ADJUSTED BASIS</b>	\$0	\$10,851,155	\$0	\$11,434,926
Applicable Fraction	66.25%	66.25%	66.25%	66.25%
<b>TOTAL QUALIFIED BASIS</b>	\$0	\$7,188,890	\$0	\$7,575,638
Applicable Percentage	0.00%	9.00%	0.00%	9.00%
<b>ANNUAL CREDIT ON BASIS</b>	\$0	\$647,000	\$0	\$681,807
<b>CREDITS ON QUALIFIED BASIS</b>	\$647,000		\$681,807	

**ANNUAL CREDIT CALCULATION  
BASED ON APPLICANT BASIS**

Method	Annual Credits	Proceeds
Eligible Basis	\$647,000	\$5,369,564
Gap	\$682,739	\$5,666,170
Original Request	\$647,000	\$5,369,563
Current Request	\$647,000	\$5,369,564

**FINAL ANNUAL LIHTC  
ALLOCATION**

Method	Eligible Basis	Variance to Request
<b>Credits</b>	<b>\$647,000</b>	<b>(\$0)</b>
<b>Total Equity Proceeds</b>	<b>\$5,369,564</b>	<b>(\$0)</b>

**Building Cost/SF**

Development Category	New Construction	Category Building Cost/SF (Mean)	
NRA	75,960	Calculated Building Cost/SF <sup>(3)</sup>	<b>\$62.03 /sf</b>
Elevator Served Enclosed Corridors <sup>(1)</sup>	0	Building Cost Variance (\$)	<b>\$7.03 /sf</b>
Common Area <sup>(2)</sup>	0	Variance to Mean (%)	<b>11.3%</b>
<b>Total SF for QAP Calculation</b>	<b>75,960</b>	Building Cost/SF reported in Application <sup>(3)</sup>	<b>\$55.01 /sf</b>
		Variance to Mean based on Application	<b>11.3%</b>

(1) Supportive Housing, Qualified Elderly or 4-Story Development

(2) Up to \$50 SF/Unit common area for Supportive Housing

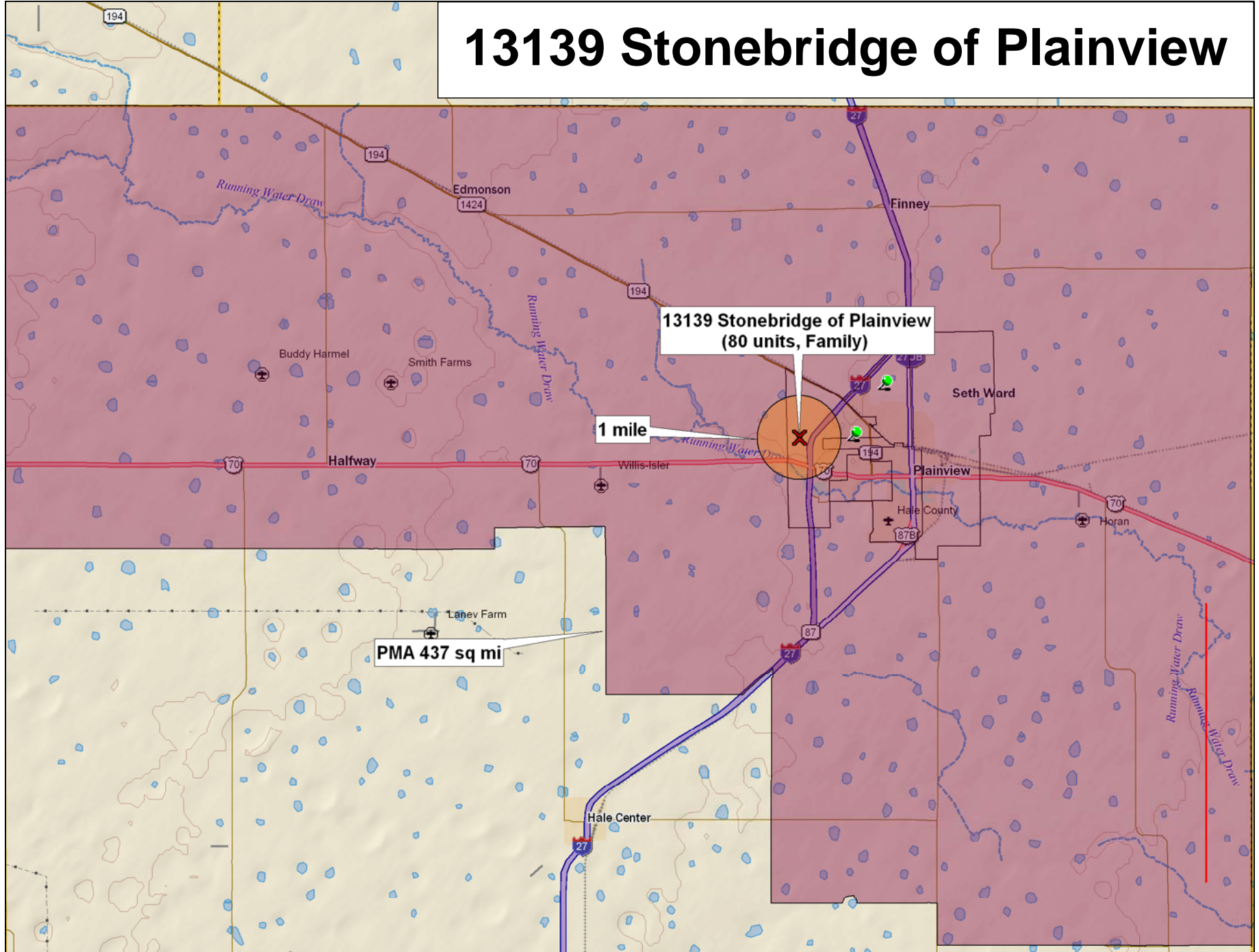
(3) Excludes Structured Parking

**DIRECT CONSTRUCTION COST ESTIMATE**

CATEGORY	FACTOR	UNITS/SF	PER SF	AMOUNT
Base Cost:	Garden (Up to 3-story)	75,960 SF	\$61.44	4,666,870
Adjustments				
Exterior Wall Finish	2.00%		1.23	\$93,337
	0.00%		0.00	0
9 ft. ceilings	3.25%		2.00	151,673
Roofing			0.00	0
Subfloor			(0.78)	(58,869)
Floor Cover			2.68	203,573
Breezeways	\$25.04	13,100	4.32	327,959
Balconies	\$24.82	5,030	1.64	124,862
Plumbing Fixtures	\$940	168	2.08	157,920
Rough-ins	\$465	80	0.49	37,200
Built-In Appliances	\$1,750	80	1.84	140,000
Exterior Stairs	\$2,125	20	0.56	42,500
Heating/Cooling			2.06	156,478
Enclosed Corridors	\$45.95	0	0.00	0
Carports	\$11.30	0	0.00	0
Garages	\$22.53	2,501	0.74	56,348
Comm &/or Aux Bldgs	\$84.96	1,500	1.68	127,440
Elevators		0	0.00	0
<b>Other:</b>			0.00	0
Other: fire sprinkler	\$2.30	90,560	2.74	208,288
<b>SUBTOTAL</b>			<b>84.72</b>	<b>6,435,578</b>
Current Cost Multiplier	0.98		-1.69	(128,712)
Local Multiplier	0.87		-11.01	(836,625)
<b>TOTAL DIRECT CONSTRUCTION COSTS</b>			<b>72.01</b>	<b>\$5,470,241</b>
Plans, specs, survey, bldg permits	3.90%		-2.81	(213,339)
Contractor's OH & Profit	11.50%		-8.28	(629,078)
<b>NET DIRECT CONSTRUCTION COSTS</b>		\$57,848/unit	\$60.92/sf	\$4,627,824



# 13139 Stonebridge of Plainview



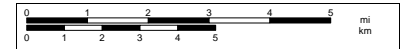
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TN  
 MN (6.6°E)  
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Scale 1 : 200,000



1" = 3.16 mi

Printed 8/28/13 Date 8/28/13



**Addendum to Underwriting Report**

TDHCA Application #: **13139** Program(s): **9% LIHTC & HOME**

**Stonebridge at Plainview**

Address/Location: NE corner of Mesa Dr. and 16th St.

City: Plainview County: Hale Zip: 79072

APPLICATION HISTORY	
Report Date	PURPOSE
05/29/14	Revised Financing w/ TDHCA HOME
11/04/13	Commitment Notice - Revised Financing
08/28/13	Initial Underwriting Report

**ALLOCATION**

TDHCA Program	Previous Allocation				RECOMMENDATION				
	Amount	Rate	Amort	Term	Amount	Rate	Amort	Term	Lien
HOME Activity Funds	\$0	0.00%	0	0	\$750,000	0.00%	40	40	2
LIHTC (Annual)	\$647,000				\$647,000				

\* Lien position after conversion to permanent. The Department's lien position during construction may vary.

**CONDITIONS STATUS**

- 1 Receipt and acceptance by Commitment:
  - Evidence of final zoning that was proposed or needed to be changed pursuant to the Development plan.

Status: **cleared**

Applicant provided a letter dated August 15, 2013 from the County stating that there is no zoning ordinance in unincorporated areas. Since the property has not been annexed at time of Commitment, this condition would be met per Competitive Tax Credit Program Manager on October 31, 2013.
- 2 Receipt and acceptance by September 28, 2013:
  - Updated term sheet from Lender confirming the rates and terms of the proposed debt.

Status: **cleared**

Applicant provided a term sheet from Bonneville Mortgage Company changing the loan type from a FHA 221 (d)(4) to a USDA 538 loan.
- 3 Receipt and acceptance by October 12, 2013:
  - MAP Invitation Letter for FHA 221(d)(4) loan, or firm commitment from Lender indicating the date that HUD concept meeting was held, and Lender's intent to proceed with HUD application.

Status: **cleared**

This condition has been rendered not applicable as a result of the fact that Applicant is no longer applying for a FHA 221 (d) (4) loan. Applicant has provided NOFA selection letter for the 538 loan from USDA dated October 17, 2013.

4 Receipt and acceptance by Cost Certification:

- Documentation clearing environmental issues contained in the ESA report, specifically:
  - \* Evidence that the recommendations of the ESA provider with regard to radon gas have been implemented, and verification that radon levels within the finished development are acceptable.

5 Should any terms of the proposed capital structure change, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

**SET-ASIDES**

TDHCA SET-ASIDES for HTC LURA		
Income Limit	Rent Limit	Number of Units
30% of AMI	30% of AMI	5
40% of AMI	40% of AMI	0
50% of AMI	50% of AMI	12
60% of AMI	60% of AMI	36

TDHCA SET-ASIDES for TDHCA HOME LURA		
Income Limit	Rent Limit	Number of Units
50% of AMFI	Low HOME	2
60% of AMFI	High HOME	8

**ANALYSIS**

**Deal Summary**

Applicant received an allocation of 9% tax credits in the 2013 application round. Subsequently, the Applicant was not able to secure financing due to local market issues related to closure of a processing plant as well as interest rate increases.

As a result and through restructuring attempts of the finance plan, the development was not feasible with the higher interest rate on a USDA 538 loan (which replaced the originally proposed FHA loan). Therefore, the Applicant reduced USDA senior debt from \$2.95M to \$2.55M and is requesting \$750K in HOME funds from TDHCA.

Nearly 40% of the units are market rate. Applicant proposes market rents with \$194-\$236 premiums over the 60% HTC rents. Only market comp data that supports these rents is from a new 12-unit fourplex property nearby, consisting of 1BR and 2BR units. There are no other recent market comparables in the Plainview area. Older HTC with market units show rents that are \$35 to \$47 less than the REA proposed rents (but much older property). The REA analysis assumes market unit premiums of \$95-\$132 over the HTC 60% rents based on independent market research using existing properties and considering improvement to the market since the HOME application was submitted. REA rents are \$40 to \$65 lower than the lender's rents.

With the REA market rents the property cannot support the Applicant's proposed debt structure. The recommended capital structure reduces the USDA 538 loan to \$2.0M amortized over 40 years at 5.3% (plus 0.5% guarantee fee) and a \$750K TDHCA HOME loan at 0% over 40 years.

Based on the overall debt reduction, debt coverage is 1.35x on the \$2.75M of hard debt (USDA and HOME). \$840K of developer fee (77% of total fee) must be deferred, which can be repaid by the end of 15 years. There is significant feasibility risk that the applicant will be unable to fully repay deferred developer fee if they are unable to attain UW rents or expenses exceed pro forma amounts.

**Operating Pro Forma**

Ten units were designated as HOME units with no impact to income due to lower HTC rents. Underwritten operating expenses changed by less than 3%. NOI is 6% less than original underwriting due to lowered expectations for market rent levels based on current economic information.

**Development Cost**

Hard Costs are unchanged with minimal changes in financing and reserve amounts due to addition of HOME loan. Seller (related party) purchased 12.5 acres for \$425K in 2012. Purchaser is purchasing 5.09 acres pro rata (\$230K).

**Sources of Funds**

Primary debt is reduced by \$950K and supplemented with \$750K TDHCA HOME funds at 0% interest. General Contractor is contributing \$38K grant to satisfy the HOME match requirement. Tax credit equity price remains at \$0.89.

**Market Analysis**

A major employer in the area (Cargill) closed a factory in January 2013. A market study supplement dated May 8, 2014, revealed improvement since a November report (submitted with the HOME application) as the occupancy at the older of the two rent-restricted developments increased from 94% to 98% while the newer one (built in 2006) increased its occupancy from 91% to 96%. This reveals some deterioration in the Plainview market as occupancies were above 99% in February 2013, when the initial Market Study was prepared, but does reveal improvement since November 2013 when the Market Study for the HOME loan application was submitted. The market study supplement also reported positive employment trends including 352 new jobs added from November 2013-March 2014. Jobs were added at the White Energy ethanol plant, Wal Mart Distribution Center, and Azteca Milling Company. Mr. Jack also resurveyed rental projects in the area and found that the overall occupancy rate increased from 87.7% to 92.6%.

1,200 of the 2,220 jobs lost at the Cargill plant were to Plainview residents. The Market Analyst performed an employment-based analysis indicating that demand could decrease by 474 units over the next 4 years. But the traditional demand analysis indicates sufficient existing demand to support the proposed units.

**Conclusion**

REA recommends approval of the HOME loan subject to:

- (1) annual maximum amortization debt service on any senior debt can not exceed \$130,536 (currently achieved assuming a \$2M senior loan at 5.30% plus MIP on a 40 year amortization). Any combination of principal and interest allowed to achieve maximum debt service.
- (2) senior loan documents (and/or partnership documents) must contain a provision that any stabilization resizing includes the debt service on the TDHCA HOME loan at a 1.15:1 DCR.

Underwriter:	<u>Eric Weiner</u>
Manager of Real Estate Analysis:	<u>Thomas Cavanagh</u>
Director of Real Estate Analysis:	<u>Brent Stewart</u>

**UNIT MIX/RENT SCHEDULE**

**Stonebridge of Plainview, Plainview, 9% LIHTC #13139**

LOCATION DATA	
CITY:	Plainview
COUNTY:	Hale
PROGRAM REGION:	1
PIS Date:	On or After 1/18/2013
IREM REGION:	

UNIT DISTRIBUTION		
# Beds	# Units	% Total
Eff		
1	24	30.0%
2	40	50.0%
3	16	20.0%
4		
<b>TOTAL</b>	<b>80</b>	<b>100.0%</b>

Applicable Programs
9% Housing Tax Credits
HOME

Pro Forma ASSUMPTIONS	
Revenue Growth	2.00%
Expense Growth	3.00%
Basis Adjustment	130%
Applicable Fraction	66.25%
APP % Acquisition	0.00%
APP % Construction	9.00%
Average Unit Size	950 sf

UNIT MIX / MONTHLY RENT SCHEDULE																					
HTC		HOME (Rent/Inc)		Unit Mix				APPLICABLE PROGRAM RENT			APPLICANT'S PRO FORMA RENTS				TDHCA PRO FORMA RENTS				MARKET RENTS		
Type	Gross Rent	Type	Gross Rent	# Units	# Beds	# Baths	NRA	Gross Rent	Tenant Pd UA's (Verified)	Max Net Program Rent	Delta to Max Program	Rent per NRA	Net Rent per Unit	Total Monthly Rent	Total Monthly Rent	Rent per Unit	Rent per NRA	Delta to Max Program	Market Rent	Rent per NRA	TDHCA Savings to Market
TC30%	\$284	LH/50%	\$473	2	1	1	750	\$284	\$86	\$198	(\$1)	\$0.26	\$197	\$394	\$396	\$198	\$0.26	\$0	\$585	0.78	\$387
TC50%	\$473	HH/60%	\$491	1	1	1	750	\$473	\$86	\$387	(\$1)	\$0.51	\$386	\$386	\$387	\$387	\$0.52	\$0	\$585	0.78	\$198
TC50%	\$473	0		3	1	1	750	\$473	\$86	\$387	(\$1)	\$0.51	\$386	\$1,158	\$1,161	\$387	\$0.52	\$0	\$585	0.78	\$198
TC60%	\$568	0		9	1	1	750	\$568	\$86	\$482	(\$1)	\$0.64	\$481	\$4,329	\$4,338	\$482	\$0.64	\$0	\$585	0.78	\$103
MR	0	0		9	1	1	750	\$0	\$86		NA	\$0.90	\$675	\$6,075	\$5,040	\$560	\$0.75	NA	\$585	0.78	\$25
TC30%	\$341	0		3	2	2	983	\$341	\$105	\$236	(\$0)	\$0.24	\$236	\$708	\$708	\$236	\$0.24	\$0	\$685	0.70	\$449
TC50%	\$568	HH/60%	\$626	1	2	2	983	\$568	\$105	\$463	(\$0)	\$0.47	\$463	\$463	\$463	\$463	\$0.47	\$0	\$685	0.70	\$222
TC50%	\$568	0		5	2	2	983	\$568	\$105	\$463	(\$0)	\$0.47	\$463	\$2,315	\$2,316	\$463	\$0.47	\$0	\$685	0.70	\$222
TC60%	\$682	0		17	2	2	983	\$682	\$105	\$577	(\$0)	\$0.59	\$577	\$9,809	\$9,811	\$577	\$0.59	\$0	\$685	0.70	\$108
MR	0	0		14	2	2	983	\$0	\$105		NA	\$0.79	\$775	\$10,850	\$9,240	\$660	\$0.67	NA	\$685	0.70	\$25
TC50%	\$656	0		2	3	2	1,165	\$656	\$124	\$532	(\$0)	\$0.46	\$532	\$1,064	\$1,065	\$532	\$0.46	\$0	\$785	0.67	\$253
TC60%	\$788	HH/60%	\$820	6	3	2	1,165	\$788	\$124	\$664	(\$0)	\$0.57	\$664	\$3,984	\$3,986	\$664	\$0.57	\$0	\$785	0.67	\$121
TC60%	\$788	0		4	3	2	1,165	\$788	\$124	\$664	(\$0)	\$0.57	\$664	\$2,656	\$2,657	\$664	\$0.57	\$0	\$785	0.67	\$121
MR	0	0		4	3	2	1,165	\$0	\$124		NA	\$0.77	\$900	\$3,600	\$3,040	\$760	\$0.65	NA	\$785	0.67	\$25
<b>TOTALS/AVERAGES:</b>				<b>80</b>			<b>75,960</b>				<b>(\$0)</b>	<b>\$0.63</b>	<b>\$597</b>	<b>\$47,791</b>	<b>\$44,608</b>	<b>\$558</b>	<b>\$0.59</b>	<b>\$0</b>	<b>\$675</b>	<b>\$0.71</b>	<b>\$117</b>

<b>ANNUAL POTENTIAL GROSS RENT:</b>	<b>\$573,492</b>	<b>\$535,290</b>
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**STABILIZED PROFORMA**

*Stonebridge of Plainview, Plainview, 9% LIHTC #13139*

**STABILIZED FIRST YEAR PRO FORMA**

	COMPARABLES		APPLICANT				Last Revision	Original UW 8/28/13		Last Revision	TDHCA				VARIANCE		
	Database	Plainview Comps	% EGI	Per SF	Per Unit	Amount	Applicant 11/4/13	Applicant 8/28/13	TDHCA 8/28/13	TDHCA 11/4/13	Amount	Per Unit	Per SF	% EGI	%	\$	
<b>POTENTIAL GROSS RENT</b>				\$0.63	\$597	\$573,492	\$573,492	\$573,492	\$554,826	\$554,826	\$535,290	\$558	\$0.59		-7.1%	(\$38,202)	
garages					\$6.25	\$6,000	\$6,000	\$6,000							0.0%	(6,000)	
application, pet, late, and NSFFees					\$6.25	\$6,000	\$6,000	\$6,000							0.0%	(6,000)	
telephone, cable, vending					\$2.50	\$2,400	\$2,400	\$2,400							0.0%	(2,400)	
Underwriter's Total Secondary Income									14,400	14,400	\$19,200	\$20.00			100.0%	19,200	
<b>POTENTIAL GROSS INCOME</b>		\$ -				\$587,892	\$587,892	\$587,892	\$569,226	\$569,226	\$554,490				-6.0%	(\$33,402)	
Vacancy & Collection Loss					7.5% PGI	(44,092)	(44,092)	(44,092)	(42,692)	(42,692)	(41,587)			7.5% PGI	-6.0%	2,505	
Non-Rental Units/Concessions						-	-	-							0.0%	-	
<b>EFFECTIVE GROSS INCOME</b>		\$ -				\$543,800	\$543,800	\$543,800	\$526,534	\$526,534	\$512,903				-6.0%	(\$30,897)	
General & Administrative	\$26,045	\$326/Unit	24,373	4.62%	\$0.33	\$314	\$25,100	\$25,100	\$25,100	\$24,373	\$24,373	\$24,373	\$305	\$0.32	4.75%	3.0%	727
Management	\$26,804	5.3% EGI	21,835	5.00%	\$0.36	\$340	\$27,190	\$27,190	\$27,190	\$26,327	\$26,327	\$25,645	\$321	\$0.34	5.00%	6.0%	1,545
Payroll & Payroll Tax	\$86,687	\$1,084/Unit	87,352	17.81%	\$1.28	\$1,211	\$96,875	\$96,875	\$96,875	\$87,352	\$87,352	\$87,352	\$1,092	\$1.15	17.03%	10.9%	9,523
Repairs & Maintenance	\$45,523	\$569/Unit	65,021	5.78%	\$0.41	\$393	\$31,445	\$31,445	\$31,445	\$44,000	\$44,000	\$44,000	\$550	\$0.58	8.58%	-28.5%	(12,555)
Electric/Gas	\$19,335	\$242/Unit	12,382	2.21%	\$0.16	\$150	\$12,000	\$12,000	\$12,000	\$12,382	\$12,382	\$12,382	\$155	\$0.16	2.41%	-3.1%	(382)
Water, Sewer, & Trash	\$41,895	\$524/Unit	56,822	5.98%	\$0.43	\$406	\$32,500	\$32,500	\$32,500	\$36,530	\$36,530	\$36,530	\$457	\$0.48	7.12%	-11.0%	(4,030)
Property Insurance	\$18,625	\$0.25 /sf	20,488	4.41%	\$0.32	\$300	\$24,000	\$24,000	\$24,000	\$24,000	\$24,000	\$24,000	\$300	\$0.32	4.68%	0.0%	-
Property Tax 1.6896	\$43,856	\$548/Unit	17,351	10.30%	\$0.74	\$700	\$56,000	\$56,000	\$56,000	\$30,163	\$30,163	\$31,187	\$390	\$0.41	6.08%	79.6%	24,813
Reserve for Replacements	\$13,957	\$174/Unit	833	3.68%	\$0.26	\$250	\$20,000	\$20,000	\$28,000	\$28,000	\$20,000	\$20,000	\$250	\$0.26	3.90%	0.0%	-
Cable TV			1,689	0.00%	\$0.00	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0.00	0.00%	0.0%	-
Supportive service contract fees				1.10%	\$0.08	\$75	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	\$75	\$0.08	1.17%	0.0%	-
TDHCA Compliance fees			4,737	0.59%	\$0.04	\$40	\$3,200	\$3,200	\$3,200	\$2,120	\$2,120	\$2,120	\$27	\$0.03	0.41%	50.9%	1,080
<b>TOTAL EXPENSES</b>	\$ 313,318		61.48%	\$4.40	\$4,179	\$ 334,310	\$ 334,310	\$ 342,310	\$321,247	\$313,247	\$313,589	\$3,920	\$4.13	61.14%	6.6%	\$ 20,721	
<b>NET OPERATING INCOME ("NOI")</b>			38.52%	\$2.76	\$2,619	\$209,490	\$209,490	\$201,490	\$205,287	\$213,287	\$199,314	\$2,491	\$2.62	38.86%	5.1%	\$10,176	

<b>CONTROLLABLE EXPENSES</b>	\$2,744/Unit	\$3,074/Unit		\$2,474/Unit								\$2,558/Unit	
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**LONG TERM OPERATING PRO FORMA**

	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 10	YEAR 15	YEAR 20	YEAR 25	YEAR 30	YEAR 35	YEAR 40
POTENTIAL GROSS RENT	\$535,290	\$545,996	\$556,916	\$568,054	\$579,415	\$639,721	\$706,304	\$720,430	\$734,838	\$749,535	\$764,526	\$779,816
garages	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
application, pet, late, and NSFFees	0	0	0	0	0	0	0	0	0	0	0	0
telephone, cable, vending	0	0	0	0	0	0	0	0	0	0	0	0
Underwriter's Total Secondary Income	19,200	19,584	19,976	20,375	20,783	\$22,946	\$25,334	25,841	26,357	26,885	27,422	27,971
<b>POTENTIAL GROSS INCOME</b>	<b>554,490</b>	<b>565,580</b>	<b>576,891</b>	<b>588,429</b>	<b>600,198</b>	<b>662,667</b>	<b>731,638</b>	<b>746,271</b>	<b>761,196</b>	<b>776,420</b>	<b>791,948</b>	<b>807,787</b>
Vacancy & Collection Loss	(41,587)	(42,418)	(43,267)	(44,132)	(45,015)	(49,700)	(54,873)	(55,970)	(57,090)	(58,231)	(59,396)	(60,584)
Non-Rental Units/Concessions	0	0	0	0	0	0	0	0	0	0	0	0
<b>EFFECTIVE GROSS INCOME</b>	<b>\$512,903</b>	<b>\$523,161</b>	<b>\$533,625</b>	<b>\$544,297</b>	<b>\$555,183</b>	<b>\$612,967</b>	<b>\$676,765</b>	<b>\$747,203</b>	<b>\$824,973</b>	<b>\$910,837</b>	<b>\$1,005,637</b>	<b>\$1,110,305</b>
LESS: TOTAL EXPENSES	313,589	322,740	332,161	341,859	351,842	417,277	482,047	556,956	643,603	743,836	859,796	993,964
<b>NET OPERATING INCOME</b>	<b>\$199,314</b>	<b>\$200,421</b>	<b>\$201,464</b>	<b>\$202,438</b>	<b>\$203,341</b>	<b>\$195,690</b>	<b>\$194,718</b>	<b>\$190,247</b>	<b>\$181,370</b>	<b>\$167,001</b>	<b>\$145,841</b>	<b>\$116,341</b>
LESS: DEBT SERVICE	149,286	149,286	149,286	149,286	149,286	149,286	149,286	149,286	149,286	149,286	149,286	149,286
<b>NET CASH FLOW</b>	<b>\$50,029</b>	<b>\$51,135</b>	<b>\$52,178</b>	<b>\$53,153</b>	<b>\$54,055</b>	<b>\$46,404</b>	<b>\$45,433</b>	<b>\$40,961</b>	<b>\$32,084</b>	<b>\$17,715</b>	<b>(\$3,445)</b>	<b>(\$32,945)</b>
<b>CUMULATIVE NET CASH FLOW</b>	<b>\$50,029</b>	<b>\$101,164</b>	<b>\$153,342</b>	<b>\$206,495</b>	<b>\$260,550</b>	<b>\$499,694</b>	<b>\$730,040</b>	<b>\$945,357</b>	<b>\$1,125,495</b>	<b>\$1,245,247</b>	<b>\$1,273,349</b>	<b>\$1,171,306</b>
<b>DEFERRED DEVELOPER FEE BALANCE</b>	<b>\$594,879</b>	<b>\$543,743</b>	<b>\$491,565</b>	<b>\$438,413</b>	<b>\$384,358</b>	<b>\$145,213</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>DCR ON UNDERWRITTEN DEBT (Must-Pay)</b>	<b>1.34</b>	<b>1.34</b>	<b>1.35</b>	<b>1.36</b>	<b>1.36</b>	<b>1.31</b>	<b>1.30</b>	<b>1.27</b>	<b>1.21</b>	<b>1.12</b>	<b>0.98</b>	<b>0.78</b>
<b>EXPENSE/EGI RATIO</b>	<b>61.14%</b>	<b>61.69%</b>	<b>62.25%</b>	<b>62.81%</b>	<b>63.37%</b>	<b>68.07%</b>	<b>71.23%</b>	<b>74.54%</b>	<b>78.02%</b>	<b>81.67%</b>	<b>85.50%</b>	<b>89.52%</b>

**CAPITALIZATION / TOTAL DEVELOPMENT BUDGET / ITEMIZED BASIS**

*Stonebridge of Plainview, Plainview, 9% LIHTC #13139*

DEBT / GRANT SOURCES																							
APPLICANT'S PROPOSED DEBT/GRANT STRUCTURE										AS UNDERWRITTEN DEBT/GRANT STRUCTURE				AS UNDERWRITTEN DEBT/GRANT STRUCTURE									
DEBT (Must Pay)	MIP	Cumulative DCR		Pmt	Rate	Amort	Term	Principal	Last Revision	Original UW 8/28/13		Last Revision	Principal	Term	Amort	Rate	Pmt	Cumulative					
		UW	App							11/4/13	8/28/13							TDHCA 8/28/13	TDHCA 11/4/13	DCR	LTC		
Bonneville MF Capital	0.50%	1.21	1.27	\$165,404	5.25%	40	40	\$2,550,000	\$2,950,000	\$3,510,000	\$3,510,000	\$2,950,000	\$2,000,000	40	40	5.30%	130,536	1.53	21.8%				
TDHCA		1.08	1.14	\$18,750	0.00%	40	40	\$750,000					\$750,000	40	40	0.00%	18,750	1.34	8.2%				
<b>CASH FLOW DEBT / GRANTS</b>																							
Bonner Carrington, Construction, LP		1.08	1.14		0.00%	0	0	\$38,000					\$38,000	0	0	0.00%		1.34	0.4%				
Note to GP		1.08	1.14		0.00%	0	0	\$0						15	30	0.00%		1.34	0.0%				
<b>TOTAL DEBT / GRANT SOURCES</b>				\$184,154				\$3,338,000	\$2,950,000	\$3,510,000	\$3,510,000	\$2,950,000	\$2,788,000					\$149,286		30.4%			
<b>NET CASH FLOW</b>		\$15,160	\$25,336	<b>NET OPERATING INCOME</b>																	\$199,314	\$50,029	<b>NET CASH FLOW</b>

EQUITY SOURCES															
APPLICANT'S PROPOSED EQUITY STRUCTURE						AS UNDERWRITTEN EQUITY STRUCTURE				AS UNDERWRITTEN EQUITY STRUCTURE					
EQUITY / DEFERRED FEES	DESCRIPTION	% Cost	Annual Credit	Credit Price	Amount	Last Revision	Prior Underwriting		Last Revision	Amount	Credit Price	Annual Credit	% Cost	Annual Credits per Unit	Total Developer Fee:
							Original Underwriting	TDHCA 8/28/13							
RBC Capital Markets	LIHTC Equity	62.6%	647,000	0.89	\$5,748,412	\$5,748,412	\$5,369,563	\$5,369,564	\$5,757,222	\$5,748,413	\$0.8885	\$647,000	62.6%	\$71,855	\$1,088,745
Stonewall Ventures, LLC	Deferred Developer Fees	1.0%	(9% Deferred)		\$94,909	\$480,868	\$296,607	\$296,606	\$471,558	\$644,908	(59% Deferred)		7.0%		\$730,040
Additional (Excess) Funds Req'd		0.0%			\$0	-\$1	\$0	\$0	\$0	\$0			0.0%		\$85,132
<b>TOTAL EQUITY SOURCES</b>		63.6%			\$5,843,321	\$6,229,280	\$5,666,170	\$5,666,170	\$6,229,280	\$6,393,321			69.6%		
<b>TOTAL CAPITALIZATION</b>					\$9,181,321	\$9,179,280	\$9,176,170	\$9,176,170	\$9,179,280	\$9,181,321					

DEVELOPMENT COST / ITEMIZED BASIS																
APPLICANT COST / BASIS ITEMS					AS UNDERWRITTEN COST / BASIS ITEMS				TDHCA COST / BASIS ITEMS				COST VARIANCE			
Eligible Basis	Acquisition	New Const. Rehab	Total Costs	Last Revision	Prior Underwriting		Last Revision	Total Costs	Last Revision	Total Costs	Last Revision	Total Costs	Last Revision	Total Costs	COST VARIANCE	
					Original Underwriting	TDHCA 8/28/13										TDHCA 11/4/13
Land Acquisition			\$2,878 / Unit	\$230,208	\$230,208	\$230,208	\$230,208	\$230,208	\$230,208	\$230,208	\$230,208	\$230,208	\$230,208	\$230,208	0.0%	\$0
Building Acquisition	\$0		\$ / Unit	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	0.0%	\$0
Off-Sites			\$ / Unit	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	0.0%	\$0
Sitework		\$843,000	\$10,538 / Unit	\$843,000	\$843,000	\$843,000	\$843,000	\$843,000	\$843,000	\$843,000	\$843,000	\$843,000	\$843,000	\$843,000	0.0%	\$0
Site Amenities		\$324,000	\$4,050 / Unit	\$324,000	\$324,000	\$324,000	\$324,000	\$324,000	\$324,000	\$324,000	\$324,000	\$324,000	\$324,000	\$324,000	0.0%	\$0
Building Costs		\$4,138,250	\$55.01 /sf	\$52,228/Unit	\$4,178,250	\$4,178,250	\$4,627,824	\$4,627,824	\$4,627,824	\$4,627,824	\$57,848/Unit	\$60.92 /sf	\$4,587,304	\$4,587,304	-9.7%	(\$449,574)
Contingency		\$265,263	5.00%	5.00%	\$267,263	\$267,263	\$267,263	\$267,263	\$267,263	\$267,263	4.61%	4.61%	\$265,263	\$265,263	0.0%	\$0
Contractor's Fees		\$742,735	13.33%	13.33%	\$748,335	\$748,335	\$748,335	\$748,335	\$748,335	\$748,335	12.34%	12.34%	\$742,735	\$742,735	0.0%	\$0
Indirect Construction	0	\$700,050		\$9,626 / Unit	\$770,050	\$770,050	\$770,050	\$770,050	\$770,050	\$770,050	\$9,626 / Unit		\$700,050	\$700,050	0.0%	\$0
Developer's Fees	\$0	\$1,088,745	15.00%	14.91%	\$1,088,745	\$1,088,745	\$1,088,745	\$1,088,745	\$1,088,745	\$1,088,745	14.05%	14.13%	\$1,088,745	\$1,088,745	0.0%	\$0
Financing	0	\$245,000		\$5,345 / Unit	\$427,629	\$439,429	\$427,629	\$427,629	\$439,429	\$427,629	\$5,345 / Unit		\$245,000	\$245,000	0.0%	\$0
Reserves				\$3,798 / Unit	\$303,841	\$290,000	\$298,690	\$218,882	\$222,124	\$204,555	\$2,557 / Unit				48.5%	\$99,286
<b>UNADJUSTED BASIS / COST</b>		\$0	\$8,347,043	\$114,767 / Unit	\$9,181,321	\$9,179,280	\$9,176,170	\$9,545,936	\$9,560,978	\$9,531,608	\$119,145 / Unit		\$8,796,097	\$8,796,097	-3.7%	(\$350,288)
Acquisition Cost for Identity of Interest Seller					\$0											
Contingency					\$0											
Contractor's Fee					\$0											
Interim Interest					\$0											
Developer's Fee	\$0				(\$0)											
<b>ADJUSTED BASIS / COST</b>		\$0	\$8,347,042	\$114,767/unit	\$9,181,321	\$9,179,280	\$9,176,170	\$9,545,936	\$9,560,978	\$9,531,608	\$119,145/unit		\$8,796,097	\$8,796,097	-3.7%	(\$350,288)
<b>TOTAL UNDERWRITTEN COSTS (Applicant's Uses are within 5% of TDHCA Estimate):</b>					\$9,181,321											



**CAPITALIZATION / DEVELOPMENT COST BUDGET / ITEMIZED BASIS ITEMS**

*Stonebridge of Plainview, Plainview, 9% LIHTC #13139*

CREDIT CALCULATION ON QUALIFIED BASIS				
	Applicant		TDHCA	
	Acquisition	Construction Rehabilitation	Acquisition	Construction Rehabilitation
	<b>ADJUSTED BASIS</b>	\$0	\$8,347,042	\$0
Deduction of Federal Grants	\$0	\$0	\$0	\$0
<b>TOTAL ELIGIBLE BASIS</b>	\$0	\$8,347,042	\$0	\$8,796,097
High Cost Area Adjustment		130%		130%
<b>TOTAL ADJUSTED BASIS</b>	\$0	\$10,851,155	\$0	\$11,434,926
Applicable Fraction	66.25%	66.25%	66.25%	66.25%
<b>TOTAL QUALIFIED BASIS</b>	\$0	\$7,188,890	\$0	\$7,575,638
Applicable Percentage	0.00%	9.00%	0.00%	9.00%
<b>ANNUAL CREDIT ON BASIS</b>	\$0	\$647,000	\$0	\$681,807
<b>CREDITS ON QUALIFIED BASIS</b>	\$647,000		\$681,807	

ANNUAL CREDIT CALCULATION BASED ON APPLICANT BASIS		
Method	Annual Credits	Proceeds
Eligible Basis	\$647,000	\$5,748,413
Gap	\$719,586	\$6,393,321
Original Request	\$647,000	\$5,748,412
Current Request	\$647,000	\$5,748,413

FINAL ANNUAL LIHTC ALLOCATION		Variance to Request
Method	Eligible Basis	
<b>Credits</b>	<b>\$647,000</b>	<b>(\$0)</b>
<b>Total Equity Proceeds</b>	<b>\$5,748,413</b>	<b>(\$0)</b>

Building Cost/SF			
Development Category	New Construction	Category Building Cost/SF (Mean)	\$62.03 /sf
NRA	75,960	Calculated Building Cost/SF <sup>(3)</sup>	\$55.01 /sf
Elevator Served Enclosed Corridors <sup>(1)</sup>	0	Building Cost Variance (\$)	\$7.03 /sf
Common Area <sup>(2)</sup>	0	Variance to Mean (%)	11.3%
<b>Total SF for QAP Calculation</b>	<b>75,960</b>	Building Cost/SF reported in Application <sup>(3)</sup>	\$0.00 /sf
		Variance to Mean based on Application	100.0%

- (1) Supportive Housing, Qualified Elderly or 4-Story Development
- (2) Up to \$50 SF/Unit common area for Supportive Housing
- (3) Excludes Structured Parking

DIRECT CONSTRUCTION COST ESTIMATE				
CATEGORY	FACTOR	UNITS/SF	PER SF	AMOUNT
Base Cost:	Garden (Up to 3-story)	75,960 SF	\$61.44	4,666,870
Adjustments				
Exterior Wall Finish	2.00%		1.23	\$93,337
	0.00%		0.00	0
9 ft. ceilings	3.25%		2.00	151,673
Roofing			0.00	0
Subfloor			(0.78)	(58,869)
Floor Cover			2.68	203,573
Breezeways	\$25.04	13,100	4.32	327,959
Balconies	\$24.82	5,030	1.64	124,862
Plumbing Fixtures	\$940	168	2.08	157,920
Rough-ins	\$465	80	0.49	37,200
Built-In Appliances	\$1,750	80	1.84	140,000
Exterior Stairs	\$2,125	20	0.56	42,500
Heating/Cooling			2.06	156,478
Enclosed Corridors	\$45.95	0	0.00	0
Carports	\$11.30	0	0.00	0
Garages	\$22.53	2,501	0.74	56,348
Comm &/or Aux Bldgs	\$84.96	1,500	1.68	127,440
Elevators		0	0.00	0
<b>Other:</b>			0.00	0
Other: fire sprinkler	\$2.30	90,560	2.74	208,288
<b>SUBTOTAL</b>			<b>84.72</b>	<b>6,435,578</b>
Current Cost Multiplier	0.98		-1.69	(128,712)
Local Multiplier	0.87		-11.01	(836,625)
<b>TOTAL DIRECT CONSTRUCTION COSTS</b>			<b>72.01</b>	<b>\$5,470,241</b>
Plans, specs, survey, bldg per	3.90%		-2.81	(213,339)
<b>Contractor's OH &amp; Profit</b>	11.50%		-8.28	(629,078)
<b>NET DIRECT CONSTRUCTION COSTS</b>		\$57,848/unit	\$60.92/sf	\$4,627,824

LEGAL DESCRIPTION

"MF-2" MULTIFAMILY RESIDENTIAL DISTRICT REGULATIONS

Schedule "B"

STONEBRIDGE, TRACT "A", an Addition to the City of Plainview, Hale County, Texas, according to the Map, Plat and/or Dedication Deed thereof recorded in County Clerk Number 2014-003157, Official Public Records of Hale County, Texas

- 17.1. PURPOSE
The purpose of this district is to promote medium density, multiple occupancy development of not more than twenty three (23) units per acre.
17.2. HEIGHT REGULATIONS
The height limit for MF-2 is 45 feet.
17.3. AREA REGULATIONS
No containing multifamily units shall contain less than ten thousand (10,000) square feet or one thousand five hundred (1,500) square feet per dwelling unit, whichever is greater.
17.4. ZONING REGULATIONS
One (1) parking space for each dwelling unit plus one-half (1/2) space for each individual bedroom in all dwelling units.
17.5. USE REGULATIONS
No building, structure, land or premises will be used and no building or structure shall be erected, constructed, reconstructed, or altered except for one or more of the uses specified in Section 8.

TABLE A ITEMS

- 2) Address: 4200 West 16th Street, Plainview, TX
3) Subject property does not lie within the 100-year flood plain as per National Flood Insurance Program FIRM Community Panel No. 48189C01850, Map Revised January 2, 2013.
4) Gross Land Area: 5.00 Acres (217,892 Sq. Ft.)
5) Parking Stalls: Total: 143 Handicap: 11
16) There is no evidence of current earth moving work, building construction or building addition.
18) There is no evidence of site use as a solid waste dump, sump or sanitary landfill.
19) There is no evidence of wetland areas with limits or subject tract.

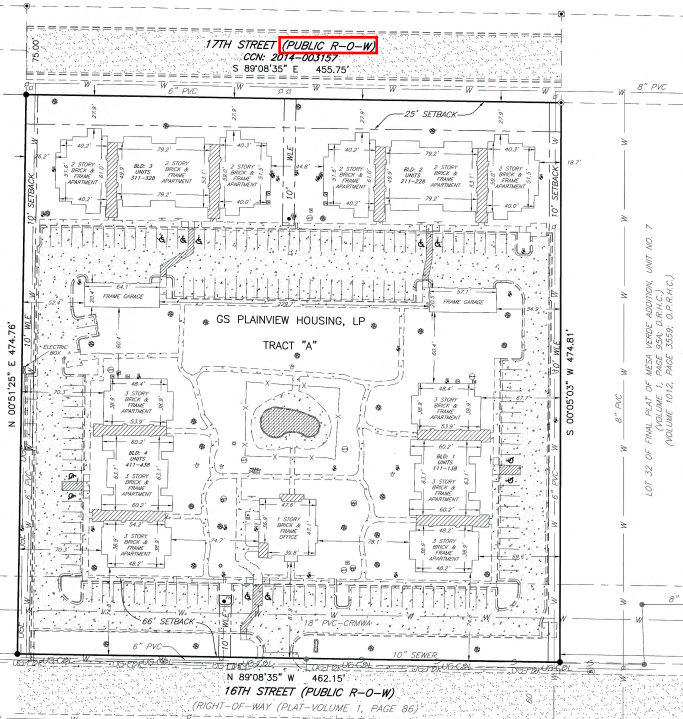
GENERAL NOTES

Monuments shown as found on this survey were accepted by this surveyor as controlling evidence due to substantial agreement with Record Documents and are not considered as Monuments or Record Dignity unless noted.
No substantial discrepancies between Record Documents and conditions as found on the ground were uncovered on this survey unless noted.

The basis of bearing for the information shown herein is the North line of 16th Street Right of Way, deduced as shown on the 8th-Mortg Supercenter Addition Subdivision Plat, recorded in Volume 1, Page 88, of the Plat Records of Hale County, Texas, as found monumented on the ground, and shown herein.
There is no visible evidence of encroachments on subject property.
Subject tract has vehicular and pedestrian access to a Public Right of Way.

TRACT 1
INTERSTATE DEVELOPMENT, INC.
(VOLUME 727, PAGE 555; O.P.R.N.C.)

STATE STREET HOUSING DEVELOPMENT, L.P.
(DOC. NO. 2014-000764)



Setback: The setback from 17th Street is 25' South of property line. The setback on East and West line is 10' inside property line. The setback from 16th Street is 86' North of property line.

SECTION 27, BLOCK JK-2
STATE STREET HOUSING DEVELOPMENT, L.P.
(DOC. NO. 2012-000225)

CANADIAN RIVER MUNICIPAL WATER AUTHORITY
66" WATER PIPELINE EASEMENT
(VOLUME 410, PAGE 95)
(ALSO U.S.A. VOLUME 410, PAGE 545)

LOT 1, BLOCK 1,
WAL-MART SUPERCENTER ADDITION
(VOLUME 1, PAGE 88; D.R.N.C.)
(VOLUME 1002, PAGE 4678; O.P.R.N.C.)

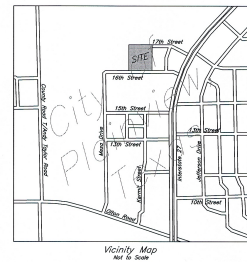
Final as-built showing
4 residential buildings

The following matters and all terms of the documents creating or offering evidence of the matters: (the Company must insert matters or delete this exception)

- a. Intentionally omitted.
b. Intentionally omitted.
c. Grant of water pipeline right of way easement to the United States of America dated July 19, 1963, recorded in Volume 410, Page 545, of the Deed Records of Hale County, Texas, as shown on survey dated August 29, 2014, last revised September 26, 2014, prepared by Charles Lynn Sawyer, Registered Professional Land Surveyor No. 5809, under Job No. 14013. Does Affect.
d. Subject to Contract to Secure Water Right and Sewer Improvements between the City of Plainview and Jerry Wofford, Inc. recorded in Volume 1002, Image 4904, of the Official Public Records of Hale County, Texas; and subject to Correction Contract to Secure Payment for Water and Sewer Improvements recorded in Volume 1010, Image 3007, of the Official Public Records of Hale County, Texas, as noted on survey dated August 29, 2014, last revised September 26, 2014, prepared by Charles Lynn Sawyer, Registered Professional Land Surveyor No. 5809, under Job No. 14013. Does Affect.
e. Subject to Ordinance #14-3610 of the City of Plainview, extending the City's boundaries recorded in County Clerk's Document Number 2014-002370, Official Public Records, Hale County, Texas, as noted on survey dated August 29, 2014, last revised September 26, 2014, prepared by Charles Lynn Sawyer, Registered Professional Land Surveyor No. 5809, under Job No. 14013. Does Affect.
f. Intentionally omitted.
g. Intentionally omitted.
h. OCN (Certificate of Convenience and Necessity) filed for record on June 29, 2007, in Volume 1041, Image No. 0370, Official Public Records, Hale County, Texas. Not Survey Related.
i. Subject to all rights, obligations, and other matter emanating from and existing by reason of the creation, establishment, maintenance, and operation of the High Plains Underground Water Conservation District No. 1, as shown by instrument dated August 19, 1993, and recorded in Volume 837, Page 245, Deed Records, Hale County, Texas. Does Not Affect.
j. Intentionally omitted.
k. Terms, Conditions, and Stipulations in Easement Agreement between State Street Housing Development, LP and City of Plainview, Texas, recorded under Document No. 2014-003285, Official Public Records, Hale County, Texas, as noted on survey dated August 29, 2014, last revised September 26, 2014, prepared by Charles Lynn Sawyer, Registered Professional Land Surveyor No. 5809, under Job No. 14013. Not Survey Related.
l. The following, as shown on Plat recorded under Document No. 2011-003157, Official Public Records, Hale County, Texas, as shown on survey dated August 29, 2014, last revised September 26, 2014, prepared by Charles Lynn Sawyer, Registered Professional Land Surveyor No. 5809, under Job No. 14013.

- Seventy-Five (75') Foot Right-Of-Way Easement for 17th Street. Does Affect.
Twenty-Five (25') Foot Setback line along the North property line - below the Right-Of-Way Easement. Does Affect.
Ten (10') Foot Water Line Easements along the North, South, East, and West property lines. Does Affect.
Sixty-Six (66') Foot Setback Lines along the South property lines. Does Affect.
Ten (10') Foot Setback Lines along the West and East property lines. Does Affect.
Conditions, Covenants, and Restrictions on set forth on the Recorded Plat. Does Affect.
m. Construction Deed of Trust, Absolute Assignment of Interests, Security Agreement and Financing Statement dated effective as of September 17, 2014, recorded under Instrument File Number 2014-003285, Official Public Records of Hale County, Texas, executed by GS Plainview Housing, LP, a Texas limited partnership to Jacqueline P. Yardley, Trustee and all terms, conditions and stipulations contained therein, including any additional indebtedness secured thereby, securing one promissory note of even date therewith in the principal amount of \$5,000,000.00, payable to iMorgan Chase Bank, N.A. Not Survey Related.
n. Financing Statement reciting GS Plainview Housing, LP, as a Debtor and iMorgan Chase Bank, N.A. as Secured Party filed under Instrument File Number 2014-003289, Official Public Records of Hale County, Texas. Not Survey Related.
o. Terms, Conditions and Stipulations contained in Land Use Restriction Agreement dated effective September 17, 2014, between GS Plainview Housing, LP, and the Texas Department of Housing and Community Affairs, recorded under Instrument File Number 2014-003287, Official Public Records, Hale County, Texas. Not Survey Related.
p. Deed of Trust dated as of September 17, 2014, recorded under Instrument File Number 2014-003291, Official Public Records of Hale County, Texas, executed by GS Plainview Housing, LP, a Texas limited partnership to Timothy K. Irvine, Trustee, and all terms, conditions and stipulations contained therein including any additional indebtedness secured thereby, securing one promissory note of even date therewith in the principal amount of \$750,000.00 to the Texas Department of Housing and Community Affairs. Not Survey Related.
q. Terms, Conditions, and Stipulations of Subordination Agreement dated as of September 17, 2014, executed by and between the Texas Department of Housing and Community Affairs and iMorgan Chase Bank, N.A., recorded under Instrument File Number 2014-003290, Official Public Records, Hale County, Texas. Not Survey Related.
r. Key and all items arising by reason of unpaid bills or claims for work performed or materials furnished in connection with improvements placed, or to be placed, upon the subject land. However, the Company does insure the insured against loss, if any, sustained by the insured under this Policy if such land has been filed with the County Clerk of Hale County, Texas, prior to the date hereof.
Liability hereunder at the date hereof is limited to \$863,658.00. Liability shall increase as contemplated improvements are made, so that any loss payable hereunder shall be limited to said sum plus the amount actually expended by the insured in improvements at the time the loss occurs. Any reasonable mode for improvements, subsequent to the date of this Policy, will be deemed made as of the date of this Policy in no event shall the liability of the Company hereunder exceed the face amount of this Policy. Nothing contained in this paragraph shall be construed as limiting any exception or any printed portion of this Policy. Not Survey Related.

r. Declaration of Land Use Restrictive Covenants Land Use Restriction Agreement for Low Income Housing Tax Credits recorded under Instrument File No. 2013-006114, Official Public Records, Hale County, Texas. (Entire Document dated March 1, 2016) Not Survey Related.



ALTA/ACSM LAND TITLE SURVEY

Surveyor's Certification: I hereby certify to First American Title Insurance Company, iMorgan Chase Bank, N.A. and its successors and/or assigns, Sunbelt Mortgage Company, a Utah corporation, its successors and assigns, and the United States Department of Agriculture, GS Plainview Housing, LP, a Texas limited partnership, its successors and/or assigns, RBC Tax Credit Manager II, Inc., its affiliates, successors and assigns, and RBC Tax Credit Equity National Fund-18, LP, as follows:
This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2011 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items 1, 2, 3, 4, 6(a), 6(b), 7(a), 7(b), 8, 9, 10(a), 10(b), 11(a), 11(b), 13, 14, 15, 16, 18, 19, and 20(a) of Table A thereto. The field work was completed on January 26, 2016. Subject property does not lie with the 100-year flood plain as per National Flood Insurance Program FIRM Community Panel No. 48189C01850, Map Revised January 2, 2013.

Dated: March 29, 2016

Charles Lynn Sawyer
Registered Professional Land Surveyor

ALTA/ACSM LAND SURVEYING
LAND SURVEYING
AMTD Engineering, LLC
1000 West 16th Street, Suite 600
Plainview, TX 79074
Phone: 800-771-9878
Fax: 817-420-0000
TX. Lic. Surv. Firm # 01798-000
Accuracy - Efficiency - Integrity

ALTA/ACSM LAND TITLE SURVEY OF
STONEBRIDGE, TRACT "A", an Addition to the City of Plainview, Hale County, Texas, according to the Map, Plat and/or Dedication Deed thereof recorded in County Clerk Number 2014-003157, Official Public Records of Hale County, Texas

PREPARED FOR:
GS Plainview Housing, LP

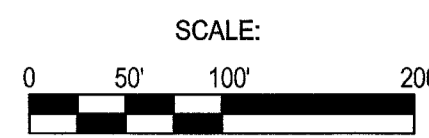
Table with columns: No., DATE, REVISIONS. Contains a grid for recording revisions.



**GENERAL NOTES:**

- 1) The basis of bearing of this survey being the North line of 16th Street Right of Way, dedicated as shown on the Wal-Mart Supercenter Addition Subdivision Plat, recorded in Volume 1, Page 88, of the Plat Records of Hale County, Texas, as found monumented on the ground, and shown hereon.
- 2) Only those copies of this survey which bear an original Embossed Impression Seal or an Ink Impression Seal will be considered a "Valid" copy of this survey. AMD Engineering, LLC, will not be responsible for anything other than a "Valid" copy of this survey.
- 3) As shown on Panel 1850 of 625 of the Flood Insurance Rate Map No. 48024801850, Community No. 480275, published by the Federal Emergency Management Agency, with an Effective Date of February 18, 2011, this property does not lie within the flood zone. Zone "X".
- 4) As of the date of this survey, only above ground, visible utilities, and visible evidence of subsurface utilities were located by this survey and shown hereon as per the ALTA/ACSM survey checklist Table A, Item 11. This item is noted this way due to the on-going nature of construction which surrounds the surveyed tract.
- 5) All visible items (improvements) shown on the face of the survey represent locations as physically tied as a result of this survey, as per the ALTA/ACSM survey checklist Table A, Item 8. No orthophotography or other such methodologies were used.
- 6) A Boundary Description has been prepared in connection with this survey, and is shown hereon.
- 7) There are no building on site to measure or show on survey per item 7(a)(1)and2)(c).
- 8) There are no parking stripes or parking lots within the plat limits per item 9.

- 1/2" IRON ROD WITH ORANGE CAP (AMD ENG), FD....CM
- 1/2" IRON ROD WITH ORANGE CAP (AMD ENG), SET
- 1/2" IRON ROD, FOUND....CM
- 1/2" IRON ROD WITH ORANGE CAP (WILLIAMS), FD....CM
- INDICATES MANHOLE
- FH INDICATES FIRE HYDRANT
- INDICATES WATER VALVE
- W — UNDERGROUND WATER LINE
- S — UNDERGROUND SEWER LINE
- E — UNDERGROUND ELECTRIC LINE
- FO — UNDERGROUND FIBER OPTIC LINE



Survey Description

STONEBRIDGE, TRACT "A"  
 an Addition to the City of  
 Plainview, Hale County, Texas,  
 According to the Map, Plat,  
 and/or Dedication Deed thereof  
 recorded in County Clerk Number  
 2014-003157, Official Public  
 Records of Hale County, Texas

**Surveyors Report:**

This plat was prepared for the exclusive use of the individual and/or institutions named on this survey. It is non-transferable to additional institutions or individuals without expressed recertification by AMD Engineering, LLC.

This plat is the property of AMD Engineering, LLC. Reproduction of this plat for any purpose is expressly forbidden without the written consent of an authorized agent of AMD Engineering, LLC.

This survey is subject to any facts which may be disclosed by a full and accurate title search.

Record documents other than those shown may affect this tract.

Visible evidence of conditions affecting this tract is as shown on this plat.

Monuments indicated as found by this survey are not "physical monuments of record dignity" unless so noted.

Found monuments are accepted by this surveyor as controlling evidence due to substantial agreement with record documents.

Heavy lines indicate plat limits.

Distances are actual Surface Distances.

D.R.H.C. - Deed Records of Hale County, Texas

O.P.R.H.C. - Official Public Records of Hale County, Texas

**UPDATED TITLE INSURANCE NOTE:**

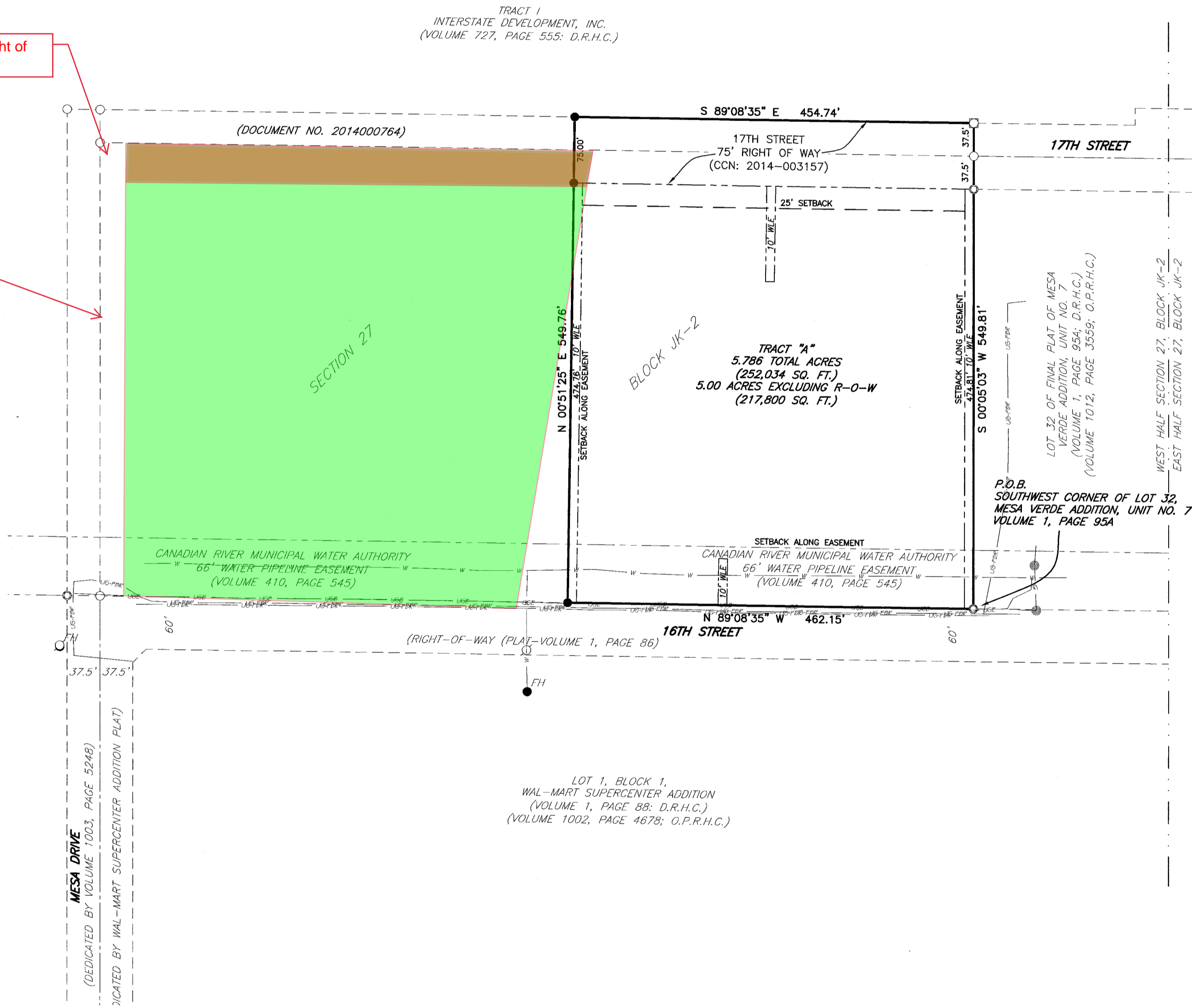
The survey shown hereon was prepared with the benefit of a Title Commitment prepared by First American Title Insurance Company, G. F. Number 1787477-HXF71, effective date September 12, 2014, and is certified only to, and subject only to the state of facts identified by Schedules "A" and "B", contained therein.

**Schedule "B", Items:**

- 10(c) Grant of water pipeline right of way easement to the United States of America dated July 16, 1963, recorded in Volume 410, Page 545, of the Deed Records of Hale County, Texas. (Does Affect Survey)
- 10(d) Subject to Contract to Secure Payment for Water and Sewer Improvements between the City of Plainview and Jerry Wofford, Inc. recorded in Volume 1002, Page 4904, of the Official Public Records of Hale County, Texas; and subject to Correction Contract to Secure Payment for Water and Sewer Improvements recorded in Volume 1010, Image 3097, of the Official Public Records of Hale County, Texas. (Affects Property, Not Plottable)
- 10(e) Subject to Ordinance #14-3610 of the City of Plainview, extending the city's boundaries recorded in County Clerk's Document Number 2014-002370, Official Public Records, Hale County, Texas. (Affects Property, Not Plottable)
- 10(h) CCN (Certificate of Convenience and Necessity) filed for record on June 29, 2007 in Volume 1041, Image No. 0370, Official Public Records, Hale County, Texas. (Not Survey Related)
- 10(i) Subject to all rights, obligations, and other matter emanating from and existing by reason of the creation, establishment, maintenance, and operation of the High Plains Underground Water Conservation District No. 1, as shown by instrument dated August 19, 1993, and recorded in Volume 837, Page 245, Deed Records, Hale County, Texas. (Not Survey Related)
- 10(j) Assignment and Assumption, Conveyance, Deed and Bill of Sale from Atmos Energy Corporation to IBIS Gas Services, LLC recorded in Volume 1055, Page 1007 of the Hale County Official Public Records. Amended by instrument filed May 28, 2009 as Document #2009-001858, Official Public Records, Hale County, Texas. (Not Survey Related)
- 10(k) Terms, Conditions and Stipulations in Easement Agreement between State Street Housing Development, LP and City of Plainview, Texas recorded under Document No. 2014-003285, Official Public Records, Hale County, Texas. (Affects Subject Property, Not Plottable)
- 10(l) The following, as shown on Plat recorded under Document No. 2014-0031257, Official Public Records, Hale County, Texas:
  - Seventy-Five (75') Foot Right-Of-Way Easement for 17th Street
  - Twenty-Five (25') Foot Setback line along the North property line-below the Right-Of-Way Easement
  - Ten (10') Foot Water Line Easements along the North, South, East, and West property lines
  - Conditions, Covenants, and Restrictions as set forth on the Recorded Plat.
- 10(m) Right of Parties in Possession. (Owner's Policy Only)
- 10(n) Drainage Easement recorded under Document Number 2014-003155 (Does Not Affect Subject Property)

Original right of way

Original site in the tax credit application

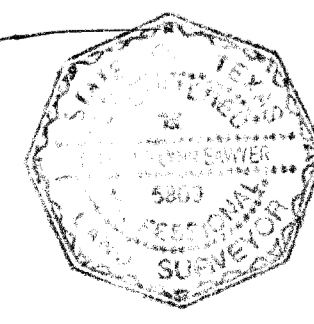


Surveyor's Certification: I hereby certify to GS Plainview Housing, LP, a Texas Limited Partnership, Texas Department of Housing and Community Affairs, Hester-First American Title Company, and First American Title Insurance Company, J.P. Morgan Chase Bank, N.A., RBC Tax Credit Equity, LLC, its successors and assigns, RBC Tax Credit Manager II, Inc., Bonneville Mortgage Company, a Utah corporation, its successors, assigns and/or affiliates as their interests may appear, United States Department of Agriculture, as follows:

1. On the 25th day of July, 2014, this survey was made by me (or under my direct supervision) on the ground as per the field notes shown on this survey and is true, correct, and accurate as to the boundaries (which have been physically inspected by me) and areas of the subject property and the size, location, and type of buildings and improvements thereon, if any, and as to the other matters shown thereon. This survey satisfies the Minimum Standard Detail Requirements (including, but not limited to, items 1, 2, 3, 4, 7(a), (b), (b1), (b2), (c), 8, 9, and 11(b) of Table 'A' thereof) and the Accuracy Standards for ALTA/ACSM Land Title Surveys, as adopted by the American Land Title Association (ALTA), the National Society of Professional Surveyors (NSPS), and the American Congress on Surveying and Mapping (ACSM) and in effect on the date of this certification. Proper field procedures, instrumentation and adequate survey personnel were employed in order to achieve results comparable to those outlined in the Minimum Angle, Distance and Closure Requirements for Survey Measurements which Control Land Boundaries for ALTA/ACSM Land Title Surveys.
2. The area or quantity of the subject property as set forth in this survey is accurate to the nearest square foot.
3. This survey correctly shows the location of the following matters affecting the subject property, whether or not located on the subject property: all easements (public and private), rights of ways (public and private), improvements, signs, fences, drainage ditches, above and below ground telephone, power and light, and other public and private utility lines and/or poles, railroads, streams (and other waterways, including all permanently inundated areas, whether or not navigable), building setback lines, party walls, and encroachments visible on the ground or of record; all places of entry and exit of all utilities to and from the subject property; all matters set forth in that certain commitment for mortgagee's policy of title insurance with an effective date of September 12, 2014, issued by Title Company, under G.F./Case No. 1787477-HXF71; and all matters of which I have knowledge or have been advised, whether or not of record, and, except as shown hereon, no such matters affect the subject property. All matters shown on this survey that are created or affected by an instrument of record contain a reference to the specific recording information under which such instrument has been filed for public record.
4. Encroachments as used herein include encroachments or protrusions onto the subject property by improvements on adjacent property, rights-of-way, or easements and encroachments and protrusions onto adjacent property, rights-of-way, easements, or building setbacks by any improvements on the subject property and any conflicts or overlaps of the metes and bounds calls of the subject property and those of adjacent property, easements, or rights-of-ways.
5. The subject property currently has unrestricted ingress and egress to and from 16th Street to 17th Street (there are no intervening strips, gaps, or gores between the boundary of the subject property and the boundary of such streets and roads), and such streets are paved, dedicated public right-of-ways maintained by the City of Plainview, State of Texas, or Hale County.

Dated: September 2, 2014  
 Revised September 11, 2014 (Acreage)  
 Revised September 17, 2014 (Schedule B Exceptions and Legal Description)  
 Revised September 18, 2014 (Schedule B)  
 Revised September 26, 2014 (Schedule B)

Charles Lynn Sawyer  
 Registered Professional Land Surveyor No. 5809  
 Job No. 14013



**CIVIL ENGINEERING  
 LAND SURVEYING**  
 AMD Engineering, LLC  
 2807 74th Street, Suite 8  
 Lubbock, TX 79423  
 Phone: 806-771-5976  
 Fax: 806-771-7625

**ALTA/ACSM**  
 on Stonebridge, Tract "A", an Addition to the City of Plainview, Hale County, Texas, According to the Map, Plat, and/or Dedication Deed thereof recorded in County Clerk Number 2014-003157, Official Public Records of Hale County, Texas

PREPARED FOR:  
 STATE STREET HOUSING  
 DRAWN BY: JDN  
 CHECKED BY: CLS  
 JOB No. 14013

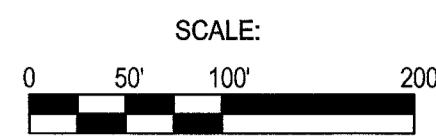
Accuracy - Efficiency - Integrity



**GENERAL NOTES:**

- 1) The basis of bearing of this survey being the North line of 16th Street Right of Way, dedicated as shown on the Wal-Mart Supercenter Addition Subdivision Plat, recorded in Volume 1, Page 88, of the Plat Records of Hale County, Texas, as found monumented on the ground, and shown hereon.
- 2) Only those copies of this survey which bear an original Embossed Impression Seal or an Ink Impression Seal will be considered a "Valid" copy of this survey. AMD Engineering, LLC, will not be responsible for anything other than a "Valid" copy of this survey.
- 3) As shown on Panel 1850 of 625 of the Flood Insurance Rate Map No. 48024801850, Community No. 480275, published by the Federal Emergency Management Agency, with an Effective Date of February 18, 2011, this property does not lie within the flood zone. Zone "X".
- 4) As of the date of this survey, only above ground, visible utilities, and visible evidence of subsurface utilities were located by this survey and shown hereon as per the ALTA/ACSM survey checklist Table A, Item 11. This item is noted this way due to the on-going nature of construction which surrounds the surveyed tract.
- 5) All visible items (improvements) shown on the face of the survey represent locations as physically tied as a result of this survey, as per the ALTA/ACSM survey checklist Table A, Item 8. No orthophotography or other such methodologies were used.
- 6) A Boundary Description has been prepared in connection with this survey, and is shown hereon.
- 7) There are no building on site to measure or show on survey per item 7(a)(1)and2(c).
- 8) There are no parking stripes or parking lots within the plat limits per item 9.

- 1/2" IRON ROD WITH ORANGE CAP (AMD ENG), FD....CM
- 1/2" IRON ROD WITH ORANGE CAP (AMD ENG), SET
- 1/2" IRON ROD, FOUND....CM
- 1/2" IRON ROD WITH ORANGE CAP (WILLIAMS), FD....CM
- INDICATES MANHOLE
- FH INDICATES FIRE HYDRANT
- INDICATES WATER VALVE
- W — UNDERGROUND WATER LINE
- S — UNDERGROUND SEWER LINE
- E — UNDERGROUND ELECTRIC LINE
- FO — UNDERGROUND FIBER OPTIC LINE



Survey Description

STONEBRIDGE, TRACT "A"  
an Addition to the City of  
Plainview, Hale County, Texas,  
According to the Map, Plat,  
and/or Dedication Deed thereof  
recorded in County Clerk Number  
2014-003157, Official Public  
Records of Hale County, Texas

**Surveyors Report:**

This plat was prepared for the exclusive use of the individual and/or institutions named on this survey. It is non-transferable to additional institutions or individuals without expressed recertification by AMD Engineering, LLC.

This plat is the property of AMD Engineering, LLC. Reproduction of this plat for any purpose is expressly forbidden without the written consent of an authorized agent of AMD Engineering, LLC.

This survey is subject to any facts which may be disclosed by a full and accurate title search.

Record documents other than those shown may affect this tract.

Visible evidence of conditions affecting this tract is as shown on this plat.

Monuments indicated as found by this survey are not "physical monuments of record dignity" unless so noted.

Found monuments are accepted by this surveyor as controlling evidence due to substantial agreement with record documents.

Heavy lines indicate plat limits.

Distances are actual Surface Distances.

D.R.H.C. - Deed Records of Hale County, Texas

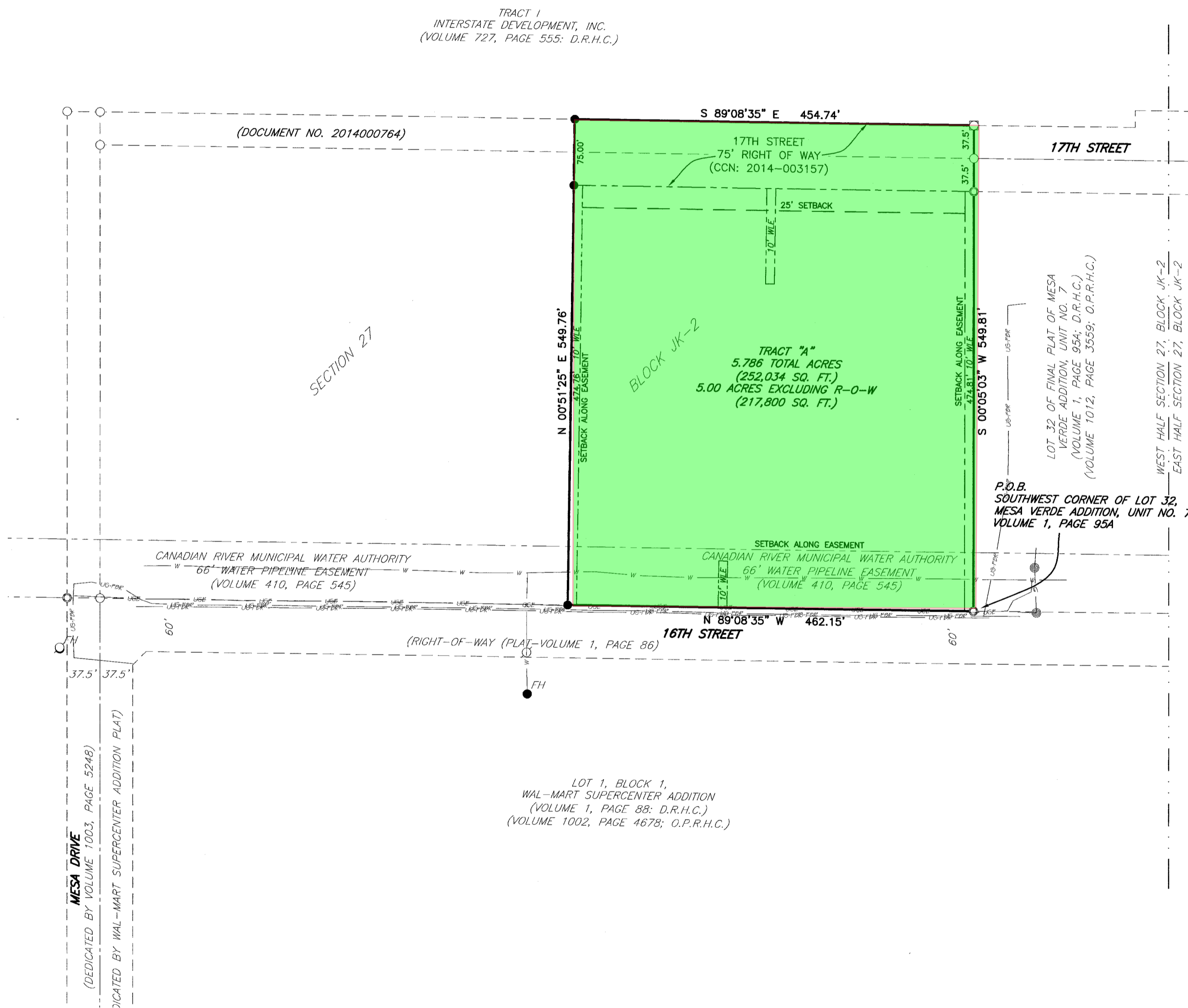
O.P.R.H.C. - Official Public Records of Hale County, Texas

**UPDATED TITLE INSURANCE NOTE:**

The survey shown hereon was prepared with the benefit of a Title Commitment prepared by First American Title Insurance Company, G. F. Number 1787477-HXF71, effective date September 12, 2014, and is certified only to, and subject only to the state of facts identified by Schedules "A" and "B", contained therein.

**Schedule "B", Items:**

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  - Seventy-Five (75) Foot Right-Of-Way Easement for 17th Street
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  - Ten (10') Foot Water Line Easements along the North, South, East, and West property lines
  - Conditions, Covenants, and Restrictions as set forth on the Recorded Plat.
- 10(m) Right of Parties in Possession. (Owner's Policy Only)
- 10(n) Drainage Easement recorded under Document Number 2014-003155 (Does Not Affect Subject Property)



Surveyor's Certification: I hereby certify to GS Plainview Housing, LP, a Texas Limited Partnership, Texas Department of Housing and Community Affairs, Hester-First American Title Company, and First American Title Insurance Company, J.P. Morgan Chase Bank, N.A., RBC Tax Credit Equity, LLC, its successors and assigns, RBC Tax Credit Manager II, Inc., Bonneville Mortgage Company, a Utah corporation, its successors, assigns and/or affiliates as their interests may appear, United States Department of Agriculture, as follows:

1. On the 25th day of July, 2014, this survey was made by me (or under my direct supervision) on the ground as per the field notes shown on this survey and is true, correct, and accurate as to the boundaries (which have been physically inspected by me) and areas of the subject property and the size, location, and type of buildings and improvements thereon, if any, and as to the other matters shown thereon. This survey satisfies the Minimum Standard Detail Requirements (including, but not limited to, items 1, 2, 3, 4, 7(a), (b), (b1), (b2), (c), 8, 9, and 11(b) of Table 'A' thereof) and the Accuracy Standards for ALTA/ACSM Land Title Surveys, as adopted by the American Land Title Association (ALTA), the National Society of Professional Surveyors (NSPS), and the American Congress on Surveying and Mapping (ACSM) and in effect on the date of this certification. Proper field procedures, instrumentation and adequate survey personnel were employed in order to achieve results comparable to those outlined in the Minimum Angle, Distance and Closure Requirements for Survey Measurements which Control Land Boundaries for ALTA/ACSM Land Title Surveys.
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4. Encroachments as used herein include encroachments or protrusions onto the subject property by improvements on adjacent property, rights-of-way, or easements and encroachments and protrusions onto adjacent property, rights-of-way, easements, or building setbacks by any improvements on the subject property and any conflicts or overlaps of the metes and bounds calls of the subject property and those of adjacent property, easements, or rights-of-ways.
5. The subject property currently has unrestricted ingress and egress to and from 16th Street to 17th Street (there are no intervening strips, gaps, or gores between the boundary of the subject property and the boundary of such streets and roads), and such streets are paved, dedicated public right-of-ways maintained by the City of Plainview, State of Texas, or Hale County.

Dated: September 2, 2014  
 Revised September 11, 2014 (Acreage)  
 Revised September 17, 2014 (Schedule B Exceptions and Legal Description)  
 Revised September 18, 2014 (Schedule B)  
 Revised September 26, 2014 (Schedule B)

*Charles Lynn Sawyer*  
 Charles Lynn Sawyer  
 Registered Professional Land Surveyor No. 5809  
 Job No. 14013

**ALTA/ACSM**

on Stonebridge, Tract "A", an Addition to the City of Plainview, Hale County, Texas, According to the Map, Plat, and/or Dedication Deed thereof recorded in County Clerk Number 2014-003157, Official Public Records of Hale County, Texas

PREPARED FOR:  
STATE STREET HOUSING

DRAWN BY: JDN  
 CHECKED BY: CLS  
 JOB No. 14013



AMD Engineering, LLC  
 2807 74th Street, Suite 8  
 Lubbock, TX 79423

CIVIL ENGINEERING  
 LAND SURVEYING

Phone: 806-771-5976  
 Fax: 806-771-7625

Accuracy - Efficiency - Integrity



**GENERAL NOTES:**

- 1) The basis of bearing of this survey being the North line of 16th Street Right of Way, dedicated as shown on the Wal-Mart Supercenter Addition Subdivision Plat, recorded in Volume 1, Page 88, of the Plat Records of Hale County, Texas, as found monumented on the ground, and shown hereon.
- 2) Only those copies of this survey which bear an original Embossed Impression Seal or an Ink Impression Seal will be considered a "Valid" copy of this survey. AMD Engineering, LLC, will not be responsible for anything other than a "Valid" copy of this survey.
- 3) As shown on Panel 1850 of 625 of the Flood Insurance Rate Map No. 48024801850, Community No. 480275, published by the Federal Emergency Management Agency, with an Effective Date of February 18, 2011, this property does not lie within the flood zone. Zone "X".
- 4) As of the date of this survey, only above ground, visible utilities, and visible evidence of subsurface utilities were located by this survey and shown hereon as per the ALTA/ACSM survey checklist Table A, Item 11. This item is noted this way due to the on-going nature of construction which surrounds the surveyed tract.
- 5) All visible items (improvements) shown on the face of the survey represent locations as physically tied as a result of this survey, as per the ALTA/ACSM survey checklist Table A, Item 8. No orthophotography or other such methodologies were used.
- 6) A Boundary Description has been prepared in connection with this survey, and is shown hereon.
- 7) There are no building on site to measure or show on survey per item 7(c)(1)and2(c).
- 8) There are no parking stripes or parking lots within the plat limits per item 9.

**Surveyors Report:**

This plat was prepared for the exclusive use of the individual and/or institutions named on this survey. It is non-transferable to additional institutions or individuals without expressed recertification by AMD Engineering, LLC.

This plat is the property of AMD Engineering, LLC. Reproduction of this plat for any purpose is expressly forbidden without the written consent of an authorized agent of AMD Engineering, LLC.

This survey is subject to any facts which may be disclosed by a full and accurate title search.

Record documents other than those shown may affect this tract.

Visible evidence of conditions affecting this tract is as shown on this plat.

Monuments indicated as found by this survey are not "physical monuments of record dignity" unless so noted.

Found monuments are accepted by this surveyor as controlling evidence due to substantial agreement with record documents.

Heavy lines indicate plat limits.

Distances are actual Surface Distances.

D.R.H.C. - Deed Records of Hale County, Texas

O.P.R.H.C. - Official Public Records of Hale County, Texas

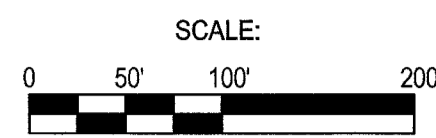
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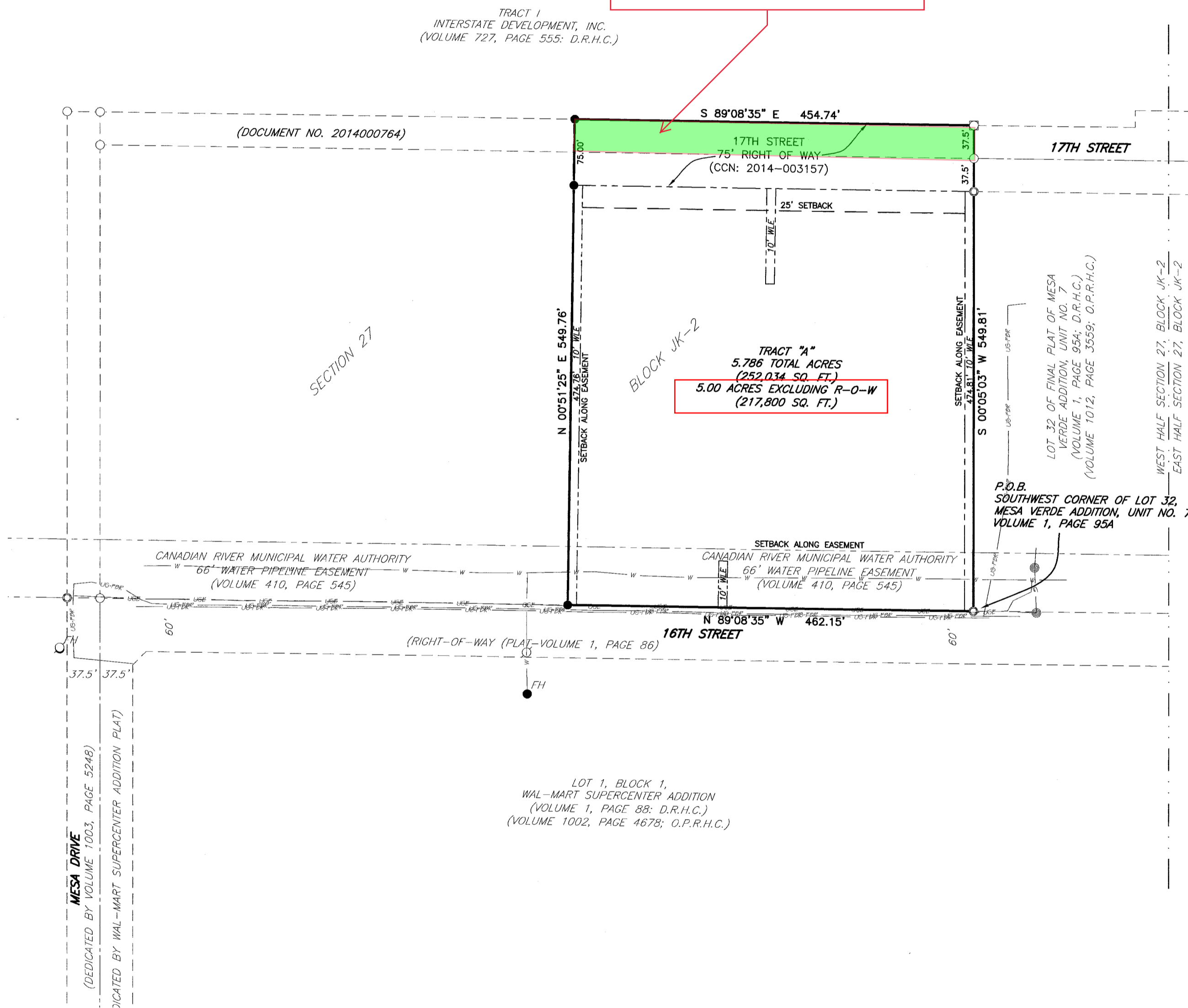
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- 1/2" IRON ROD WITH ORANGE CAP (AMD ENG), FD....CM
- 1/2" IRON ROD WITH ORANGE CAP (AMD ENG), SET
- 1/2" IRON ROD, FOUND....CM
- 1/2" IRON ROD WITH ORANGE CAP (WILLIAMS), FD....CM
- INDICATES MANHOLE
- FH INDICATES FIRE HYDRANT
- INDICATES WATER VALVE
- W — UNDERGROUND WATER LINE
- S — UNDERGROUND SEWER LINE
- E — UNDERGROUND ELECTRIC LINE
- FO — UNDERGROUND FIBER OPTIC LINE



Additional right of way deeded by separate instrument



Survey Description

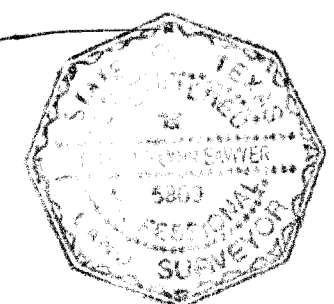
STONEBRIDGE, TRACT "A"  
 an Addition to the City of  
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 on Stonebridge, Tract "A", an Addition to the City of Plainview, Hale County,  
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PREPARED FOR:  
 STATE STREET HOUSING

DRAWN BY: JDN  
 CHECKED BY: CLS  
 JOB No. 14013

Accuracy - Efficiency - Integrity

**BOARD ACTION REQUEST**

**ASSET MANAGEMENT**

**OCTOBER 13, 2016**

Presentation, Discussion, and Possible Action regarding a material amendment to the Housing Tax Credit Application for Residences at Earl Campbell in Tyler (#15285)

**RECOMMENDED ACTION**

**WHEREAS**, Residences at Earl Campbell (the “Development”) received an award of 9% Housing Tax Credits in 2015 to construct 92 new units in Tyler;

**WHEREAS**, the Development Owner has requested approval for changes to the Application including a decrease in the development site acreage which modifies the residential density by more than five percent, changes to the site plan that resulted in the reconfiguration and relocation of buildings within the site and reductions to the unit and common area square footage by more than three percent;

**WHEREAS**, Board approval is required for a modification of the residential density of at least five percent and for a reduction of three percent or more in the square footage of the units or common areas under Texas Gov’t Code §2306.6712 and 10 TAC §10.405(a)(3)(F) and (D), and the Owner has complied with the amendment requirements in 10 TAC §10.405(a); and,

**WHEREAS**, the changes described do not negatively affect the Development, impact the viability of the transaction, negatively impact the scoring of the application, or affect the amount of tax credits awarded;

**NOW, therefore, it is hereby**

**RESOLVED**, that the requested material application amendment for Residences at Earl Campbell is approved as presented to 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**

Residences at Earl Campbell was submitted and approved for a 9% HTC allocation during the 2015 competitive cycle to construct 92 new multifamily units in Tyler. The representative for the Development Owner, Len Vilicic (NuRock Companies), has submitted a request seeking approval for several changes to the HTC Application.

The HTC application proposed a development site of seven acres, resulting in a residential density of 13.1 units per acre. Documentation submitted within the 10% Test for this development, including a General Warranty Deed recorded November 13, 2015, and a survey of the site dated May 12, 2016, identified the property as 5.382 acres. According to the owner representative, the site acreage identified at Application was an estimate based on a sketch of an area the seller was willing to subdivide out of a much larger tract, as the tract of land had not been platted and surveyed since the 1930s. Staff reviewed the original HTC application and found that the development narrative at that time indicated that the seven-acre tract was part of a larger 30-acre undeveloped tract, and that a grocery store center was planned for the bulk of the site. The owner indicates that the reason they had to change the original design was due to the site being a part of a larger mixed-use tract with Wal-Mart Neighborhood Market being the anchor. Wal-Mart did not close on their tract until after the application for this development was submitted and their final boundary impacted the proposed entrance to the property. The seller also wanted a common access through the site as one of the stipulations with Wal-Mart. Therefore, the owner had to include the private drive in the final site plan. The private drive is owned by the owner and is not built to code for city roads; therefore, it will not be dedicated to the city. It is, however, built to the code required by the fire department. The owner further states that the building composition and materials remain unchanged from the original plans and the elevations submitted with this request support this. The parking spaces were reduced from 193 to 185, which still exceeds the City of Tyler parking requirement by one space. Additionally, a previously anticipated detention pond was determined not to be needed for this site by the City of Tyler. As a result of the changes the site plan was re-worked to accommodate the final and smaller land size of 5.382 acre tract of land to develop. Mr. Vilicic states that the site is zoned R-MF which allows up to 24 units per acre. A comparison of the changes to the Application is reflected below.

**Material Alterations as defined in Texas Government Code §2306.6712(d) and 10 TAC §10.405(a)(3)**

**Application**

**Amendment**

**Modification of the residential density of at least 5 percent**

Site acreage = 7 acres  
Density = 13.1 units/acre

Site acreage = 5.382 acres (-23%)  
Density = 17.1 units/acre (+30%)

**Reduction of 3 percent or more in the square footage of the units or common areas**

Unit Type	# Units	Size (SF)
1BR/1BA	18	927
2BR/2BA	46	1,167
3BR/2BA	28	1,319
<b>TOTAL</b>	<b>92</b>	<b>107,300</b>

Unit Type	# Units	Size (SF)
1BR/1BA	17	876
1BR/1BA- HC	1	893
2BR/2BA	43	1,117
2BR/2BA- HC	3	1,134
3BR/2BA	27	1,221
3BR/3BA- HC	1	1,269





originally proposed, however, the owner's representative reports that the new design is more efficient for the size of the property and that the activity room in the current floor plan will contain some exercise equipment, as well as the community room will have a shared bookcase or two. The owner's representative further confirms that they will provide 15 points worth of common amenities, the requirement is to provide 10 points worth.

The owner submitted revised application exhibits that were affected by this change and Real Estate Analysis has completed a review of the changes to the site plan, construction costs and financing, concluding that the project remains feasible with the changes reflected and remains eligible for the credits originally awarded.

Staff recommends approval of the material amendment request.

**Addendum to Underwriting Report**

TDHCA Application #:  Program(s):

**Residences at Earl Campbell**

Address/Location:

City:  County:  Zip:

APPLICATION HISTORY	
Report Date	PURPOSE
09/27/16	Amendment Memo at 10% Test
12/01/15	Carryover Memo
07/01/15	Original Underwriting Report

**ALLOCATION**

TDHCA Program	Previous Allocation				RECOMMENDATION				
	Amount	Rate	Amort	Term	Amount	Rate	Amort	Term	Lien
LIHTC (Annual)	\$1,035,633				\$1,035,633				

**CONDITIONS STATUS**

- Receipt and acceptance by Cost Certification:
  - Documentation clearing environmental issues contained in the ESA report, specifically:
    - Noise Assessment documentation and implementation consistent with current HUD guidelines

**Status:** Pending.
- Should any terms of the proposed capital structure change, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

**Status:** At application, the seller of the subject property had no surveys and the property was not platted. In the original contract, acreage was represented to be 7.00 acres more or less at a Purchase Price of \$1,239,680 (\$4.00/SF plus \$20K in Ext. Fees). Subsequently, a survey was done that determined subject to be 5.382 acres. In conjunction, a replacement sales contract was executed at a Purchase Price of \$1,054,980 (\$4.50/SF), which was the closing price as reflected in the actual Settlement Statement. The actual acreage of 5.382 acres results in a density of 17.09 units per acre, while the R-MF zoning for the site allows up to 24 units per acre.

Site acquisition cost decreased by 14.90%, thereby exceeding the 10% threshold. However, total development cost increased by 6.57% (from \$13.99M to \$14.91M) as a result of building design and configuration changes that increased total net rentable area ("NRA") by 7,548 SF (8.64% from 87,404 SF to 94,952 SF). The number of units (92), mix and program restrictions have remained the same but the size of each unit type has been increased. **All of these changes prompted Applicant to make Amendment request.**

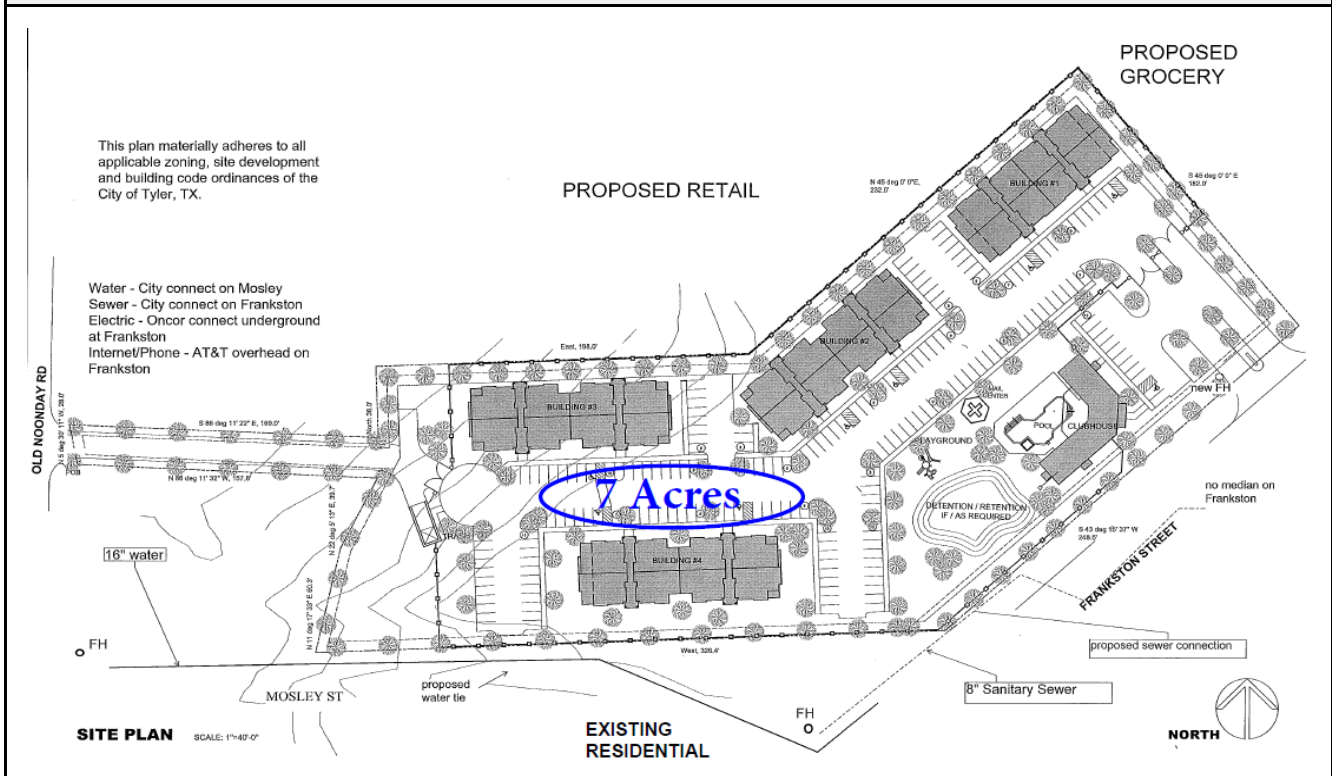
**ORIGINAL & CURRENT SET-ASIDES (UNCHANGED)**

TDHCA SET-ASIDES for HTC LURA		
Income Limit	Rent Limit	Number of Units
30% of AMI	30% of AMI	8
50% of AMI	50% of AMI	16
60% of AMI	60% of AMI	56

## AMENDMENT SUMMARY

	Amended	Original	Variance	% Change
Site Acreage	5.382	7.00	(1.62)	(23.11%)
Unit Density	17.09/acre	13.14/acre	3.95/acre	30.06%
Site Acquisition Cost	\$1,054,980	\$1,239,680	(\$184,700)	(14.90%)
Building Cost	\$6,930,380	\$6,297,000	\$633,380	10.06%
Total Dev. Cost	\$14,907,973	\$13,988,404	\$919,569	6.57%
Permanent Loan	\$4,000,000	\$3,275,000	\$725,000	22.14%
Equity	\$10,665,953	\$9,941,083	\$724,870	7.29%
Credit Price	\$1.03	\$0.96	\$0.07	7.29%
Deferred Dev. Fee	\$162,020	\$692,321	(\$530,301)	(76.60%)
1BR NRA	876 sf	927 sf	-51 sf	(5.50%)
1BR-HC NRA	893 sf	927 sf	-34 sf	(3.67%)
2BR NRA	1,117 sf	1,167 sf	-50 sf	(4.28%)
2BR-HC NRA	1,134 sf	1,167 sf	-33 sf	(2.83%)
3BR NRA	1,221 sf	1,319 sf	-98 sf	(7.43%)
3BR-HC NRA	1,269 sf	1,319 sf	-50 sf	(3.79%)
Total NRA	101,454 sf	107,300 sf	-5,846 sf	(5.45%)
Clubhouse	2,200 sf	4,521 sf	(2,321) sf	(51.34%)

## ORIGINAL SITE PLAN

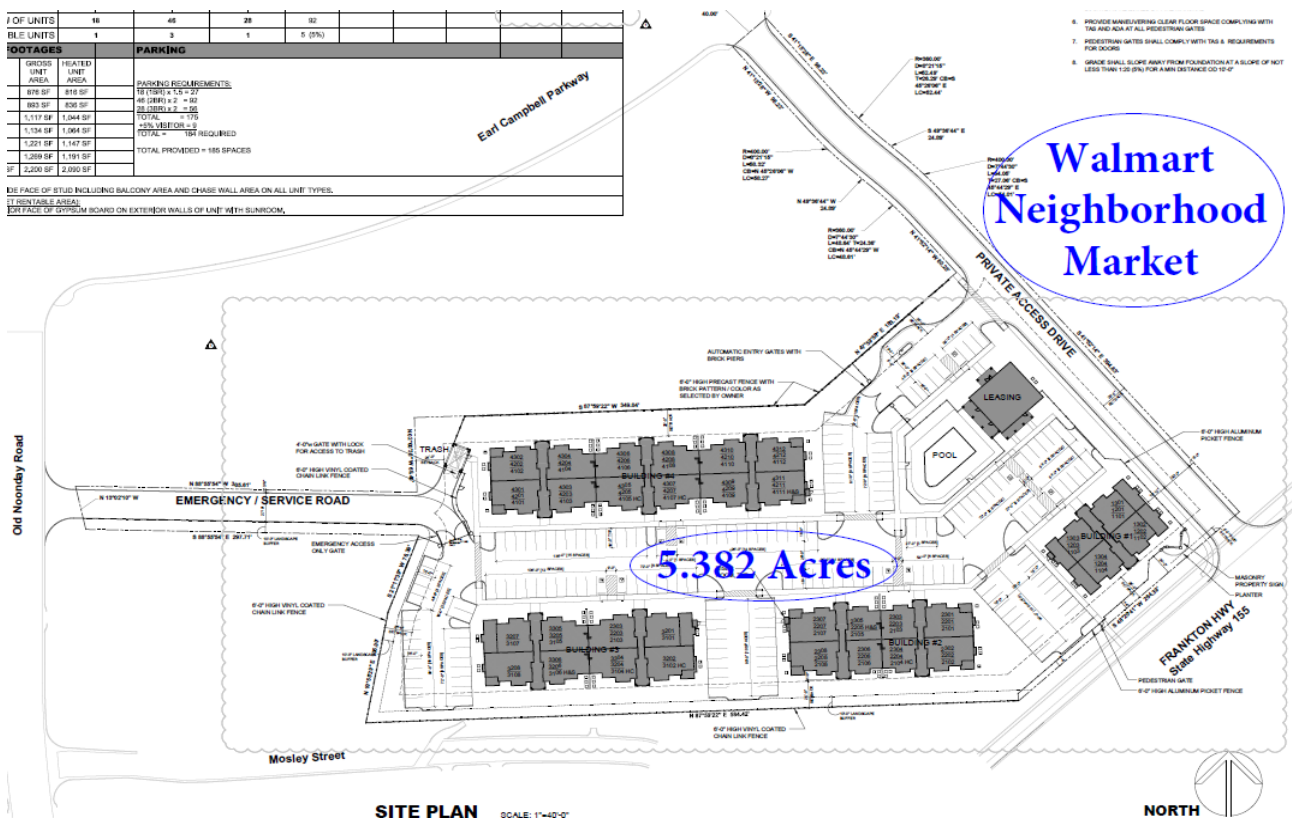


# AMENDED SITE PLAN

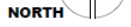
OF UNITS	16	46	28	92				
BLE UNITS	1	3	1	5 (7%)				
<b>FOOTAGES</b>		<b>PARKING</b>						
HEATED UNIT AREA	816 SF	816 SF	816 SF	816 SF	816 SF	816 SF	816 SF	816 SF
UNHEATED UNIT AREA	816 SF	816 SF	816 SF	816 SF	816 SF	816 SF	816 SF	816 SF
TOTAL	1,632 SF	1,632 SF	1,632 SF	1,632 SF	1,632 SF	1,632 SF	1,632 SF	1,632 SF
UNITS REQUIRED	16	46	28	92				
TOTAL PROVIDED	16	46	28	92				

Walmart Neighborhood Market

5.382 Acres



**SITE PLAN** SCALE: 1"=40'-0"



**Comments:**

The site is part of a larger mixed-use tract with a Wal-Mart Neighborhood Market being the anchor. At the time of application, Wal-Mart was still negotiating their site acquisition. Shortly thereafter, Wal-Mart closed and their final site boundary ended up reducing Applicant's acreage from approximately 7 to 5.382 acres. Another stipulation with Wal-Mart's acquisition was the addition of a private access drive connecting Frankston Highway to an existing median cut on Earl Campbell Blvd. and the other future retail and office to be constructed there.

The access drive also benefits this project but the site reduction resulted in the Applicant moving and reconfiguring the buildings and clubhouse. Based on Gross Unit Area depicted in the latest set of architectural drawings submitted by the Applicant, building NRA was reduced as well as a reduction in the size of the clubhouse. What originally were three 24-unit buildings and one 20-unit building became one 12-unit building, one 24-unit building, one 20-unit building, and one 36-unit building. All units are smaller but the number and type remain the same. **This plan has been approved by the City of Tyler, and construction is underway.**

Applicant's concept of NRA has been to only count the "heated are" within any given unit, which is less than the Gross Unit Area depicted in the architectural drawings as it doesn't count the area for utility closets (water heater) or other similar spaces within a unit. At original underwriting, Applicant's reported total NRA was 87,404 SF while it has now been amended to 94,952 SF, an increase of 7,548 SF (8.64%). However, REA changed Applicant's reported unit sizes to correspond to the Gross Unit Area square footages depicted in the updated architectural drawings. These square footage measurements are now consistent with how units have been measured on all other deals and are consistent with how the units were measured and presented in the original underwriting report. That method of measuring units shows that total NRA has been reduced from 107,300 So to 101,454 SF, a reduction of 5,846 SF (5.45%).

## ANALYSIS

### Operating Pro Forma

Max program rents for 2016 should be achievable. Rents for the 12 market rate units (13% of total) are projected at an average of \$183/unit (27%) more than net 60% rents, which equates to an average of \$141/unit (13%) less than concluded Market Study rent. The feasibility conclusion is unaffected if market units are only underwritten to achieve gross 60% rents.

Average rent with 1 month concession on 60% and market rate units is \$6 less than breakeven, but concessions are unlikely since overall average rents are 36% less than market.

Breakeven occupancy occurs with 12 units vacant (underwritten at 7).

As underwritten, 15 year residual cash flow is \$612K and DCR remains above 1.15 for 35 years .

### Building Cost

Construction is underway. Contract reflects a 10% increase of \$633K over the original Building Cost budget. Average unit building cost is \$75K/unit (\$73/SF), which is comparable to the deals awarded in the recent 2016 cycle.

### Sources of Funds

Permanent debt and equity increased accordingly to finance a \$920K increase (7%) in Total Development Cost, while also enabling a reduction in Deferred Developer Fee. Only \$165K (10%) of the Developer Fee is now projected for deferral, with repayment forecast to occur within 4 years (vs. the originally projected 44% deferral of \$692K). A lower interest rate (4.95% vs. an original estimate of 5.55%) and longer amortization (35 vs. 30 years) on the permanent debt helped maintain a positive feasibility conclusion.

### Conclusion

Project remains feasible with the amended increase in development cost. While unit sizes are smaller, they remain within the typical size range found in other deals. Therefore, no change in the original credit allocation of \$1,035,633 is being recommended at this time.

Underwriter:	<u>Gregg Kazak</u>
Manager of Real Estate Analysis:	<u>Thomas Cavanagh</u>
Director of Real Estate Analysis:	<u>Brent Stewart</u>



**UNIT MIX/RENT SCHEDULE**  
*Residences at Earl Campbell, Tyler, 9% HTC #15285*

LOCATION DATA	
CITY:	Tyler
COUNTY:	Smith
PROGRAM REGION:	4
PIS Date:	On or After 2/1/2014
IREM REGION:	NA

UNIT DISTRIBUTION						
# Beds	# Units	% Total		Income	# Units	% Total
Eff	-	0.0%		30%	8	8.7%
1	18	19.6%		40%	-	0.0%
2	46	50.0%		50%	16	17.4%
3	28	30.4%		60%	56	60.9%
4	-	0.0%		MR	12	13.0%
<b>TOTAL</b>	<b>92</b>	<b>100.0%</b>		<b>TOTAL</b>	<b>92</b>	<b>100.0%</b>

Applicable Programs
9% Housing Tax Credits

Pro Forma ASSUMPTIONS	
Revenue Growth	2.00%
Expense Growth	3.00%
Basis Adjust	130%
Applicable Fraction	86.85%
APP % Acquisition	3.35%
APP % Construction	7.87%
Average Unit Size	1,103 sf

UNIT MIX / MONTHLY RENT SCHEDULE																			
HTC		UNIT MIX				APPLICABLE PROGRAM RENT			APPLICANT'S PRO FORMA RENTS				TDHCA PRO FORMA RENTS				MARKET RENTS		
Type	Gross Rent	# Units	# Beds	# Baths	NRA	Gross Rent	Utility Allow	Max Net Program Rent	Delta to Max	Rent psf	Net Rent per Unit	Total Monthly Rent	Total Monthly Rent	Rent per Unit	Rent psf	Delta to Max	Underwritten	Mkt Analyst	
TC 30%	\$345	2	1	1	876	\$345	\$129	\$216	\$0	\$0.25	\$216	\$432	\$432	\$216	\$0.25	\$0	\$690	\$0.79	\$800
TC 50%	\$575	3	1	1	876	\$575	\$129	\$446	\$0	\$0.51	\$446	\$1,338	\$1,338	\$446	\$0.51	\$0	\$690	\$0.79	\$800
TC 60%	\$690	1	1	1	893	\$690	\$129	\$561	\$0	\$0.63	\$561	\$561	\$561	\$561	\$0.63	\$0	\$690	\$0.77	\$800
TC 60%	\$690	10	1	1	876	\$690	\$129	\$561	\$0	\$0.64	\$561	\$5,610	\$5,610	\$561	\$0.64	\$0	\$690	\$0.79	\$800
MR		2	1	1	876	\$0	\$129		NA	\$0.82	\$715	\$1,430	\$1,380	\$690	\$0.79	NA	\$690	\$0.79	\$800
TC 30%	\$414	4	2	2	1,117	\$414	\$158	\$256	\$0	\$0.23	\$256	\$1,024	\$1,024	\$256	\$0.23	\$0	\$828	\$0.74	\$950
TC 50%	\$690	8	2	2	1,117	\$690	\$158	\$532	\$0	\$0.48	\$532	\$4,256	\$4,256	\$532	\$0.48	\$0	\$828	\$0.74	\$950
TC 60%	\$828	3	2	2	1,134	\$828	\$158	\$670	\$0	\$0.59	\$670	\$2,010	\$2,010	\$670	\$0.59	\$0	\$828	\$0.73	\$950
TC 60%	\$828	25	2	2	1,117	\$828	\$158	\$670	\$0	\$0.60	\$670	\$16,750	\$16,750	\$670	\$0.60	\$0	\$828	\$0.74	\$950
MR		6	2	2	1,117	\$0	\$158		NA	\$0.76	\$850	\$5,100	\$4,968	\$828	\$0.74	NA	\$828	\$0.74	\$950
TC 30%	\$478	2	3	2	1,221	\$478	\$188	\$290	\$0	\$0.24	\$290	\$580	\$580	\$290	\$0.24	\$0	\$957	\$0.78	\$1,200
TC 50%	\$797	5	3	2	1,221	\$797	\$188	\$609	\$0	\$0.50	\$609	\$3,045	\$3,045	\$609	\$0.50	\$0	\$957	\$0.78	\$1,200
TC 60%	\$957	1	3	2	1,269	\$957	\$188	\$769	\$0	\$0.61	\$769	\$769	\$769	\$769	\$0.61	\$0	\$957	\$0.75	\$1,200
TC 60%	\$957	16	3	2	1,221	\$957	\$188	\$769	\$0	\$0.63	\$769	\$12,304	\$12,304	\$769	\$0.63	\$0	\$957	\$0.78	\$1,200
MR		4	3	2	1,221	\$0	\$188		NA	\$0.79	\$970	\$3,880	\$3,828	\$957	\$0.78	NA	\$957	\$0.78	\$1,200
<b>TOTALS/AVERAGES:</b>		<b>92</b>			<b>101,454</b>				<b>\$0</b>	<b>\$0.58</b>	<b>\$642</b>	<b>\$59,089</b>	<b>\$58,855</b>	<b>\$640</b>	<b>\$0.58</b>	<b>\$0</b>	<b>\$840</b>	<b>\$0.76</b>	<b>\$997</b>

<b>ANNUAL POTENTIAL GROSS RENT:</b>	<b>\$709,068</b>	<b>\$706,260</b>
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Wtd. Avg.

**STABILIZED PRO FORMA**

*Residences at Earl Campbell, Tyler, 9% HTC #15285*

**STABILIZED FIRST YEAR PRO FORMA**

	COMPARABLES		APPLICANT				Original Underwriting and at Carryover		TDHCA				VARIANCE	
	Database	Other	% EGI	Per SF	Per Unit	Amount	Applicant	TDHCA	Amount	Per Unit	Per SF	% EGI	%	\$
<b>POTENTIAL GROSS RENT</b>				\$0.58	\$642	\$709,068	\$691,836	\$691,836	\$706,260	\$640	\$0.58		0.4%	\$2,808
late fees, forfeited deposits, interest, cable TV						\$20,000	\$22,080	22,080						
Total Secondary Income						\$20,000		22,080	\$22,080	\$20.00			0.0%	\$0
<b>POTENTIAL GROSS INCOME</b>						\$731,148	\$713,916	\$713,916	\$728,340				0.4%	\$2,808
Vacancy & Collection Loss					7.5% PGI	(\$4,836)	(\$5,544)	(\$5,544)	(\$4,626)	7.5% PGI			0.4%	(\$211)
Rental Concessions						-			-				0.0%	-
<b>EFFECTIVE GROSS INCOME</b>						\$676,312	\$660,372	\$660,372	\$673,715				0.4%	\$2,597

General & Administrative	\$35,592	\$387/Unit	\$28,712	\$312	4.76%	\$0.32	\$350	\$32,200	\$30,820	\$36,677	\$36,677	\$399	\$0.36	5.44%	-12.2%	(4,477)
Management	\$33,361	5.5% EGI	\$36,280	\$394	5.35%	\$0.36	\$393	\$36,167	\$39,625	\$33,019	\$33,686	\$366	\$0.33	5.00%	7.4%	2,481
Payroll & Payroll Tax	\$96,870	\$1,053/Unit	\$114,793	\$1,248	14.96%	\$1.00	\$1,100	\$101,200	\$101,200	\$101,200	\$101,200	\$1,100	\$1.00	15.02%	0.0%	-
Repairs & Maintenance	\$59,726	\$649/Unit	\$50,530	\$549	8.84%	\$0.59	\$650	\$59,800	\$59,800	\$50,600	\$55,200	\$600	\$0.54	8.19%	8.3%	4,600
Electric/Gas	\$19,700	\$214/Unit	\$21,743	\$236	2.11%	\$0.14	\$155	\$14,240	\$15,240	\$20,302	\$20,302	\$221	\$0.20	3.01%	-29.9%	(6,062)
Water, Sewer, & Trash <b>Tenant Pays: WS</b>	\$41,132	\$447/Unit	\$38,186	\$415	3.29%	\$0.22	\$242	\$22,240	\$22,600	\$26,598	\$26,598	\$289	\$0.26	3.95%	-16.4%	(4,358)
Property Insurance	\$22,174	\$0.22 /sf	\$21,237	\$231	4.76%	\$0.32	\$350	\$32,200	\$32,200	\$22,174	\$22,174	\$241	\$0.22	3.29%	45.2%	10,026
Property Tax 2.124926	\$37,446	\$407/Unit	\$46,316	\$503	7.89%	\$0.53	\$580	\$53,360	\$53,360	\$52,028	\$52,028	\$566	\$0.51	7.72%	2.6%	1,332
Reserve for Replacements	\$28,589	\$311/Unit	\$23,128	\$251	4.08%	\$0.27	\$300	\$27,600	\$23,000	\$23,000	\$27,600	\$300	\$0.27	4.10%	0.0%	-
Supportive Services			\$4,532	\$49	1.48%	\$0.10	\$109	\$10,000	\$10,000	\$10,000	\$10,000	\$109	\$0.10	1.48%	0.0%	-
TDHCA Compliance fees			\$3,488	\$38	0.47%	\$0.03	\$35	\$3,200	\$3,200	\$3,200	\$3,200	\$35	\$0.03	0.47%	0.0%	-
<b>TOTAL EXPENSES</b>			<b>\$439,842</b>		<b>57.99%</b>	<b>\$3.87</b>	<b>\$4,263</b>	<b>\$ 392,207</b>	<b>\$ 391,045</b>	<b>\$ 378,798</b>	<b>\$ 388,665</b>	<b>\$4,225</b>	<b>\$3.83</b>	<b>57.69%</b>	<b>0.9%</b>	<b>\$ 3,542</b>
<b>NET OPERATING INCOME ("NOI")</b>			<b>\$ -</b>		<b>42.01%</b>	<b>\$2.80</b>	<b>\$3,088</b>	<b>\$284,105</b>	<b>\$269,327</b>	<b>\$281,574</b>	<b>\$285,049</b>	<b>\$3,098</b>	<b>\$2.81</b>	<b>42.31%</b>	<b>-0.3%</b>	<b>\$ (944)</b>

<b>CONTROLLABLE EXPENSES</b>							\$2,497/Unit		\$2,496/Unit	\$2,558/Unit		\$2,608/Unit				
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**CAPITALIZATION / TOTAL DEVELOPMENT BUDGET / ITEMIZED BASIS**

*Residences at Earl Campbell, Tyler, 9% HTC #15285*

DEBT / GRANT SOURCES																			
APPLICANT'S PROPOSED DEBT/GRANT STRUCTURE										AS UNDERWRITTEN DEBT/GRANT STRUCTURE									
DEBT (Must Pay)	MIP	Cumulative DCR		Pmt	Rate	Amort	Term	Principal	Carryover	Original Underwriting		Carryover	Principal	Term	Amort	Rate	Pmt	Cumulative	
		UW	App							Applicant	TDHCA							TDHCA	DCR
Mass. Mutual Life Ins. Co.		0.59	0.59	240,722	4.95%	35	15	\$4,000,000	\$3,275,000	\$3,275,000	\$3,275,000	\$3,275,000	\$4,000,000	15	35	4.95%	\$240,722	1.18	26.8%
City of Tyler		0.59	0.59	4,047	3.00%	30	15	\$80,000	\$80,000	\$80,000	\$80,000	\$80,000	\$80,000	15	30	3.00%	\$4,047	1.16	0.5%
				<b>244,769</b>	<b>TOTAL DEBT / GRANT SOURCES</b>			<b>\$4,080,000</b>	<b>\$3,355,000</b>	<b>\$3,355,000</b>	<b>\$3,355,000</b>	<b>\$3,355,000</b>	<b>\$4,080,000</b>	<b>TOTAL DEBT SERVICE</b>		<b>\$244,769</b>	<b>1.16</b>	<b>27.4%</b>	

<b>NET CASH FLOW</b>	\$40,280	\$39,336	<b>NET OPERATING INCOME</b>														\$284,105	\$39,336	<b>NET CASH FLOW</b>
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EQUITY SOURCES																	
APPLICANT'S PROPOSED EQUITY STRUCTURE								AS UNDERWRITTEN EQUITY STRUCTURE									
FEES	DESCRIPTION	% Cost	Annual Credit	Credit Price	Amount	Carryover	Original Underwriting		Carryover	Amount	Credit Price	Annual Credit	% Cost	Annual Credits per Unit	Total		
							Applicant	TDHCA							TDHCA	DCR	LTC
Boston Capital	LIHTC Equity	71.5%	\$1,035,633	1.03	\$10,665,953	\$9,941,083	\$9,941,083	\$9,941,083	\$9,941,083	\$10,662,963	\$1.03	\$1,035,633	71.5%	\$11,257			
NuRock Development	Deferred Developer Fees	1.1%	(9% Deferred)		\$162,020	\$692,321	\$692,321	\$692,321	\$507,621	\$165,010	(10% Deferred)		1.1%		<b>Total Developer Fee:</b>	<b>\$1,716,904</b>	
Additional (Excess) Funds Req'd		0.0%			(\$0)	(\$184,700)	\$0	\$0	\$0	\$0			0.0%				
<b>TOTAL EQUITY SOURCES</b>		<b>72.6%</b>			<b>\$10,827,973</b>	<b>\$10,448,704</b>	<b>\$10,633,404</b>	<b>\$10,827,973</b>	<b>\$10,448,704</b>	<b>\$10,827,973</b>			<b>72.6%</b>		<b>15-Year Cash Flow:</b>	<b>\$776,800</b>	

<b>TOTAL CAPITALIZATION</b>	<b>\$14,907,973</b>	<b>\$13,803,704</b>	<b>\$13,988,404</b>	<b>\$14,182,973</b>	<b>\$13,803,704</b>	<b>\$14,907,973</b>							<b>15-Yr Cash Flow after Deferred Fee:</b>	<b>\$611,791</b>
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DEVELOPMENT COST / ITEMIZED BASIS															
APPLICANT COST / BASIS ITEMS						TDHCA COST / BASIS ITEMS						COST VARIANCE			
Eligible Basis	Acquisition	New Const. Rehab	Total Costs	Carryover	Original Underwriting		Carryover	Total Costs	Eligible Basis	New Const. Rehab	Acquisition	%	\$		
					Applicant	TDHCA								TDHCA	
Land Acquisition			\$11,467 / Unit	\$1,054,980	\$1,054,980	\$1,239,680	\$1,239,680	\$1,054,980	\$11,467 / Unit			0.0%	\$0		
Building Acquisition	\$0		\$ / Unit	\$0	\$0	\$0	\$0	\$0	\$ / Unit		\$0	0.0%	\$0		
Closing costs & acq. legal fees			\$18,080	\$37,200	\$37,200	\$37,200	\$37,200	\$18,080					\$0		
Off-Sites		\$0	\$ / Unit	\$0	\$0	\$0	\$0	\$0	\$ / Unit	\$0		0.0%	\$0		
Site Work		\$1,220,000	\$13,261 / Unit	\$1,220,000	\$1,100,000	\$1,100,000	\$1,100,000	\$1,220,000	\$13,261 / Unit	\$1,220,000		0.0%	\$0		
Site Amenities		\$25,000	\$272 / Unit	\$25,000	\$70,000	\$70,000	\$70,000	\$25,000	\$272 / Unit	\$25,000		0.0%	\$0		
Building Cost		\$6,930,380	\$68.31 /sf	\$75,330/Unit	\$6,930,380	\$6,297,000	\$6,621,111	\$6,930,380	\$75.330/Unit	\$68.31 /sf	\$6,930,380		0.0%	\$0	
Contingency		\$650,620	7.96%	7.96%	\$650,620	\$622,690	\$545,378	\$545,378	\$572,277	7.00%	7.00%	\$572,277	13.7%	\$78,343	
Contractor Fees		\$1,144,554	12.97%	13.84%	\$1,221,640	\$1,045,380	\$1,045,380	\$1,045,380	\$1,221,640	13.97%	13.08%	\$1,144,554	0.0%	\$0	
Soft Costs	0	\$921,200	\$10,698 / Unit	\$984,200	\$984,200	\$984,200	\$984,200	\$984,200	\$10,698 / Unit	\$921,200	\$0	0.0%	\$0		
Financing	0	\$554,272	\$8,223 / Unit	\$756,546	\$700,978	\$700,978	\$700,978	\$756,546	\$8,223 / Unit	\$554,272	\$0	0.0%	\$0		
Developer Fee	\$0	\$1,716,904	15.00%	15.00%	\$1,716,904	\$1,583,533	\$1,583,533	\$1,583,533	\$1,705,152	15.00%	15.00%	\$1,705,152	0.7%	\$11,752	
Reserves			\$3,583 / Unit	\$329,623	\$307,743	\$307,743	\$303,610	\$303,610	\$316,717	\$3,443 / Unit		4.1%	\$12,906		
<b>UNADJUSTED BASIS / COST</b>	<b>\$0</b>	<b>\$13,162,930</b>		<b>\$162,043 / Unit</b>	<b>\$14,907,973</b>	<b>\$13,803,704</b>	<b>\$13,988,404</b>	<b>\$14,231,070</b>	<b>\$14,046,369</b>	<b>\$14,804,972</b>	<b>\$160,924 / Unit</b>	<b>\$13,072,835</b>	<b>\$0</b>	<b>0.7%</b>	<b>\$103,001</b>
Acquisition Cost	\$0			\$0	\$0	\$0									
Contingency		(\$78,343)													
Contractor's Fee		\$0													
Interim Interest		\$0													
Developer Fee	\$0	(\$11,752)			(\$0)	\$0	\$0								
Reserves					\$0	\$0	\$0								
<b>ADJUSTED BASIS / COST</b>	<b>\$0</b>	<b>\$13,072,835</b>		<b>\$162,043/unit</b>	<b>\$14,907,973</b>	<b>\$13,803,704</b>	<b>\$13,988,404</b>	<b>\$14,231,070</b>	<b>\$14,046,369</b>	<b>\$14,804,972</b>	<b>\$160,924/unit</b>	<b>\$13,072,835</b>	<b>\$0</b>	<b>0.7%</b>	<b>\$103,001</b>
<b>TOTAL UNDERWRITTEN COSTS (Applicant's Uses are within 5% of TDHCA Estimate):</b>					<b>\$14,907,973</b>										

**CAPITALIZATION / DEVELOPMENT COST BUDGET / ITEMIZED BASIS ITEMS**

*Residences at Earl Campbell, Tyler, 9% HTC #15285*

**CREDIT CALCULATION ON QUALIFIED BASIS**

	Applicant		TDHCA	
	Acquisition	Construction Rehabilitation	Acquisition	Construction Rehabilitation
	<b>ADJUSTED BASIS</b>	\$0	\$13,072,835	\$0
Deduction of Federal Gra	\$0	\$0	\$0	\$0
<b>TOTAL ELIGIBLE BASIS</b>	\$0	\$13,072,835	\$0	\$13,072,835
High Cost Area Adjustme		130%		130%
<b>TOTAL ADJUSTED BASIS</b>	\$0	\$16,994,685	\$0	\$16,994,685
Applicable Fraction	86.85%	86.85%	86.85%	86.85%
<b>TOTAL QUALIFIED BASIS</b>	\$0	\$14,760,421	\$0	\$14,760,421
Applicable Percentage	3.35%	7.87%	3.35%	7.87%
<b>ANNUAL CREDIT ON BAS</b>	\$0	\$1,161,645	\$0	\$1,161,645
<b>CREDITS ON QUALIFIED</b>	\$1,161,645		\$1,161,645	

**ANNUAL CREDIT CALCULATION  
BASED ON APPLICANT BASIS**

**FINAL ANNUAL LIHTC ALLOCATION**

Method	Annual Credits	Proceeds	Credit Allocation		
			Credit Price \$1.0296	Variance to Request	
<b>Eligible Basis</b>	\$1,161,645	\$11,960,394	----	----	----
<b>Gap</b>	\$1,051,659	\$10,827,973	----	----	----
<b>Applicant Request</b>	\$1,035,633	\$10,662,963	<b>\$1,035,633</b>	<b>\$0</b>	<b>\$0</b>

**BUILDING COST ESTIMATE**

CATEGORY	FACTOR	UNITS/SF	PER SF	AMOUNT
Base Cost:	Garden (Up to 4-story)	101,454 SF	\$68.65	\$6,964,761
<b>Adjustments</b>				
Exterior Wall Finish	3.20%		2.20	\$222,872
	0.00%		0.00	0
9 ft. ceilings	3.40%		2.33	236,802
Roofing			0.00	0
Subfloor			(0.12)	(11,836)
Floor Cover			2.50	253,635
Breezeways	\$27.77	14,400	3.94	399,840
Balconies	\$25.24	842	0.21	21,252
Plumbing Fixtures	\$970	222	2.12	215,340
Rough-ins	\$475	184	0.86	87,400
Built-In Appliances	\$1,790	92	1.62	164,680
Exterior Stairs	\$2,425	32	0.76	77,600
Heating/Cooling			2.11	184,422
Enclosed Corridors	\$52.44	0	0.00	0
Carports	\$11.82	0	0.00	0
Garages		0	0.00	0
Comm &/or Aux Bldgs	\$96.23	2,200	2.09	211,704
Elevators		0	0.00	0
<b>Other:</b>			0.00	0
Fire Sprinklers	\$2.47	118,054	2.87	291,593
<b>SUBTOTAL</b>			<b>92.16</b>	<b>9,349,711</b>
Current Cost Multiplier	0.99		(0.92)	(93,497)
Local Multiplier	0.88		(11.06)	(1,121,965)
<b>TOTAL BUILDING COSTS</b>			<b>80.18</b>	<b>\$8,134,249</b>
Plans, specs, survey, bldg permit	3.30%		(2.65)	(\$268,430)
Contractor's OH & Profit	11.50%		(9.22)	(935,439)
<b>NET BUILDING COSTS</b>		\$75,330/unit	\$68.31/sf	\$6,930,380

## 35-Year Long-Term Pro Forma

*Residences at Earl Campbell, Tyler, 9% HTC #15285*

	Growth Rate	Year 1	Year 2	Year 3	Year 4	Year 5	Year 10	Year 15	Year 20	Year 25	Year 30
EFFECTIVE GROSS INCOME	2.00%	\$676,312	\$689,838	\$703,635	\$717,708	\$732,062	\$808,255	\$892,379	\$985,259	\$1,087,805	\$1,201,025
TOTAL EXPENSES	3.00%	\$392,207	\$403,612	\$415,351	\$427,435	\$439,874	\$507,774	\$586,264	\$677,007	\$781,928	\$903,259
<b>NET OPERATING INCOME ("NOI")</b>		<b>\$284,105</b>	<b>\$286,227</b>	<b>\$288,284</b>	<b>\$290,272</b>	<b>\$292,187</b>	<b>\$300,481</b>	<b>\$306,115</b>	<b>\$308,252</b>	<b>\$305,877</b>	<b>\$297,766</b>
TOTAL DEBT SERVICE		\$244,769	\$244,769	\$244,769	\$244,769	\$244,769	\$244,769	\$244,769	\$244,769	\$244,769	\$244,769
<b>ANNUAL CASH FLOW</b>		<b>\$39,336</b>	<b>\$41,458</b>	<b>\$43,515</b>	<b>\$45,503</b>	<b>\$47,418</b>	<b>\$55,712</b>	<b>\$61,346</b>	<b>\$63,483</b>	<b>\$61,108</b>	<b>\$52,997</b>
<b>CUMULATIVE NET CASH FLOW</b>		<b>\$39,336</b>	<b>\$80,794</b>	<b>\$124,308</b>	<b>\$169,812</b>	<b>\$217,230</b>	<b>\$480,119</b>	<b>\$776,800</b>	<b>\$1,091,529</b>	<b>\$1,403,852</b>	<b>\$1,687,628</b>
DEBT COVERAGE RATIO		1.16	1.17	1.18	1.19	1.19	1.23	1.25	1.26	1.25	1.22
EXPENSE/INCOME RATIO		58.0%	58.5%	59.0%	59.6%	60.1%	62.8%	65.7%	68.7%	71.9%	75.2%
Deferred Developer Fee Balance		\$125,674	\$84,216	\$40,701	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Residual Cash Flow		\$0	\$0	\$0	\$4,802	\$47,418	\$55,712	\$61,346	\$63,483	\$61,108	\$52,997



**NuRock Companies**  
4925 Greenville Avenue, Suite 1305  
Dallas, Texas 75206  
Phone 972-573-3400 ♦ Fax 972-573-3401

September 26, 2016

Raquel Morales  
Director of Asset Management  
Texas Department of Housing and Community Affairs  
221 E. 11<sup>th</sup> Street  
Austin, TX 78701

**Re: Request for Application Amendment - TDHCA # 15285 – Residences at Earl Campbell**

Dear Ms. Morales:

Please accept this letter and related attachments as a Request for Application Amendment for Residences at Earl Campbell—TDHCA # 15285. The \$2,500 fee required for a Material Amendment has been sent via overnight FedEx to your attention.

Please find below a description of the changes made to our site acreage, site plan, and community building. The changes made do not impact scoring items in the tax credit application, nor do they impact the number of units, building unit amenity or common amenities in the application. The changes are simply a reflection of the updated information we received as we moved through the design, permitting, and development process.

**Change to Site Acreage**

We are requesting a change of the site acreage from 7 acres more or less to 5.382 acres. The original application at 7 acres more or less resulted in a density of 13.14 units per acre. The actual acreage of 5.382 acres results in a density of 17.09 units per acre. The site is zoned R-MF, which allows up to 24 units per acre.

This change is requested because the original site acreage of 7 acres was an estimate based, literally, on a sketch of an area the seller was willing to subdivide out of his much larger tract. The larger tract itself had not been platted and had not been surveyed since the 1930s. The contract stipulated that final cost of the land (which was contracted on a per square foot cost) would be based on a final survey. The final survey showed the land to equal 5.382 acres, which included a strip tying the site west to Earl Campbell Blvd. The boundary of the final site is nearly identical to the original boundary in the application adding the private access to Earl Campbell Blvd., thus indicating that the original estimate of 7 acres was grossly overstated, which could not have been known until much later in the development process. An accurate survey was not required by the land contract before the application was submitted.



### **Change to Site Plan**

This site is part of a larger mixed use tract. The anchor, Walmart Neighborhood Market, is in operation. To improve access to Earl Campbell Blvd, a major east/west thoroughfare, we negotiated the addition of a private access drive to an existing median cut on Earl Campbell Blvd and the other future retail and office to be constructed here. This resulted in moving the clubhouse and reconfiguring the buildings. What originally were three 24-unit buildings and one 20-unit building became one 12-unit building, one 24-unit building, one 20-unit building, and one 36-unit building. The number and type of units remain the same. This plan has been approved by the City of Tyler, as construction is underway.

### **Change to Clubhouse**

The alteration of the site plan caused us to reduce the square footage of the clubhouse, from 4,521 SF to 2,090 SF, a reduction of 2,431 SF. The design is more efficient, therefore no amenity was lost due to the reduction and sufficient amenities to meet application obligations are provided. In fact, Residences at Earl Campbell is providing 15 points worth of common amenities, which is 50% more than the minimum required.

### **Change to Unit Size**

Finally, we are requesting approval of a change to the unit sizes. The original application stated unit sizes of 722 SF for a 1BR unit, 948 SF for a 2BR unit, and 1,100 SF for a 3BR unit. The underwriting report represented the unit sizes as 927 SF for a 1BR unit, 1,167 SF for a 2BR unit, and 1,319 SF for a 3BR unit. The Final Permitted unit sizes are 876 SF for a 1BR unit, 1,117 SF for a 2BR unit, and 1,221 SF for a 3 BR unit. Though they are 6%, 4%, and 7% smaller, respectively, than represented in the underwriting report, the units are 46%, 40%, and 22% larger, respectively, than TDHCA minimum unit sizes, and the Final Permitted unit sizes are 21%, 18%, and 11% larger, respectively, than those represented in the original application. The five accessible units are larger still. Also, the units have a more efficient layout than originally conceived.

These changes were not foreseeable at the time of application, because the seller was in final negotiations with Walmart for the anchor piece of the tract, which would dictate the site plan of our development. Until Walmart finalized their design, we were working with rough estimates of our acreage and its boundaries.

If you have any questions about this request, you may reach me at (972) 573-3400 x 2 or [lvilicic@nurock.com](mailto:lvilicic@nurock.com). Thank you for your consideration.

Sincerely,



Leonard Vilicic  
NuRock Companies



**NuRock Companies**  
4925 Greenville Avenue, Suite 1305  
Dallas, Texas 75206  
Phone 972-573-3400 ♦ Fax 972-573-3401

July 22, 2016

Kent Bedell  
Asset Manager  
Texas Department of Housing and Community Affairs  
221 E. 11<sup>th</sup> Street  
Austin, TX 78701

**Re: Request for Application Amendment - TDHCA # 15285 – Residences at Earl Campbell**

Dear Mr. Bedell:

Please accept this letter and related attachments as a Request for Application Amendment for Residences at Earl Campbell—TDHCA # 15285. The \$2,500 fee required for a Material Amendment has been sent via overnight FedEx to your attention.

Please find below a description of the changes made to our site acreage, site plan, and community building. The changes made do not impact scoring items in the tax credit application, nor do they impact the number of units, building unit amenity or common amenities in the application. The changes are simply a reflection of the updated information we received as we moved through the design, permitting, and development process.

**Change to Site Acreage**

We are requesting a change of the site acreage from 7 acres more or less to 5.382 acres. The original application at 7 acres more or less resulted in a density of 13.14 units per acre. The actual acreage of 5.382 acres results in a density of 17.09 units per acre. The site is zoned R-MF, which allows up to 24 units per acre.

This change is requested because the original site acreage of 7 acres was an estimate based, literally, on a sketch of an area the seller was willing to subdivide out of his much larger tract. The larger tract itself had not been platted and had not been surveyed since the 1930s. The contract stipulated that final cost of the land (which was contracted on a per square foot cost) would be based on a final survey. The final survey showed the land to equal 5.382 acres, which included a strip tying the site west to Earl Campbell Blvd. The boundary of the final site is nearly identical to the original boundary in the application adding the private access to Earl Campbell Blvd., thus indicating that the original estimate of 7 acres was grossly overstated,

which could not have been known until much later in the development process. An accurate survey was not required by the land contract before the application was submitted.

### **Change to Site Plan**

This site is part of a larger mixed use tract. The anchor, Walmart Neighborhood Market, is in operation. To improve access to Earl Campbell Blvd, a major east/west thoroughfare, we negotiated the addition of a private access drive to an existing median cut on Earl Campbell Blvd and the other future retail and office to be constructed here. This resulted in moving the clubhouse and reconfiguring the buildings. What originally were three 24-unit buildings and one 20-unit building became one 12-unit building, one 24-unit building, one 20-unit building, and one 36-unit building. The number and type of units remain the same. This plan has been approved by the City of Tyler, as construction is underway.

### **Change to Clubhouse**

The alteration of the site plan caused us to reduce the square footage of the clubhouse, from 4,521 SF to 2,090 SF, a reduction of 2,431 SF. The design is more efficient, therefore no amenity was lost due to the reduction and sufficient amenities to meet application obligations are provided. This loss of clubhouse square footage is offset by the larger unit plans. The one bedroom unit plan increased from 722 SF to 817 SF. The two bedroom unit plan increase from 948 SF to 1,045 SF. The three bedroom unit plan increased from 1,100 SF to 1,149 SF. Overall increase to net rentable area is 7,548 SF, or 8.636%. These changes resulted in very little impact to the overall cost of the project.

These changes were not foreseeable at the time of application, because the seller was in final negotiations with Walmart for the anchor piece of the tract, which would dictate the site plan of our development. Until Walmart finalized their design, we were working with rough estimates of our acreage and its boundaries.

If you have any questions about this request, you may reach me at (972) 573-3400 x 2 or [lvilicic@nurock.com](mailto:lvilicic@nurock.com). Thank you for your consideration.

Sincerely,



Leonard Vilicic  
NuRock Companies  
[lvilicic@nurock.com](mailto:lvilicic@nurock.com)

Enclosure: Specifications and Building/Unit Type Configuration form

Enclosure: Rent Schedule form











Original

Rent Schedule (Continued)

		% of LI	% of Total	
<b>HOUSING TAX CREDITS</b>	TC30%	10%	9%	8
	TC40%			0
	TC50%	20%	17%	16
	TC60%	70%	61%	56
	<b>HTC LI Total</b>			<b>80</b>
	EO			0
	MR			12
	<b>MR Total</b>			<b>12</b>
	<b>Total Units</b>			<b>92</b>
	<b>MORTGAGE REVENUE BOND</b>	MRB30%		
MRB40%				0
MRB50%				0
MRB60%				0
<b>MRB LI Total</b>				<b>0</b>
MRBMR				0
<b>MRBMR Total</b>				<b>0</b>
<b>MRB Total</b>				<b>0</b>

		% of LI	% of Total	
<b>HOUSING TRUST FUND</b>	HTF30%			0
	HTF40%			0
	HTF50%			0
	HTF60%			0
	HTF80%			0
	<b>HTF LI Total</b>			<b>0</b>
	MR			0
	<b>MR Total</b>			<b>0</b>
	<b>HTF Total</b>			<b>0</b>
	<b>HOME</b>	30%		
LH/50%				0
HH/60%				0
HH/80%				0
<b>HOME LI Total</b>				<b>0</b>
EO				0
MR				0
<b>MR Total</b>				<b>0</b>
<b>HOME Total</b>				<b>0</b>
<b>OTHER</b>				<b>Total OT Units</b>

<b>BEDROOMS</b>	0			0
	1			18
	2			46
	3			28
	4			0
	5			0

<b>ACQUISITION + HARD</b>			
Cost Per Sq Ft	\$ 84.20		
<b>HARD</b>			
Cost Per Sq Ft	\$ 84.20		
<b>BUILDING</b>			
Cost Per Sq Ft	\$ 58.69		
		<b>Total Points claimed:</b>	<b>12</b>

Applicants are advised to ensure that figure is not rounding down to the maximum dollar figure to support the elected points.



## Rent Schedule (Continued)

		% of LI	% of Total	
<b>HOUSING TAX CREDITS</b>	TC30%	10%	9%	8
	TC40%			0
	TC50%	20%	17%	16
	TC60%	70%	61%	56
	<b>HTC LI Total</b>			<b>80</b>
	EO			0
	MR			12
	<b>MR Total</b>			<b>12</b>
	<b>Total Units</b>			<b>92</b>
	<b>MORTGAGE REVENUE BOND</b>	MRB30%		
MRB40%				0
MRB50%				0
MRB60%				0
<b>MRB LI Total</b>				<b>0</b>
MRBMR				0
<b>MRBMR Total</b>				<b>0</b>
<b>MRB Total</b>				<b>0</b>

		% of LI	% of Total	
<b>HOUSING TRUST FUND</b>	HTF30%			0
	HTF40%			0
	HTF50%			0
	HTF60%			0
	HTF80%			0
	<b>HTF LI Total</b>			<b>0</b>
	MR			0
	<b>MR Total</b>			<b>0</b>
	<b>HTF Total</b>			<b>0</b>
	<b>HOME</b>	30%		
LH/50%				0
HH/60%				0
HH/80%				0
<b>HOME LI Total</b>				<b>0</b>
EO				0
MR				0
<b>MR Total</b>				<b>0</b>
<b>HOME Total</b>				<b>0</b>
<b>OTHER</b>		<b>Total OT Units</b>		

<b>BEDROOMS</b>	0			0
	1			18
	2			46
	3			28
	4			0
	5			0

<b>ACQUISITION + HARD</b>		<b>Total Points claimed:</b>
<b>Cost Per Sq Ft</b>	\$ 104.76	
<b>HARD</b>		
<b>Cost Per Sq Ft</b>	\$ 104.76	
<b>BUILDING</b>		
<b>Cost Per Sq Ft</b>	\$ 72.99	<b>11</b>

Applicants are advised to ensure that figure is not rounding down to the maximum dollar figure to support the elected points.

Original

## Utility Allowances

**Applicant must attach to this form documentation from the source of the "Utility Allowance" estimate used in completing the Rent Schedule provided in the Application Packet. This exhibit must clearly indicate which utility costs are included in the estimate.**

*Note: If more than one entity (Sec. 8 administrator, public housing authority) is responsible for setting the utility allowance(s) in the area of the development location, then the selected utility allowance must be the one which most closely reflects the actual expenses.*

*If an independent utility cost evaluation is conducted it must include confirming documentation from all the relevant utility providers.*

*If other reductions to the tenant rent is required such as the cost of flood insurance for the tenant's contents, documentation for these reductions to gross rent should also be attached.*

Utility	Who Pays	Energy Source	OBR	1BR	2BR	3BR	4BR	Source of Utility Allowance & Effective Date
Heating	Tenant	Electric		\$ 10	\$ 13	\$ 15		City of Tyler Hsg Agency, 10/1/2014
Cooking	Tenant	Electric		\$ 7	\$ 8	\$ 10		City of Tyler Hsg Agency, 10/1/2014
Other Electric	Tenant			\$ 23	\$ 30	\$ 37		City of Tyler Hsg Agency, 10/1/2014
Air Conditioning	Tenant	Electric		\$ 10	\$ 16	\$ 22		City of Tyler Hsg Agency, 10/1/2014
Water Heater	Tenant	Electric		\$ 14	\$ 20	\$ 25		City of Tyler Hsg Agency, 10/1/2014
Water	Tenant			\$ 16	\$ 20	\$ 25		City of Tyler Hsg Agency, 10/1/2014
Sewer	Tenant			\$ 16	\$ 19	\$ 23		City of Tyler Hsg Agency, 10/1/2014
Trash	Landlord							
Flat Fee	Tenant	Electric		\$ 16	\$ 16	\$ 16		City of Tyler Hsg Agency, 10/1/2014
Other								
<b>Total Paid by Tenant</b>			\$ -	\$ 112	\$ 142	\$ 173	\$ -	

Other (Describe)




## Utility Allowances

**Applicant must attach to this form documentation from the source of the "Utility Allowance" estimate used in completing the Rent Schedule provided in the Application Packet. This exhibit must clearly indicate which utility costs are included in the estimate.**

*Note: If more than one entity (Sec. 8 administrator, public housing authority) is responsible for setting the utility allowance(s) in the area of the development location, then the selected utility allowance must be the one which most closely reflects the actual expenses.*

*If an independent utility cost evaluation is conducted it must include confirming documentation from all the relevant utility providers.*

*If other reductions to the tenant rent is required such as the cost of flood insurance for the tenant's contents, documentation for these reductions to gross rent should also be attached.*

Utility	Who Pays	Energy Source	OBR	1BR	2BR	3BR	4BR	Source of Utility Allowance & Effective Date
Heating	Tenant	Electric		\$ 8	\$ 10	\$ 12		City of Tyler Hsg Agency, 10/1/2015
Cooking	Tenant	Electric		\$ 6	\$ 7	\$ 8		City of Tyler Hsg Agency, 10/1/2015
Other Electric	Tenant			\$ 42	\$ 50	\$ 59		City of Tyler Hsg Agency, 10/1/2015
Air Conditioning	Tenant	Electric		\$ 8	\$ 13	\$ 18		City of Tyler Hsg Agency, 10/1/2015
Water Heater	Tenant	Electric		\$ 11	\$ 16	\$ 20		City of Tyler Hsg Agency, 10/1/2015
Water	Tenant			\$ 16	\$ 21	\$ 26		City of Tyler Hsg Agency, 10/1/2015
Sewer	Tenant			\$ 17	\$ 20	\$ 24		City of Tyler Hsg Agency, 10/1/2015
Trash	Landlord							
Flat Fee	Tenant	Electric		\$ 21	\$ 21	\$ 21		City of Tyler Hsg Agency, 10/1/2015
Other								
<b>Total Paid by Tenant</b>			\$ -	\$ 129	\$ 158	\$ 188	\$ -	

Other (Describe)




Original

<b>ANNUAL OPERATING EXPENSES</b>			
<b>General &amp; Administrative Expenses</b>			
Accounting	\$	6,472	
Advertising	\$	12,945	
Legal fees	\$	1,294	
Leased equipment	\$	3,113	
Postage & office supplies	\$	3,883	
Telephone	\$	3,113	
Other	\$		
Other	\$		
<b>Total General &amp; Administrative Expenses:</b>	\$		59,820
<b>Management Fee:</b>	Percent of Effective Gross Income:	5.83%	\$ 39,625
<b>Payroll, Payroll Tax &amp; Employee Benefits</b>			
Management	\$	46,046	
Maintenance	\$	45,945	
Other	\$	9,209	
Other	\$		
<b>Total Payroll, Payroll Tax &amp; Employee Benefits:</b>	\$		101,200
<b>Repairs &amp; Maintenance</b>			
Elevator	\$		
Exterminating	\$	7,973	
Grounds	\$	6,379	
Make-ready	\$	15,975	
Repairs	\$	26,625	
Pool	\$	2,848	
Other	\$		
Other	\$		
<b>Total Repairs &amp; Maintenance:</b>	\$		59,800
<b>Utilities (Enter Only Property Paid Expense)</b>			
Electric	\$	15,240	
Natural gas	\$		
Trash	\$	13,400	
Water/Sewer	\$	9,200	
Other	\$		
Other	\$		
<b>Total Utilities:</b>	\$		37,840
<b>Annual Property Insurance:</b>	Rate per net rentable square foot:	\$ 0.37	\$ 32,200
<b>Property Taxes:</b>			
Published Capitalization Rate		Source:	
Annual Property Taxes	\$	53,360	
Payments in Lieu of Tax	\$		
<b>Total Property Taxes:</b>	\$		53,360
<b>Reserve for Replacements:</b>	Annual reserves per unit:	\$ 250	\$ 23,000
<b>Other Expenses</b>			
Cable TV	\$		
Supportive Services (Staffing/Contracted Services)	\$	10,000	
TDHCA Compliance fees	\$	3,200	
TDHCA Bond Administration Fees (TDHCA as Bond Issuer Only)	\$		
Security	\$		
Other	\$		
Other	\$		
<b>Total Other Expenses:</b>	\$		13,200
<b>TOTAL ANNUAL EXPENSES</b>	Expense per unit:	\$ 4250	\$ 391,045
	Expense to Income Ratio:	<b>57.58%</b>	
<b>NET OPERATING INCOME (before debt service)</b>			\$ 288,086
<b>Annual Debt Service</b>			
<b>1st Mortgage debt service</b>	\$	223,141	
<b>Local Funding debt service</b>	\$	4,047	
	\$		
	\$		
<b>TOTAL ANNUAL DEBT SERVICE</b>	Debt Coverage Ratio:	1.27	\$ 227,188
<b>NET CASH FLOW</b>			\$ 60,898



## ANNUAL OPERATING EXPENSES

<b>General &amp; Administrative Expenses</b>			
Accounting	\$	6,762	
Advertising	\$	13,525	
Legal fees	\$	1,352	
Leased equipment	\$	3,252	
Postage & office supplies	\$	4,057	
Telephone	\$	3,252	
Other	\$		
Other	\$		
Total General & Administrative Expenses:			\$ 32,200
Management Fee:	Percent of Effective Gross Income:	5.83%	\$ 39,455
<b>Payroll, Payroll Tax &amp; Employee Benefits</b>			
Management	\$	46,046	
Maintenance	\$	45,945	
Other	\$	9,209	
Other	\$		
Total Payroll, Payroll Tax & Employee Benefits:			\$ 101,200
<b>Repairs &amp; Maintenance</b>			
Elevator	\$		
Exterminating	\$	7,973	
Grounds	\$	6,379	
Make-ready	\$	15,975	
Repairs	\$	26,625	
Pool	\$	2,848	
Other	\$		
Other	\$		
Total Repairs & Maintenance:			\$ 59,800
<b>Utilities (Enter Only Property Paid Expense)</b>			
Electric	\$	14,240	
Natural gas	\$		
Trash	\$	13,040	
Water/Sewer	\$	9,200	
Other	\$		
Other	\$		
Total Utilities:			\$ 36,480
Annual Property Insurance:	Rate per net rentable square foot:	\$ 0.34	\$ 32,200
<b>Property Taxes:</b>			
Published Capitalization Rate:		Source:	
Annual Property Taxes	\$	53,360	
Payments in Lieu of Taxes	\$		
Total Property Taxes:			\$ 53,360
Reserve for Replacements:	Annual reserves per unit:	\$ 300	\$ 27,600
<b>Other Expenses</b>			
Cable TV	\$		
Supportive Services (Staffing/Contracted Services)	\$	10,000	
TDHCA Compliance fees	\$	3,200	
TDHCA Bond Administration Fees (TDHCA as Bond Issuer <u>Only</u> )	\$		
Security	\$		
Other	\$		
Other	\$		
Total Other Expenses:			\$ 13,200
TOTAL ANNUAL EXPENSES			\$ 395,495
Expense per unit:			\$ 4299
Expense to Income Ratio:			58.48%
NET OPERATING INCOME (before debt service)			\$ 280,817
<b>Annual Debt Service</b>			
1st Mortgage debt service	\$	240,722	
Local Funding debt service	\$	4,047	
	\$		
	\$		
TOTAL ANNUAL DEBT SERVICE			\$ 244,769
Debt Coverage Ratio:			1.15
NET CASH FLOW			\$ 36,048

### 15 Year Rental Housing Operating Pro Forma

**All Programs Must Complete the following:**

The pro forma should be based on the operating income and expense information for the base year (first year of stabilized occupancy using today's best estimates of market rents, restricted rents, rental income and expenses), and principal and interest debt service. The Department uses an annual growth rate of 2% for income and 3% for expenses. Written explanation for any deviations from these growth rates or for assumptions other than straight-line growth made during the proforma period should be attached to this exhibit.

INCOME	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 10	YEAR 15
POTENTIAL GROSS ANNUAL RENTAL INCOME	\$691,836	\$705,673	\$719,786	\$734,182	\$748,866	\$826,808	\$912,863
Secondary Income	\$ 22,080	\$ 22,522	\$ 22,972	\$ 23,431	\$ 23,900	26,388	\$ 29,134
POTENTIAL GROSS ANNUAL INCOME	\$713,916	\$728,194	\$742,758	\$757,613	\$772,766	\$853,196	\$941,997
Provision for Vacancy & Collection Loss	(\$53,544)	(\$54,615)	(\$55,707)	(\$56,821)	(\$57,957)	(\$63,990)	(\$70,650)
Rental Concessions	\$0						
EFFECTIVE GROSS ANNUAL INCOME	\$660,372	\$673,580	\$687,051	\$700,792	\$714,808	\$789,206	\$871,347
<b>EXPENSES</b>							
General & Administrative Expenses	\$30,820	\$31,745	\$32,697	\$33,678	\$34,688	\$40,213	\$46,618
Management Fee	\$ 39,625	\$ 40,814	\$ 42,038	\$ 43,299	\$ 44,598	\$ 51,702	\$ 59,936
Payroll, Payroll Tax & Employee Benefits	\$ 101,200	\$ 104,236	\$ 107,363	\$ 110,584	\$ 113,901	\$ 132,043	\$ 153,074
Repairs & Maintenance	\$ 59,800	\$ 61,594	\$ 63,441	\$ 65,345	\$ 67,305	\$ 78,025	\$ 90,453
Electric & Gas Utilities	\$ 15,240	\$ 15,697	\$ 16,168	\$ 16,653	\$ 17,153	\$ 19,885	\$ 23,052
Water, Sewer & Trash Utilities	\$ 22,600	\$ 23,278	\$ 23,976	\$ 24,696	\$ 25,436	\$ 29,488	\$ 34,185
Annual Property Insurance Premiums	\$ 32,200	\$ 33,166	\$ 34,161	\$ 35,186	\$ 36,241	\$ 42,014	\$ 48,705
Property Tax	\$ 53,360	\$ 54,967	\$ 56,610	\$ 58,308	\$ 60,057	\$ 69,623	\$ 80,712
Reserve for Replacements	\$ 23,000	\$ 23,690	\$ 24,401	\$ 25,133	\$ 25,887	\$ 30,010	\$ 34,790
Other Expenses	\$ 13,200	\$ 13,596	\$ 14,004	\$ 14,424	\$ 14,857	\$ 17,223	\$ 19,966
TOTAL ANNUAL EXPENSES	\$391,045	\$402,776	\$414,860	\$427,305	\$440,125	\$510,225	\$591,491
NET OPERATING INCOME	\$269,327	\$270,803	\$272,192	\$273,487	\$274,684	\$278,981	\$279,857
<b>DEBT SERVICE</b>							
First Deed of Trust Annual Loan Payment	\$223,141	\$223,141	\$223,141	\$223,141	\$223,141	\$223,141	\$223,141
Second Deed of Trust Annual Loan Payment	4,047	4,047	4,047	4,047	4,047	4,047	4,047
Third Deed of Trust Annual Loan Payment							
Other Annual Required Payment							
Other Annual Required Payment							
<b>NET CASH FLOW</b>	\$42,139	\$43,615	\$45,003	\$46,298	\$47,495	\$51,793	\$52,668
Debt Coverage Ratio	1.19	1.19	1.20	1.20	1.21	1.23	1.23
Other (Describe)							
Other (Describe)							

By signing below I (we) are certifying that the above 15 Year pro forma, rent schedule and operating expense schedule have been reviewed and generally meet current lender underwriting parameters for the loan terms indicated in the term sheet. (Signature only required if using this pro forma for points under §11.9(e)(1) relating to Financial Feasibility)

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

\_\_\_\_\_  
Signature, Authorized Representative, Construction or Permanent Lender

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

## 15 Year Rental Housing Operating Pro Forma

**All Programs Must Complete the following:**

The pro forma should be based on the operating income and expense information for the base year (first year of stabilized occupancy using today's best estimates of market rents, restricted rents, rental income and expenses), and principal and interest debt service. The Department uses an annual growth rate of 2% for income and 3% for expenses. Written explanation for any deviations from these growth rates or for assumptions other than straight-line growth made during the proforma period should be attached to this exhibit.

INCOME	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 10	YEAR 15
POTENTIAL GROSS ANNUAL RENTAL INCOME	\$709,068	\$723,249	\$737,714	\$752,469	\$767,518	\$847,402	\$935,600
Secondary Income	\$ 22,080	\$ 22,522	\$ 22,972	\$ 23,431	\$ 23,900	\$ 26,388	\$ 29,134
POTENTIAL GROSS ANNUAL INCOME	\$731,148	\$745,771	\$760,686	\$775,900	\$791,418	\$873,790	\$964,734
Provision for Vacancy & Collection Loss	(\$54,836)	(\$55,933)	(\$57,051)	(\$58,193)	(\$59,356)	(\$65,534)	(\$72,355)
Rental Concessions	\$0						
EFFECTIVE GROSS ANNUAL INCOME	\$676,312	\$689,838	\$703,635	\$717,708	\$732,062	\$808,255	\$892,379
EXPENSES							
General & Administrative Expenses	\$32,200	\$33,166	\$34,161	\$35,186	\$36,241	\$42,014	\$48,705
Management Fee	\$ 39,455	\$ 40,639	\$ 41,858	\$ 43,114	\$ 44,407	\$ 51,480	\$ 59,679
Payroll, Payroll Tax & Employee Benefits	\$ 101,200	\$ 104,236	\$ 107,363	\$ 110,584	\$ 113,901	\$ 132,043	\$ 153,074
Repairs & Maintenance	\$ 59,800	\$ 61,594	\$ 63,442	\$ 65,345	\$ 67,305	\$ 78,025	\$ 90,453
Electric & Gas Utilities	\$ 14,240	\$ 14,667	\$ 15,107	\$ 15,560	\$ 16,027	\$ 18,580	\$ 21,539
Water, Sewer & Trash Utilities	\$ 22,240	\$ 22,907	\$ 23,594	\$ 24,302	\$ 25,031	\$ 29,018	\$ 33,640
Annual Property Insurance Premiums	\$ 32,200	\$ 33,166	\$ 34,161	\$ 35,186	\$ 36,241	\$ 42,014	\$ 48,705
Property Tax	\$ 53,360	\$ 54,961	\$ 56,610	\$ 58,308	\$ 60,057	\$ 69,623	\$ 80,712
Reserve for Replacements	\$ 27,600	\$ 28,428	\$ 29,281	\$ 30,159	\$ 31,064	\$ 36,012	\$ 41,747
Other Expenses	\$ 13,200	\$ 13,596	\$ 14,004	\$ 14,424	\$ 14,857	\$ 17,223	\$ 19,966
TOTAL ANNUAL EXPENSES	\$395,495	\$407,360	\$419,581	\$432,168	\$445,133	\$516,031	\$598,222
NET OPERATING INCOME	\$280,817	\$282,478	\$284,054	\$285,540	\$286,929	\$292,224	\$294,158
DEBT SERVICE							
First Deed of Trust Annual Loan Payment	\$240,722	\$240,722	\$240,722	\$240,722	\$240,722	\$240,722	\$240,722
Second Deed of Trust Annual Loan Payment	4,047	4,047	4,047	4,047	4,047	4,047	4,047
Third Deed of Trust Annual Loan Payment							
Other Annual Required Payment							
Other Annual Required Payment							
<b>NET CASH FLOW</b>	\$36,048	\$37,709	\$39,285	\$40,771	\$42,160	\$47,455	\$49,389
Debt Coverage Ratio	1.15	1.15	1.16	1.17	1.17	1.19	1.20
Other (Describe)							
Other (Describe)							

By signing below I (we) are certifying that the above 15 Year pro forma, rent schedule and operating expense schedule have been reviewed and generally meet current lender underwriting parameters for the loan terms indicated in the term sheet. (Signature only required if using this pro forma for points under §11.9(e)(1) relating to Financial Feasibility)

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

\_\_\_\_\_  
Signature, Authorized Representative, Construction or  
Permanent Lender

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date





Original

**FINANCING:**

**CONSTRUCTION LOAN(S)<sup>3</sup>**

Interest	339,988		237,992
Loan origination fees	49,125		49,125
Title & recording fees	86,000		86,000
Closing costs & legal fees	75,000		75,000
Inspection fees	35,000		35,000
Credit Report			
Discount Points			
Local Funding Loan Appl & Interest	7,000		5,000
Local Funding Loan Legal	25,000		12,500

**PERMANENT LOAN(S)**

Loan origination fees	32,750		
Title & recording fees			
Closing costs & legal			
Bond premium			
Credit report			
Discount points			
Credit enhancement fees			
Prepaid MIP			
Other (specify) - see footnote 1			
Other (specify) - see footnote 1			

**BRIDGE LOAN(S)**

Interest			
Loan origination fees			
Title & recording fees			
Closing costs & legal fees			
Other (specify) - see footnote 1			
Other (specify) - see footnote 1			

**OTHER FINANCING COSTS<sup>3</sup>**

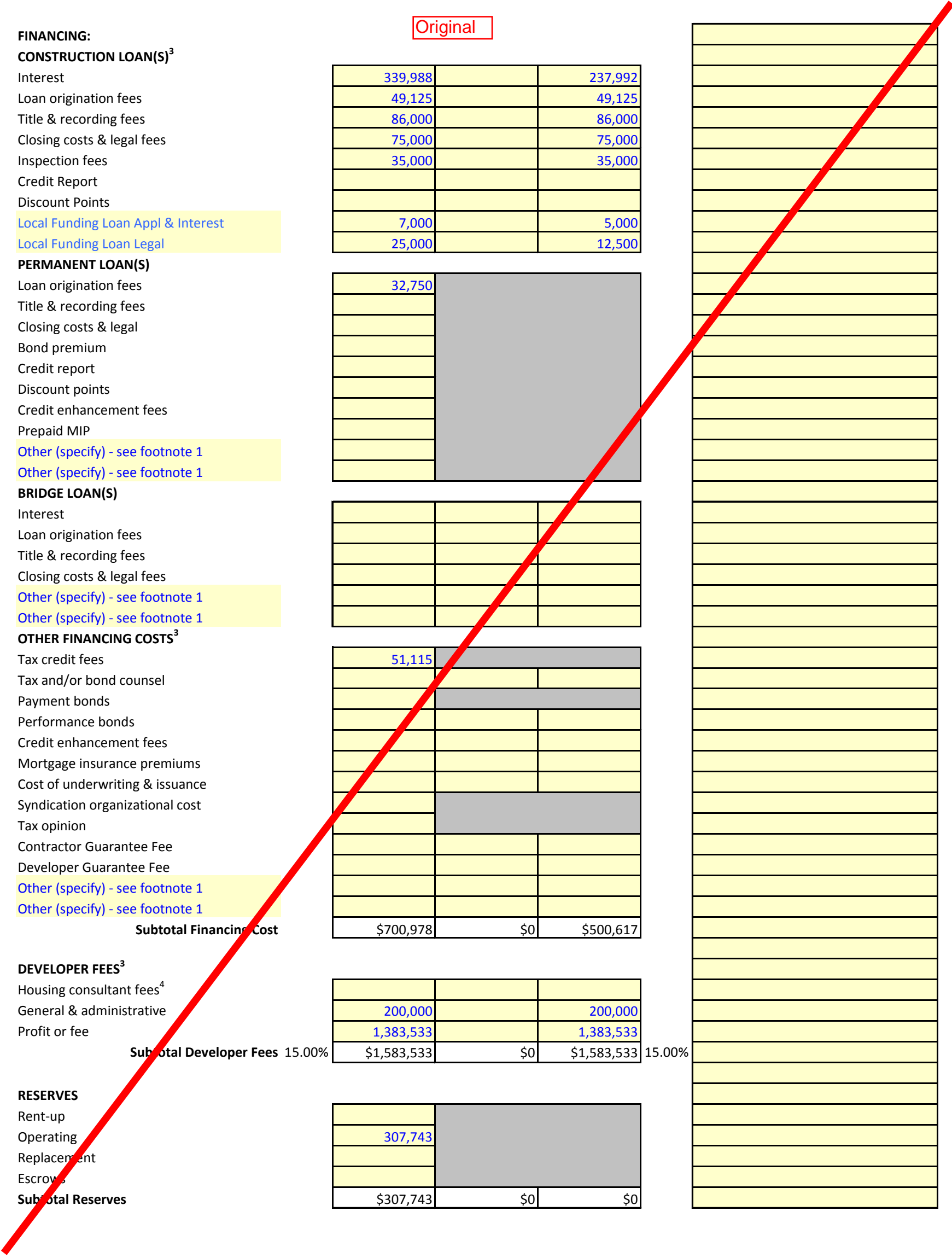
Tax credit fees	51,115		
Tax and/or bond counsel			
Payment bonds			
Performance bonds			
Credit enhancement fees			
Mortgage insurance premiums			
Cost of underwriting & issuance			
Syndication organizational cost			
Tax opinion			
Contractor Guarantee Fee			
Developer Guarantee Fee			
Other (specify) - see footnote 1			
Other (specify) - see footnote 1			
<b>Subtotal Financing Cost</b>	<b>\$700,978</b>	<b>\$0</b>	<b>\$500,617</b>

**DEVELOPER FEES<sup>3</sup>**

Housing consultant fees <sup>4</sup>			
General & administrative	200,000		200,000
Profit or fee	1,383,533		1,383,533
<b>Subtotal Developer Fees 15.00%</b>	<b>\$1,583,533</b>	<b>\$0</b>	<b>\$1,583,533 15.00%</b>

**RESERVES**

Rent-up			
Operating	307,743		
Replacement			
Escrows			
<b>Subtotal Reserves</b>	<b>\$307,743</b>	<b>\$0</b>	<b>\$0</b>



















## Financing Narrative and Summary of Sources and Uses

*Describe all sources of funds. Information must be consistent with the information provided throughout the Application (i.e. Financing Narrative, Term Sheets and Development Cost Schedule).*

Financing Participants	Funding Description	Construction Period		Lien Position	Permanent Period					Lien Position
		Loan/Equity Amount	Interest Rate (%)		Loan/Equity Amount	Interest Rate (%)	Amort - ization	Term (Yrs)	Syndication Rate	
<b>Debt</b>										
TDHCA	<a href="#">HOME</a>	\$0	0%		\$ -	0%	0	0		
TDHCA	<a href="#">TCAP Loan Repayments</a>	\$0	0%		\$ -	0%	0	0		
TDHCA	<a href="#">Mortgage Revenue Bond</a>	\$0	0%		\$ -	0%	0	0		
Bank of Oklahoma	Conventional Loan	\$12,174,260	3.25%	1						
Mass. Mutual Life Ins Co.	Conventional Loan				\$ 4,000,000	4.95%	35	15		1
City of Tyler	Local Government Loan	\$80,000	3.00%	2	\$ 80,000	3.00%	30	15		2
<b>Third Party Equity</b>										
Boston Capital	<a href="#">HTC</a>	\$ 1,035,633	\$ 1,599,893		\$ 10,665,953				1.03	
<b>Grant</b>										
<b>Deferred Developer Fee</b>										
					\$ 162,020					
<b>Other</b>										
	<b>Total Sources of Funds</b>	\$ 13,854,153			\$ 14,907,973					
	<b>Total Uses of Funds</b>				\$ 14,907,973					



Original

BUILDING TABULATION									
BUILDING #	BLDG. TYPE	# OF STORIES	1 BR	2 BR	3 BR	NUMBER OF UNITS/ BUILDING	GROSS BUILDING AREA	HEATED BUILDING AREA (NRA)	BREEZEWAY AREA PER BUILDING
BUILDING #1	A	3	16	0	8	24	25,384 SF	20,352 SF	3,576 SF
BUILDING #2	B	3	0	16	8	24	29,224 SF	23,968 SF	3,576 SF
BUILDING #3	B	3	0	16	8	24	29,224 SF	23,968 SF	3,576 SF
BUILDING #4	C	3	2	14	4	20	23,468 SF	19,116 SF	3,576 SF
CLUBHOUSE		1					5,037 SF	4,521 SF	-
<b>TOTALS:</b>			<b>18</b>	<b>46</b>	<b>28</b>	<b>92</b>	<b>112,337 SF</b>	<b>91,925 SF</b>	<b>14,304 SF</b>

UNIT SQUARE FOOTAGES			PARKING	
	GROSS BLDG AREA PER UNIT	GROSS UNIT AREA	HEATED UNIT AREA	
1 BR	927 SF	778 SF	722 SF	<b>PARKING REQUIREMENTS:</b> 18 (1BR) x 1.5 = 27 46 (2BR) x 2 = 92 28 (3BR) x 2 = 56 CLUBHOUSE = 18 <b>TOTAL = 193 REQUIRED</b>  <b>TOTAL PROVIDED = 193 SPACES</b>
2 BR	1,167 SF	1,018 SF	948 SF	
3 BR	1,319 SF	1,170 SF	1,100 SF	
CLUBHOUSE	-	5,166 SF	4,521 SF	

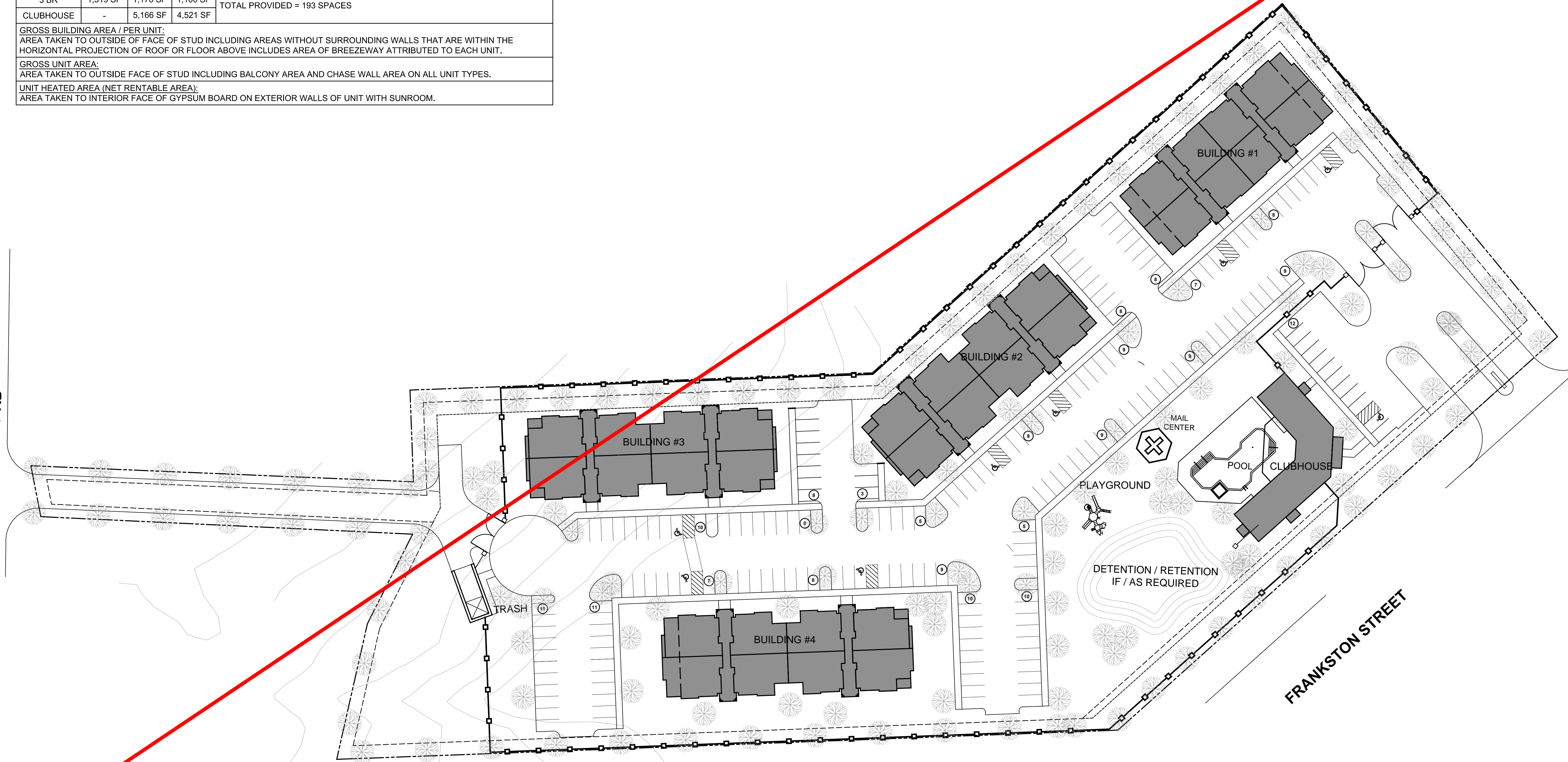
91,925 - 4,521 clubhouse = 87,404 NRA - bps

**GROSS BUILDING AREA / PER UNIT:**  
 AREA TAKEN TO OUTSIDE OF FACE OF STUD INCLUDING AREAS WITHOUT SURROUNDING WALLS THAT ARE WITHIN THE HORIZONTAL PROJECTION OF ROOF OR FLOOR ABOVE INCLUDES AREA OF BREEZEWAY ATTRIBUTED TO EACH UNIT.

**GROSS UNIT AREA:**  
 AREA TAKEN TO OUTSIDE FACE OF STUD INCLUDING BALCONY AREA AND CHASE WALL AREA ON ALL UNIT TYPES.

**UNIT HEATED AREA (NET RENTABLE AREA):**  
 AREA TAKEN TO INTERIOR FACE OF GYPSUM BOARD ON EXTERIOR WALLS OF UNIT WITH SUNROOM.

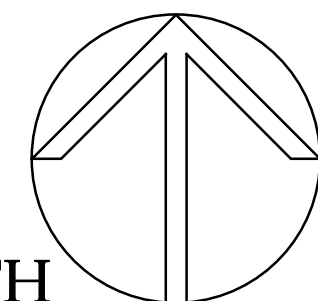
OLD NOONDAY RD



SITE PLAN

SCALE: 1"=40'-0"

NORTH



*The Residences at Earl Campbell*

SITE PLAN  
UNIT TABULATION

T2  
PRELIMINARY  
DESIGN

DATE: 2015-02-25  
REVISION: PRELIMINARY DESIGN  
NOT FOR CONSTRUCTION



FRANKSTON STREET  
TYLER, TEXAS

MORTON M. GRUBER, AIA, ARCHITECT  
245 PEACHTREE CENTER AVE SUITE 2415 ATLANTA, GA 30303 TEL: 404.984-1880 FAX: 404.984-1895



**BUILDING TABULATION**

BUILDING #	BLDG. TYPE	# OF STORIES	1 BR	1BR-HC	2 BR	2BR-HC	3 BR	3BR-HC	NUMBER OF UNITS/BUILDING	GROSS UNIT AREA	HEATED BUILDING (UNIT) AREA (NRA)	GROSS BUILDING AREA	ACCESSIBLE UNITS	HEARING & SIGHT IMPAIRED UNITS
BUILDING #1	A	3	4	0	0	0	8	0	12	13,272 SF	12,440 SF	14,944 SF	-	-
BUILDING #2	B	3	11	1	4	0	8	0	24	24,765 SF	23,164 SF	28,109 SF	#2401 (1 BR)	#2205 (1 BR)
BUILDING #3	B	3	2	0	13	1	3	1	20	22,339 SF	20,900 SF	25,683 SF	#3102 (3 BR), #3104 (2 BR)	#3106 (2 BR)
BUILDING #4	C	3	0	0	26	2	8	0	36	41,078 SF	38,448 SF	46,094 SF	#4105 (2 BR), #4107 (2 BR)	#4111 (3 BR)
CLUBHOUSE		1								2200	2,090 SF	2970	-	-
<b>TOTALS:</b>			17	1	43	3	27	1		103,654 SF	97,042 SF	117,800 SF	5	3
<b>TOTAL # OF UNITS</b>			18		46		28		92					
<b>TOTAL # ACCESSIBLE UNITS</b>			1		3		1		5 (5%)					

**UNIT SQUARE FOOTAGES**

	GROSS UNIT AREA	HEATED UNIT AREA
1 BR	876 SF	816 SF
1BR-HC	893 SF	836 SF
2 BR	1,117 SF	1,044 SF
2BR-HC	1,134 SF	1,064 SF
3 BR	1,221 SF	1,147 SF
3BR-HC	1,269 SF	1,191 SF
CLUBHOUSE	2,970 SF	2,200 SF

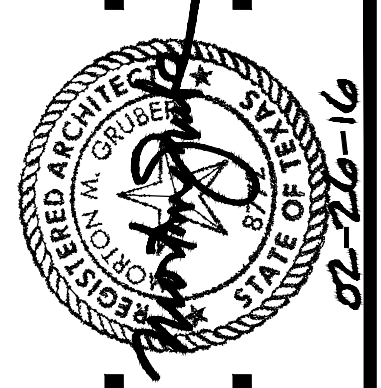
**PARKING**

**PARKING REQUIREMENTS:**  
 18 (1BR) x 1.5 = 27  
 46 (2BR) x 2 = 92  
 28 (3BR) x 2 = 56  
 TOTAL = 175  
 +5% VISITOR = 9  
 TOTAL = 184 REQUIRED  
 TOTAL PROVIDED = 185 SPACES

**GROSS UNIT AREA:**  
 AREA TAKEN TO OUTSIDE FACE OF STUD INCLUDING BALCONY AREA AND CHASE WALL AREA ON ALL UNIT TYPES.  
**UNIT HEATED AREA (NET RENTABLE AREA):**  
 AREA TAKEN TO INTERIOR FACE OF GYPSUM BOARD ON EXTERIOR WALLS OF UNIT WITH SUNROOM.

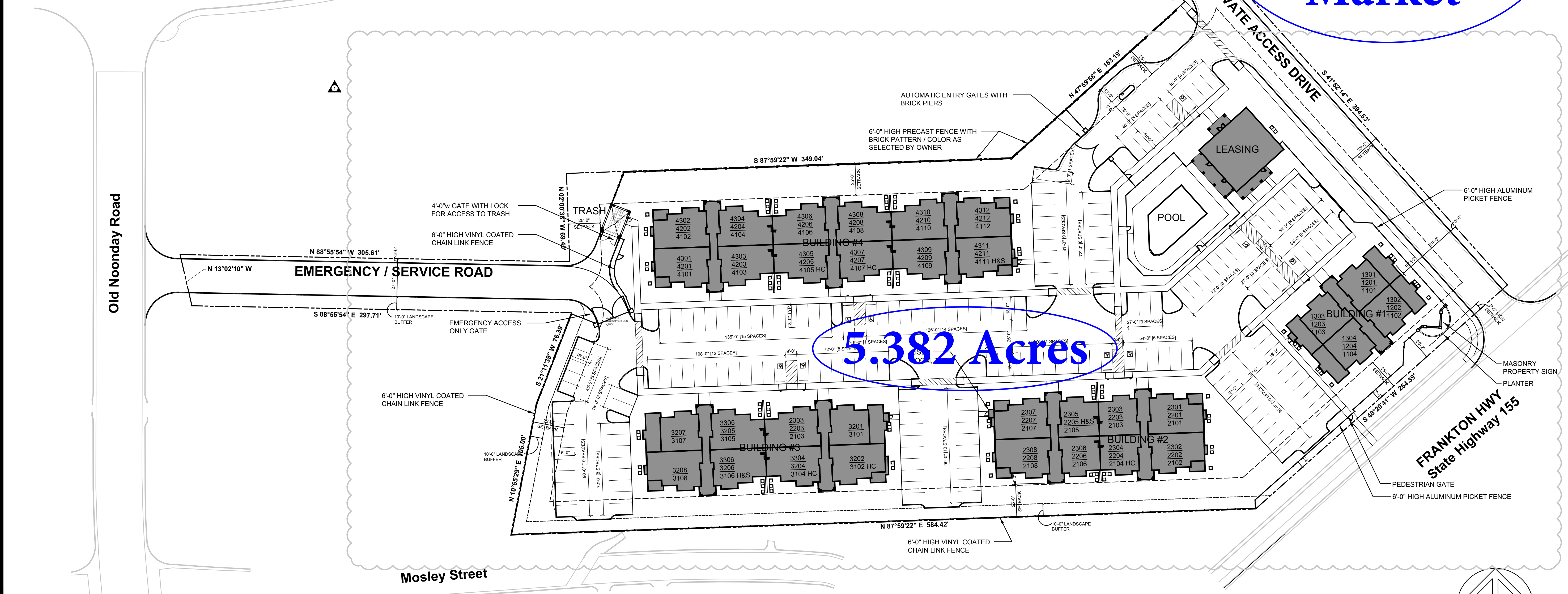
**SITE NOTES**

- ALL SIDEWALKS SHALL HAVE MAX 5% RUNNING SLOPE AND 2% MAXIMUM CROSS SLOPE
- PROVIDE CURB RAMP AT ALL LOCATIONS WHERE SIDEWALK CROSSES CURB
- WHERE ACCESSIBLE ROUTE CROSSES PARKING DRIVE AISLE, DRIVE AISLE SHALL MAX 5% RUNNING SLOPE AND 2% MAXIMUM CROSS SLOPE
- PROVIDE COMPLETE OPERABLE ENTRY GATE SYSTEM WITH MOTORIZED OPERATOR, KEYPAD & CALL BOX SYSTEM, PROVIDE CONDUITS FOR POWER AND PHONE UNDER PAVEMENT TO CALL BOX AND GATE OPERATORS. PROVIDE 2 KEYCHAIN GATE REMOTES PER APARTMENT UNIT PLUS 4 FOR MANAGEMENT USE AND 10 EXTRA REPLACEMENTS.
- PROVIDE KNOX BOX FOR AT ENTRY GATE FOR FIRE DEPT. ACCESS LOCATE AS REQUIRED BY FIRE MARSHAL
- PROVIDE MANEUVERING CLEAR FLOOR SPACE COMPLYING WITH TAS AND ADA AT ALL PEDESTRIAN GATES
- PEDESTRIAN GATES SHALL COMPLY WITH TAS & REQUIREMENTS FOR DOORS
- GRADE SHALL SLOPE AWAY FROM FOUNDATION AT A SLOPE OF NOT LESS THAN 1:20 (5%) FOR A MIN DISTANCE OD 10'-0"



DATE: 2015-12-28  
 REVISION: 2016-02-26

**Walmart Neighborhood Market**



**SITE PLAN** SCALE: 1"=40'-0"

**NORTH**

*The Residences at Earl Campbell*

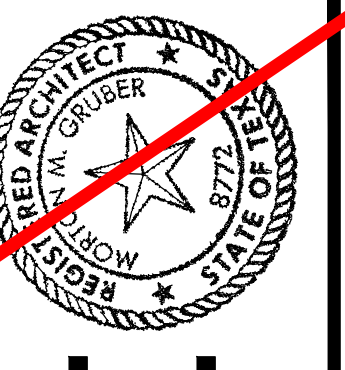
FRANKSTON HWY (STATE HWY 155)  
 TYLER, TEXAS

**MORTON M. GRUBER, AIA, ARCHITECT**  
 245 PEACHTREE CENTERAVE SUITE 2445 ATLANTA, GA 30303 TEL: 404.984-1880 FAX: 404.984-1895

SITE PLAN  
 UNIT TABULATION

**T2**





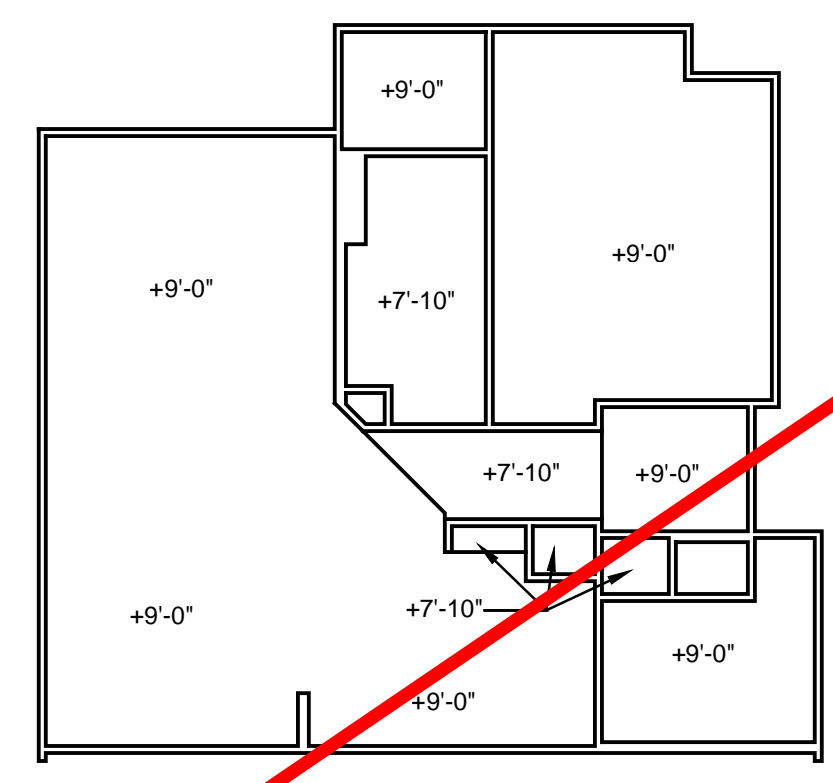
DATE: 2-25-15  
4-2-15  
REVISION: PRELIMINARY DESIGN  
NOT FOR CONSTRUCTION

*The Residences at Earl Campbell*  
FRANKSTON STREET  
TYLER, TEXAS

ONE BEDROOM UNIT  
FIRST FLOOR PLAN  
ACCESSIBLE FLOOR PLAN

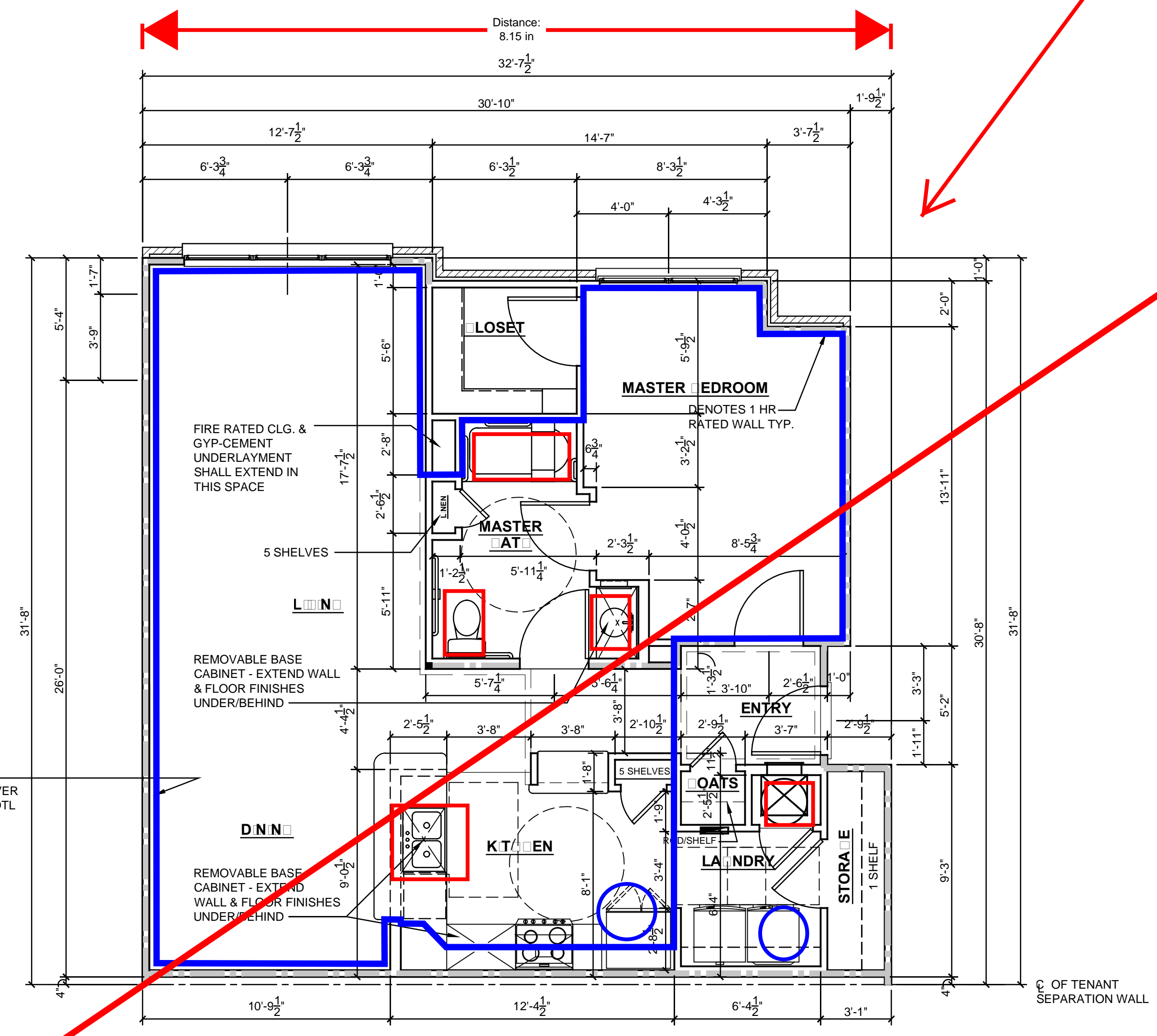
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PRELIMINARY  
DESIGN

Original

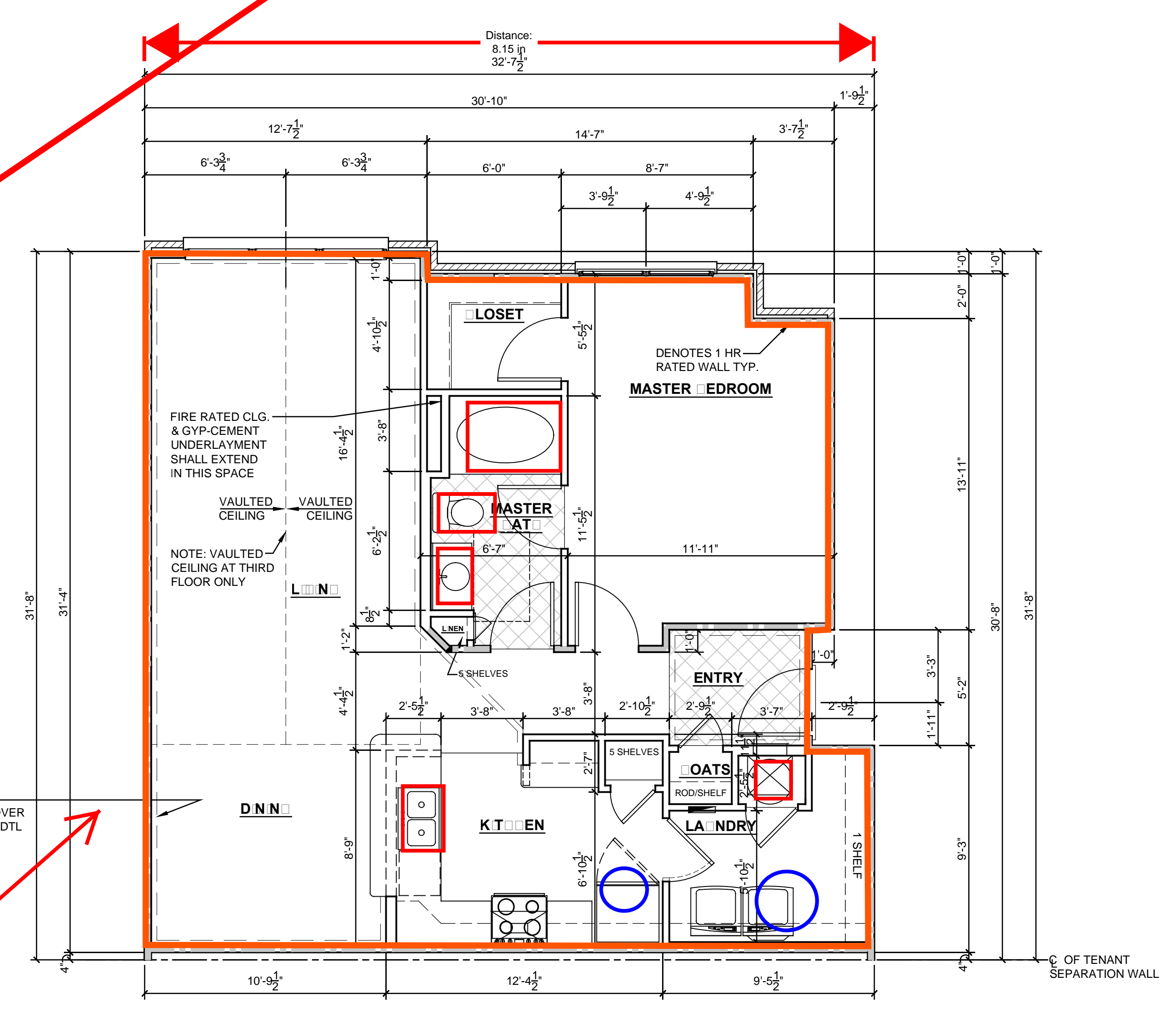


CEILING PLAN 1/8"=1'-0"

**NRA is heated area only.**



ACCESSIBLE ONE BEDROOM UNIT PLAN 722sf  
1/4"=1'-0"

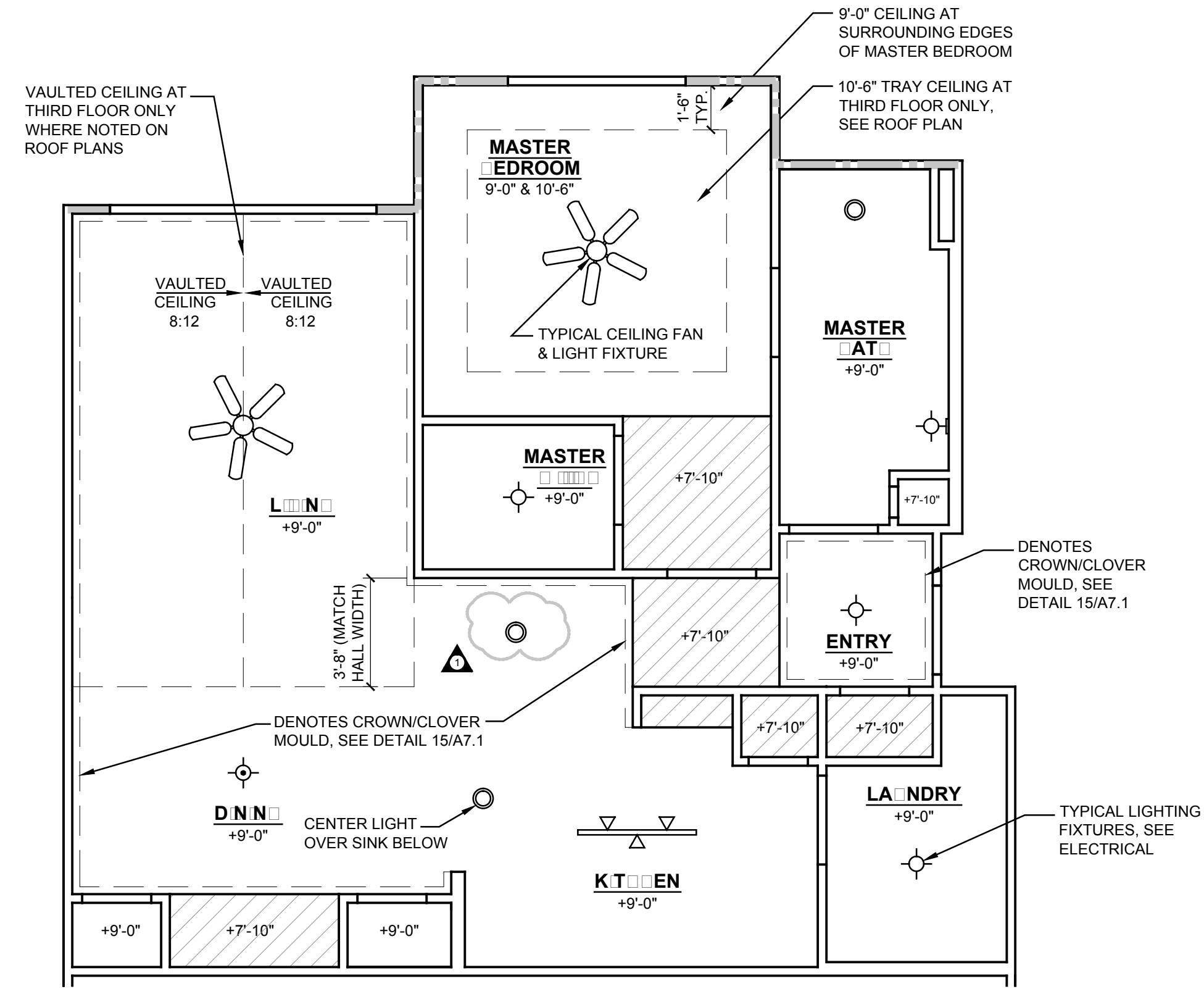


ONE BEDROOM UNIT PLAN 722sf  
1/4"=1'-0"

**Gross Area = 927sf**

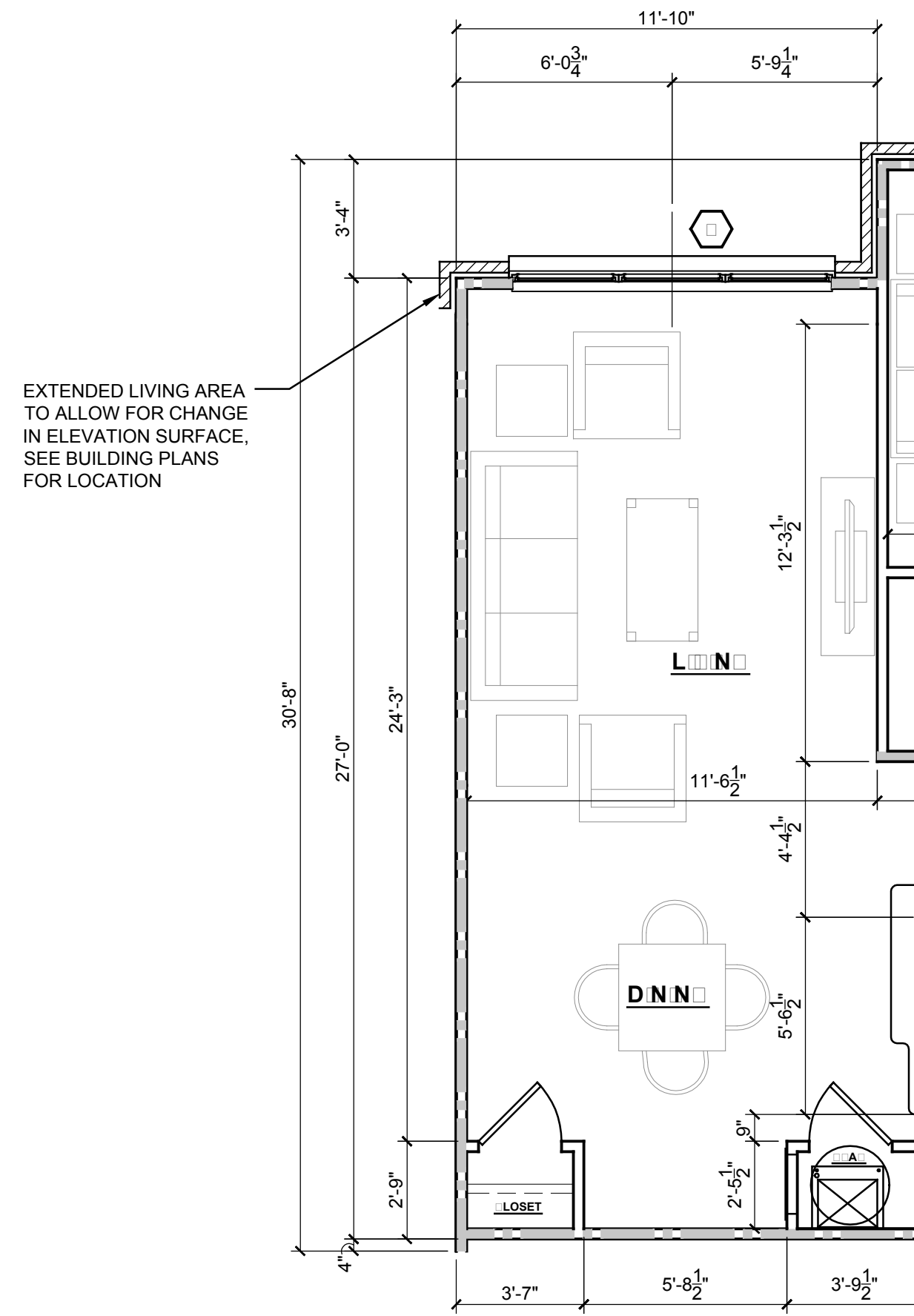
- GENERAL NOTES:
1. INSULATE THE ENDS OF ALL PLUMBING CHASES AND AIRSPACES.
  2. DENOTES 1-HOUR FIRE RATED WALL ASSEMBLIES.
  3. FOLLOW UL DESIGN #U-341 AT TENANT SEPARATION WALLS. FOLLOW GA DESIGN #WP3514 AT BREEZEWAY WALLS. FOLLOW UL #U356 AT EXTERIOR WALLS. FOLLOW GA DESIGN #WP3514 AT INTERIOR BEARING.
  3. DIMENSIONS ARE TO FACE OF STUD UNLESS OTHERWISE NOTED.





**ONE BEDROOM REFLECTED CEILING PLAN**

1/4"=1'-0"

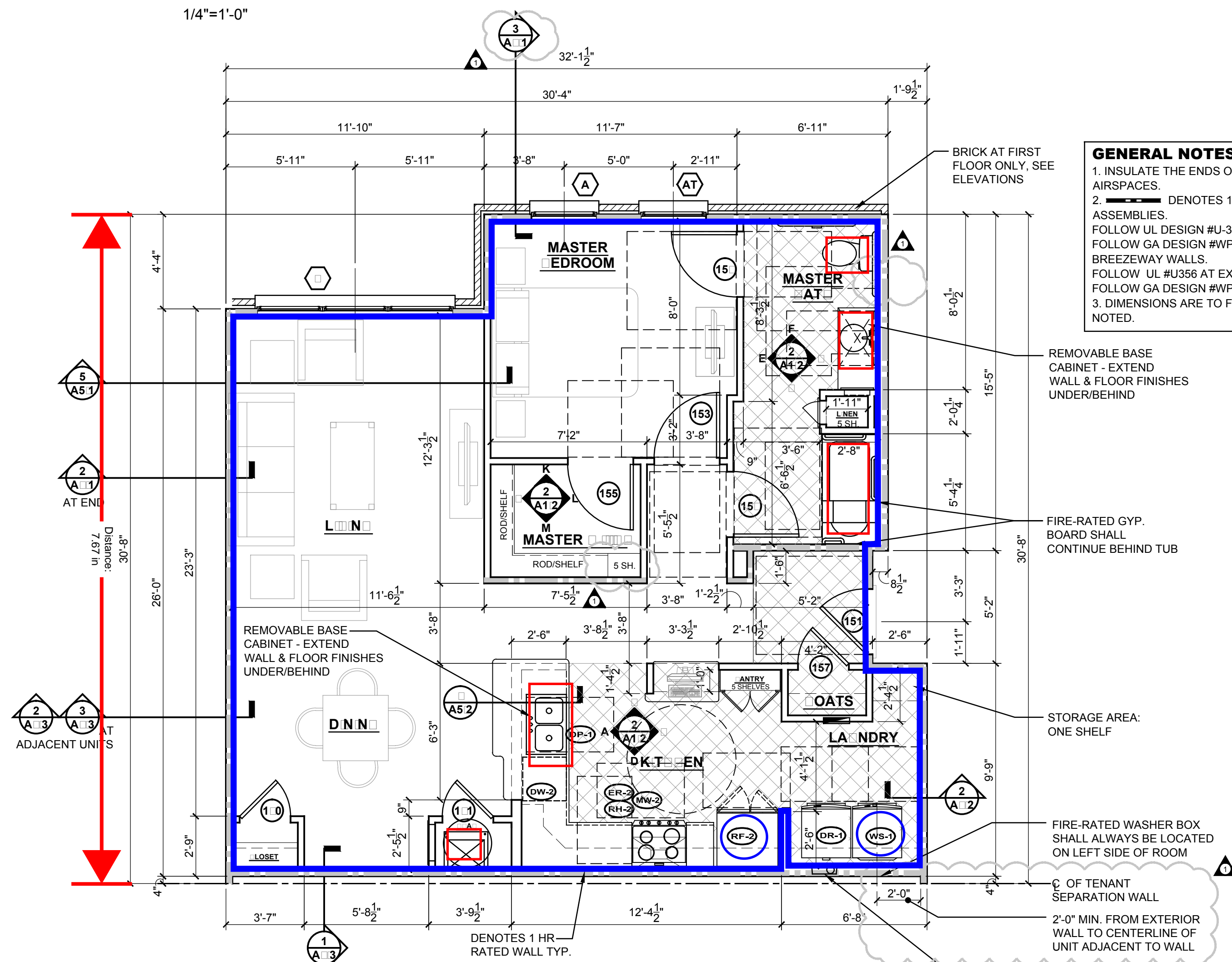


**1 ALL FLOORS EXTENDED UNIT PLAN**

SCALE: 1/4"=1'-0"

**2 TOP FLOOR ONLY ALL UNITS**

SCALE: 1/4"=1'-0"

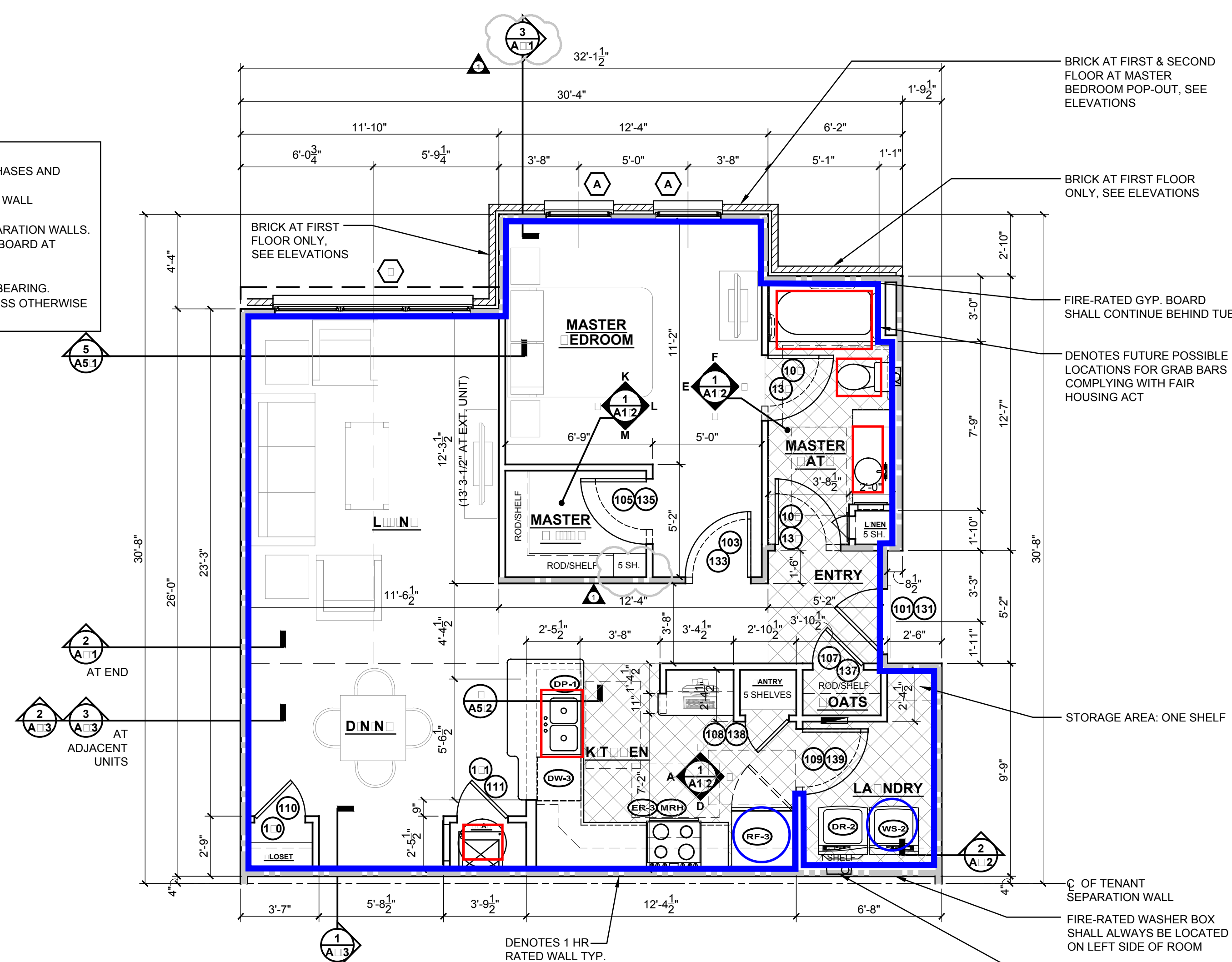


**ACCESSIBLE ONE BEDROOM UNIT PLAN**

1/4"=1'-0"

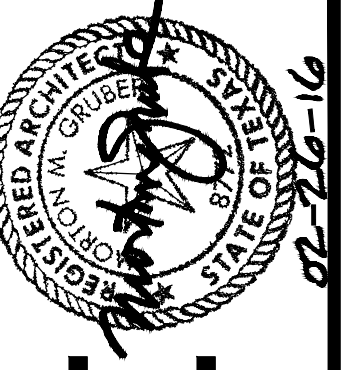
AT FIRST FLOOR ONLY

**GENERAL NOTES:**  
 1. INSULATE THE ENDS OF ALL PLUMBING CHASES AND AIRSPACES.  
 2. --- DENOTES 1-HOUR FIRE RATED WALL ASSEMBLIES.  
 FOLLOW UL DESIGN #U-341 AT TENANT SEPARATION WALLS.  
 FOLLOW GA DESIGN #WP8105 PLUS SOUND BOARD AT BREEZEWAY WALLS.  
 FOLLOW UL #U356 AT EXTERIOR WALLS.  
 FOLLOW GA DESIGN #WP3514 AT INTERIOR BEARING.  
 3. DIMENSIONS ARE TO FACE OF STUD UNLESS OTHERWISE NOTED.



**ONE BEDROOM UNIT PLAN**

1/4"=1'-0"



DATE: 2015-12-28  
 REVISION: 2016-02-26

*The Residences at Earl Campbell*

FRANKSTON HWY (STATE HWY 155)  
 TYLER, TEXAS

MORTON M. GRUBER, AIA, ARCHITECT  
 245 PEACHTREE CENTERAVE SUITE 2445 ATLANTA, GA 30303 TEL: 404.984-1880 FAX: 404.984-1895

ONE BEDROOM UNIT  
 UNIT FLOOR PLAN  
 ACCESSIBLE UNIT FLOOR PLAN  
 EXTENDED UNIT FLOOR PLAN  
 REFLECTED CEILING PLAN

**A1.1**





DATE: 2-25-15  
4-2-15  
REVISION: PRELIMINARY DESIGN  
NOT FOR CONSTRUCTION

# The Residences at Earl Campbell

FRANKSTON STREET  
TYLER, TEXAS

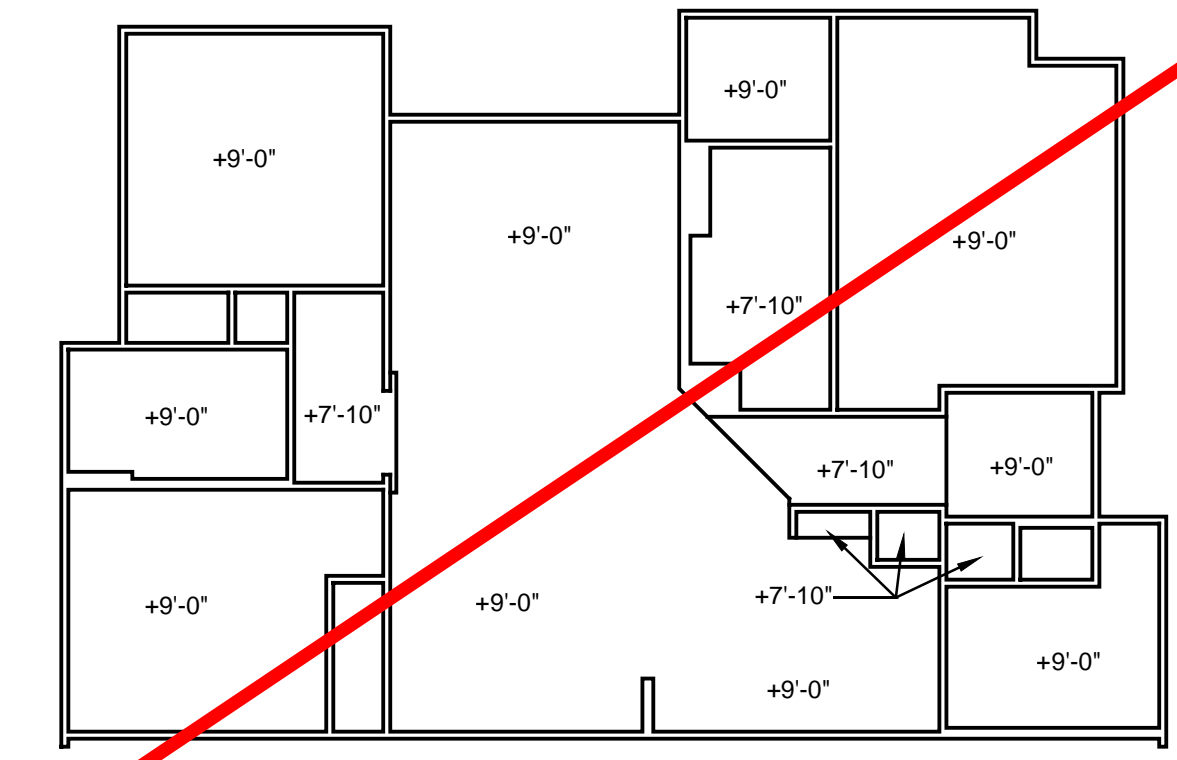
MORTON M. GRUBER, AIA, ARCHITECT  
245 PEACHTREE CENTER AVE SUITE 2445 ATLANTA, GA 30303 TEL: 404.584-1880 FAX: 404.584-1895

THREE BEDROOM UNIT  
FIRST FLOOR PLAN  
SUNROOM FLOOR PLAN  
ACCESSIBLE FLOOR PLAN

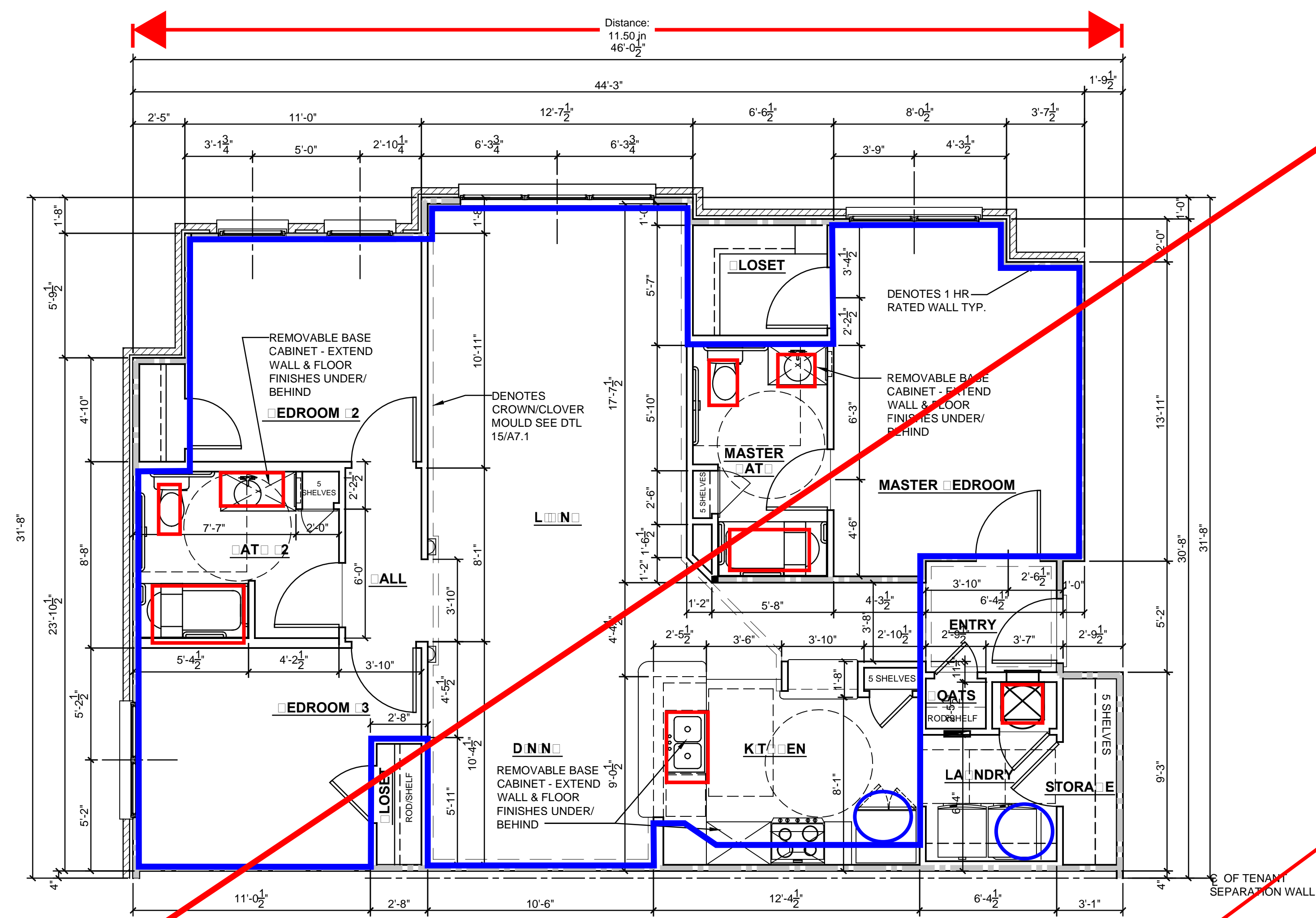
A1.6  
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DESIGN

Original

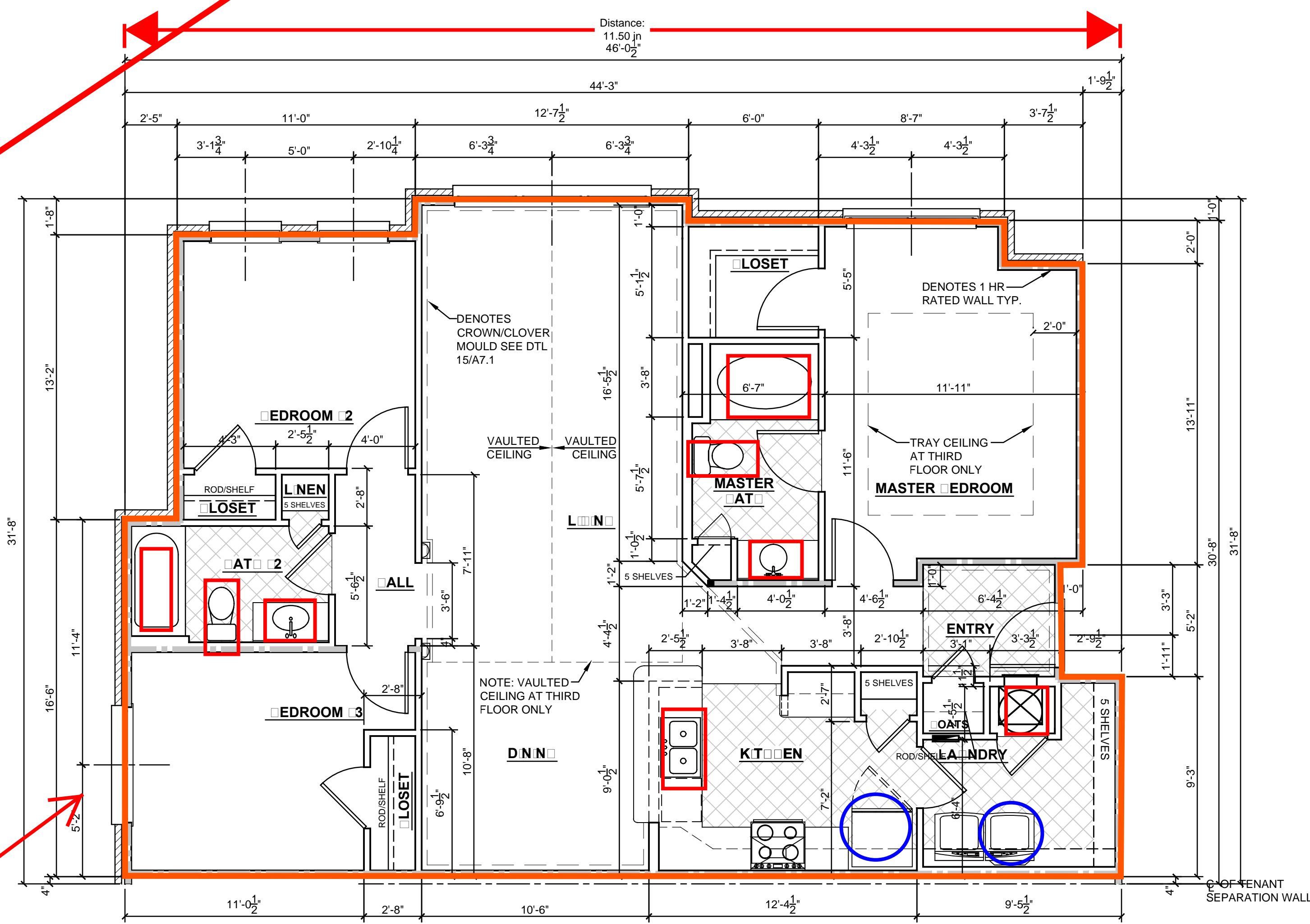
**NRA is heated area only.**



CEILING PLAN 1/8"=1'-0"



ACCESSIBLE THREE BEDROOM UNIT PLAN 1,100sf  
1/4"=1'-0"

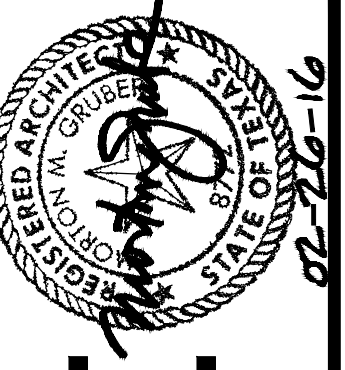


THREE BEDROOM UNIT PLAN 1,100sf  
1/4"=1'-0"

**Gross Area = 1,319sf**

- GENERAL NOTES:
1. INSULATE THE ENDS OF ALL PLUMBING CHASES AND AIRSPACES.
  2. DENOTES 1-HOUR FIRE RATED WALL ASSEMBLIES.
  3. FOLLOW UL DESIGN #U-341 AT TENANT SEPARATION WALLS.
  4. FOLLOW GA DESIGN #WP3514 AT BREEZEWAY WALLS.
  5. FOLLOW UL #U356 AT EXTERIOR WALLS.
  6. FOLLOW GA DESIGN #WP3514 AT INTERIOR BEARING.
  7. DIMENSIONS ARE TO FACE OF STUD UNLESS OTHERWISE NOTED.



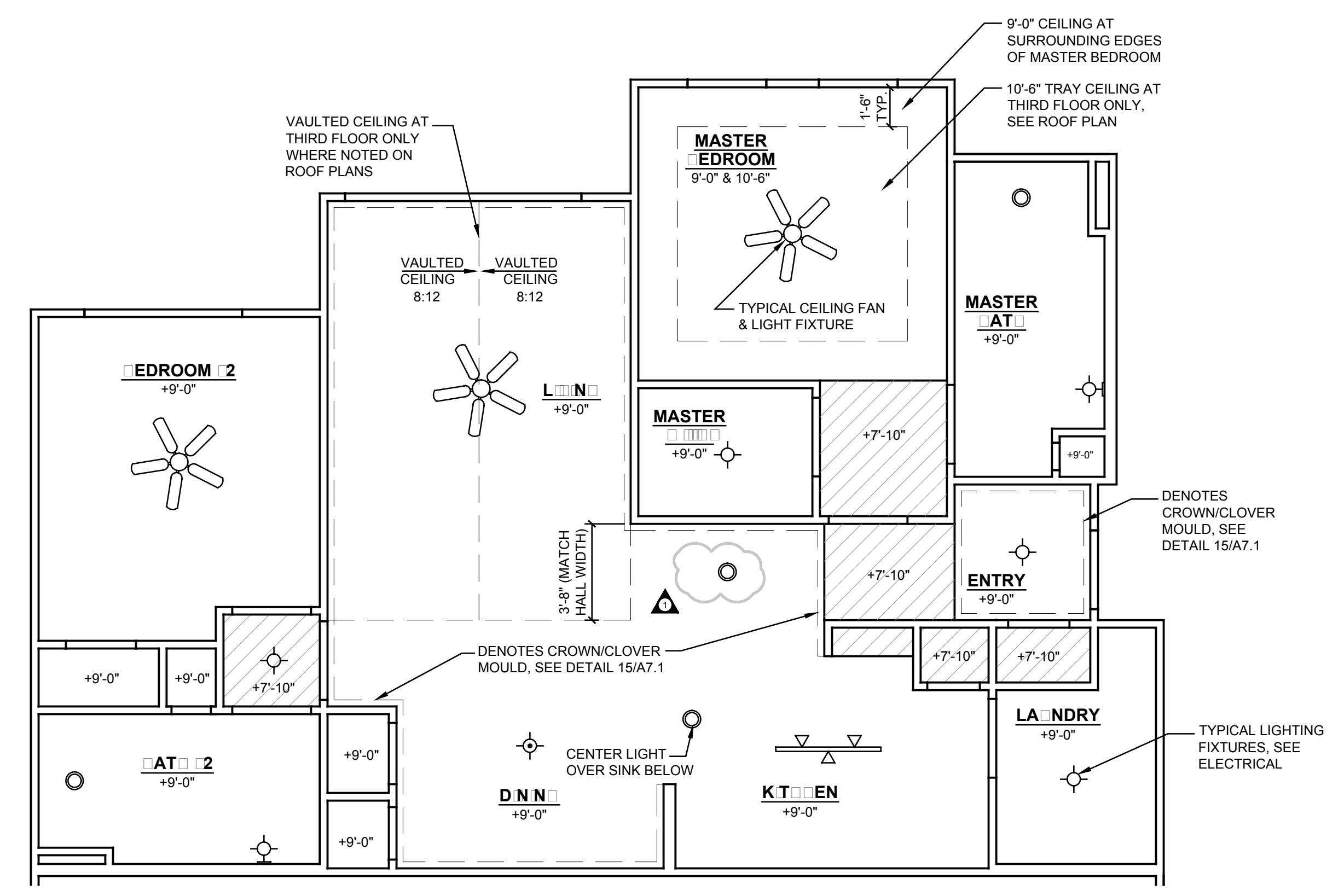


DATE  
2015-12-28  
REVISION  
2016-02-26

*The Residences at Earl Campbell*  
FRANKSTON HWY (STATE HWY 155)  
TYLER, TEXAS

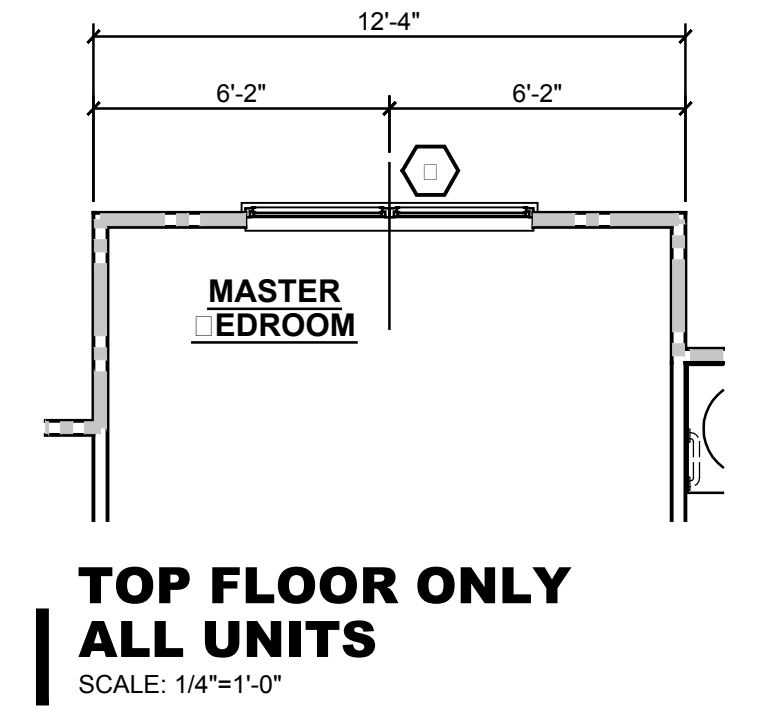
TWO BEDROOM UNIT  
FLOOR PLAN  
ACCESSIBLE FLOOR PLAN  
REFLECTED CEILING PLAN

**A1.3**

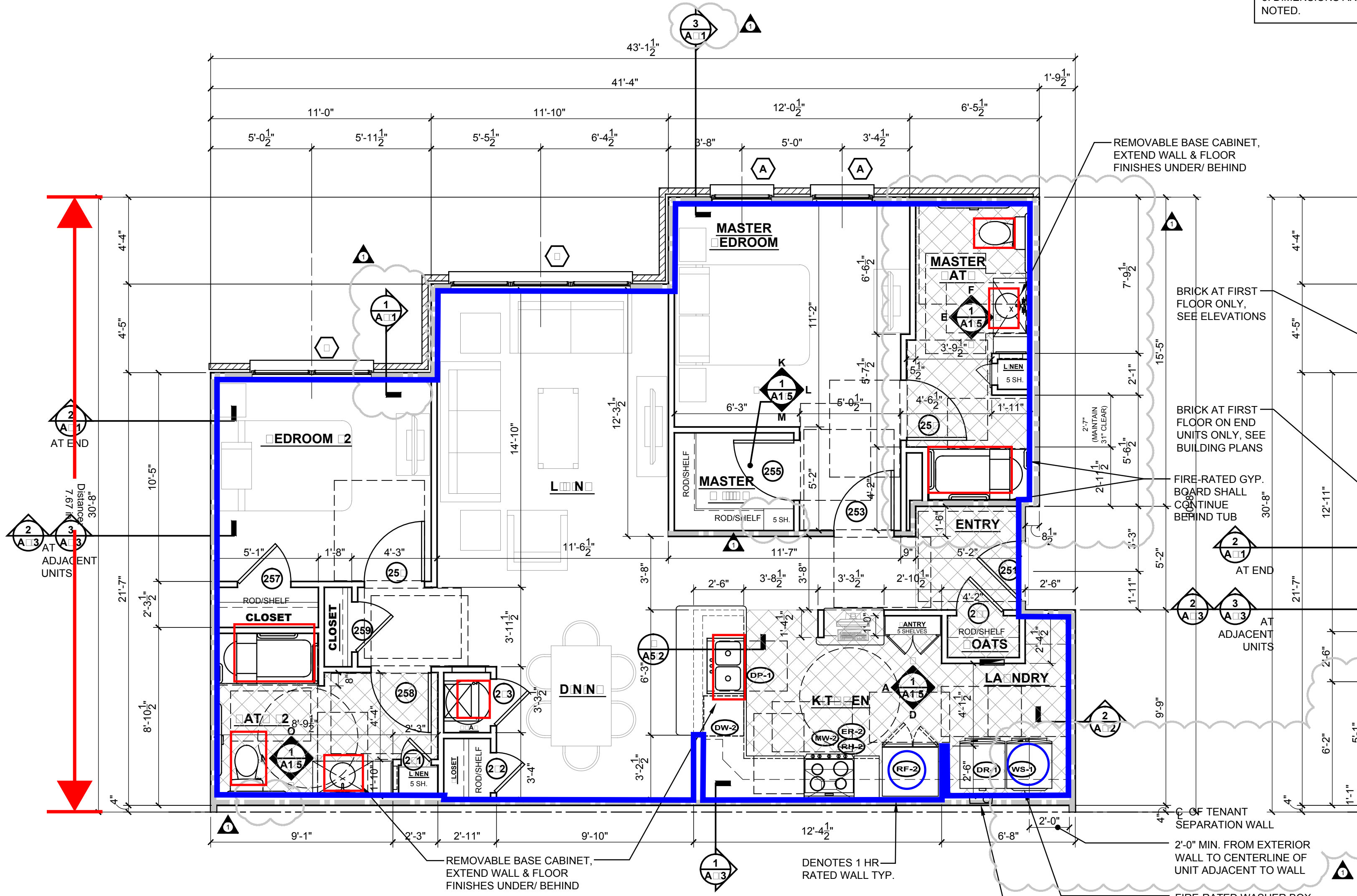


**TWO BEDROOM REFLECTED CEILING PLAN**  
1/4"=1'-0"

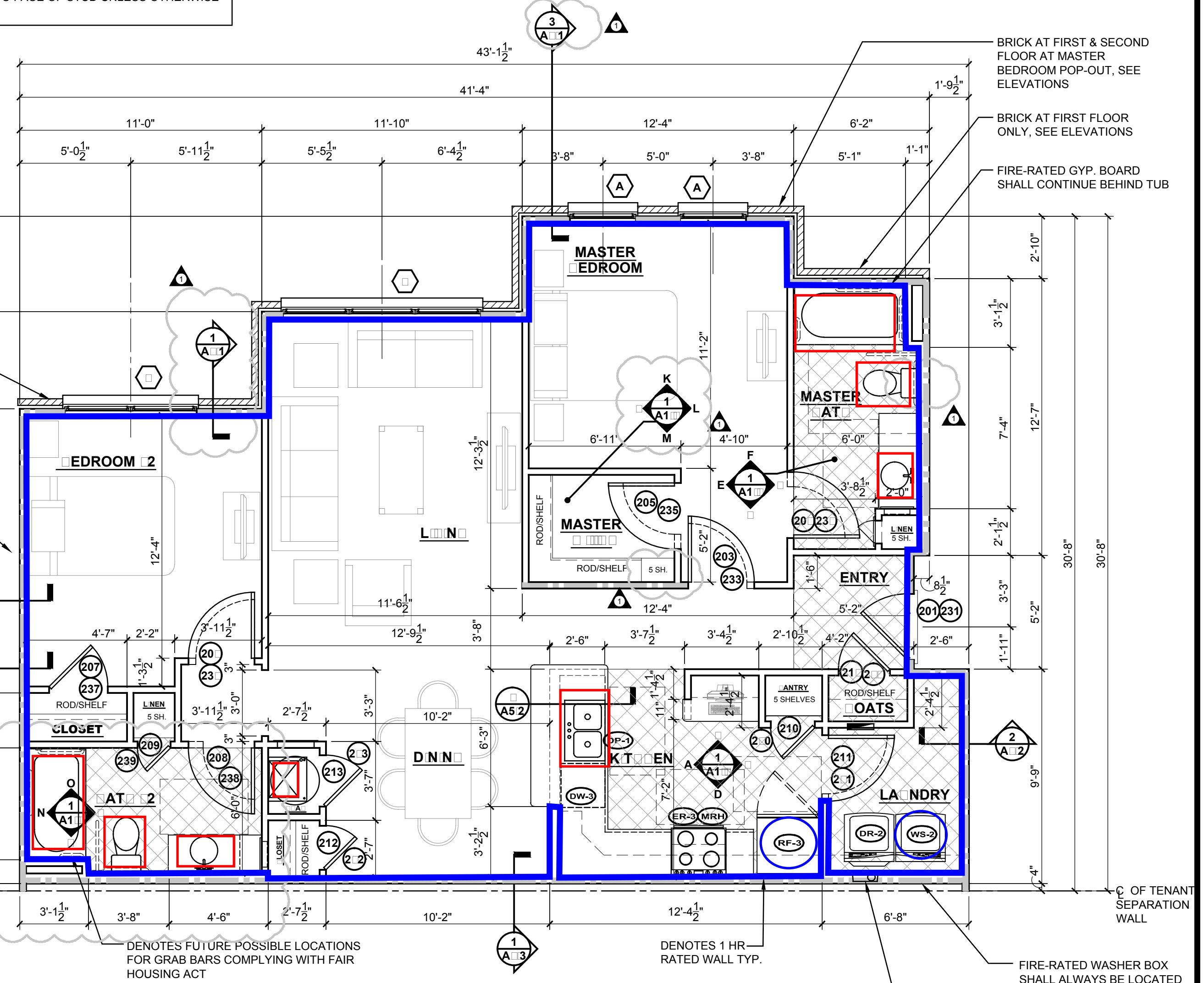
**GENERAL NOTES:**  
1. INSULATE THE ENDS OF ALL PLUMBING CHASES AND AIRSPACES.  
2. DENOTES 1-HOUR FIRE RATED WALL ASSEMBLIES.  
FOLLOW UL DESIGN #U-341 AT TENANT SEPARATION WALLS.  
FOLLOW GA DESIGN #WP8105 PLUS SOUND BOARD AT BREEZEWAY WALLS.  
FOLLOW UL #J356 AT EXTERIOR WALLS.  
FOLLOW GA DESIGN #WP3514 AT INTERIOR BEARING.  
3. DIMENSIONS ARE TO FACE OF STUD UNLESS OTHERWISE NOTED.



**TOP FLOOR ONLY ALL UNITS**  
SCALE: 1/4"=1'-0"



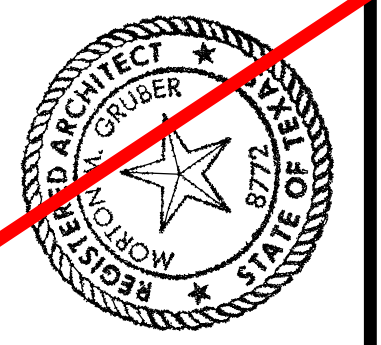
**ACCESSIBLE TWO BEDROOM UNIT PLAN**  
AT FIRST FLOOR ONLY  
1/4"=1'-0"



**TWO BEDROOM UNIT PLAN**  
1/4"=1'-0"

FIRE-RATED WASH. BOX SHALL ALWAYS BE LOCATED ON LEFT SIDE OF ROOM  
FIRE-RATED DRYER BOX SHALL ALWAYS BE LOCATED ON RIGHT SIDE OF ROOM





DATE: 2-25-15  
4-2-15  
REVISION: PRELIMINARY DESIGN  
NOT FOR CONSTRUCTION

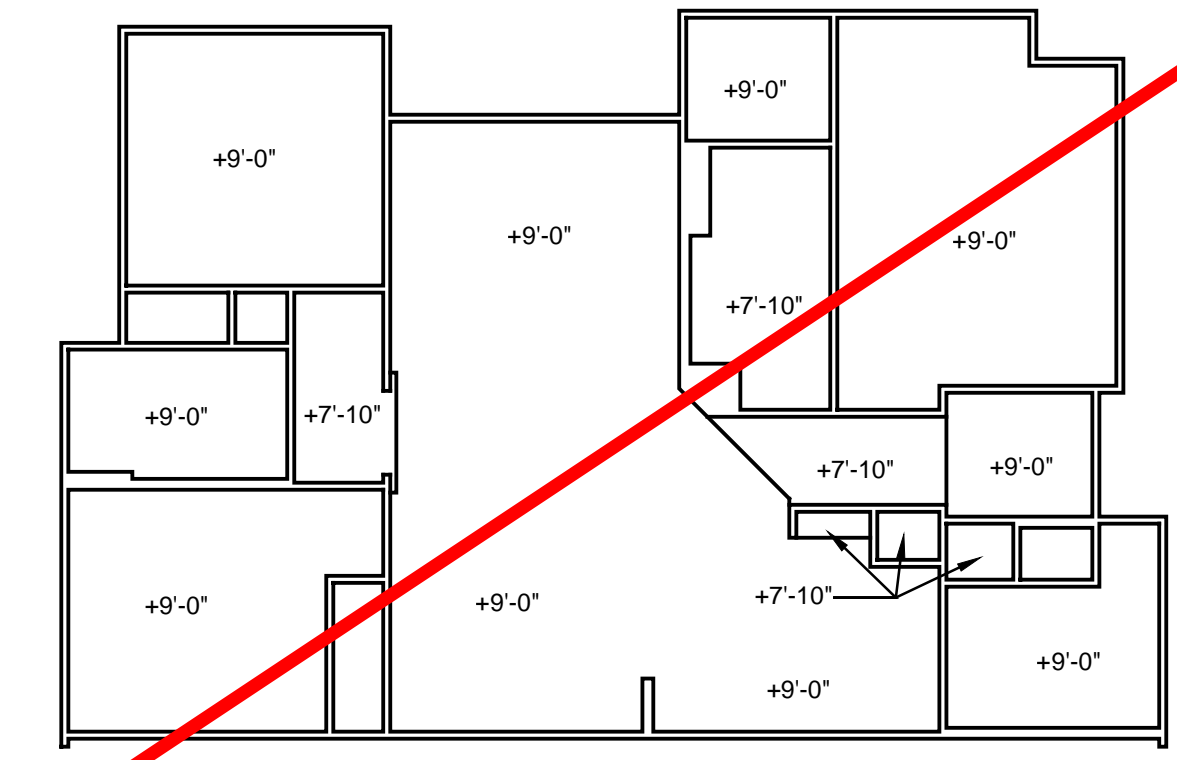
*The Residences at Earl Campbell*  
FRANKSTON STREET  
TYLER, TEXAS

THREE BEDROOM UNIT  
FIRST FLOOR PLAN  
SUNROOM FLOOR PLAN  
ACCESSIBLE FLOOR PLAN

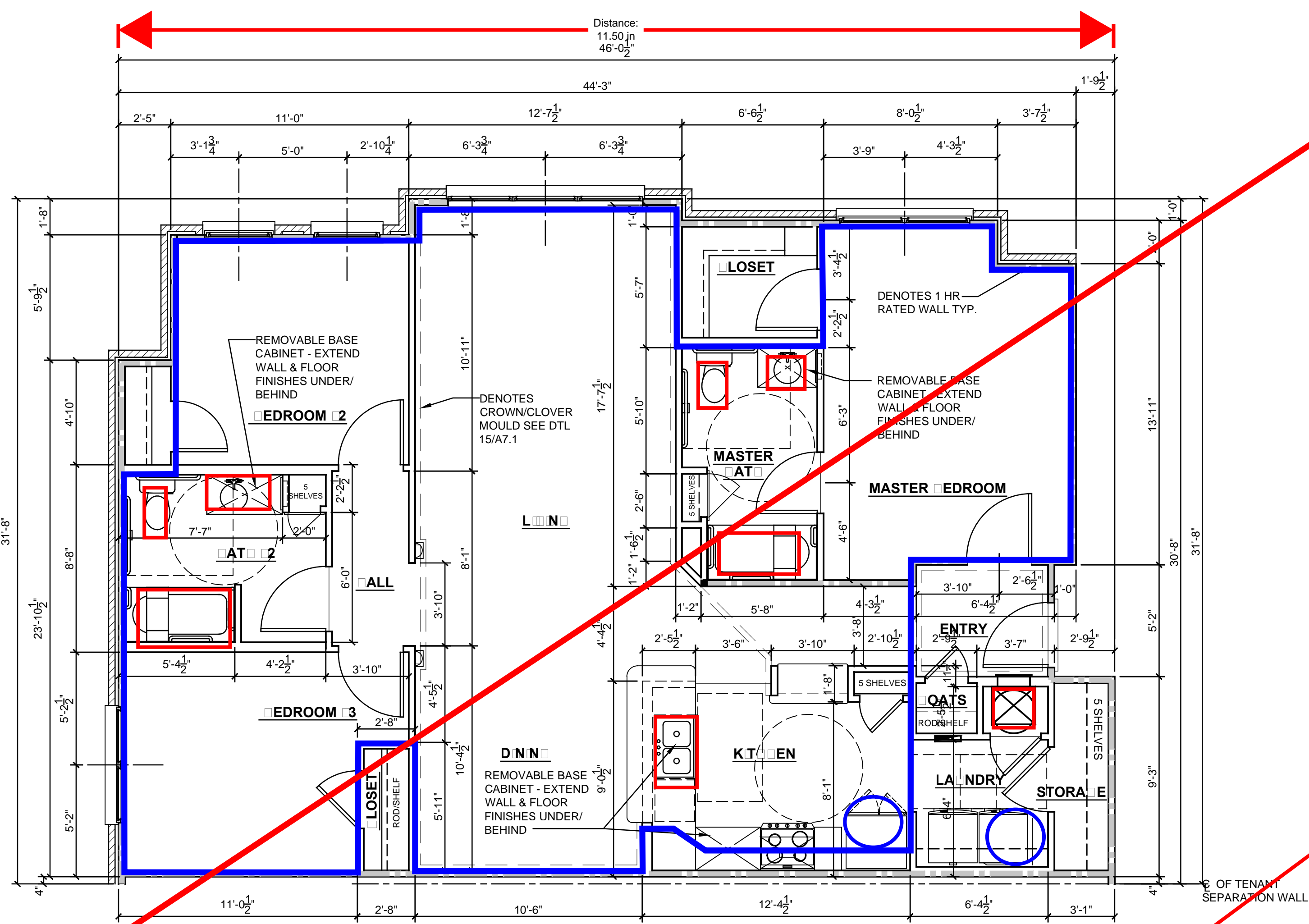
A1.6  
PRELIMINARY  
DESIGN

Original

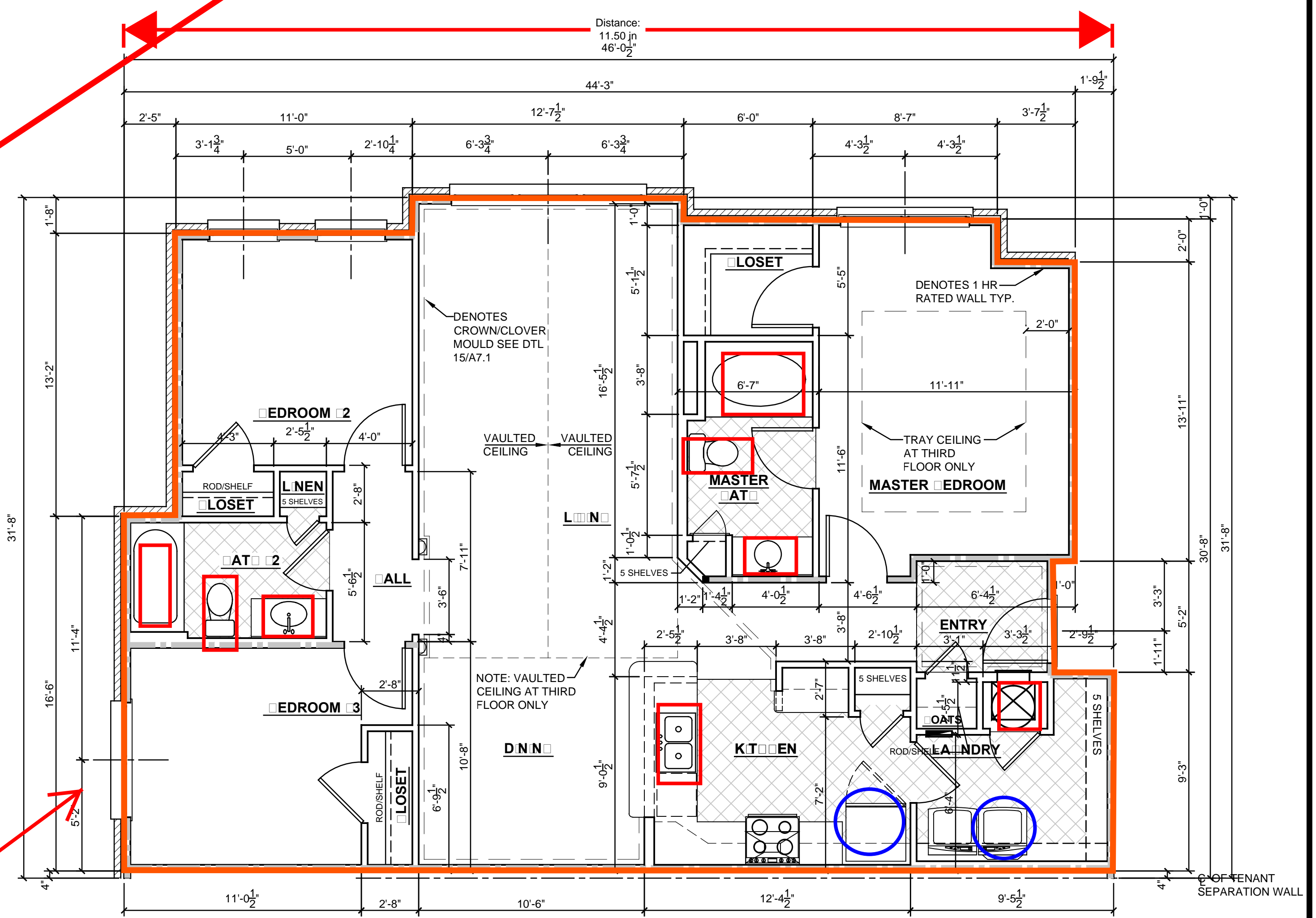
NRA is heated area only.



CEILING PLAN 1/8"=1'-0"



ACCESSIBLE THREE BEDROOM UNIT PLAN 1,100sf  
1/4"=1'-0"

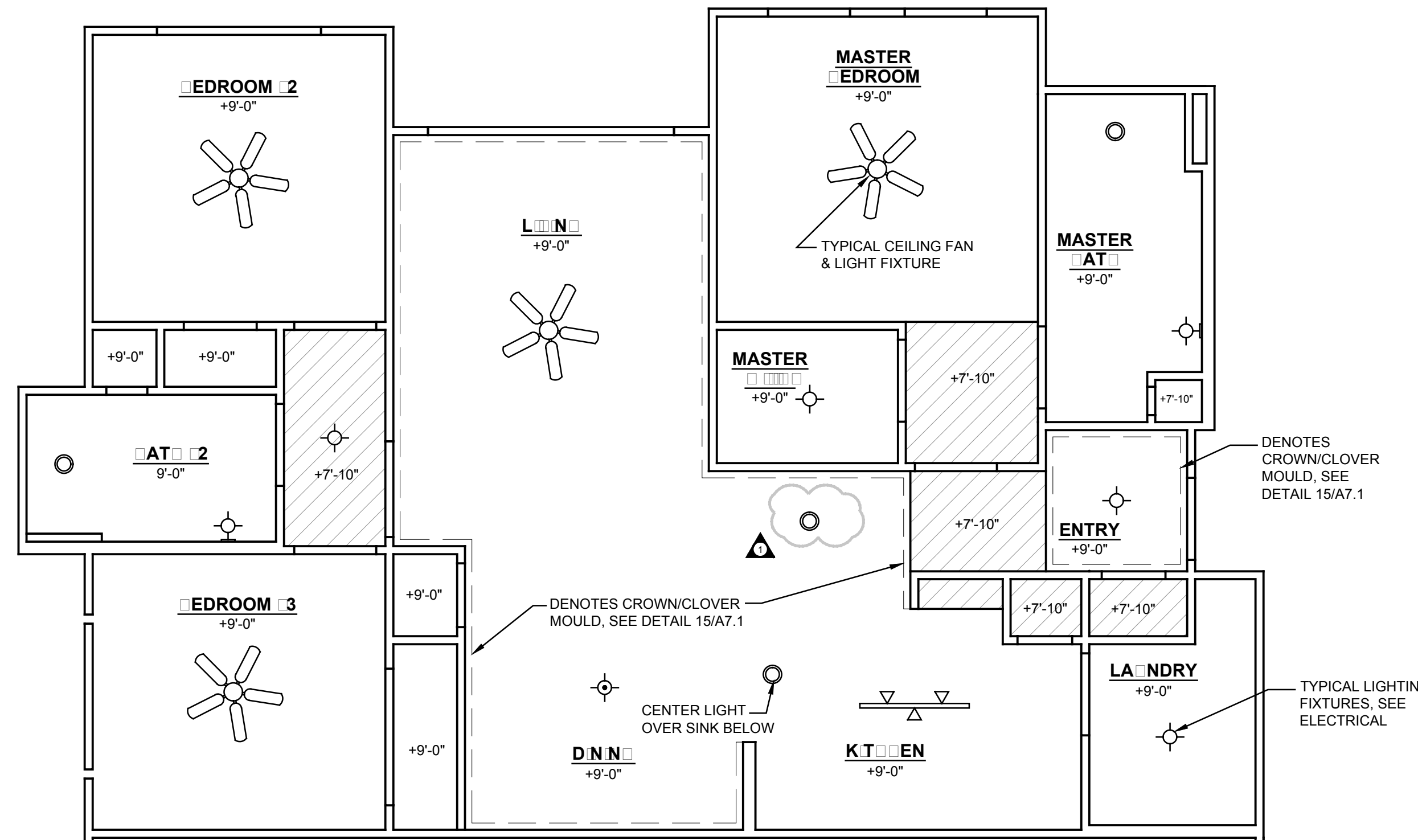


THREE BEDROOM UNIT PLAN 1,100sf  
1/4"=1'-0"

Gross Area = 1,319sf

- GENERAL NOTES:
1. INSULATE THE ENDS OF ALL PLUMBING CHASES AND AIRSPACES.
  2. DENOTES 1-HOUR FIRE RATED WALL ASSEMBLIES.
  3. FOLLOW UL DESIGN #U-341 AT TENANT SEPARATION WALLS.
  4. FOLLOW GA DESIGN #WP3514 AT BREEZEWAY WALLS.
  5. FOLLOW UL #U356 AT EXTERIOR WALLS.
  6. FOLLOW GA DESIGN #WP3514 AT INTERIOR BEARING.
  7. DIMENSIONS ARE TO FACE OF STUD UNLESS OTHERWISE NOTED.

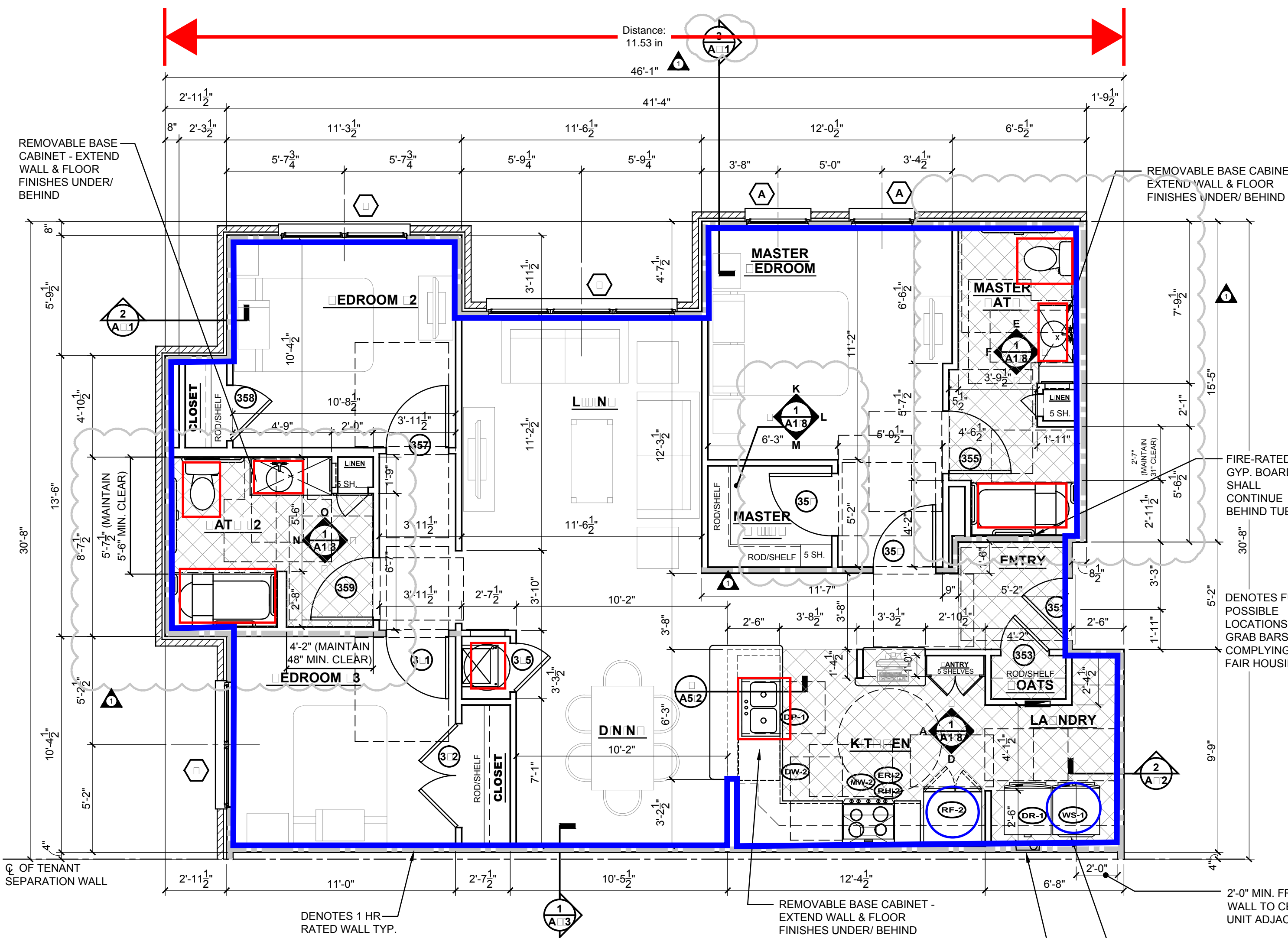




**THREE BEDROOM REFLECTED CEILING PLAN**

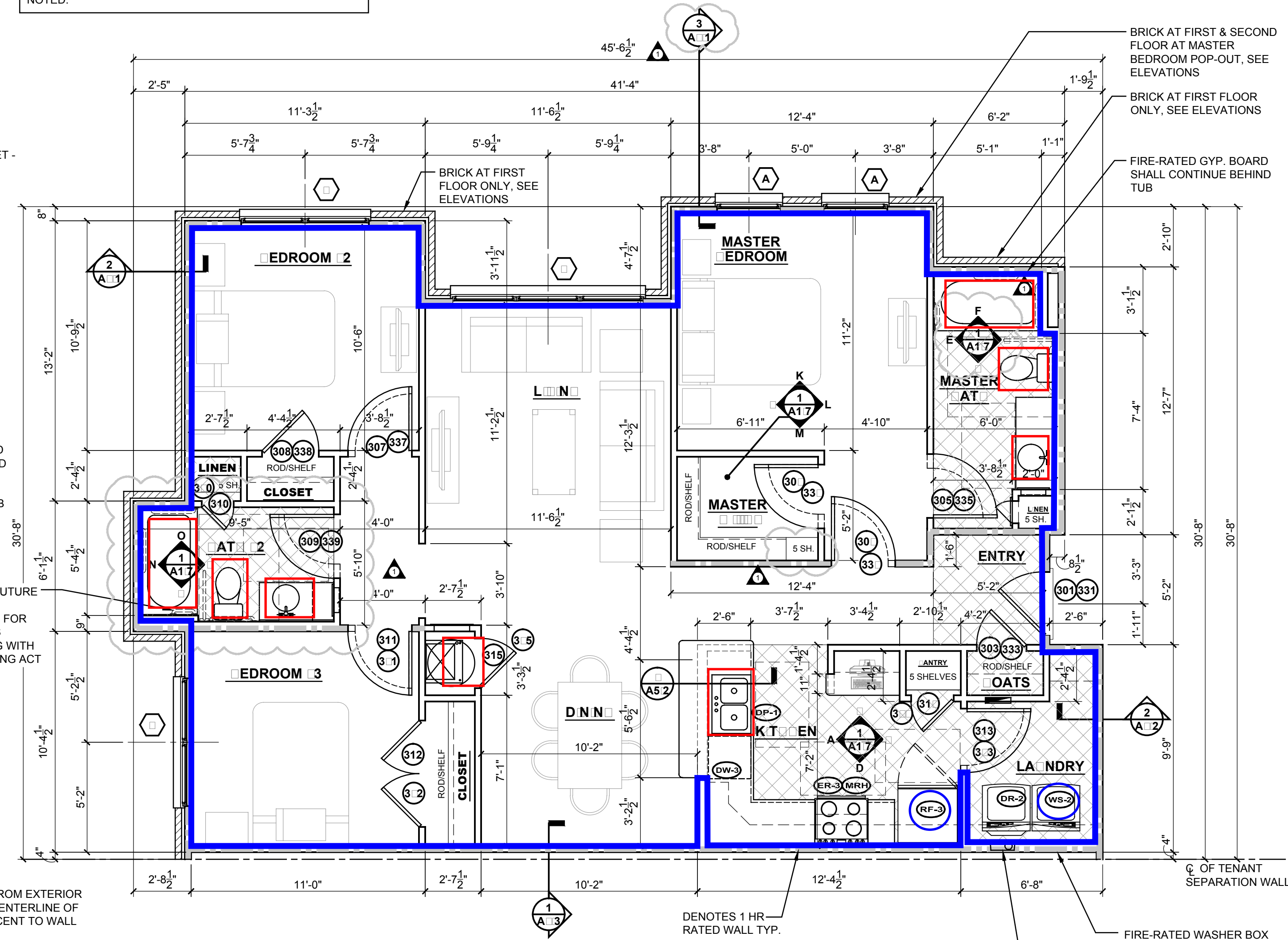
1/4"=1'-0"

**GENERAL NOTES:**  
 1. INSULATE THE ENDS OF ALL PLUMBING CHASES AND AIRSPACES.  
 2. [Symbol] DENOTES 1-HOUR FIRE RATED WALL ASSEMBLIES. FOLLOW UL DESIGN #U-341 AT TENANT SEPARATION WALLS. FOLLOW GA DESIGN #WP8105 PLUS SOUND BOARD AT BREEZEWAY WALLS. FOLLOW UL #U356 AT EXTERIOR WALLS. FOLLOW GA DESIGN #WP3514 AT INTERIOR BEARING.  
 3. DIMENSIONS ARE TO FACE OF STUD UNLESS OTHERWISE NOTED.



**ACCESSIBLE THREE BEDROOM UNIT PLAN** AT FIRST FLOOR ONLY

1/4"=1'-0"



**THREE BEDROOM UNIT PLAN**

1/4"=1'-0"



DATE: 2015-12-28  
 REVISION: 2016-02-26

*The Residences at Earl Campbell*  
 FRANKSTON HWY (STATE HWY 155)  
 TYLER, TEXAS

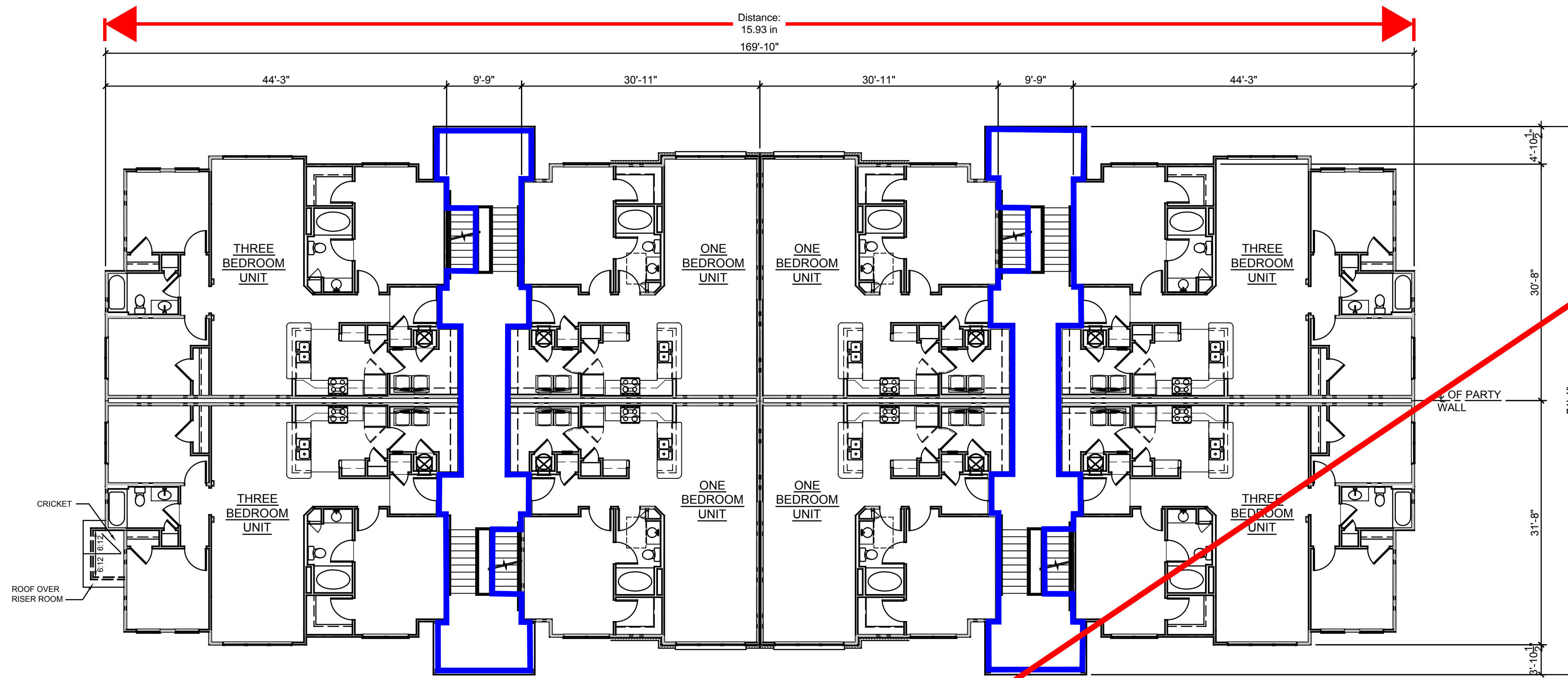
**MORTON M. GRUBER, AIA, ARCHITECT**  
 245 PEACHTREE CENTERAVE SUITE 2445 ATLANTA, GA 30303 TEL: 404584-1880 FAX: 404584-1895

THREE BEDROOM UNIT  
 UNIT FLOOR PLAN  
 ACCESSIBLE UNIT FLOOR PLAN  
 REFLECTED CEILING PLAN

**A1.6**

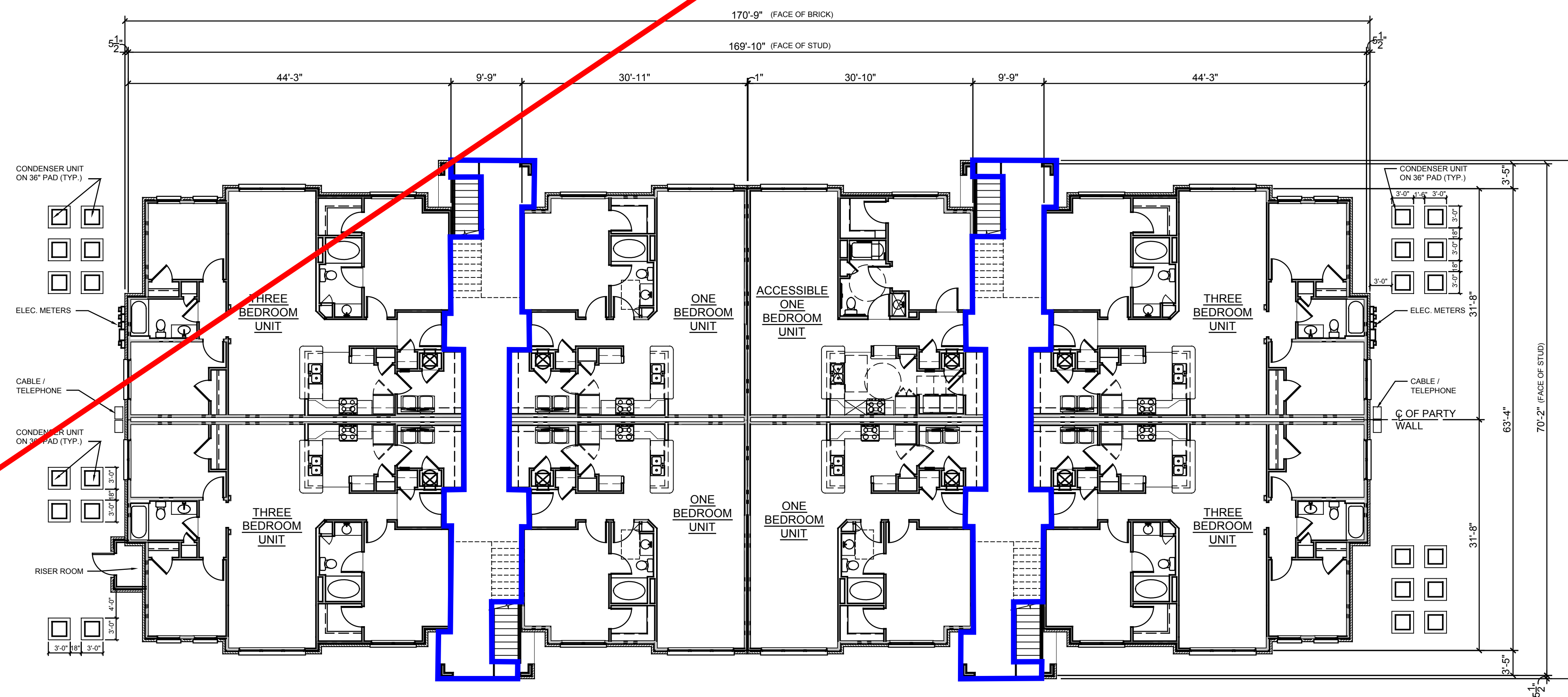


Original



BUILDING TYPE 'A' - SECOND FLOOR PLAN 3/32"=1'-0"

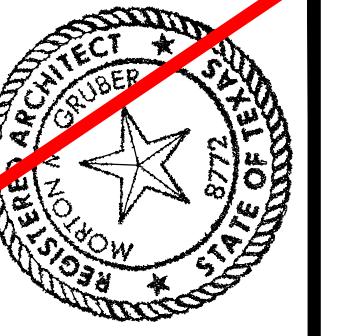
SEE TYPICAL UNIT & BREEZEWAY PLANS FOR ADDITIONAL INFORMATION



BUILDING TYPE 'A' - FIRST FLOOR PLAN 3/32"=1'-0"

SEE TYPICAL UNIT & BREEZEWAY PLANS FOR ADDITIONAL INFORMATION

- GENERAL NOTES:
1. INSULATE THE ENDS OF ALL PLUMBING CHASES AND AIRSPACES.
  2. DENOTES 1-HOUR FIRE RATED WALL ASSEMBLIES.
  3. FOLLOW UL DESIGN #U-341 AT TENANT SEPARATION WALLS.
  4. FOLLOW GA DESIGN #WP2514 AT BREEZEWAY WALLS.
  5. FOLLOW UL #4366 AT EXTERIOR WALLS.
  6. FOLLOW GA DESIGN #WP2514 AT INTERIOR BEARING.
  7. DIMENSIONS ARE TO FACE OF STUD UNLESS OTHERWISE NOTED.



DATE: 2015-02-25  
REVISION: PRELIMINARY DESIGN NOT FOR CONSTRUCTION

*The Residences at Earl Campbell*

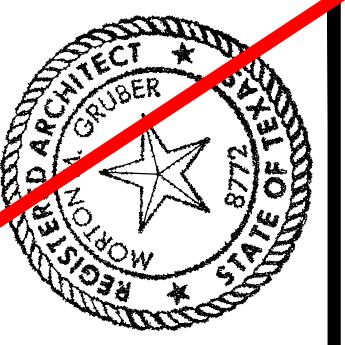
FRANKSTON STREET  
TYLER, TEXAS

MORTON M. GRUBER, AIA, ARCHITECT  
245 PEACHTREE CENTER AVE SUITE 2445 ATLANTA, GA 30303 TEL: 404.984-1680 FAX: 404.984-1695

BUILDING TYPE 'A'  
FIRST & SECOND  
FLOOR PLANS

A4.1.1  
PRELIMINARY  
DESIGN

Original

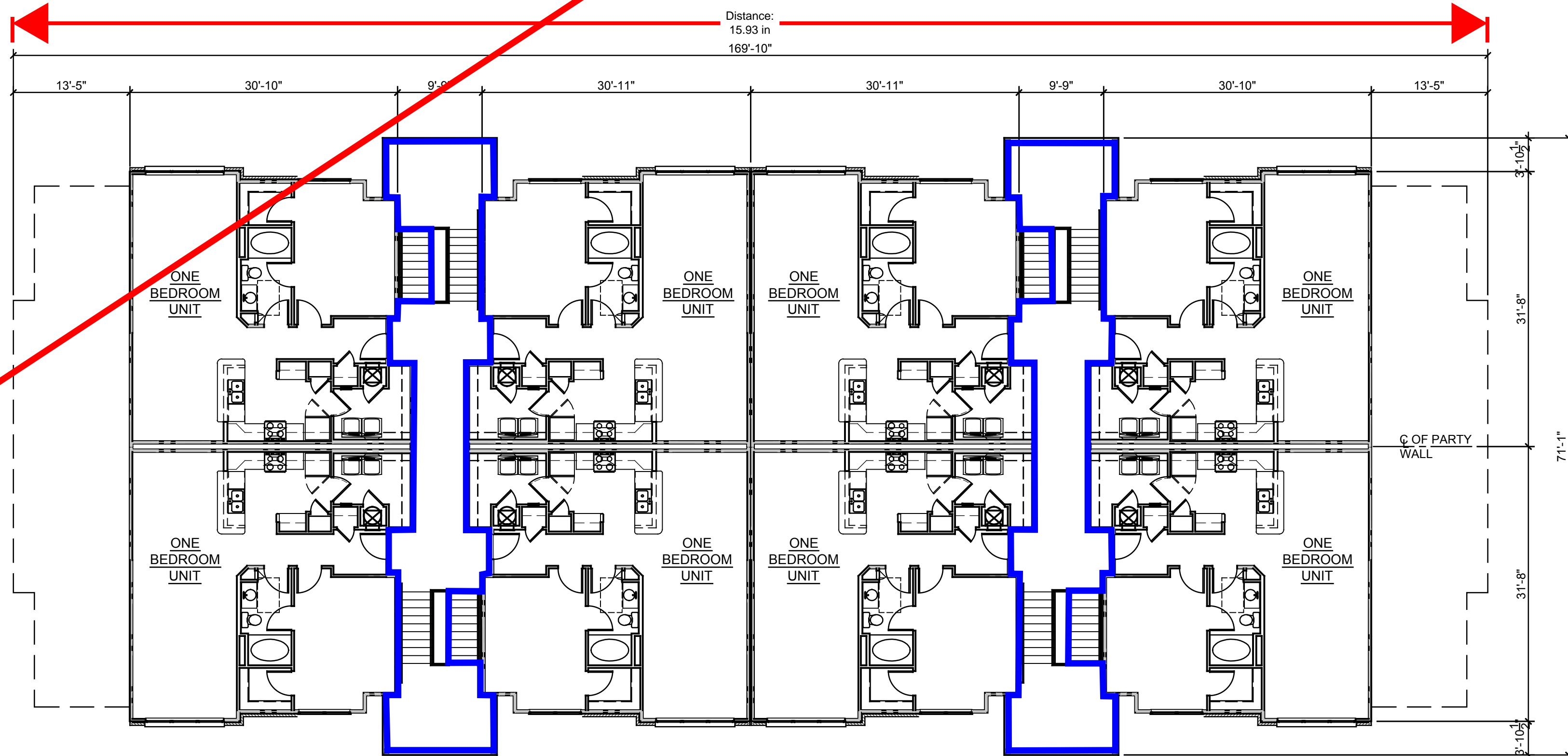


DATE: 2015-02-25  
REVISION: PRELIMINARY DESIGN  
NOT FOR CONSTRUCTION

# The Residences at Earl Campbell

FRANKSTON STREET  
TYLER, TEXAS

MORTON M. GRUBER, AIA, ARCHITECT  
245 PEACHTREE CENTER AVE SUITE 2415 ATLANTA, GA 30303 TEL: 404.984-1880 FAX: 404.984-1895



BUILDING TYPE 'A' - THIRD FLOOR PLAN

3/32"=1'-0"

SEE TYPICAL UNIT & BREEZEWAY PLANS FOR ADDITIONAL INFORMATION

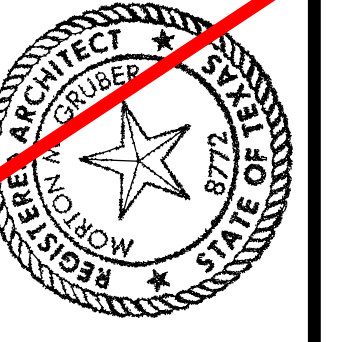
GENERAL NOTES:  
1. INSULATE THE ENDS OF ALL PLUMBING CHASES AND AIRSPACES.  
2. [Symbol] DENOTES 1-HOUR FIRE RATED WALL ASSEMBLIES.  
FOLLOW GA DESIGN #U-341 AT TENANT SEPARATION WALLS.  
FOLLOW GA DESIGN #WP5514 AT BREEZEWAY WALLS.  
FOLLOW UL #R306 AT EXTERIOR WALLS.  
FOLLOW GA DESIGN #WP5514 AT INTERIOR BEARING.  
3. DIMENSIONS ARE TO FACE OF STUD UNLESS OTHERWISE NOTED.

BUILDING TYPE 'A'  
THIRD FLOOR

A4.1.2  
PRELIMINARY  
DESIGN



Original



DATE: 2016-02-25  
REVISION: PRELIMINARY DESIGN  
NOT FOR CONSTRUCTION

*The Residences at Earl Campbell*

FRANKSTON STREET  
TYLER, TEXAS

MORTON M. GRUBER, AIA, ARCHITECT  
245 PEACHTREE CENTER AVENUE SUITE 2445 ATLANTA, GA 30303 TEL: 404.984-1880 FAX: 404.984-1895

BUILDING TYPE 'A'  
ELEVATIONS

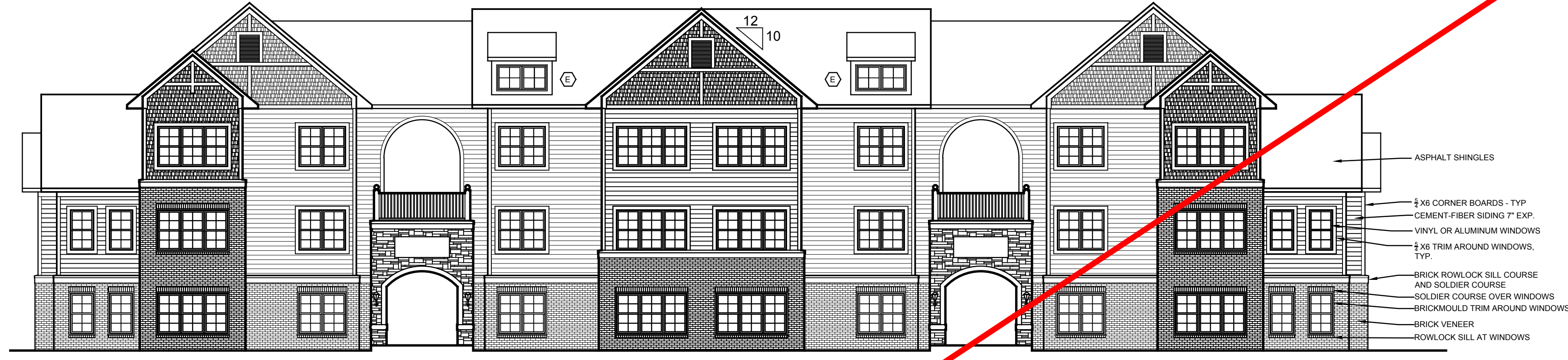
A4.1.3  
PRELIMINARY  
DESIGN



FRONT ELEVATION

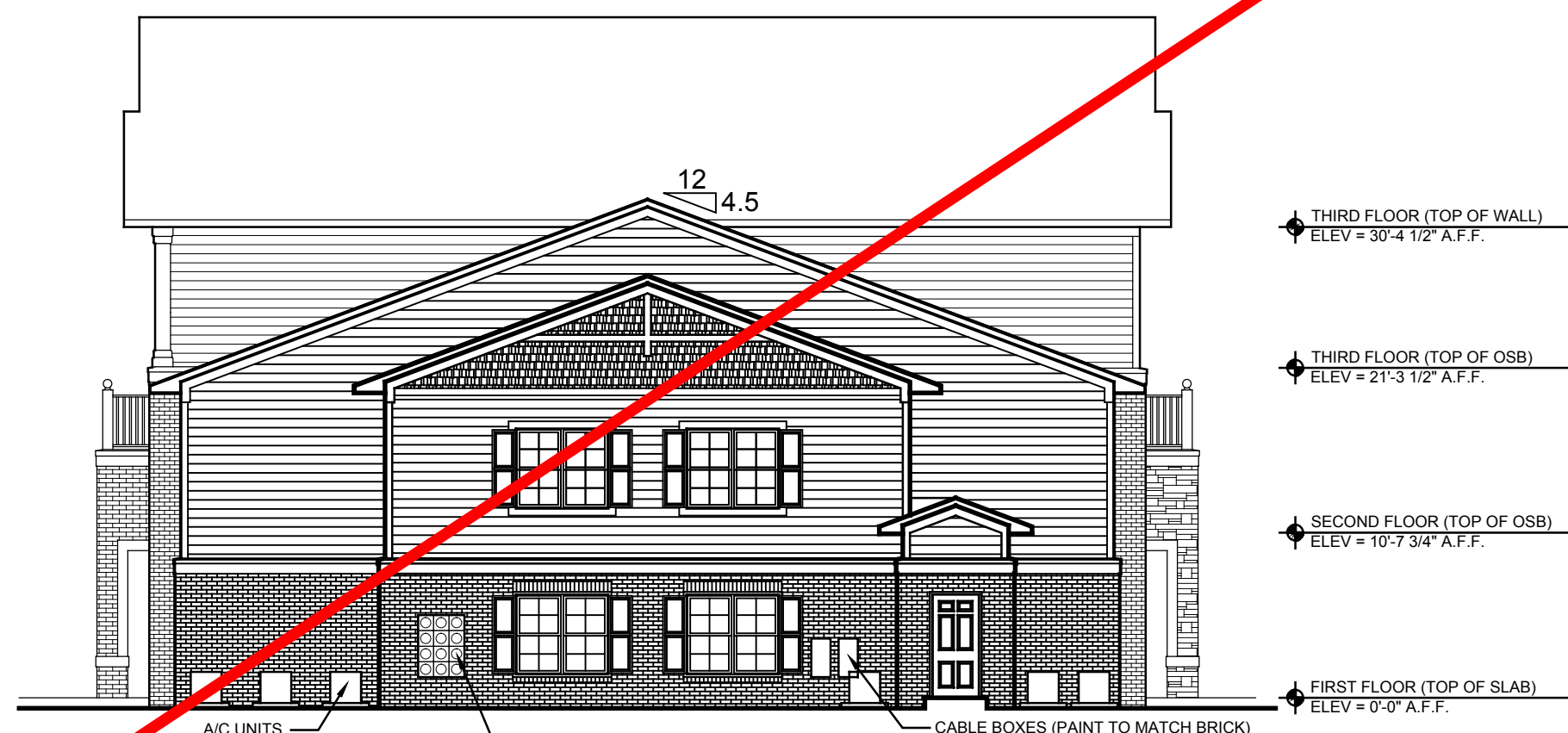
SCALE: 3/32" = 1'-0"

EXTERIOR FINISH PERCENTAGES:  
BRICK/STONE = 40%  
CEMENT FIBER SIDING = 60%



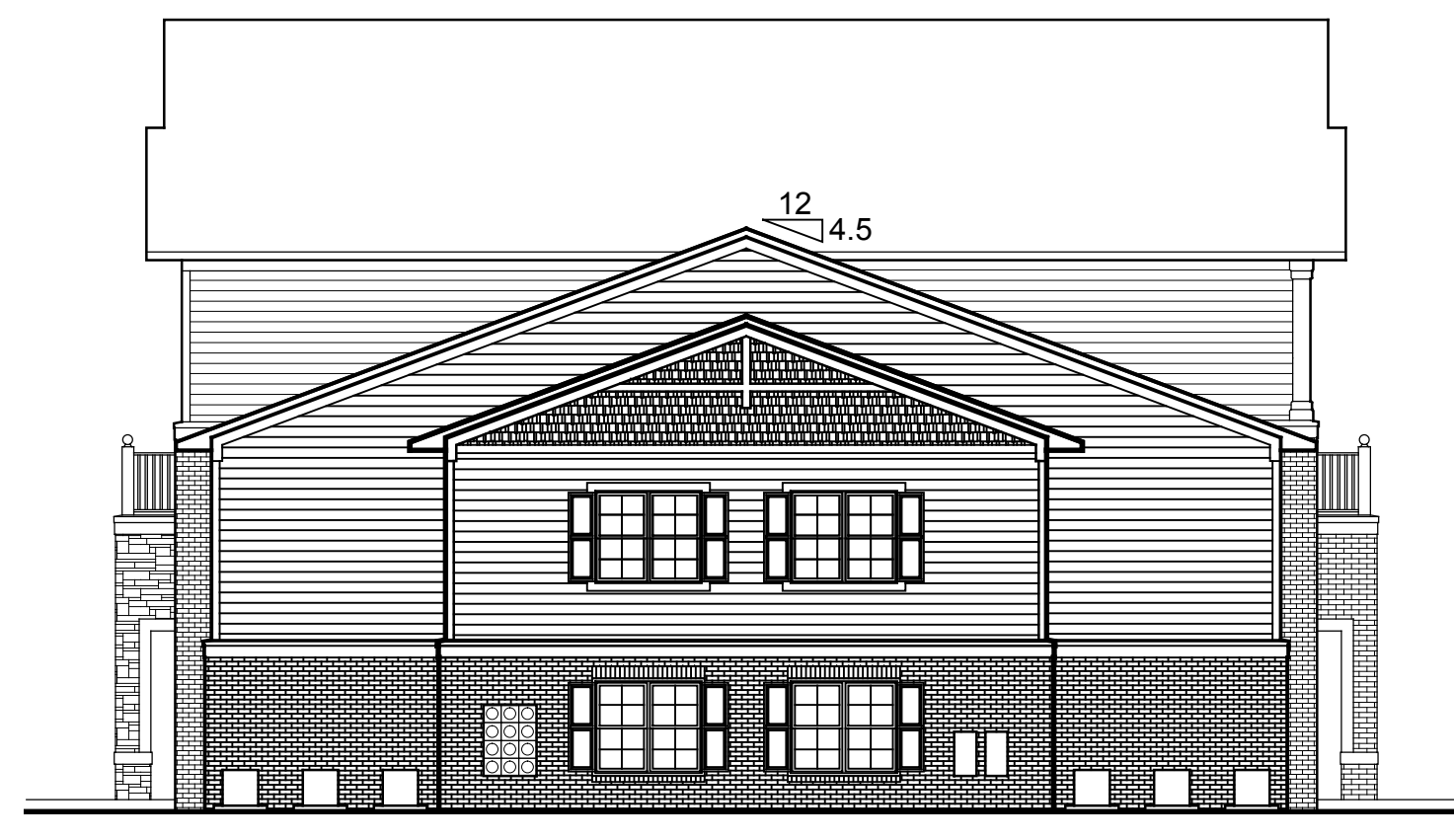
REAR ELEVATION

SCALE: 3/32" = 1'-0"



LEFT ELEVATION

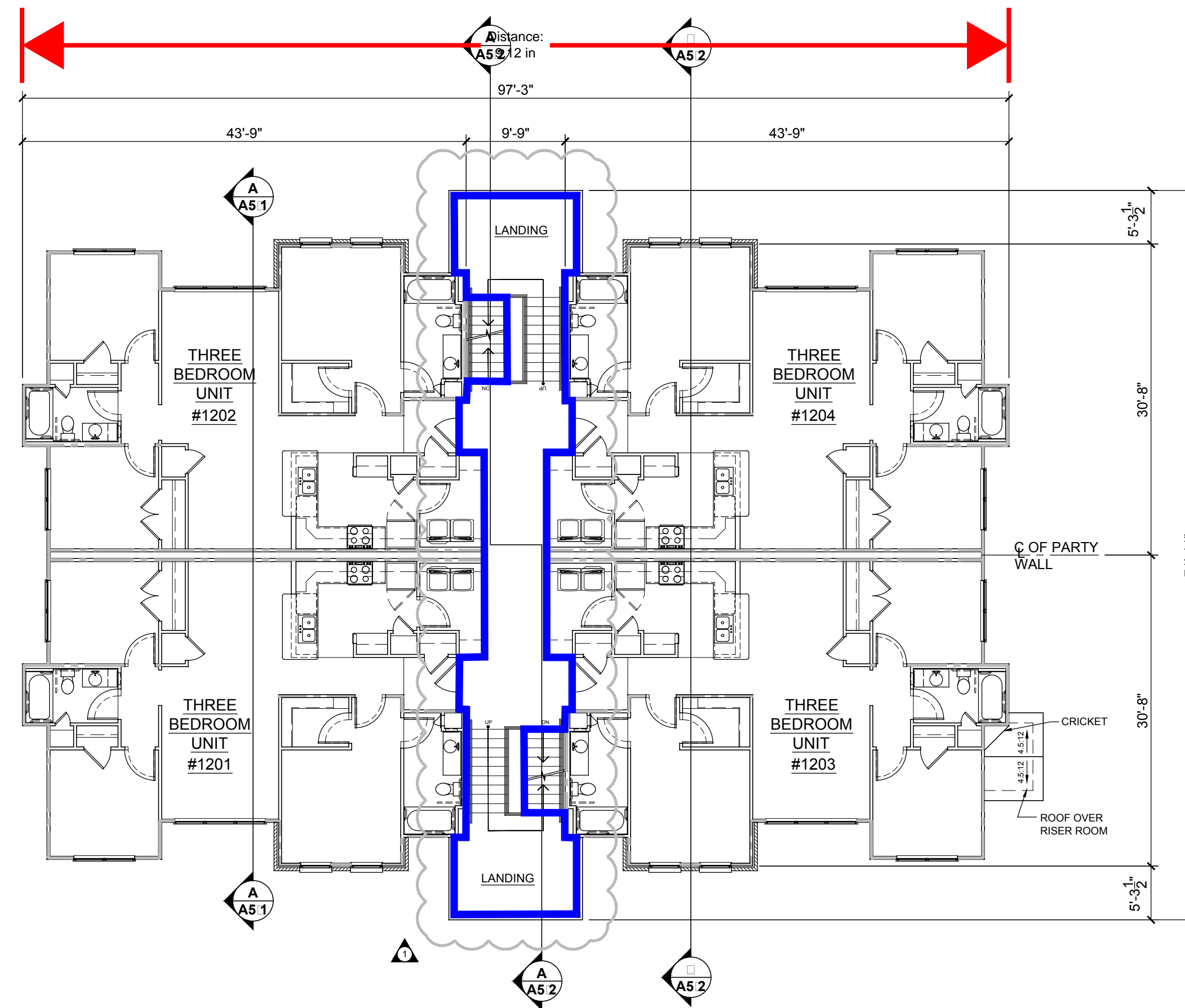
SCALE: 3/32" = 1'-0"



RIGHT ELEVATION

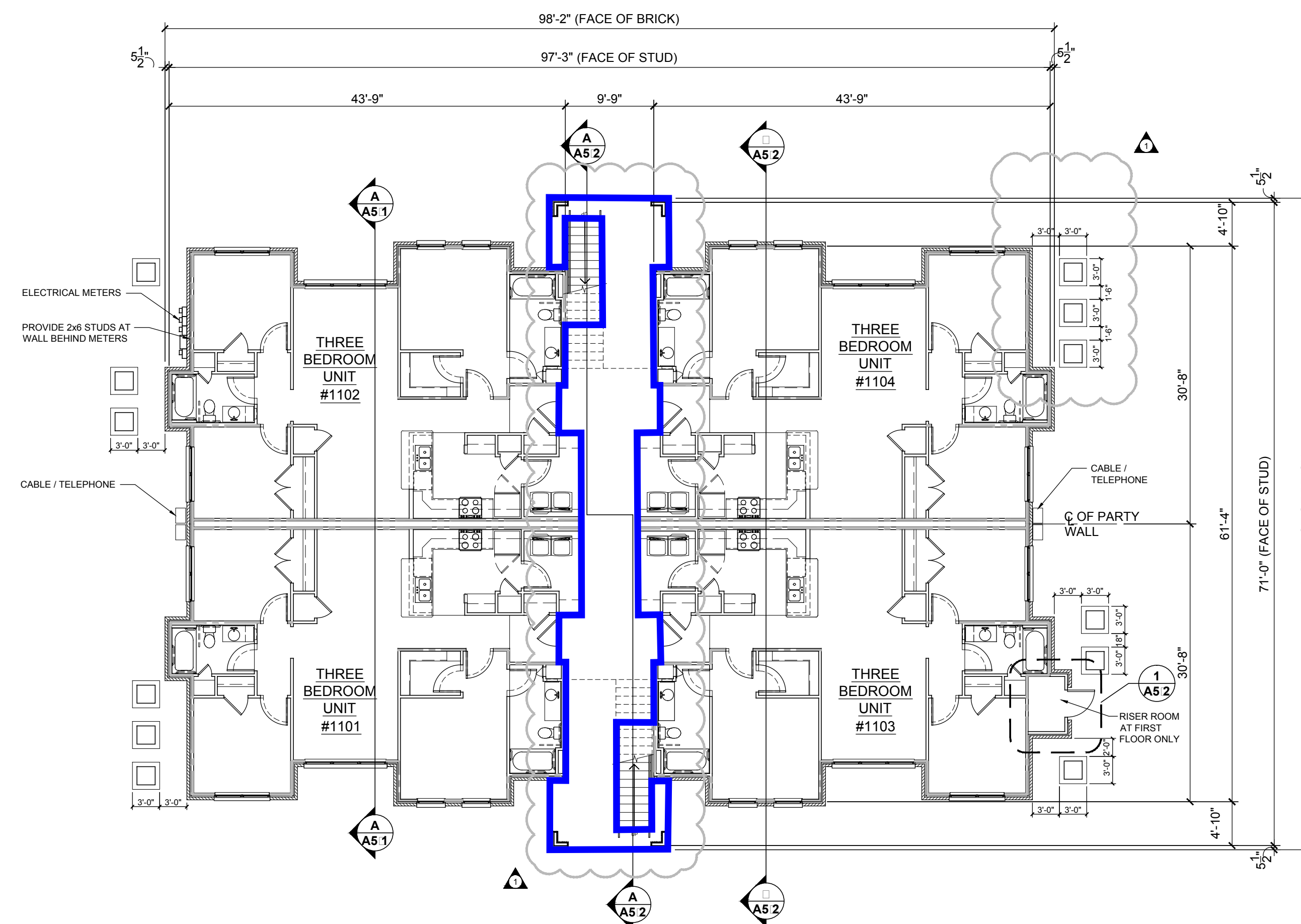
SCALE: 3/32" = 1'-0"





**BUILDING #1 - SECOND FLOOR PLAN** 3/32"=1'-0"

SEE TYPICAL UNIT & BREEZEWAY PLANS FOR ADDITIONAL INFORMATION



**BUILDING #1 - FIRST FLOOR PLAN** 3/32"=1'-0"

SEE TYPICAL UNIT & BREEZEWAY PLANS FOR ADDITIONAL INFORMATION

- GENERAL NOTES:**
1. INSULATE THE ENDS OF ALL PLUMBING CHASES AND AIRSPACES.
  2. [Symbol] DENOTES 1-HOUR FIRE RATED WALL ASSEMBLIES.
  3. FOLLOW UL DESIGN #U-341 AT TENANT SEPARATION WALLS. FOLLOW GA DESIGN #WP8105 PLUS SOUND BOARD AT BREEZEWAY WALLS.
  4. FOLLOW UL #US66 AT EXTERIOR WALLS.
  5. FOLLOW GA DESIGN #WP3514 AT INTERIOR BEARING.
  6. DIMENSIONS ARE TO FACE OF STUD UNLESS OTHERWISE NOTED.



DATE	REVISION
2015-12-28	
	2016-02-26

*The Residences at Earl Campbell*

FRANKSTON HWY (STATE HWY 155)  
TYLER, TEXAS

**MORTON M. GRUBER, AIA, ARCHITECT**  
245 PEACHTREE CENTERAVE SUITE 2415 ATLANTA, GA 30303 TEL: 404.984-1880 FAX: 404.984-1895

BUILDING #1  
FIRST & SECOND  
FLOOR PLANS

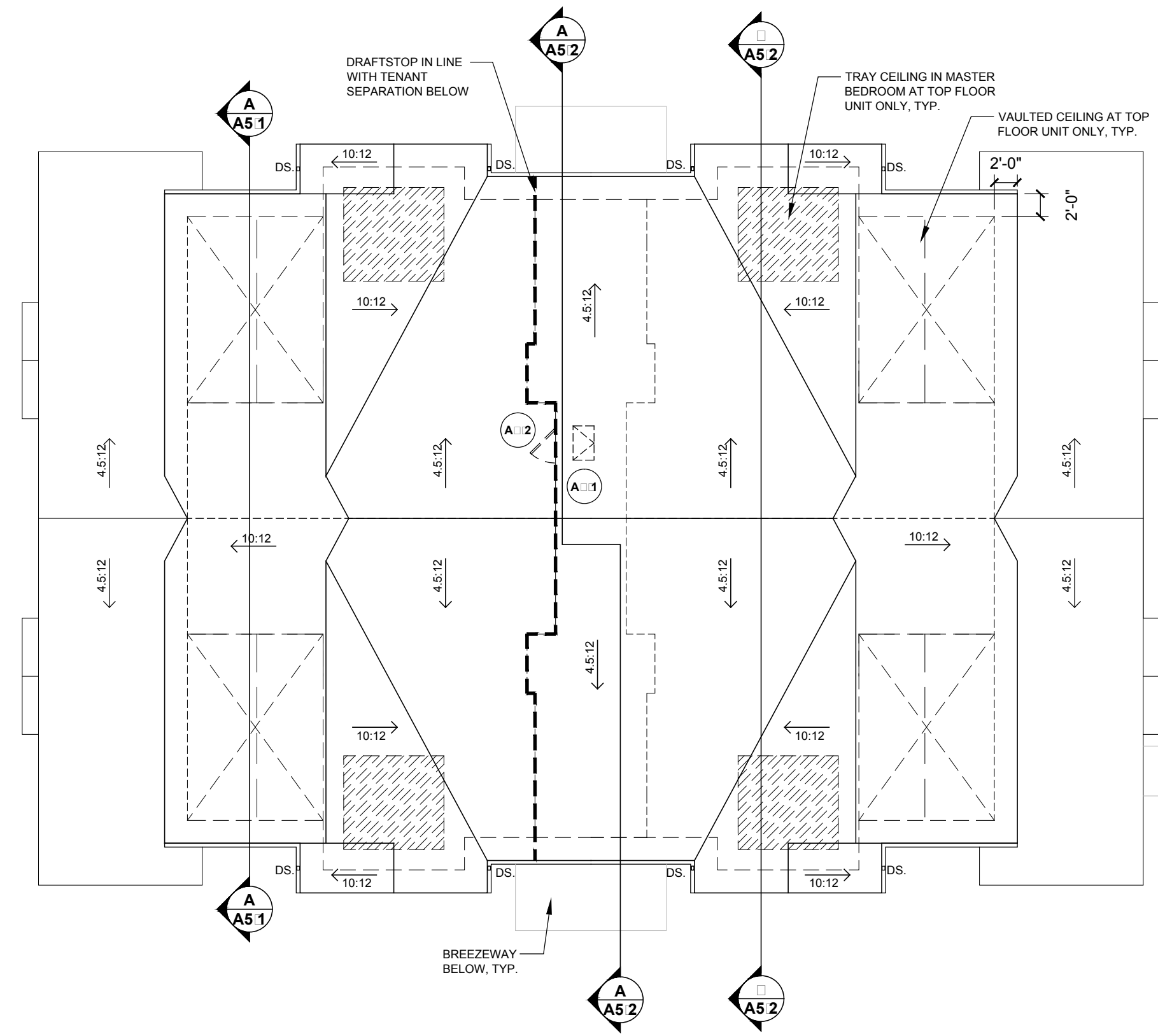
**A4.1.1**

# ATTIC VENTILATION

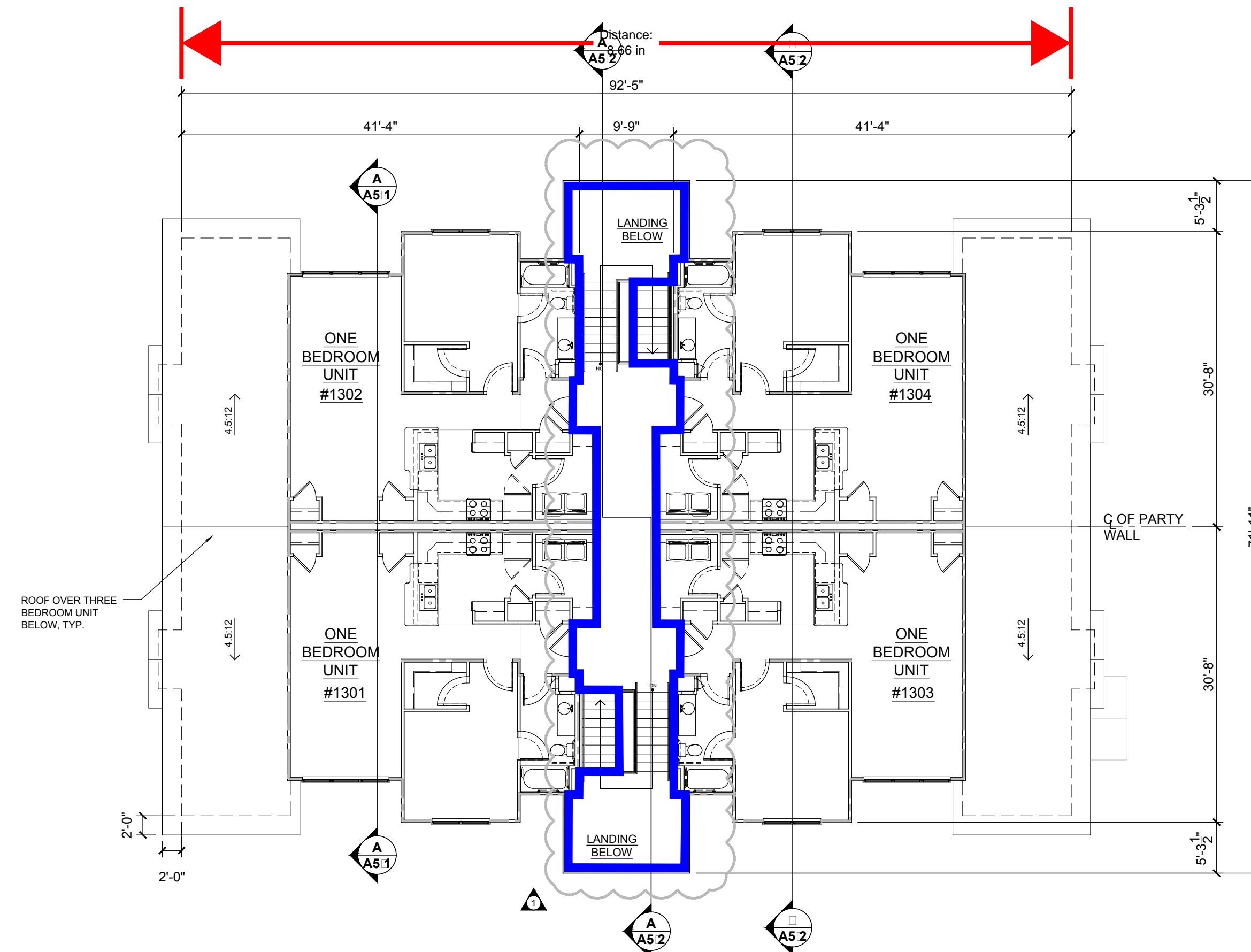
SHALL BE PROVIDED WITHIN EACH SECTION OF ATTIC TO MEET THE FOLLOWING REQUIREMENTS:

$$\text{TOTAL VENTILATION SHALL} = \frac{\text{ATTIC AREA}}{150} \text{ MIN.}$$

50% MIN. OF THE REQUIRED VENTILATION AREA SHALL BE LOCATED IN UPPER PORTION OF ATTIC NEAR RIDGE.



**BUILDING #1 - ROOF PLAN** 3/32"=1'-0"



**BUILDING #1 - THIRD FLOOR PLAN** 3/32"=1'-0"

SEE TYPICAL UNIT & BREEZEWAY PLANS FOR ADDITIONAL INFORMATION

- GENERAL NOTES:**
- INSULATE THE ENDS OF ALL PLUMBING CHASES AND AIRSPACES.
  - DENOTES 1-HOUR FIRE RATED WALL ASSEMBLIES.
  - FOLLOW UL DESIGN #U-341 AT TENANT SEPARATION WALLS.
  - FOLLOW GA DESIGN #WPR105 PLUS SOUND BOARD AT BREEZEWAY WALLS.
  - FOLLOW UL #U356 AT EXTERIOR WALLS.
  - FOLLOW GA DESIGN #WPS14 AT INTERIOR BEARING.
  3. DIMENSIONS ARE TO FACE OF STUD UNLESS OTHERWISE NOTED.



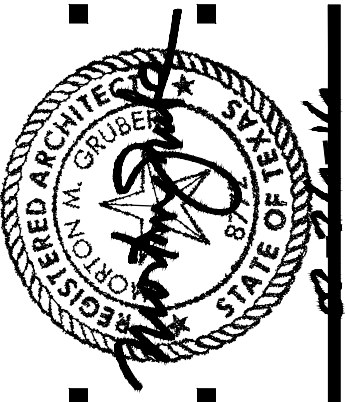
DATE	REVISION
2015-12-28	
	2016-02-26

*The Residences at Earl Campbell*  
 FRANKSTON HWY (STATE HWY 155)  
 TYLER, TEXAS

BUILDING #1  
 THIRD FLOOR  
 ROOF PLAN

**A4.1.2**

**MORTON M. GRUBER, AIA, ARCHITECT**  
 245 PEACHTREE CENTER AVE SUITE 2415 ATLANTA, GA 30303 TEL: 404.984-1880 FAX: 404.984-1895



DATE  
2015-12-28

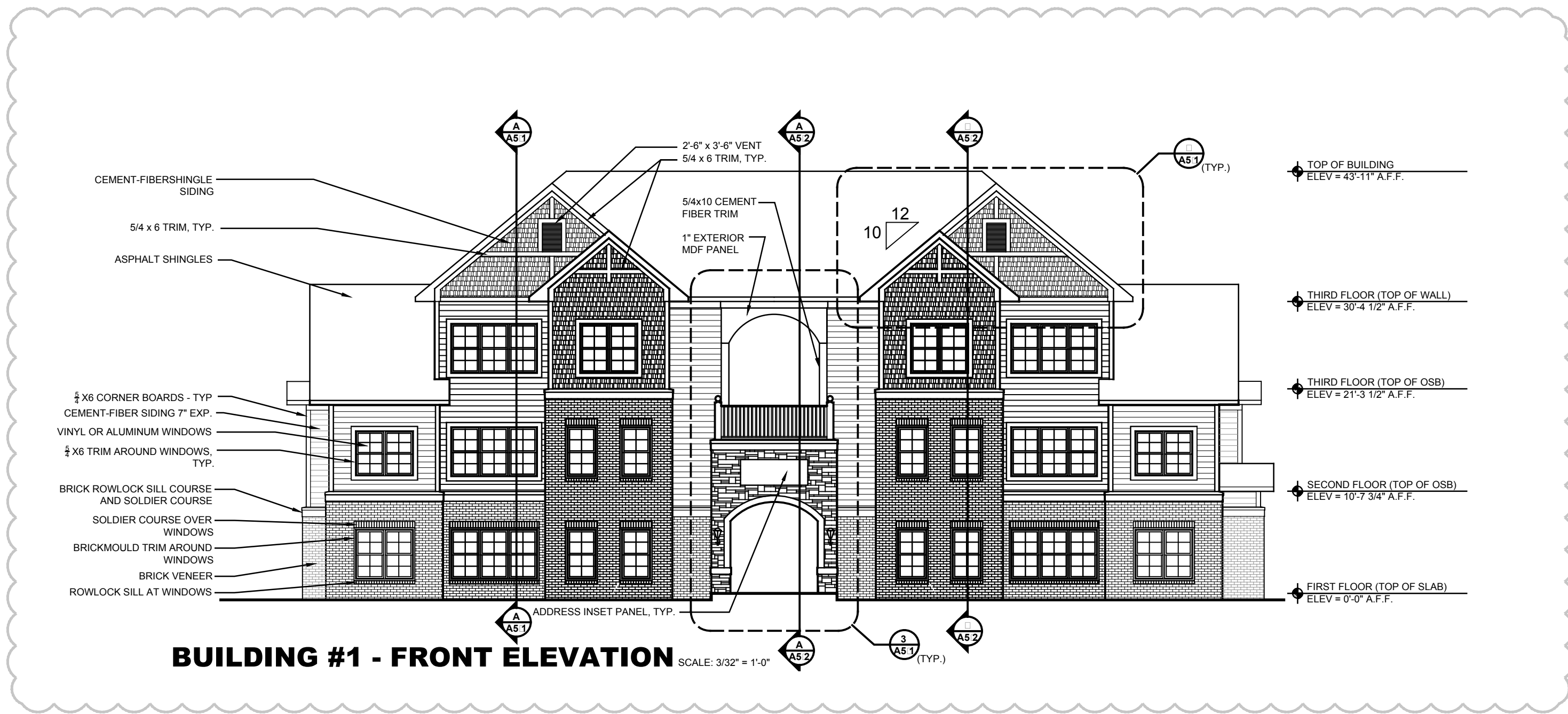
REVISION  
2016-02-26

*The Residences at Earl Campbell*

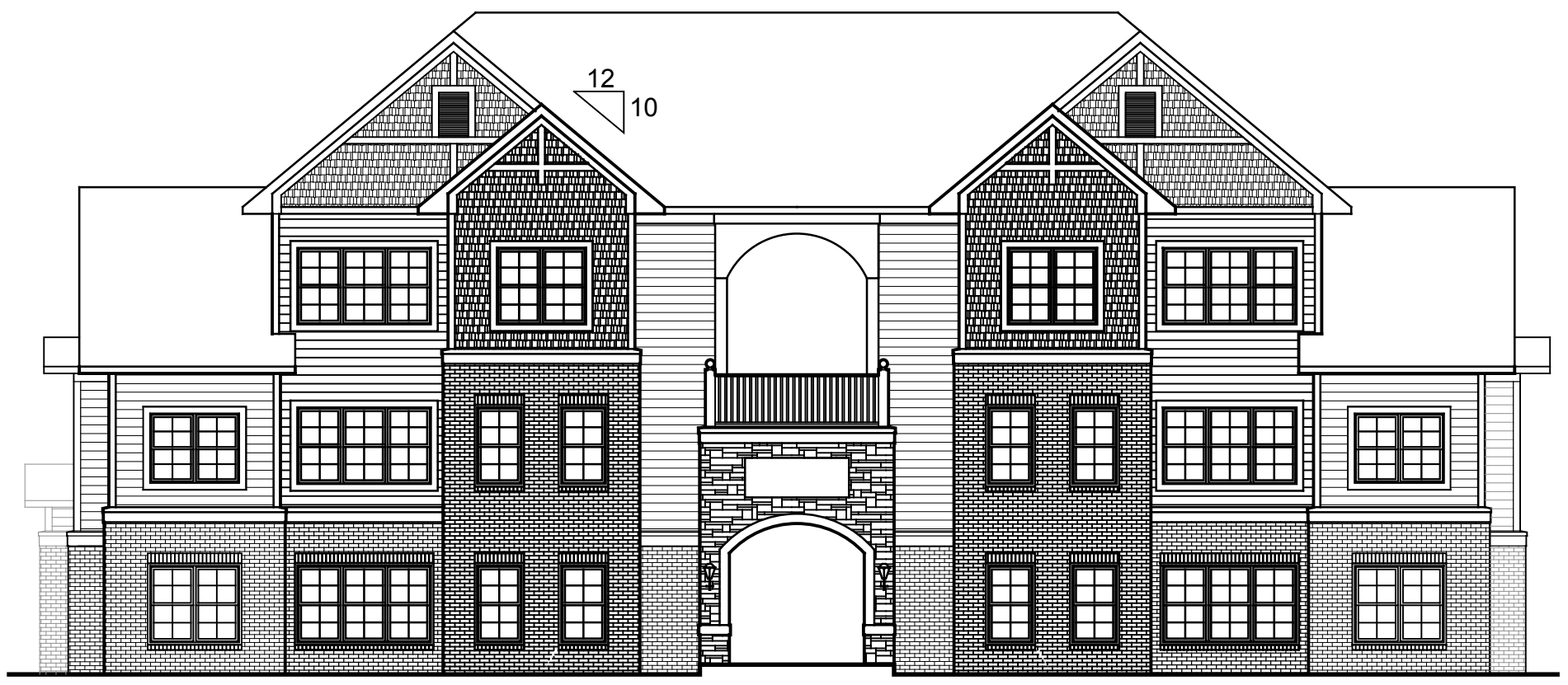
FRANKSTON HWY (STATE HWY 155)  
TYLER, TEXAS

MORTON M. GRUBER, AIA, ARCHITECT  
245 PEACHTREE CENTERAVE SUITE 2445 ATLANTA, GA 30303 TEL: 404594-1880 FAX: 404594-1895

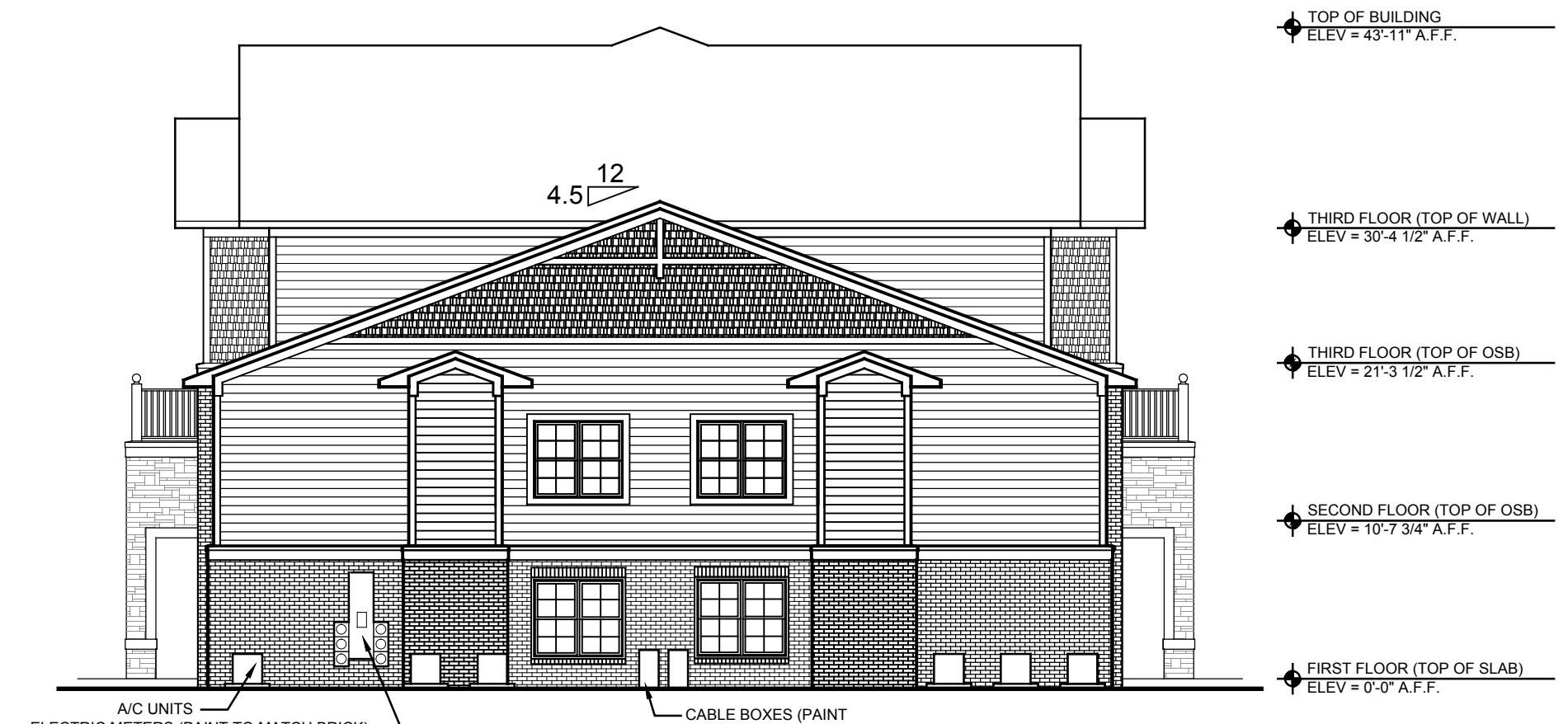
BUILDING #1  
ELEVATIONS



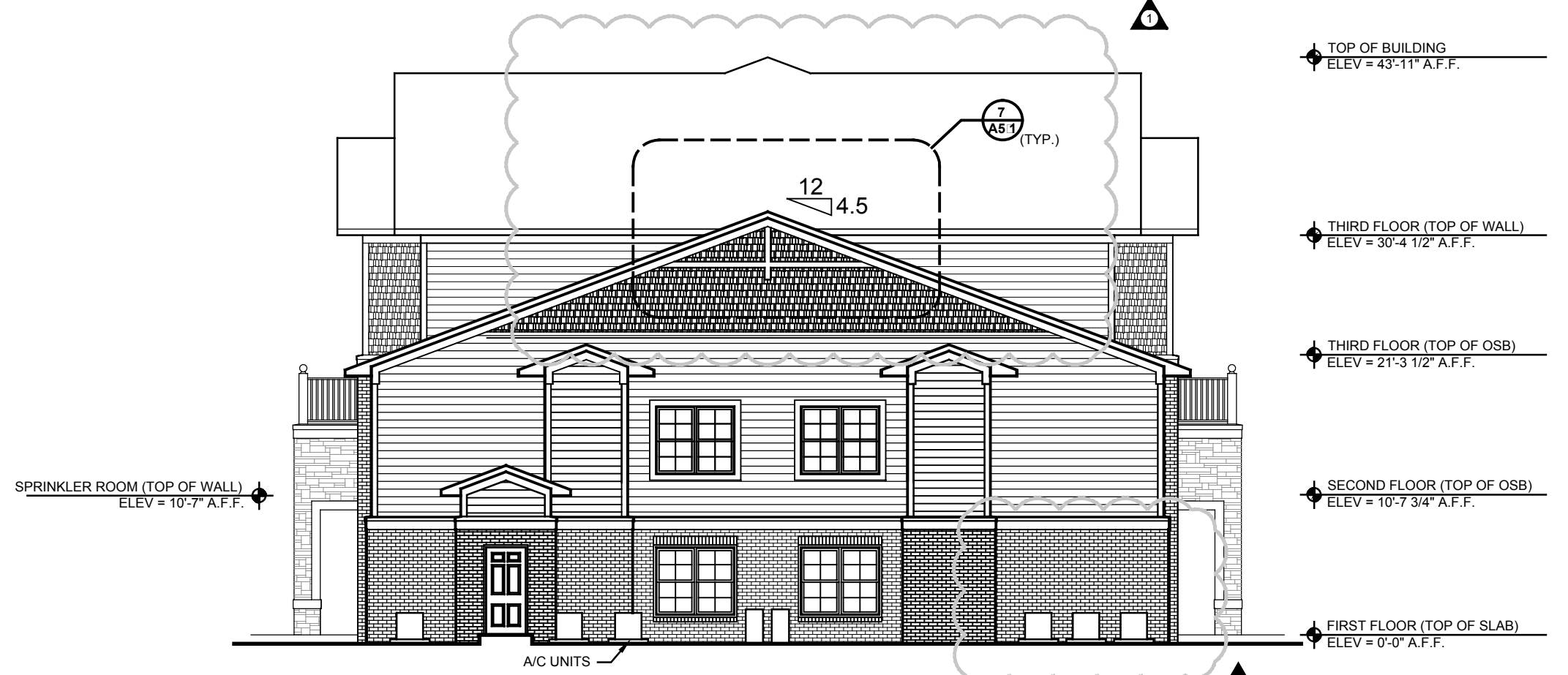
**BUILDING #1 - FRONT ELEVATION** SCALE: 3/32" = 1'-0"



**BUILDING #1 - REAR ELEVATION** SCALE: 3/32" = 1'-0"



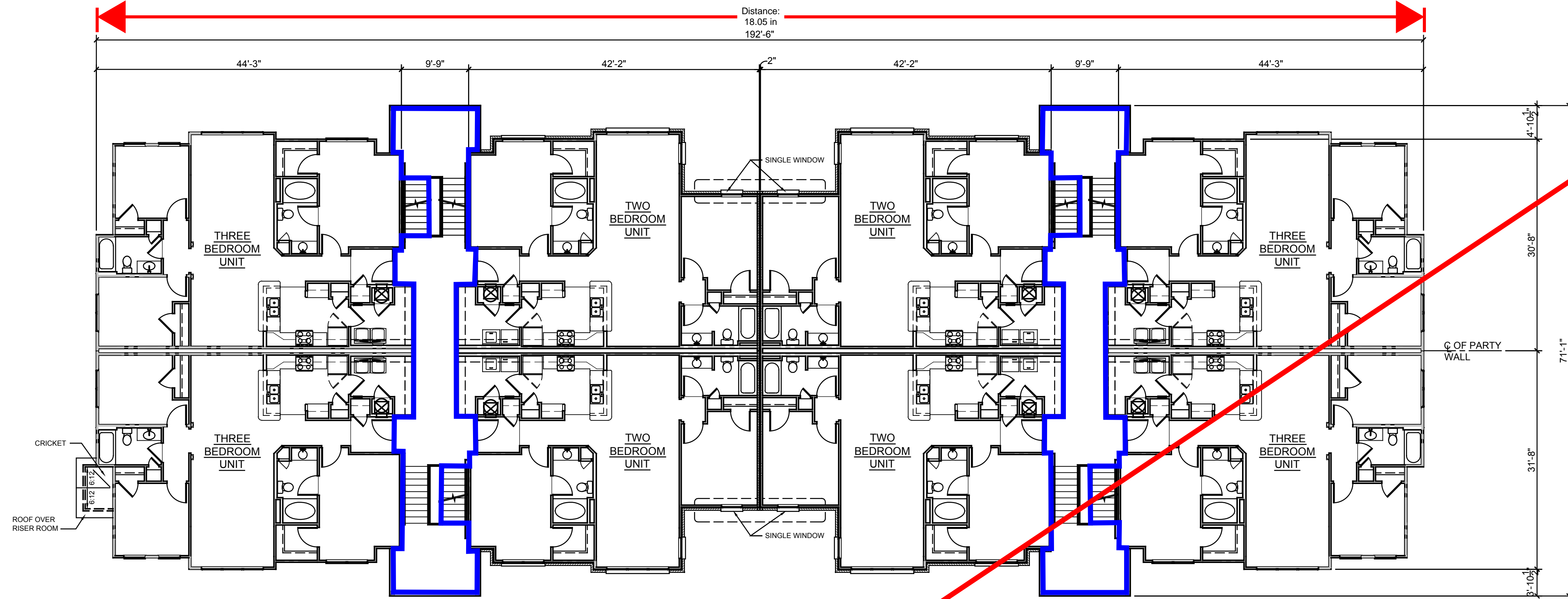
**BUILDING #1 - LEFT ELEVATION** SCALE: 3/32" = 1'-0"



**BUILDING #1 - RIGHT ELEVATION** SCALE: 3/32" = 1'-0"

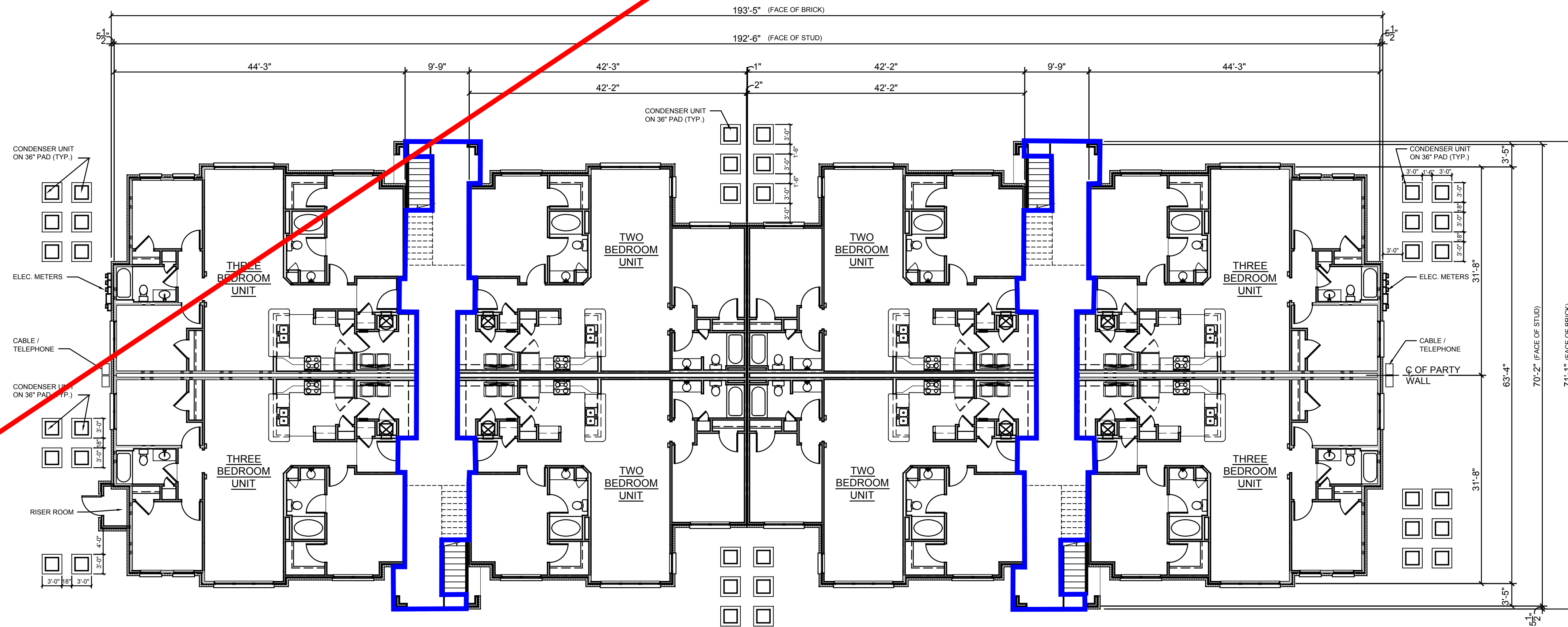


Original



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

SEE TYPICAL UNIT & BREEZEWAY PLANS FOR ADDITIONAL INFORMATION



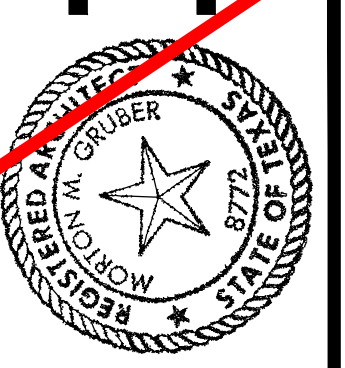
BUILDING TYPE 'B' - FIRST FLOOR PLAN 3/32"=1'-0"

SEE TYPICAL UNIT & BREEZEWAY PLANS FOR ADDITIONAL INFORMATION

GENERAL NOTES:

- INSULATE THE ENDS OF ALL PLUMBING CHASES AND AIRSPACES.
- DENOTES 1-HOUR FIRE RATED WALL ASSEMBLIES.
- FOLLOW UL DESIGN #U-341 AT TENANT SEPARATION WALLS.
- FOLLOW UL DESIGN #WPS14 AT BREEZEWAY WALLS.
- FOLLOW UL #4036 AT EXTERIOR WALLS.
- FOLLOW GA DESIGN #WPS14 AT INTERIOR BEARING.

3. DIMENSIONS ARE TO FACE OF STUD UNLESS OTHERWISE NOTED.



DATE: 2015-02-25  
 REVISION: PRELIMINARY DESIGN NOT FOR CONSTRUCTION

*The Residences at Earl Campbell*

FRANKSTON STREET  
 TYLER, TEXAS

MORTON M. GRUBER, AIA, ARCHITECT  
 245 PEACHTREE CENTER AVE SUITE 2445 ATLANTA, GA 30303 TEL: 404.984-1880 FAX: 404.984-1895

BUILDING TYPE 'B'  
 FIRST & SECOND  
 FLOOR PLANS

**A4.2.1**  
 PRELIMINARY  
 DESIGN

Original



DATE: 2015-02-25  
REVISION: PRELIMINARY DESIGN  
NOT FOR CONSTRUCTION

# The Residences at Earl Campbell

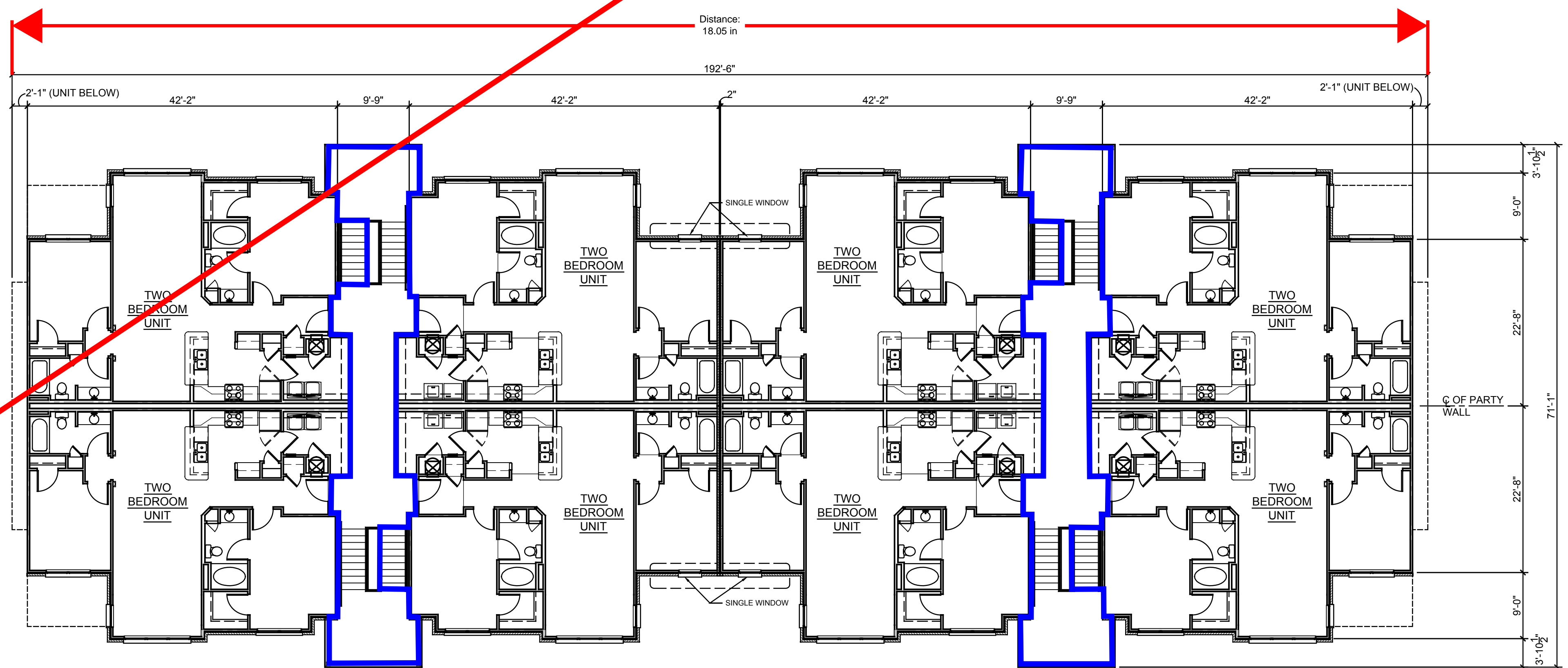
FRANKSTON STREET  
TYLER, TEXAS

MORTON M. GRUBER, AIA, ARCHITECT  
245 PEACHTREE CENTER AVE SUITE 2415 ATLANTA, GA 30303 TEL: 404.984-1880 FAX: 404.984-1895

BUILDING TYPE 'B'  
THIRD FLOOR &  
ROOF PLANS

## A4.2.2

PRELIMINARY  
DESIGN



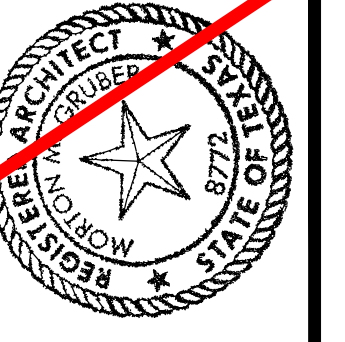
BUILDING TYPE 'B' - THIRD FLOOR PLAN 3/32"=1'-0"

SEE TYPICAL UNIT & BREEZEWAY PLANS  
FOR ADDITIONAL INFORMATION

- GENERAL NOTES:
1. INSULATE THE ENDS OF ALL PLUMBING CHASES AND AIRSPACES.
  2. [Symbol] DENOTES 1-HOUR FIRE RATED WALL ASSEMBLIES.
  3. FOLLOW UL DESIGN #U-341 AT TENANT SEPARATION WALLS.
  4. FOLLOW GA DESIGN #WPS14 AT BREEZEWAY WALLS.
  5. FOLLOW UL #1036 AT EXTERIOR WALLS.
  6. FOLLOW GA DESIGN #WPS14 AT INTERIOR BEARING.
3. DIMENSIONS ARE TO FACE OF STUD UNLESS OTHERWISE NOTED.



Original



DATE: 2015-02-25  
REVISION: PRELIMINARY DESIGN  
NOT FOR CONSTRUCTION

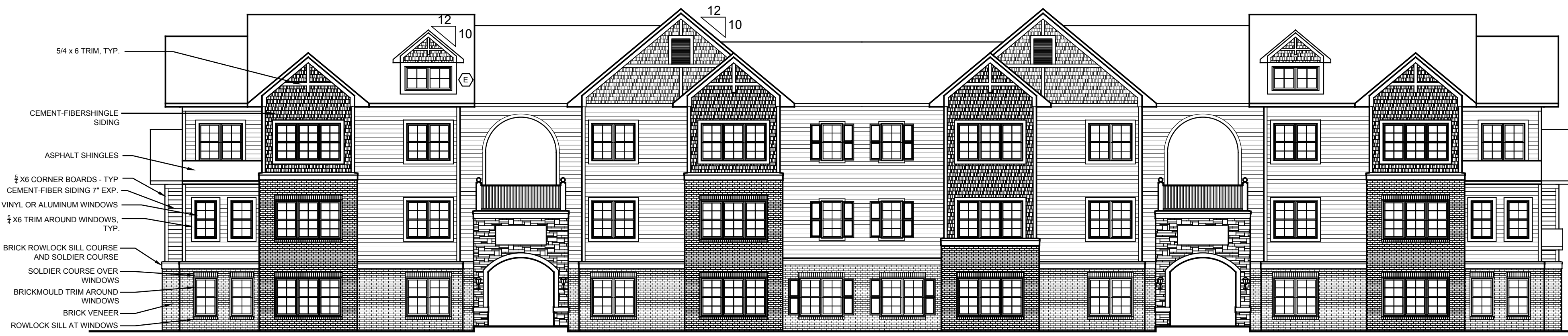
# The Residences at Earl Campbell

FRANKSTON STREET  
TYLER, TEXAS

MORTON M. GRUBER, AIA, ARCHITECT  
245 PEACHTREE CENTER AVE SUITE 2445 ATLANTA, GA 30303 TEL: 404/984-1880 FAX: 404/984-1895

BUILDING TYPE 'B'  
ELEVATIONS

A4.2.3  
PRELIMINARY  
DESIGN



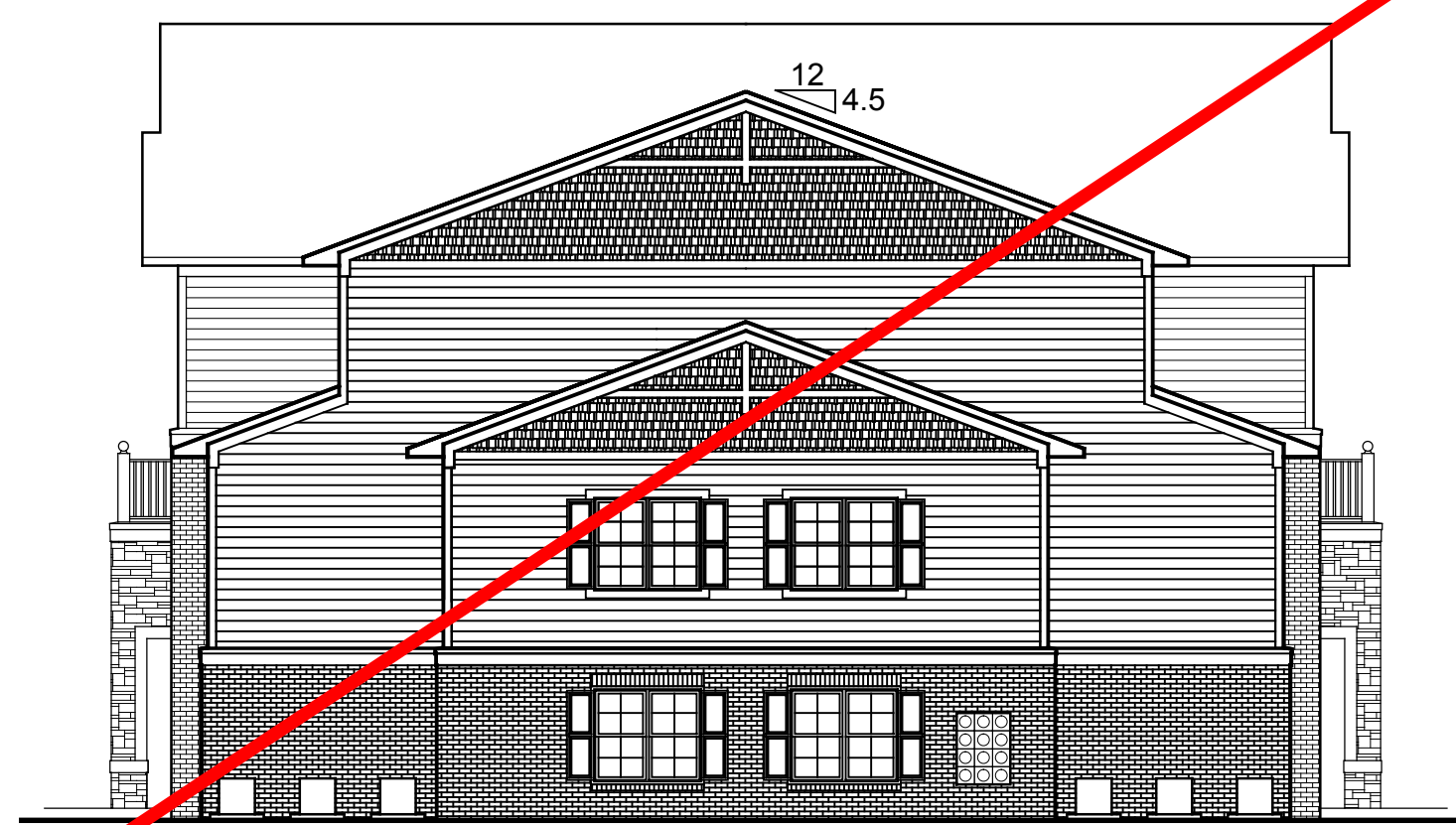
FRONT ELEVATION

SCALE: 3/32" = 1'-0"  
EXTERIOR FINISH PERCENTAGES:  
BRICK/STONE = 40%  
CEMENT FIBER SIDING = 60%



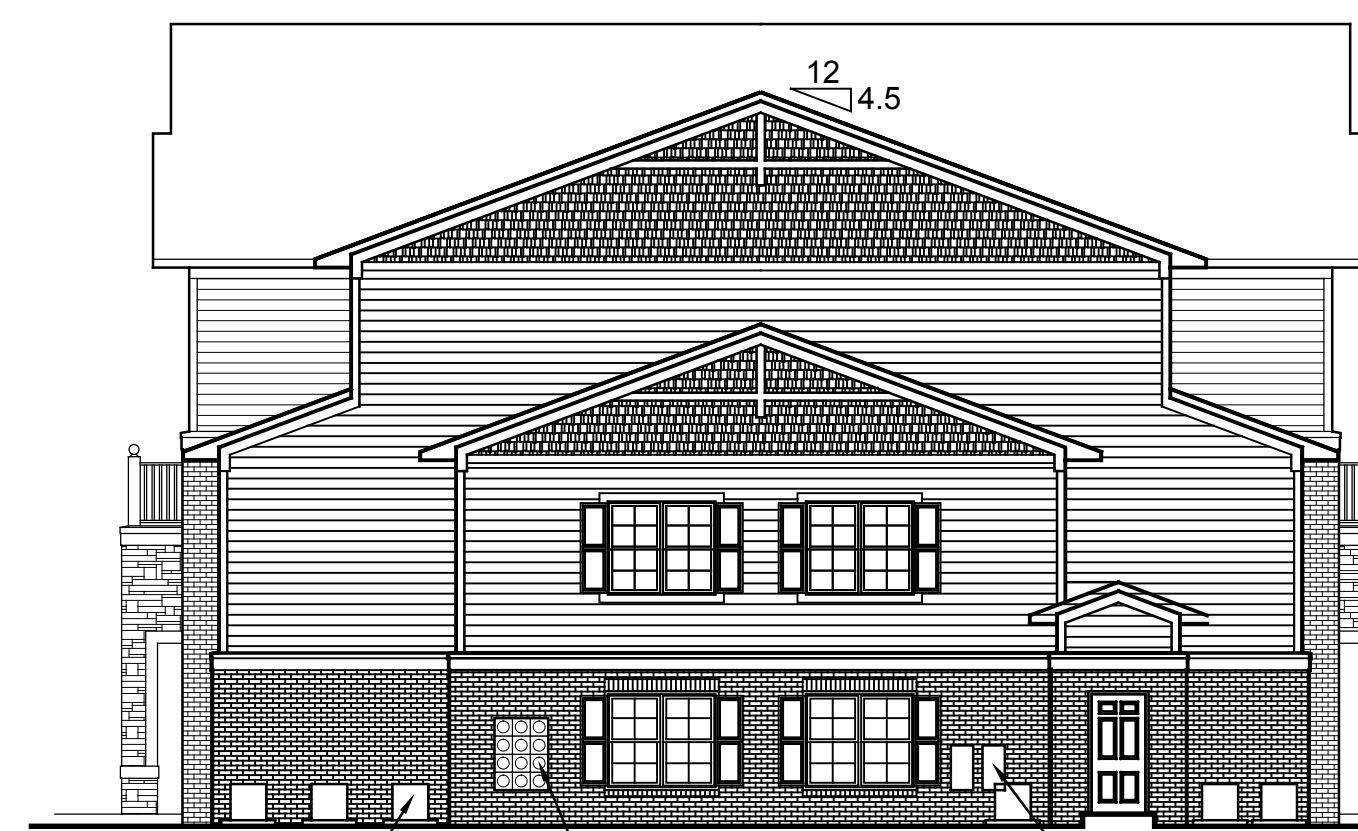
REAR ELEVATION

SCALE: 3/32" = 1'-0"



LEFT ELEVATION

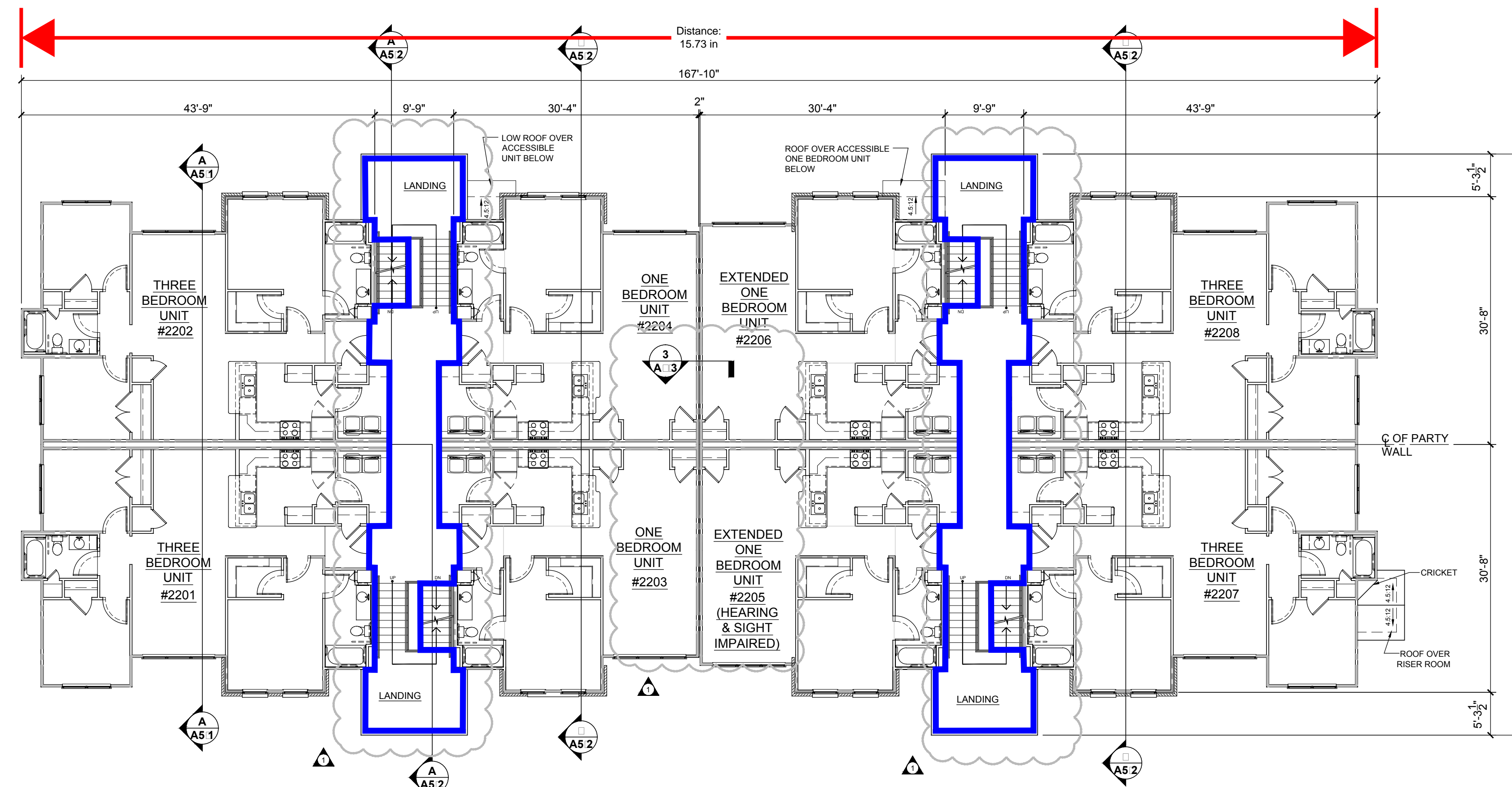
SCALE: 3/32" = 1'-0"



RIGHT ELEVATION

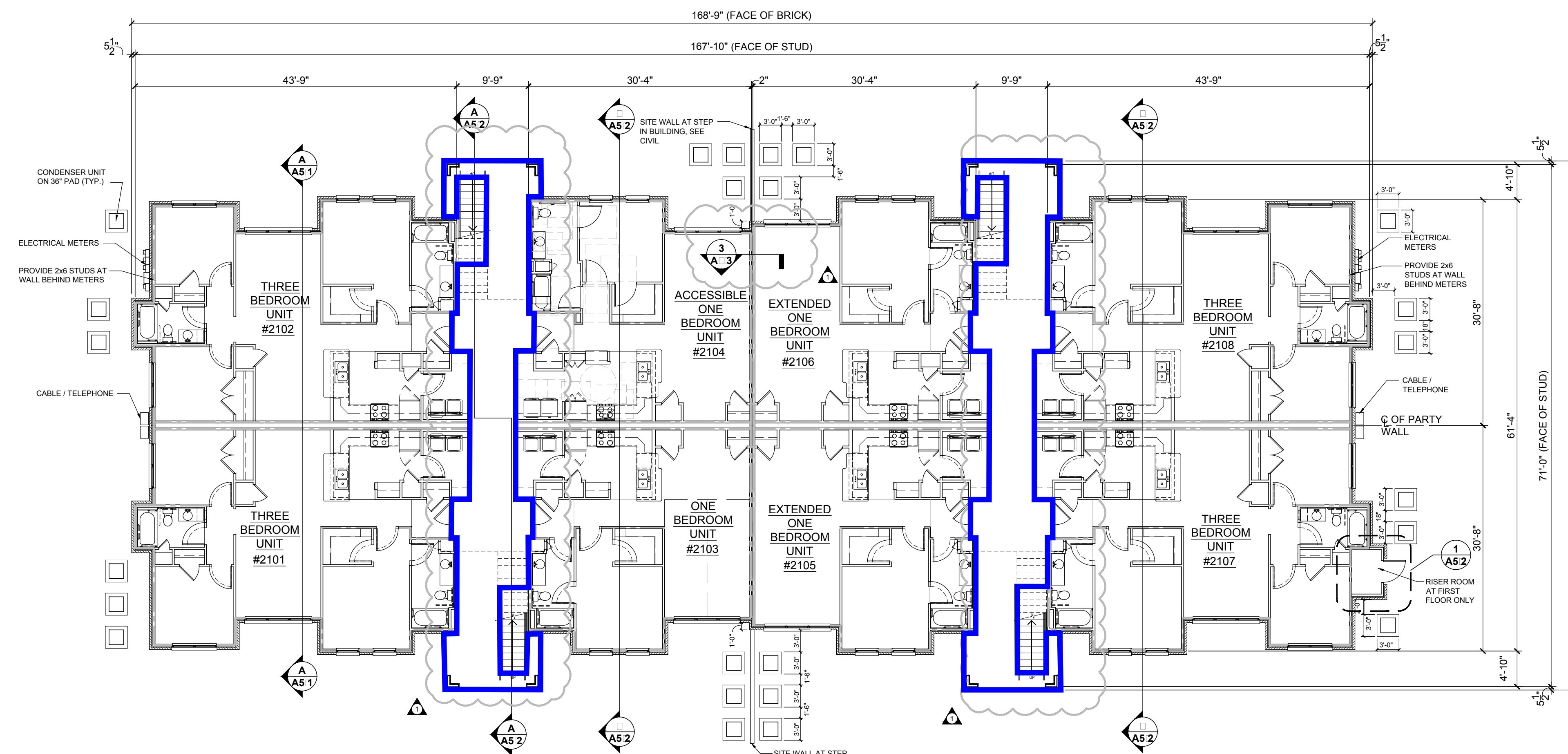
SCALE: 3/32" = 1'-0"





**BUILDING #2 - SECOND FLOOR PLAN** 3/32"=1'-0"

SEE TYPICAL UNIT & BREEZEWAY PLANS FOR ADDITIONAL INFORMATION  
 BLDG SLAB STEPS, COORDINATE HEIGHT & DIRECTION WITH CIVIL DRAWINGS



**BUILDING #2 - FIRST FLOOR PLAN** 3/32"=1'-0"

SEE TYPICAL UNIT & BREEZEWAY PLANS FOR ADDITIONAL INFORMATION  
 BLDG SLAB STEPS, COORDINATE HEIGHT & DIRECTION WITH CIVIL DRAWINGS

**GENERAL NOTES:**  
 1. INSULATE THE ENDS OF ALL PLUMBING CHASES AND AIRSPACES.  
 2. DENOTES 1-HOUR FIRE RATED WALL ASSEMBLIES.  
 FOLLOW U.L. DESIGN #U-341 AT TENANT SEPARATION WALLS.  
 FOLLOW GA DESIGN #WP8105 PLUS SOUND BOARD AT BREEZEWAY WALLS.  
 FOLLOW U.L. #4356 AT EXTERIOR WALLS.  
 FOLLOW GA DESIGN #WP3514 AT INTERIOR BEARING.  
 3. DIMENSIONS ARE TO FACE OF STUD UNLESS OTHERWISE NOTED.



DATE: 2015-12-28  
 REVISION: 2016-02-26

*The Residences at Earl Campbell*  
 FRANKSTON HWY (STATE HWY 155)  
 TYLER, TEXAS

BUILDING #2  
 FIRST & SECOND  
 FLOOR PLANS

**A4.2.1**

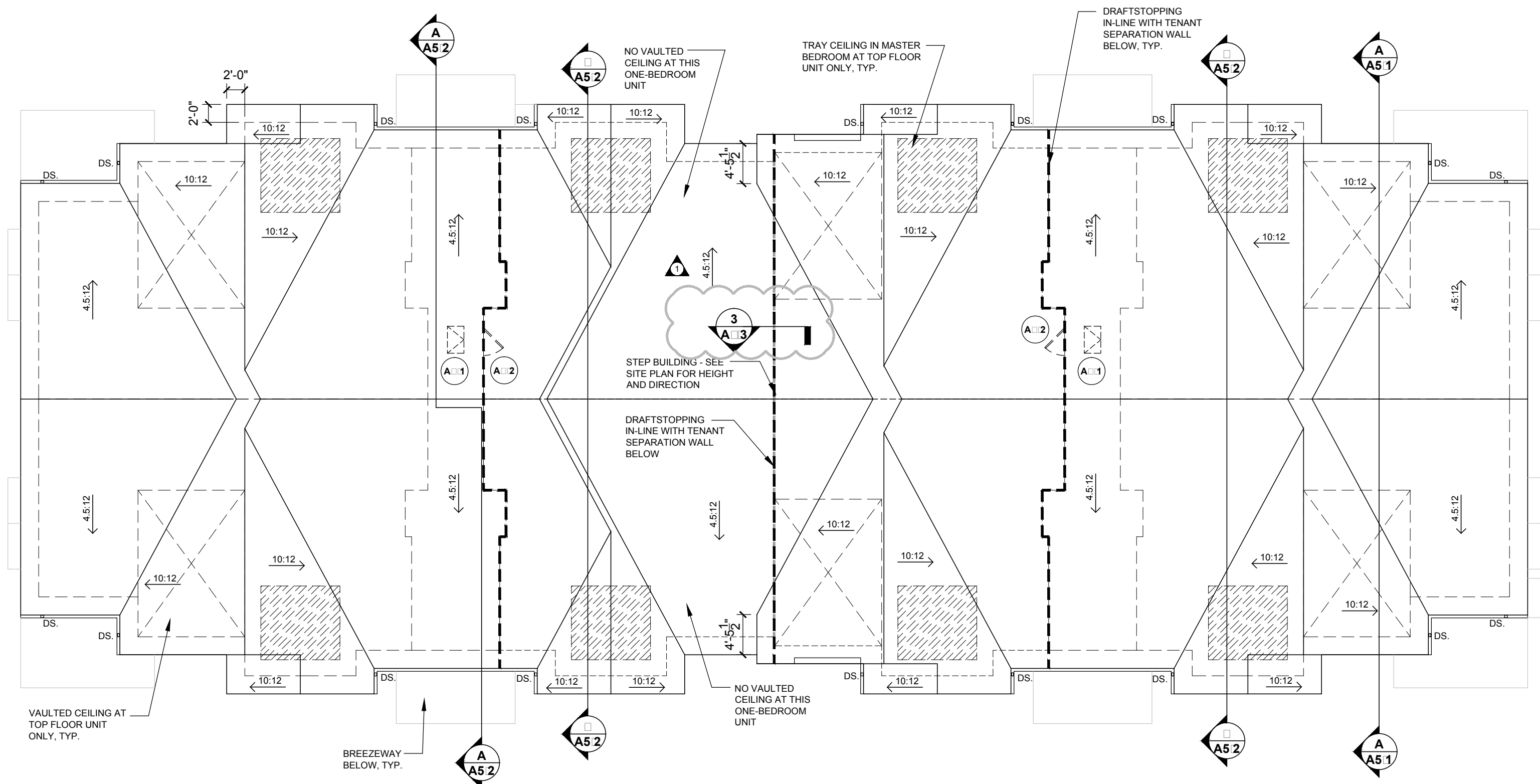
MORTON M. GRUBER, AIA, ARCHITECT  
 245 PEACHTREE CENTER AVE SUITE 2445 ATLANTA, GA 30303 TEL: 404.984-1880 FAX: 404.984-1895

**ATTIC VENTILATION**

SHALL BE PROVIDED WITHIN EACH SECTION OF ATTIC TO MEET THE FOLLOWING REQUIREMENTS:

TOTAL VENTILATION SHALL =  $\frac{\text{ATTIC AREA}}{150}$  MIN.

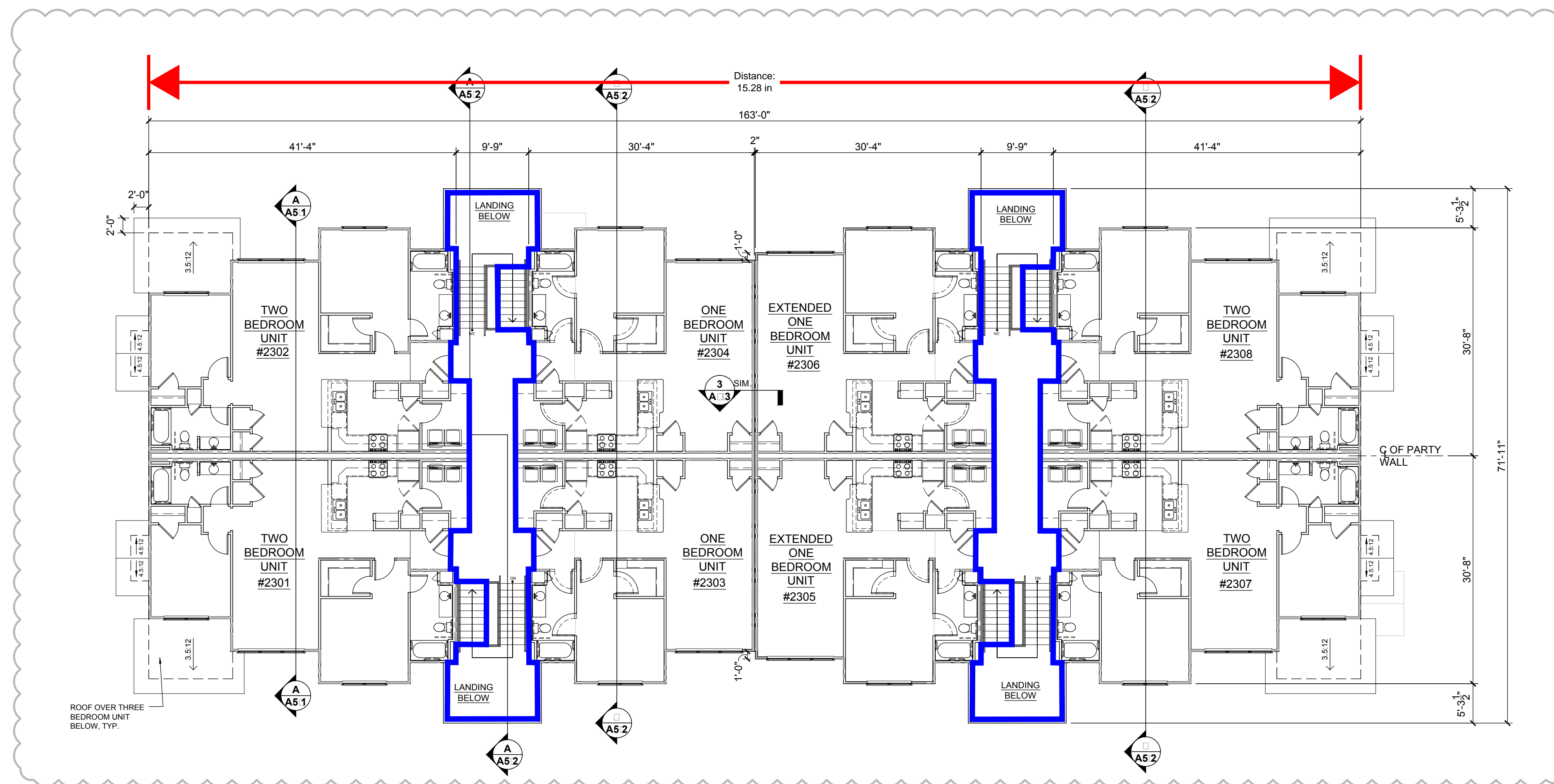
50% MIN. OF THE REQUIRED VENTILATION AREA SHALL BE LOCATED IN UPPER PORTION OF ATTIC NEAR RIDGE.



**BUILDING #2 - ROOF PLAN**

3/32"=1'-0"

BLDG SLAB STEPS, COORDINATE HEIGHT & DIRECTION WITH CIVIL DRAWINGS



**BUILDING #2 - THIRD FLOOR PLAN**

3/32"=1'-0"

SEE TYPICAL UNIT & BREEZEWAY PLANS FOR ADDITIONAL INFORMATION

BLDG SLAB STEPS, COORDINATE HEIGHT & DIRECTION WITH CIVIL DRAWINGS

- GENERAL NOTES:**
1. INSULATE THE ENDS OF ALL PLUMBING CHASES AND AIRSPACES.
  2. [Symbol] DENOTES 1-HOUR FIRE RATED WALL ASSEMBLIES. FOLLOW GA DESIGN #U-341 AT TENANT SEPARATION WALLS. FOLLOW GA DESIGN #WR105 PLUS SOUND BOARD AT BREEZEWAY WALLS. FOLLOW UL #J356 AT EXTERIOR WALLS. FOLLOW GA DESIGN #WP3514 AT INTERIOR BEARING.
  3. DIMENSIONS ARE TO FACE OF STUD UNLESS OTHERWISE NOTED.



DATE: 2015-12-28  
REVISION: 2016-02-26

*The Residences at Earl Campbell*

FRANKSTON HWY (STATE HWY 155)  
TYLER, TEXAS

MORTON M. GRUBER, AIA, ARCHITECT  
245 PEACHTREE CENTERAVE SUITE 2445 ATLANTA, GA 30303 TEL: 404.984-1880 FAX: 404.984-1895

BUILDING #2  
THIRD FLOOR  
ROOF PLAN

**A4.2.2**



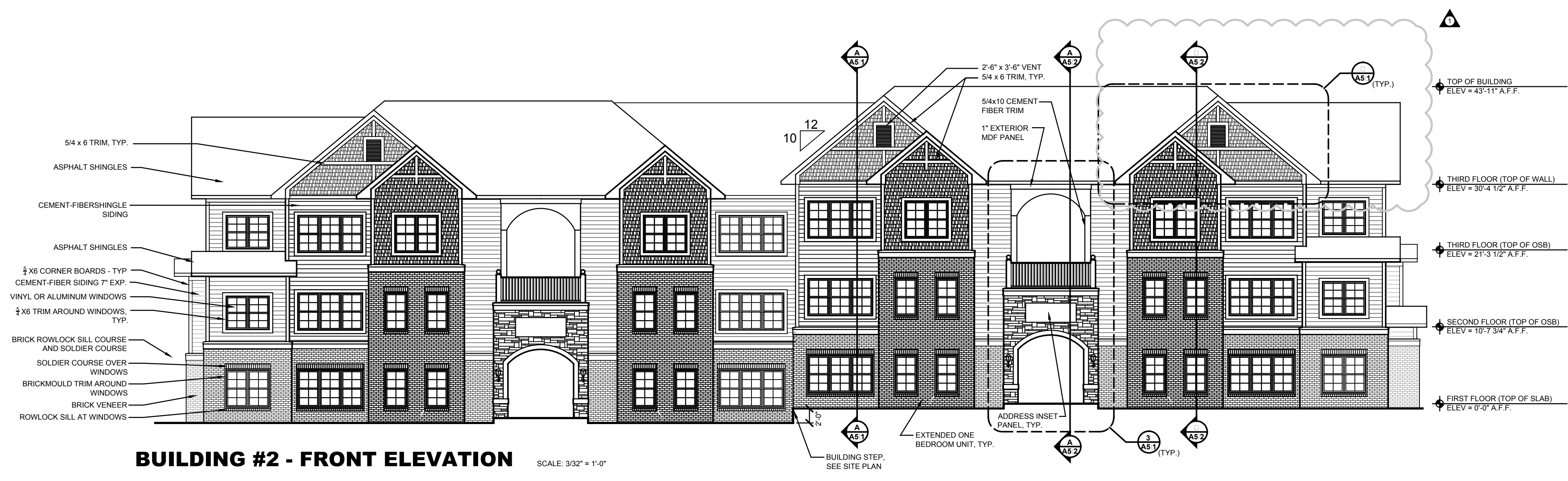


DATE  
2015-12-28  
REVISION  
2016-02-26

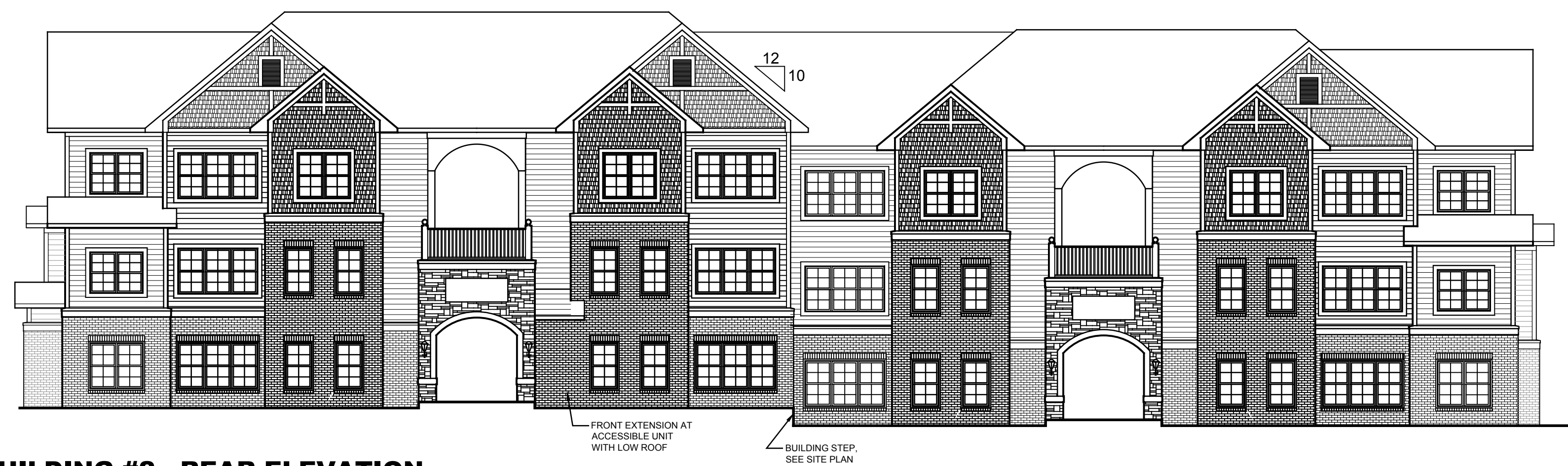
*The Residences at Earl Campbell*  
FRANKSTON HWY (STATE HWY 155)  
TYLER, TEXAS  
**MORTON M. GRUBER, AIA, ARCHITECT**  
245 PEACHTREE CENTERAVE SUITE 2445 ATLANTA, GA 30303 TEL: 404/984-1880 FAX: 404/984-1895

BUILDING #2  
ELEVATIONS

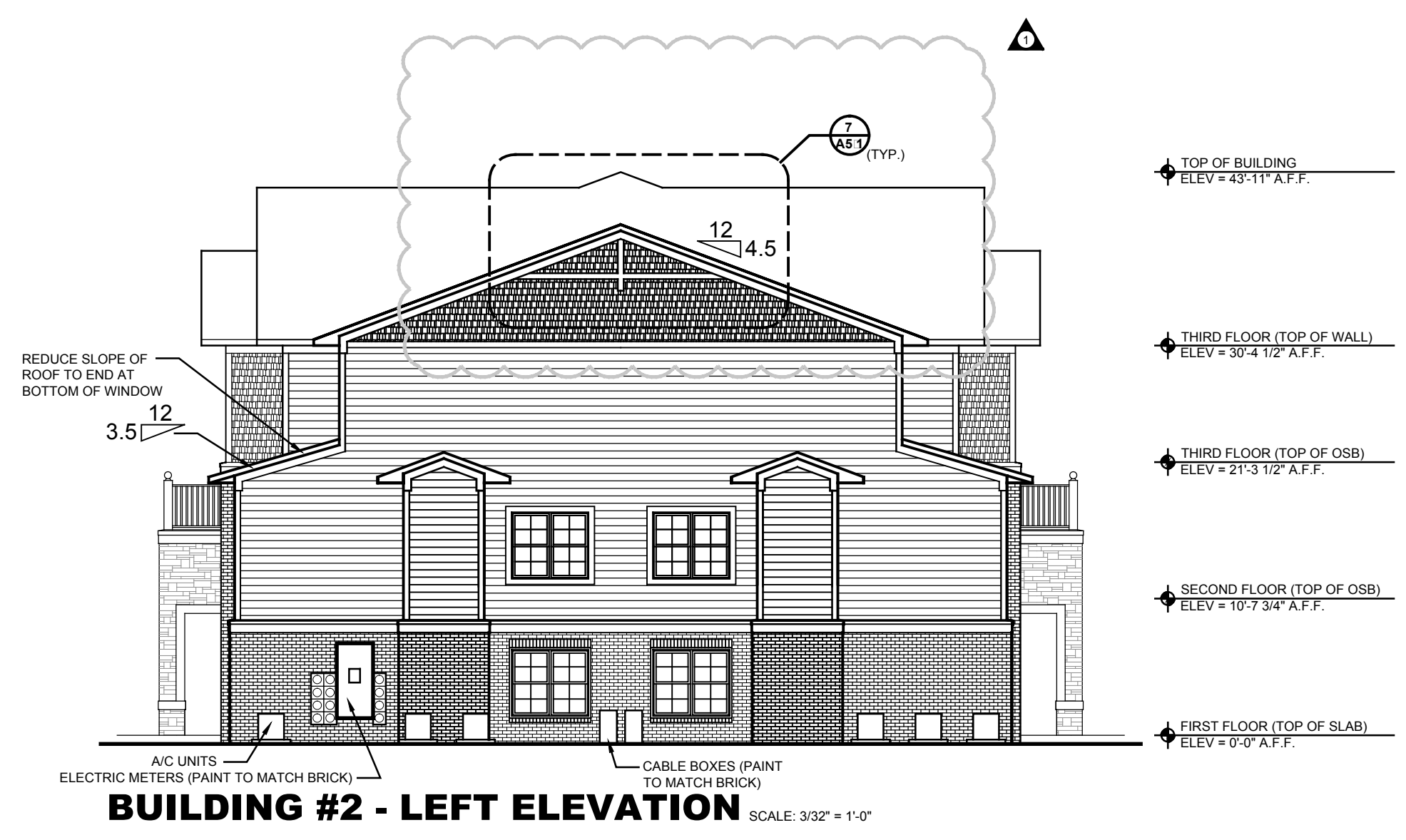
**A4.2.3**



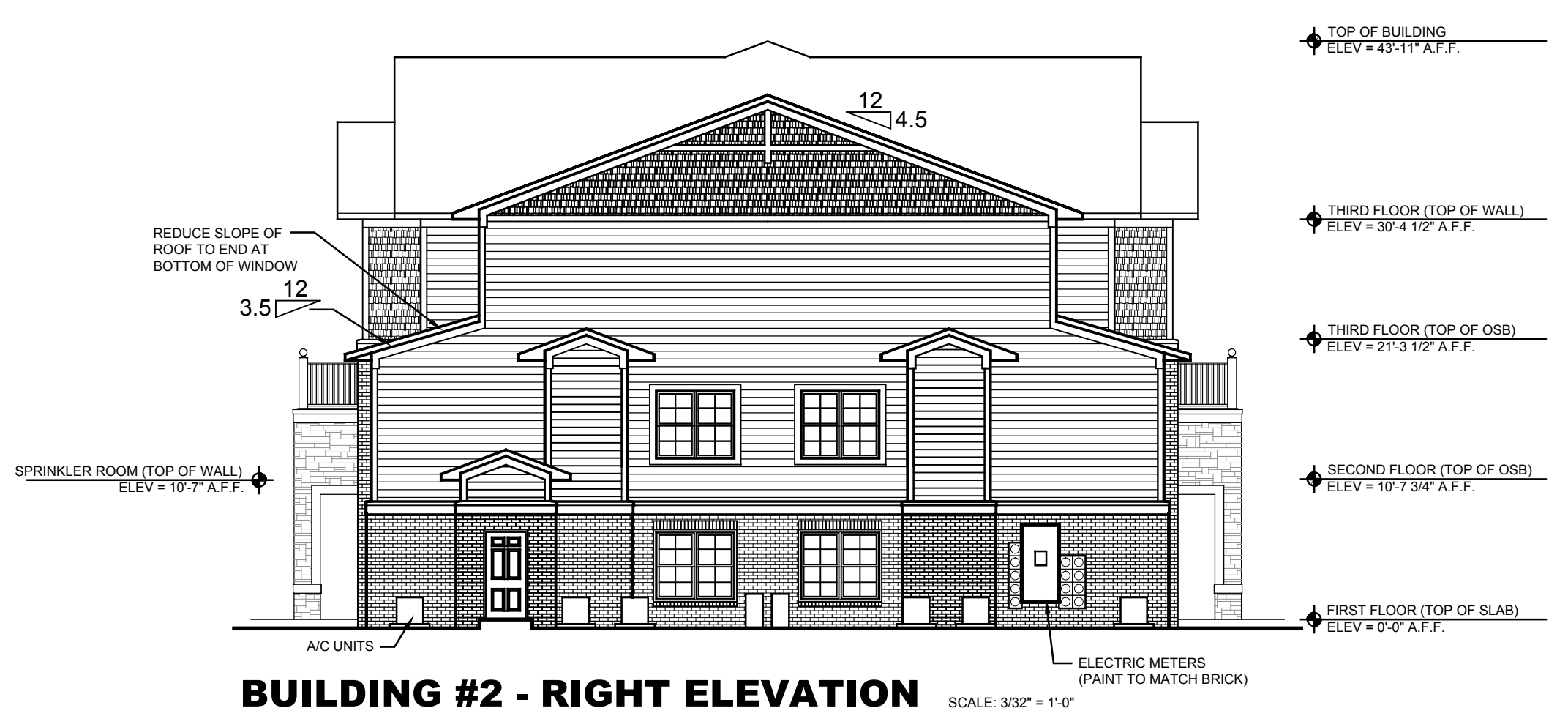
**BUILDING #2 - FRONT ELEVATION** SCALE: 3/32" = 1'-0"



**BUILDING #2 - REAR ELEVATION** SCALE: 3/32" = 1'-0"

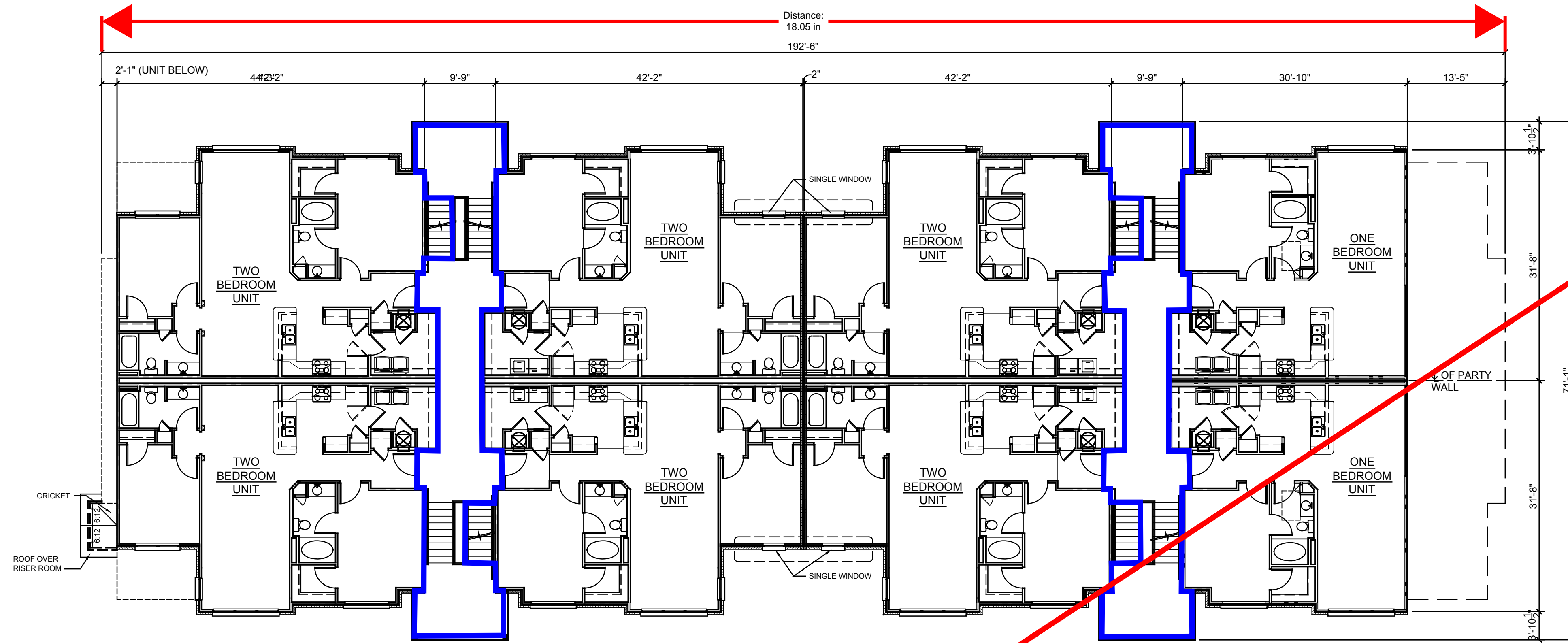


**BUILDING #2 - LEFT ELEVATION** SCALE: 3/32" = 1'-0"



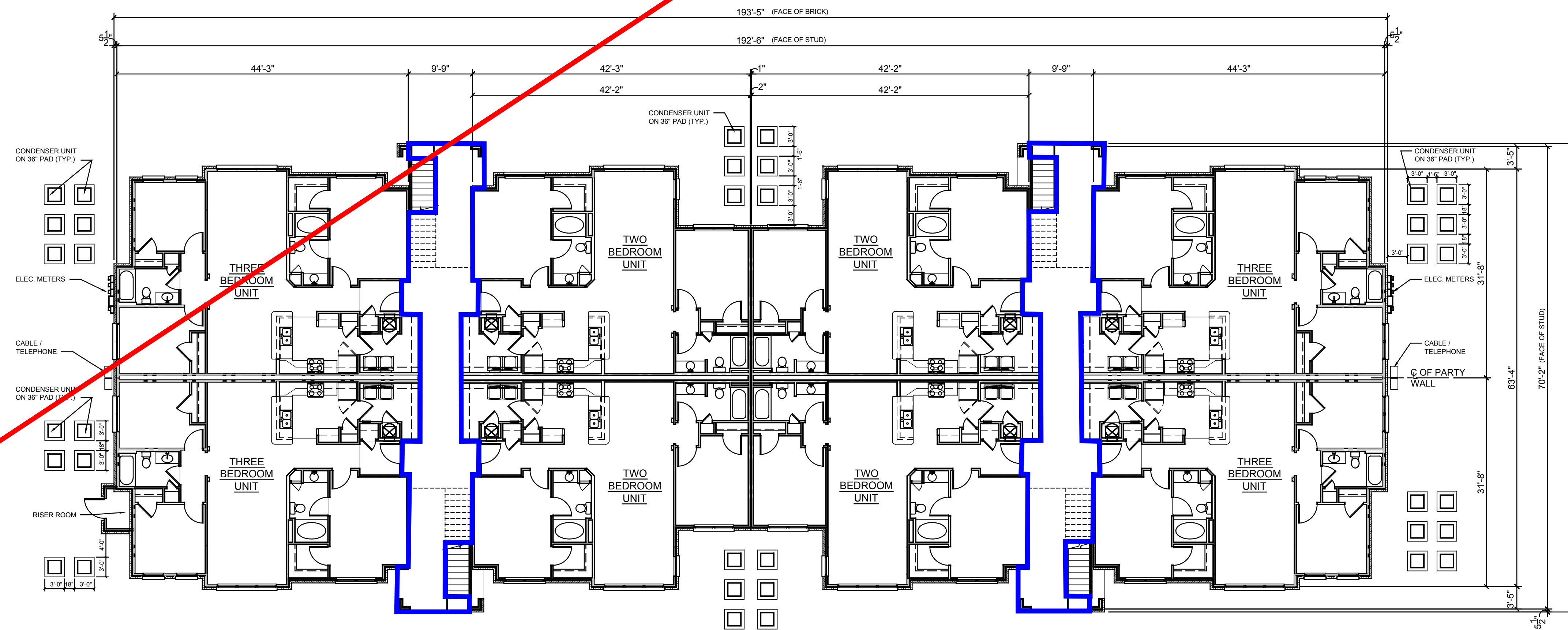
**BUILDING #2 - RIGHT ELEVATION** SCALE: 3/32" = 1'-0"

Original



BUILDING TYPE 'C' - SECOND FLOOR PLAN 3/32"=1'-0"

SEE TYPICAL UNIT & BREEZEWAY PLANS FOR ADDITIONAL INFORMATION

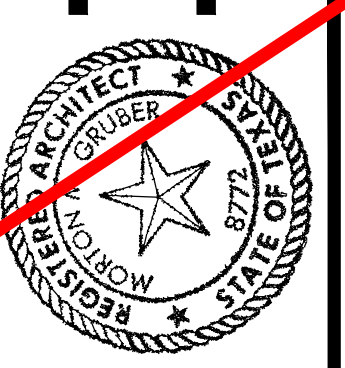


BUILDING TYPE 'C' - FIRST FLOOR PLAN 3/32"=1'-0"

SEE TYPICAL UNIT & BREEZEWAY PLANS FOR ADDITIONAL INFORMATION

GENERAL NOTES:

- INSULATE THE ENDS OF ALL PLUMBING CHASES AND AIRSPACES.
- DENOTES 1-HOUR FIRE RATED WALL ASSEMBLIES.
- FOLLOW UL DESIGN #U-341 AT TENANT SEPARATION WALLS.
- FOLLOW UL DESIGN #WPS14 AT BREEZEWAY WALLS.
- FOLLOW UL #4036 AT EXTERIOR WALLS.
- FOLLOW GA DESIGN #WPS14 AT INTERIOR BEARING.
- DIMENSIONS ARE TO FACE OF STUD UNLESS OTHERWISE NOTED.



DATE: 2015-02-25

REVISION: PRELIMINARY DESIGN NOT FOR CONSTRUCTION

*The Residences at Earl Campbell*

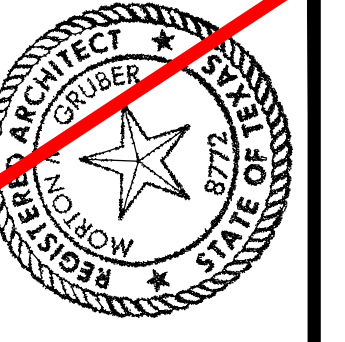
FRANKSTON STREET  
TYLER, TEXAS

BUILDING TYPE 'C'  
FIRST & SECOND  
FLOOR PLANS

**A4.3.1**  
PRELIMINARY  
DESIGN

MORTON M. GRUBER, AIA, ARCHITECT  
245 PEACHTREE CENTER AVE SUITE 2445 ATLANTA, GA 30303 TEL: 404.984-1880 FAX: 404.984-1895

Original



DATE: 2015-02-25  
REVISION: PRELIMINARY DESIGN  
NOT FOR CONSTRUCTION

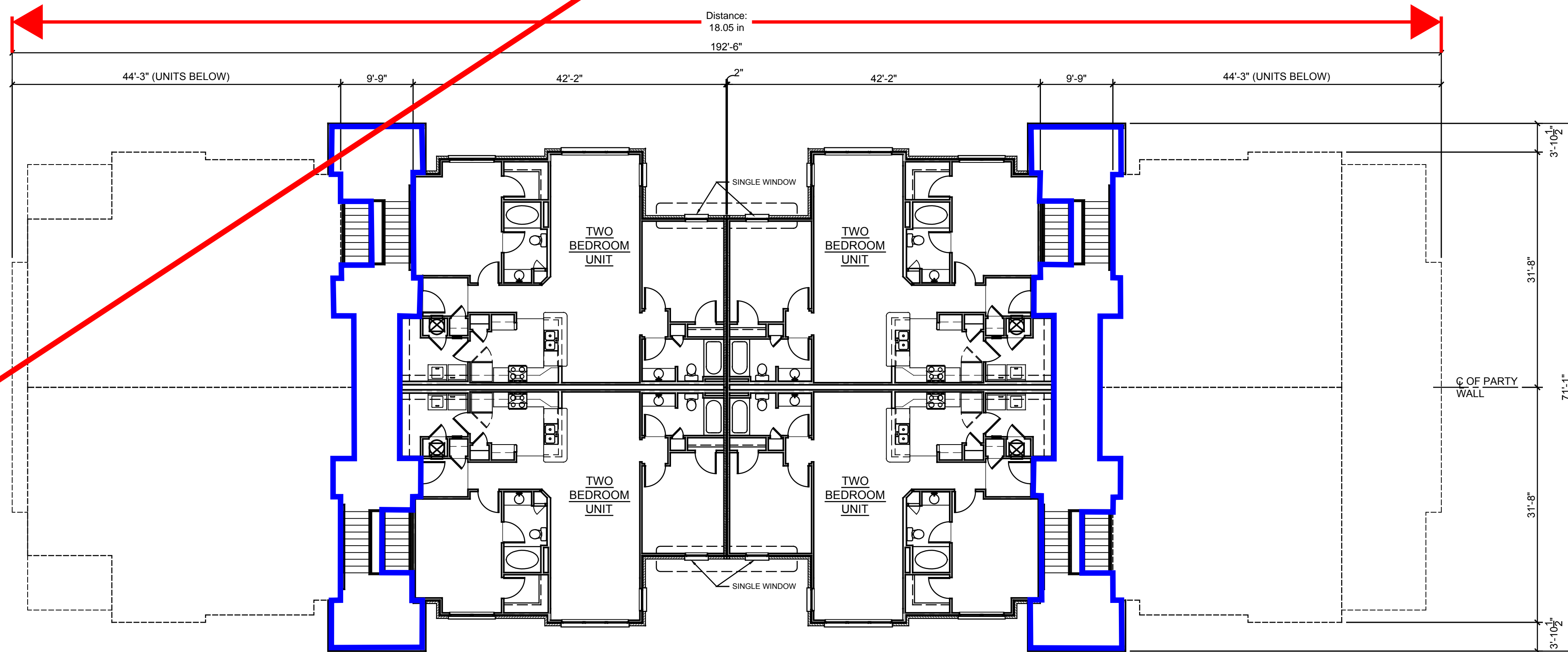
# The Residences at Earl Campbell

FRANKSTON STREET  
TYLER, TEXAS

MORTON M. GRUBER, AIA, ARCHITECT  
245 PEACHTREE CENTER AVE SUITE 2415 ATLANTA, GA 30303 TEL: 404.584-1880 FAX: 404.584-1895

BUILDING TYPE 'C'  
THIRD FLOOR &  
ROOF PLANS

A4.3.2  
PRELIMINARY  
DESIGN



BUILDING TYPE 'C' - THIRD FLOOR PLAN

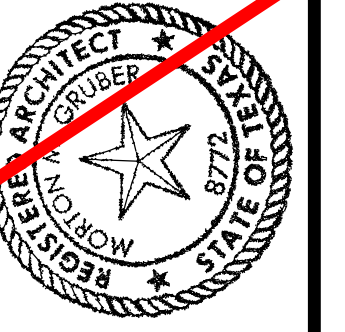
3/32"=1'-0"

SEE TYPICAL UNIT & BREEZEWAY PLANS  
FOR ADDITIONAL INFORMATION

GENERAL NOTES:  
 1. INSULATE THE ENDS OF ALL PLUMBING CHASES AND AIRSPACES.  
 2. [Symbol] DENOTES 1-HOUR FIRE RATED WALL ASSEMBLIES.  
 FOLLOW GA DESIGN #U-341 AT TENANT SEPARATION WALLS.  
 FOLLOW GA DESIGN #WP514 AT BREEZEWAY WALLS.  
 FOLLOW UL #R306 AT EXTERIOR WALLS.  
 FOLLOW GA DESIGN #WP514 AT INTERIOR BEARING.  
 3. DIMENSIONS ARE TO FACE OF STUD UNLESS OTHERWISE NOTED.



Original



DATE: 2016-02-25  
REVISION: PRELIMINARY DESIGN  
NOT FOR CONSTRUCTION

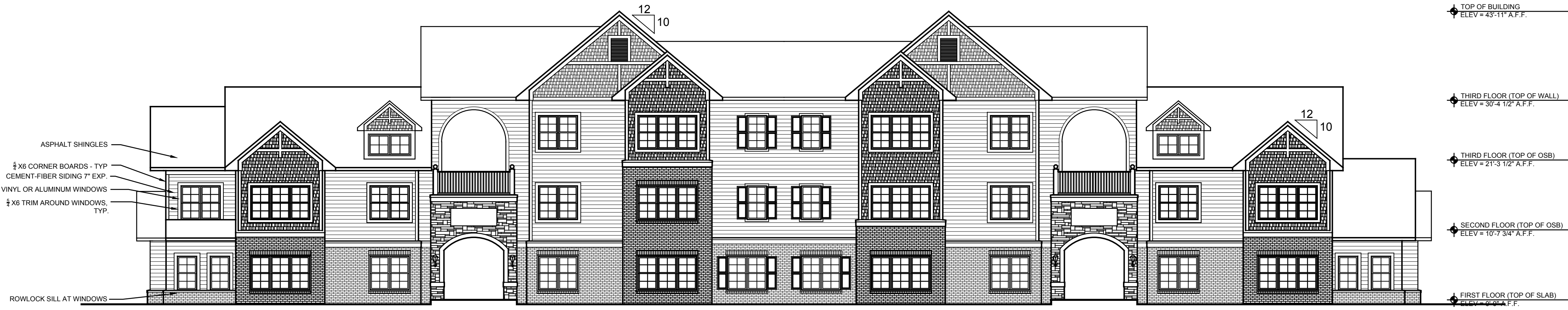
*The Residences at Earl Campbell*

FRANKSTON STREET  
TYLER, TEXAS

MORTON M. GRUBER, AIA, ARCHITECT  
245 PEACHTREE CENTER AVE SUITE 2445 ATLANTA, GA 30303 TEL: 404.984-1880 FAX: 404.984-1895

BUILDING TYPE 'C'  
ELEVATIONS

A4.3.3  
PRELIMINARY  
DESIGN



FRONT ELEVATION

SCALE: 3/32" = 1'-0"

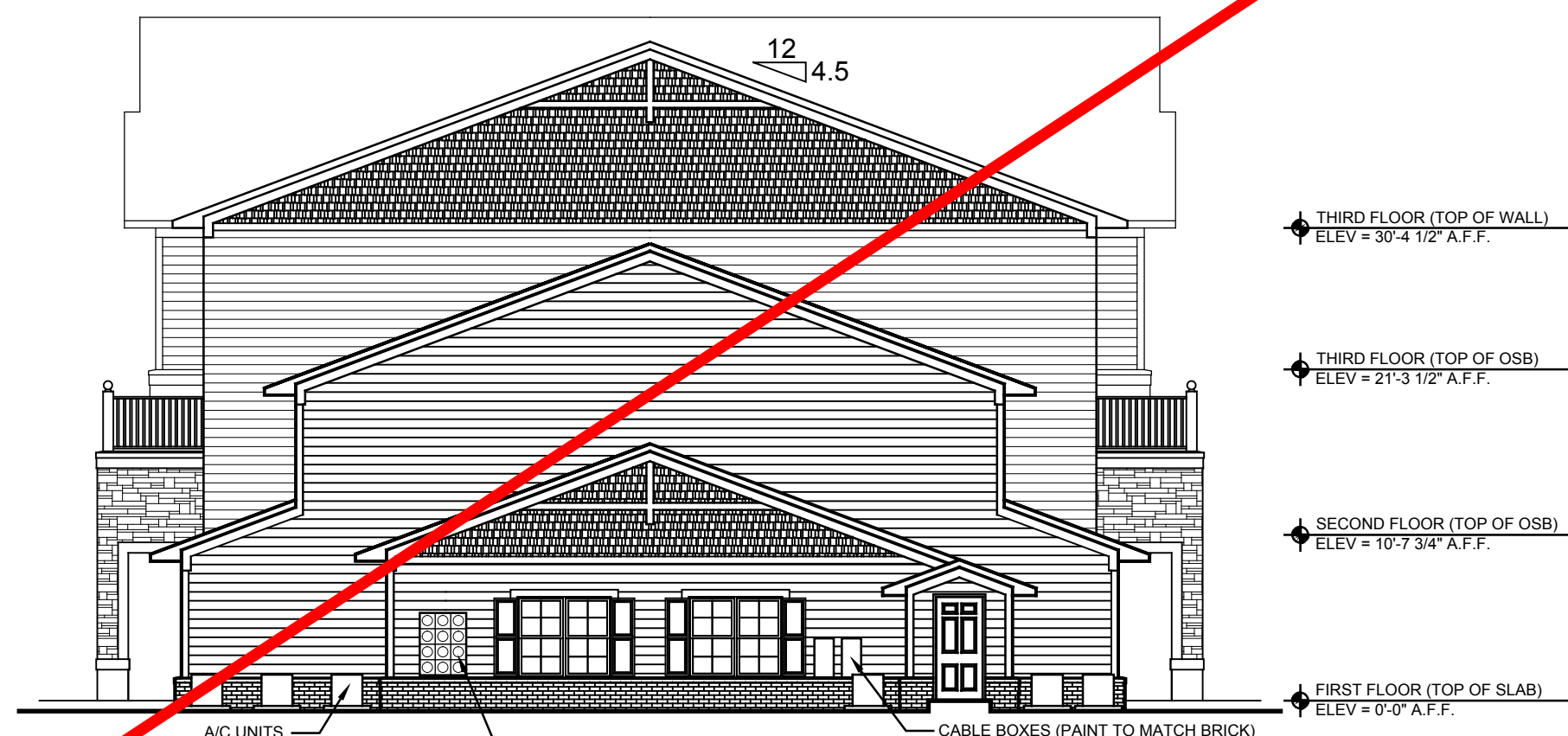
EXTERIOR FINISH PERCENTAGES:  
BRICKSTONE = 40%  
CEMENT FIBER SIDING = 60%

- TOP OF BUILDING  
ELEV = 43'-11" A.F.F.
- THIRD FLOOR (TOP OF WALL)  
ELEV = 30'-4 1/2" A.F.F.
- THIRD FLOOR (TOP OF OSB)  
ELEV = 21'-3 1/2" A.F.F.
- SECOND FLOOR (TOP OF OSB)  
ELEV = 10'-7 3/4" A.F.F.
- FIRST FLOOR (TOP OF SLAB)  
ELEV = 0'-0" A.F.F.



REAR ELEVATION

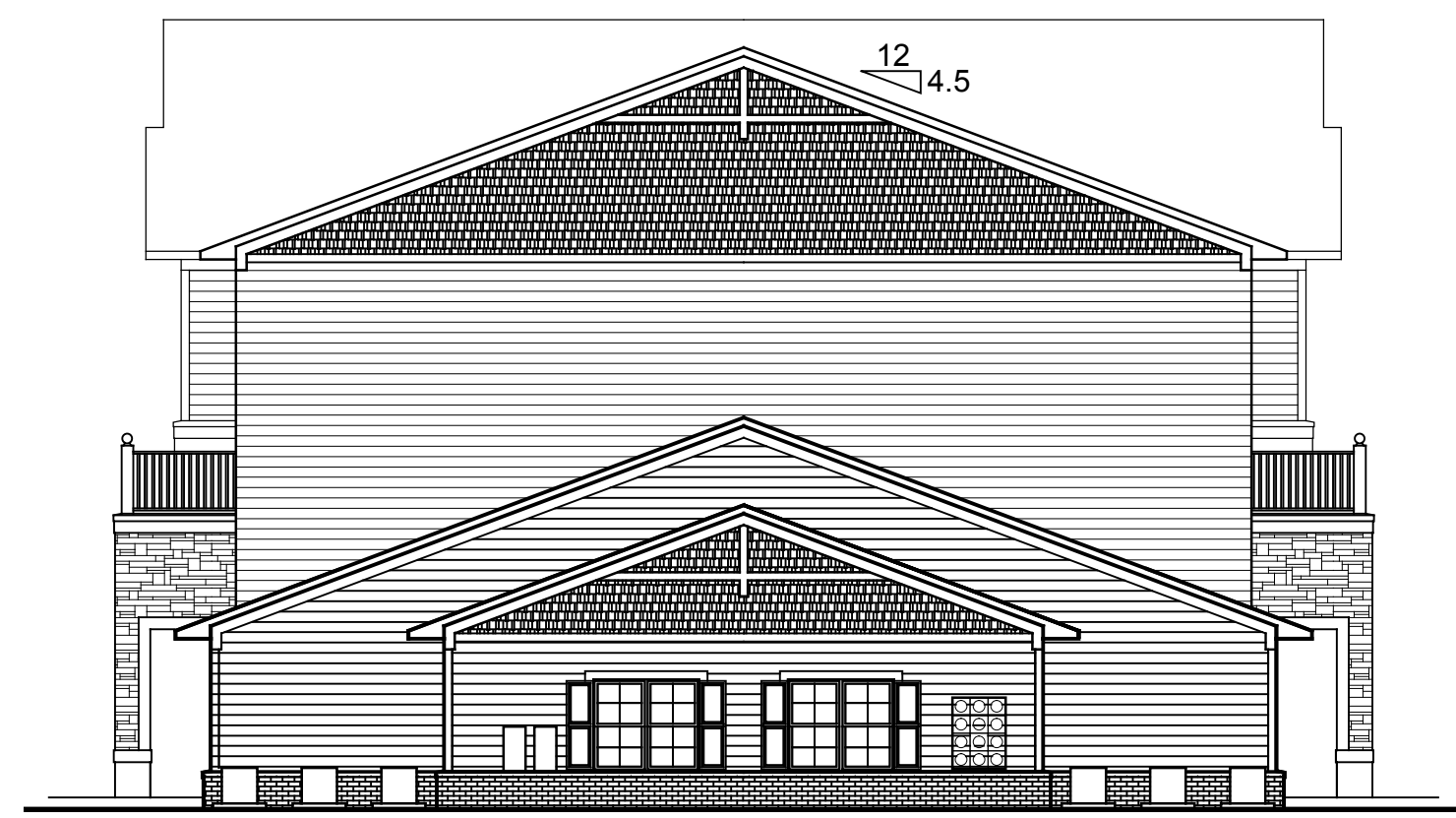
SCALE: 3/32" = 1'-0"



LEFT ELEVATION

SCALE: 3/32" = 1'-0"

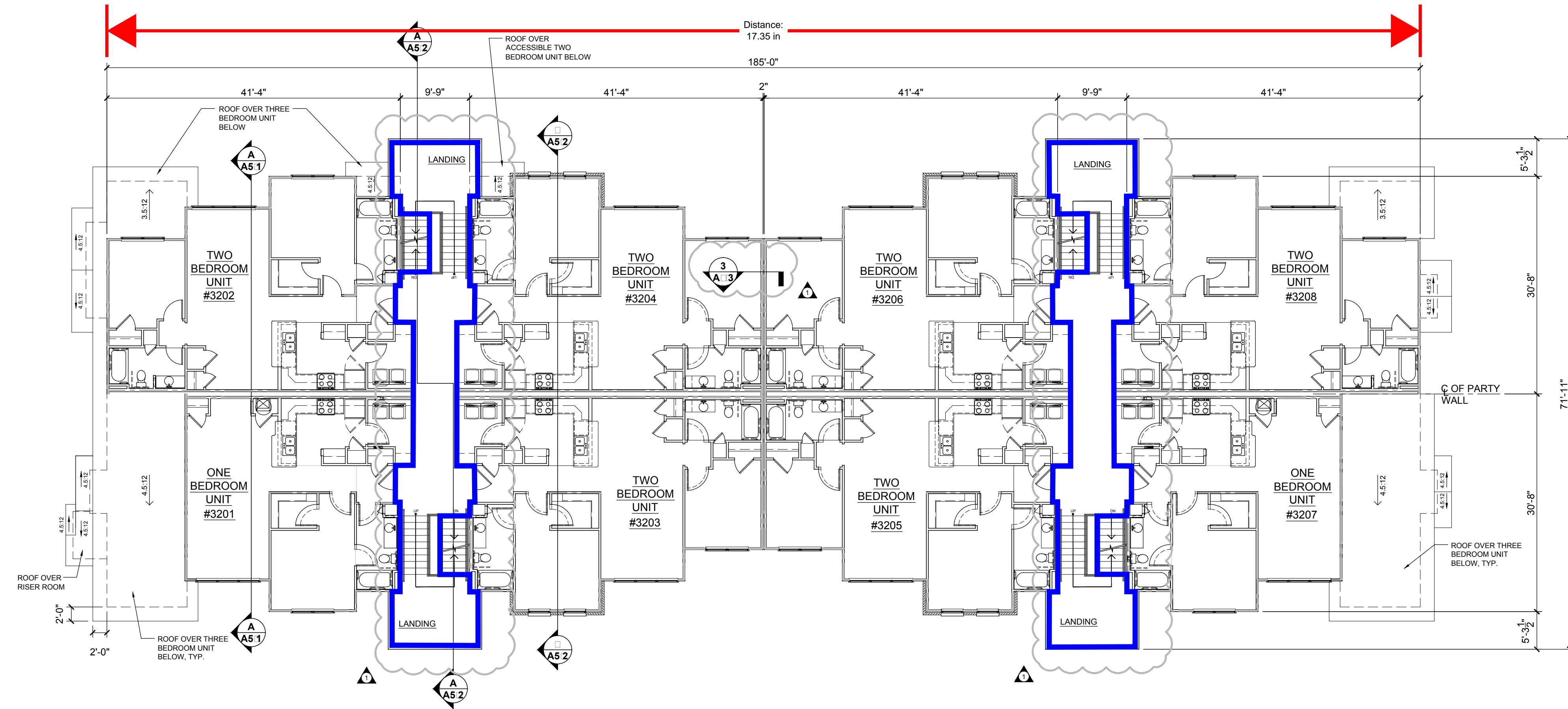
- THIRD FLOOR (TOP OF WALL)  
ELEV = 30'-4 1/2" A.F.F.
- THIRD FLOOR (TOP OF OSB)  
ELEV = 21'-3 1/2" A.F.F.
- SECOND FLOOR (TOP OF OSB)  
ELEV = 10'-7 3/4" A.F.F.
- FIRST FLOOR (TOP OF SLAB)  
ELEV = 0'-0" A.F.F.



RIGHT ELEVATION

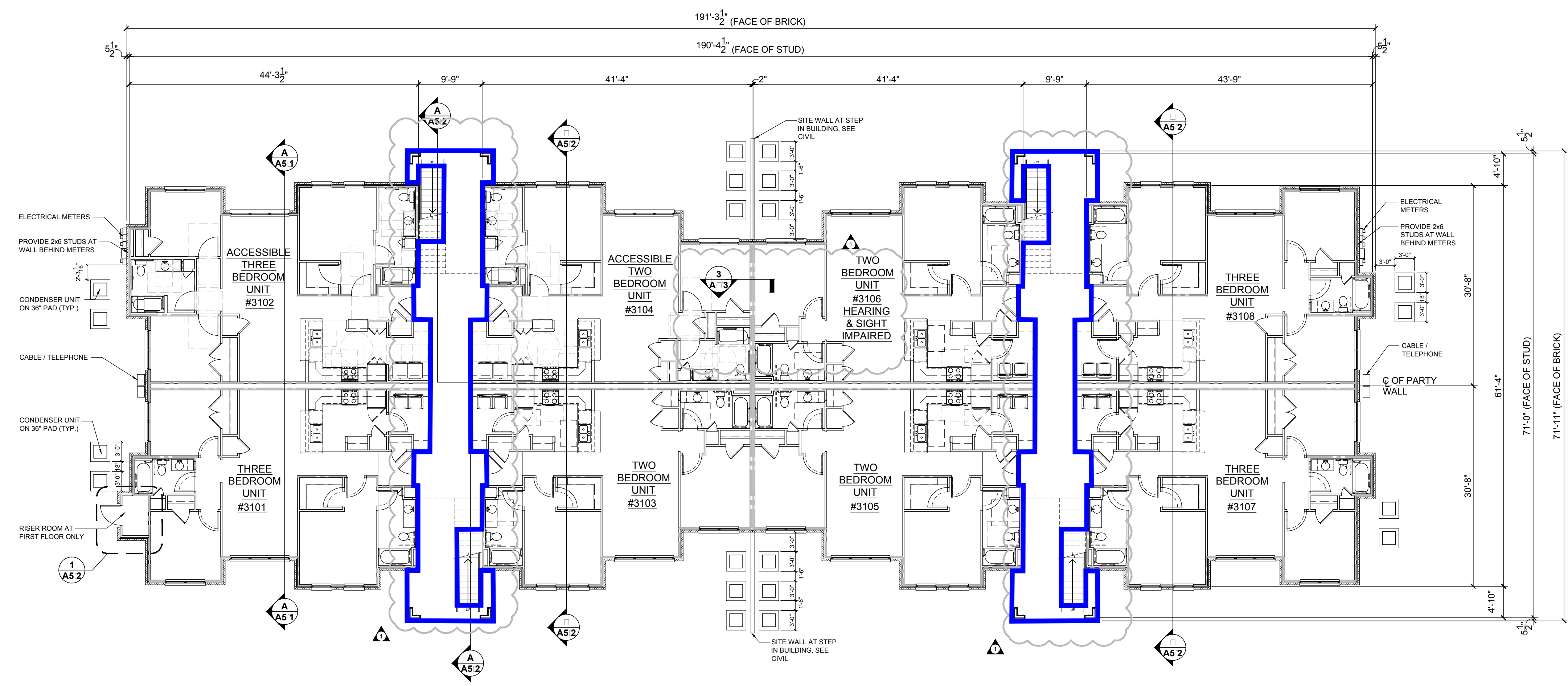
SCALE: 3/32" = 1'-0"





**BUILDING #3 - SECOND FLOOR PLAN** 3/32"=1'-0"

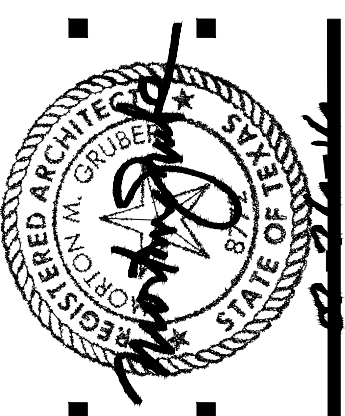
SEE TYPICAL UNIT & BREEZEWAY PLANS FOR ADDITIONAL INFORMATION  
BLDG SLAB STEPS, COORDINATE HEIGHT & DIRECTION WITH CIVIL DRAWINGS



**BUILDING #3 - FIRST FLOOR PLAN** 3/32"=1'-0"

SEE TYPICAL UNIT & BREEZEWAY PLANS FOR ADDITIONAL INFORMATION  
BLDG SLAB STEPS, COORDINATE HEIGHT & DIRECTION WITH CIVIL DRAWINGS

**GENERAL NOTES:**  
1. INSULATE THE ENDS OF ALL PLUMBING CHASES AND AIRSPACES.  
2. \_\_\_\_\_ DENOTES 1-HOUR FIRE RATED WALL ASSEMBLIES.  
FOLLOW UL DESIGN #U-341 AT TENANT SEPARATION WALLS.  
FOLLOW GA DESIGN #WPR105 PLUS SOUND BOARD AT BREEZEWAY WALLS.  
FOLLOW UL #J356 AT EXTERIOR WALLS.  
FOLLOW GA DESIGN #WPS14 AT INTERIOR BEARING.  
3. DIMENSIONS ARE TO FACE OF STUD UNLESS OTHERWISE NOTED.



DATE: 2015-12-28  
REVISION: 2016-02-26

*The Residences at Earl Campbell*  
FRANKSTON HWY (STATE HWY 155)  
TYLER, TEXAS

BUILDING #3  
FIRST & SECOND  
FLOOR PLANS

**A4.3.1**

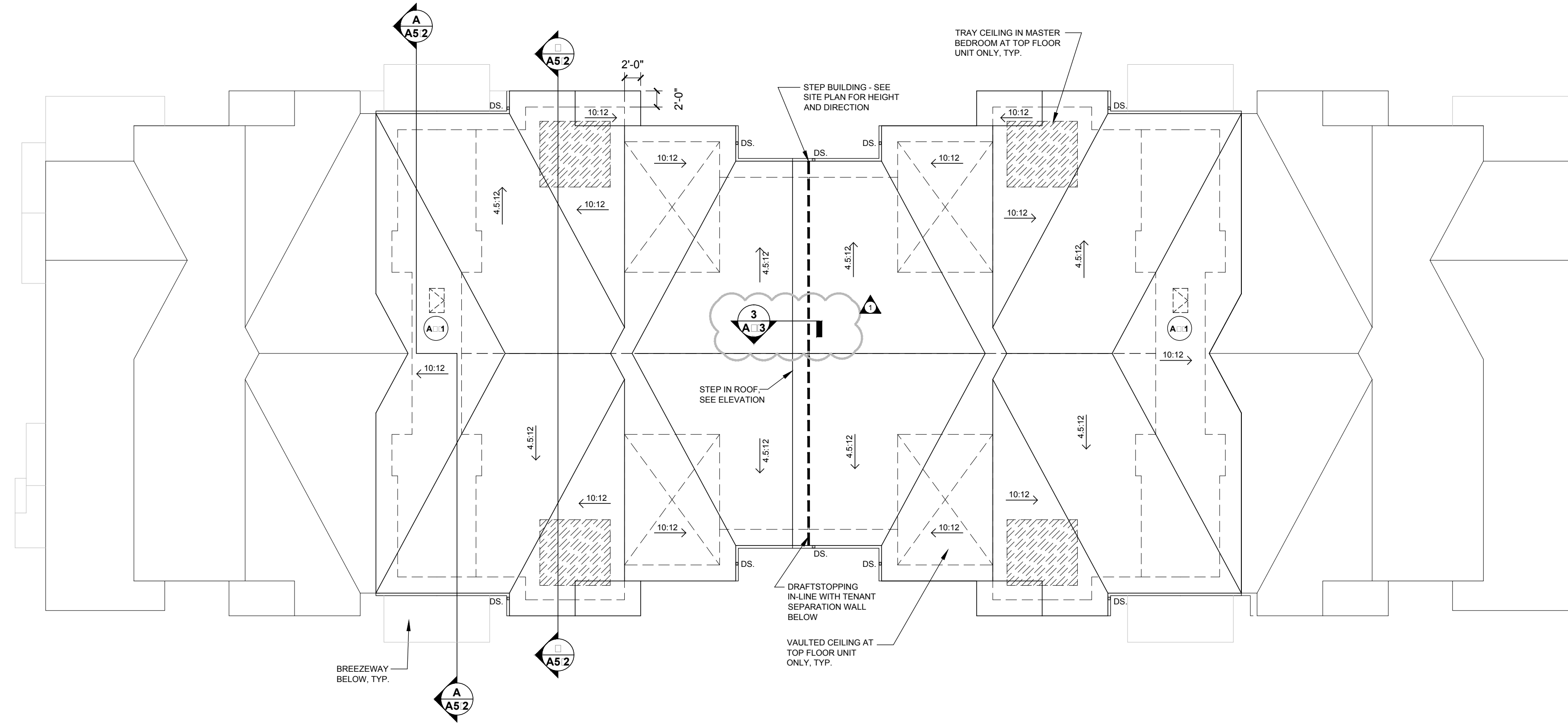
**MORTON M. GRUBER, AIA, ARCHITECT**  
245 PEACHTREE CENTERAVE SUITE 2445 ATLANTA, GA 30303 TEL: 404.984-1880 FAX: 404.984-1895

**ATTIC VENTILATION**

SHALL BE PROVIDED WITHIN EACH SECTION OF ATTIC TO MEET THE FOLLOWING REQUIREMENTS:

TOTAL VENTILATION SHALL =  $\frac{\text{ATTIC AREA}}{150}$  MIN.

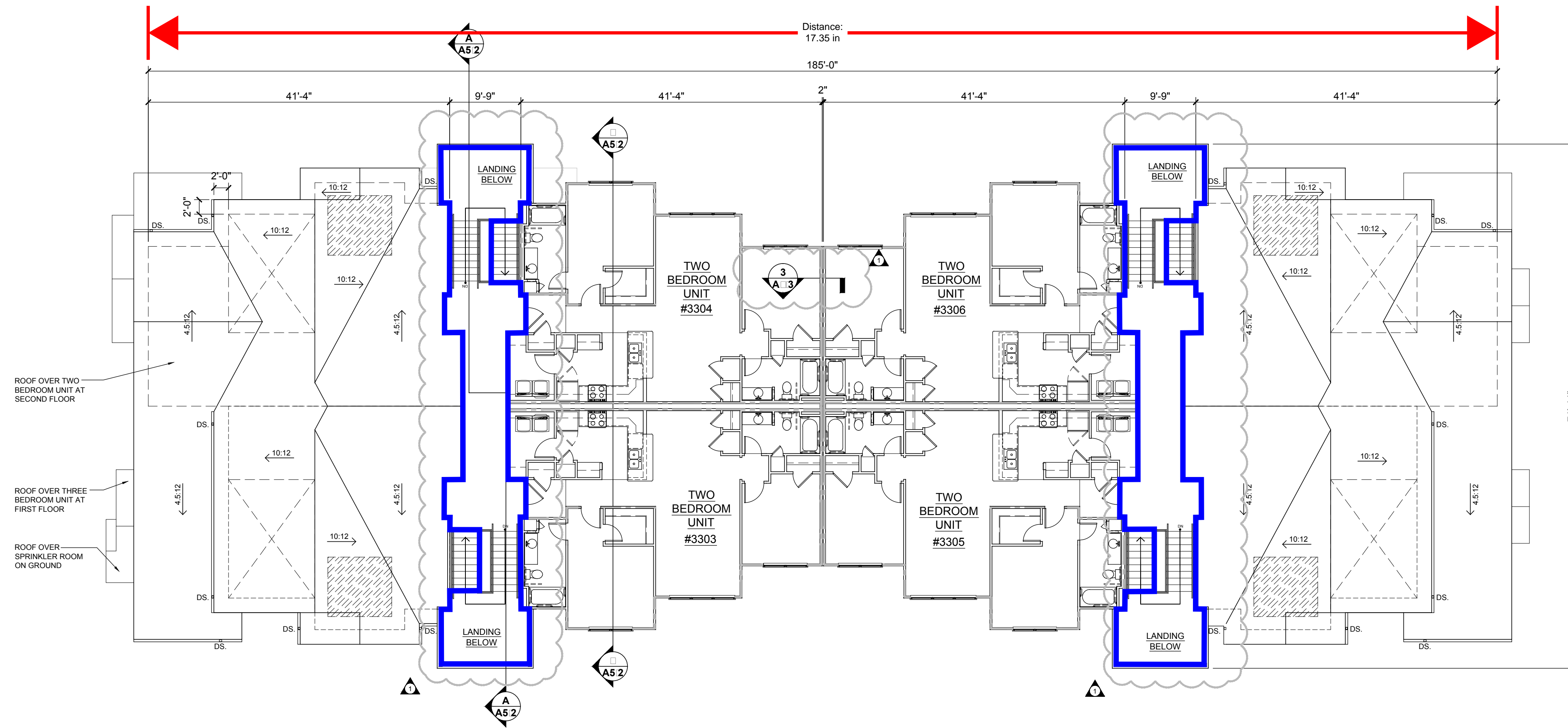
50% MIN. OF THE REQUIRED VENTILATION AREA SHALL BE LOCATED IN UPPER PORTION OF ATTIC NEAR RIDGE.



**BUILDING #3 - ROOF PLAN**

3/32"=1'-0"

BLDG SLAB STEPS, COORDINATE HEIGHT & DIRECTION WITH CIVIL DRAWINGS



**BUILDING #3 - THIRD FLOOR PLAN**

3/32"=1'-0"

SEE TYPICAL UNIT & BREEZEWAY PLANS FOR ADDITIONAL INFORMATION

BLDG SLAB STEPS, COORDINATE HEIGHT & DIRECTION WITH CIVIL DRAWINGS

- GENERAL NOTES:**
- INSULATE THE ENDS OF ALL PLUMBING CHASES AND AIRSPACES.
  - DENOTES 1-HOUR FIRE RATED WALL ASSEMBLIES.
  - FOLLOW UL DESIGN #U-341 AT TENANT SEPARATION WALLS.
  - FOLLOW GA DESIGN #W8105 PLUS SOUND BOARD AT BREEZEWAY WALLS.
  - FOLLOW UL #U356 AT EXTERIOR WALLS.
  - FOLLOW GA DESIGN #WP314 AT INTERIOR BEARING.
  - DIMENSIONS ARE TO FACE OF STUD UNLESS OTHERWISE NOTED.



DATE  
2015-12-28

REVISION  
2016-02-26

*The Residences at Earl Campbell*

FRANKSTON HWY (STATE HWY 155)  
TYLER, TEXAS

**MORTON M. GRUBER, AIA, ARCHITECT**  
245 PEACHTREE CENTERAVE SUITE 2415 ATLANTA, GA 30303 TEL: 404.984-1880 FAX: 404.984-1895

BUILDING #3  
THIRD FLOOR  
ROOF PLAN

**A4.3.2**





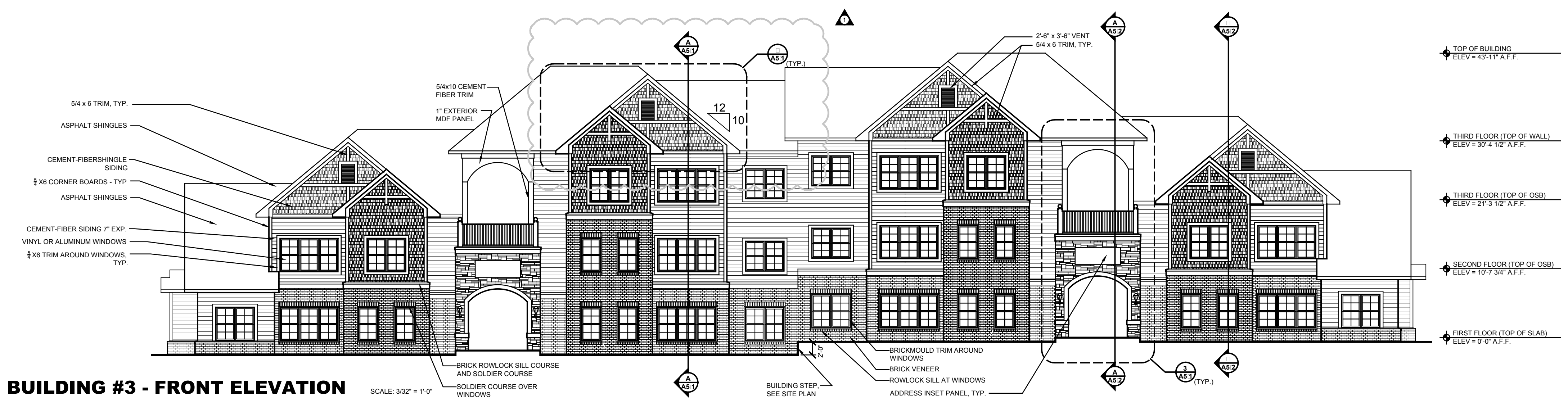
DATE  
2015-12-28  
REVISION  
2016-02-26

*The Residences at Earl Campbell*  
FRANKSTON HWY (STATE HWY 155)  
TYLER, TEXAS

MORTON M. GRUBER, AIA, ARCHITECT  
245 PEACHTREE CENTERAVE SUITE 2445 ATLANTA, GA 30303 TEL: 404.984-1880 FAX: 404.984-1895

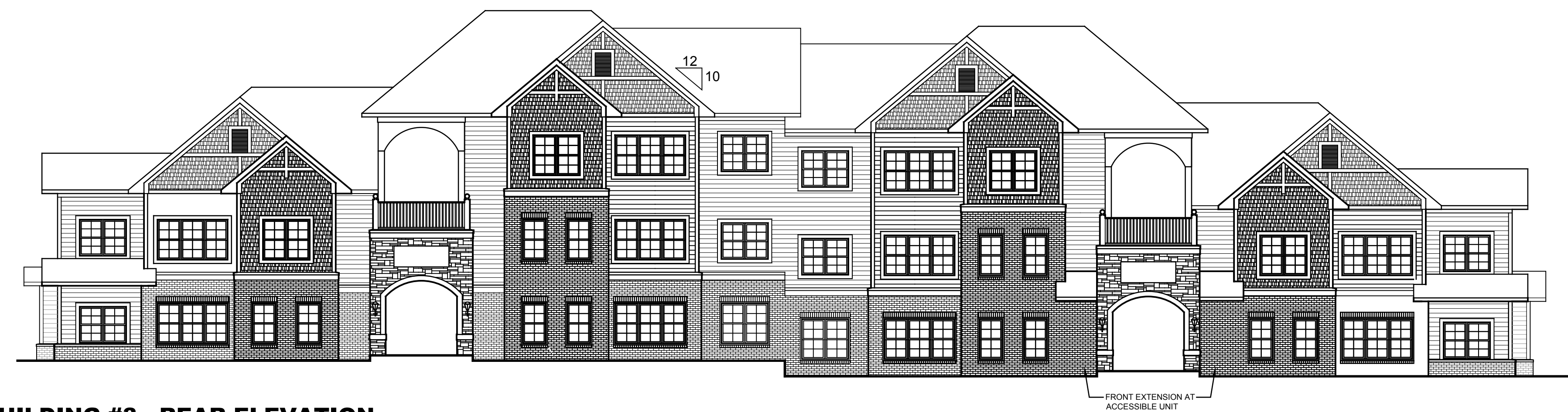
BUILDING #3  
ELEVATIONS

**A4.3.3**



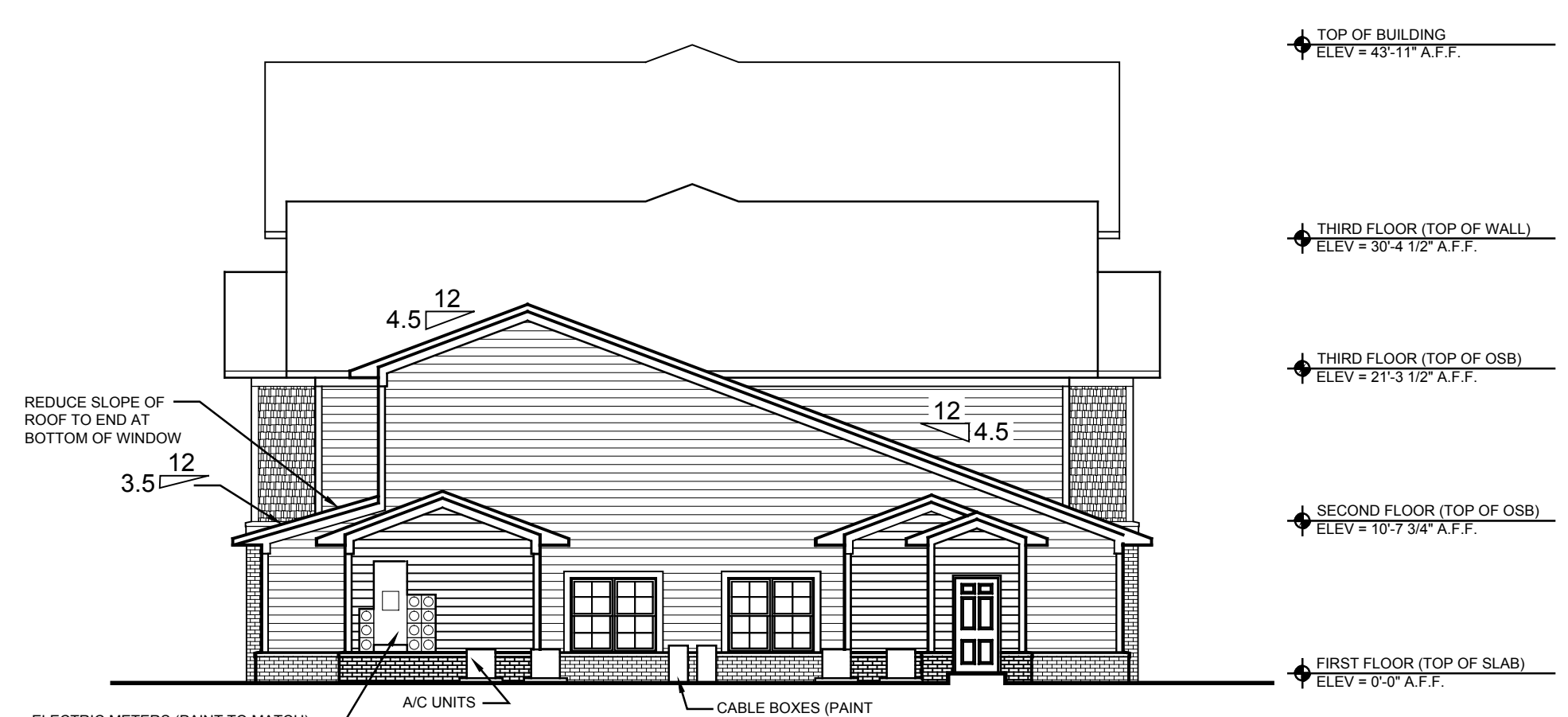
**BUILDING #3 - FRONT ELEVATION**

SCALE: 3/32" = 1'-0"



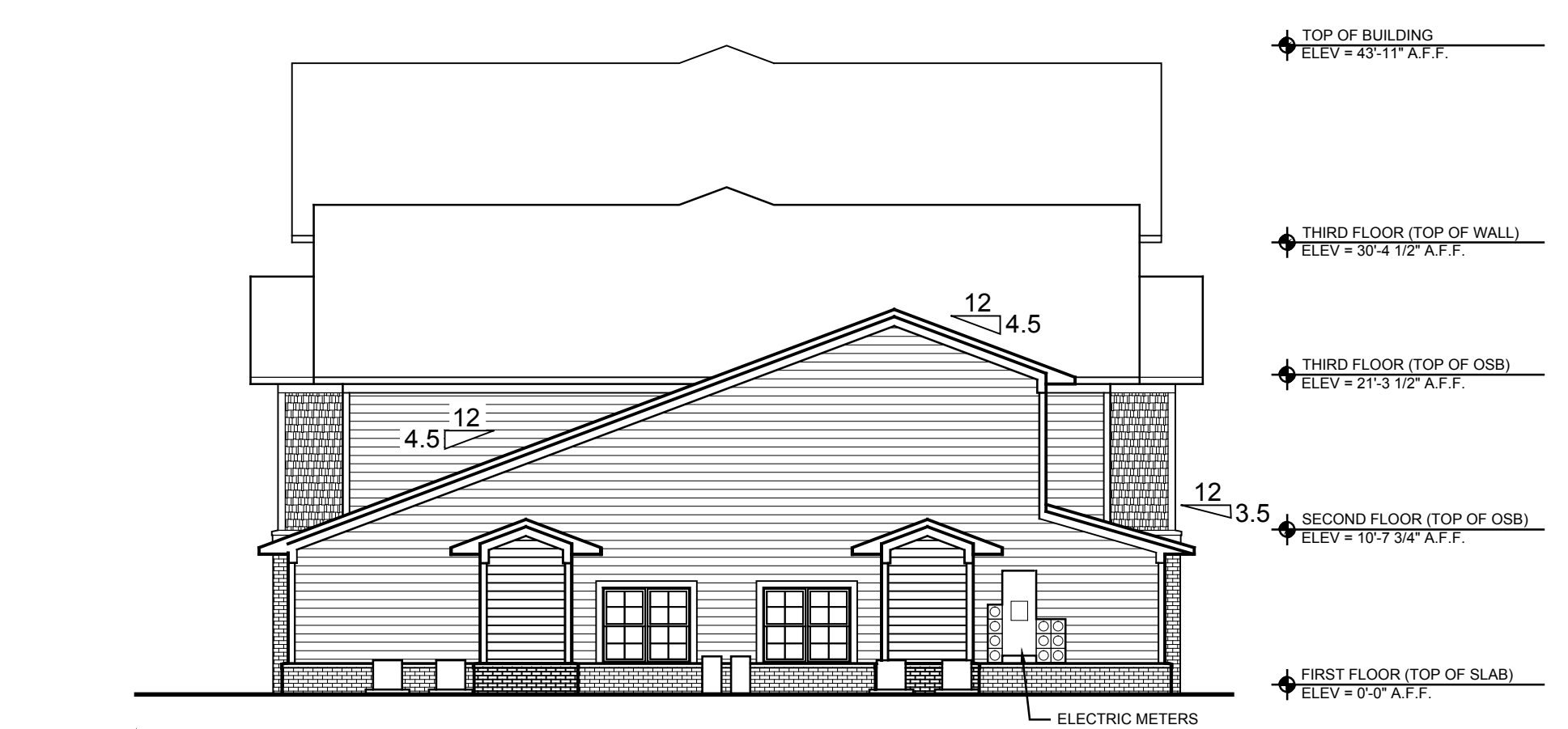
**BUILDING #3 - REAR ELEVATION**

SCALE: 3/32" = 1'-0"



**BUILDING #3 - LEFT ELEVATION**

SCALE: 3/32" = 1'-0"



**BUILDING #3 - RIGHT ELEVATION**

SCALE: 3/32" = 1'-0"

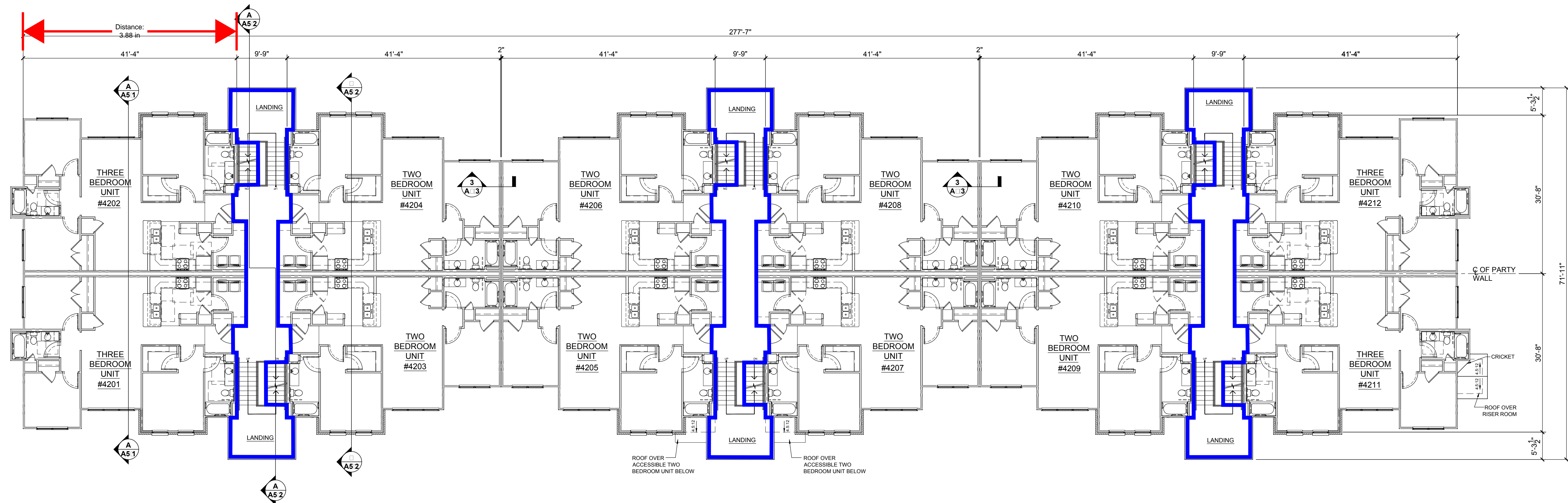


DATE  
2015-12-28  
REVISION  
2016-02-26

*The Residences at Earl Campbell*  
FRANKSTON HWY (STATE HWY 155)  
TYLER, TEXAS

BUILDING #4  
FIRST & SECOND  
FLOOR PLANS

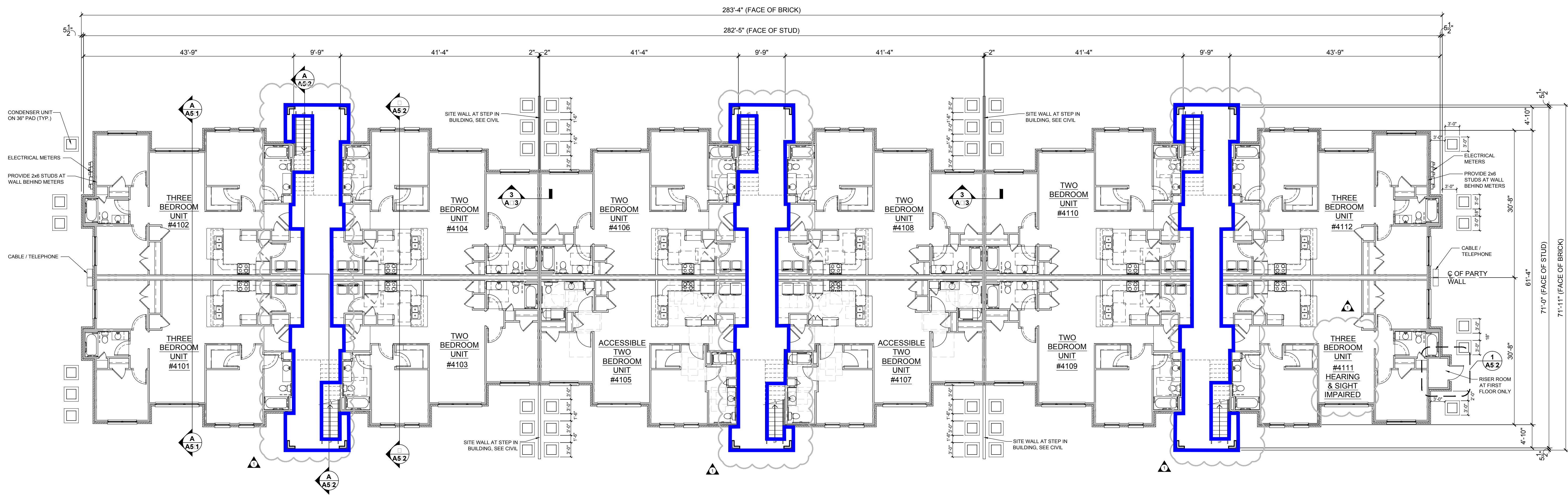
**A4.4.1**



**BUILDING #4 - SECOND FLOOR PLAN** 3/32"=1'-0"

SEE TYPICAL UNIT & BREEZEWAY PLANS FOR ADDITIONAL INFORMATION

- GENERAL NOTES:**
1. INSULATE THE ENDS OF ALL PLUMBING CHASES AND AIRSPACES.
  2. DENOTES 1-HOUR FIRE RATED WALL ASSEMBLY. FOLLOW GA DESIGN #W-341 AT TENANT SEPARATION WALLS. FOLLOW GA DESIGN #WP8105 PLUS SOUND BOARD AT BREEZEWAY WALLS. FOLLOW UL #1835 AT EXTERIOR WALLS. FOLLOW GA DESIGN #WP9514 AT INTERIOR BEARING.
  3. DIMENSIONS ARE TO FACE OF STUD UNLESS OTHERWISE NOTED.



**BUILDING #4 - FIRST FLOOR PLAN** 3/32"=1'-0"

SEE TYPICAL UNIT & BREEZEWAY PLANS FOR ADDITIONAL INFORMATION

**MORTON M. GRUBER, AIA, ARCHITECT**  
245 PEACHTREE CENTER AVE SUITE 2445 ATLANTA, GA 30303 TEL. 404.984-1880 FAX 404.984-1895

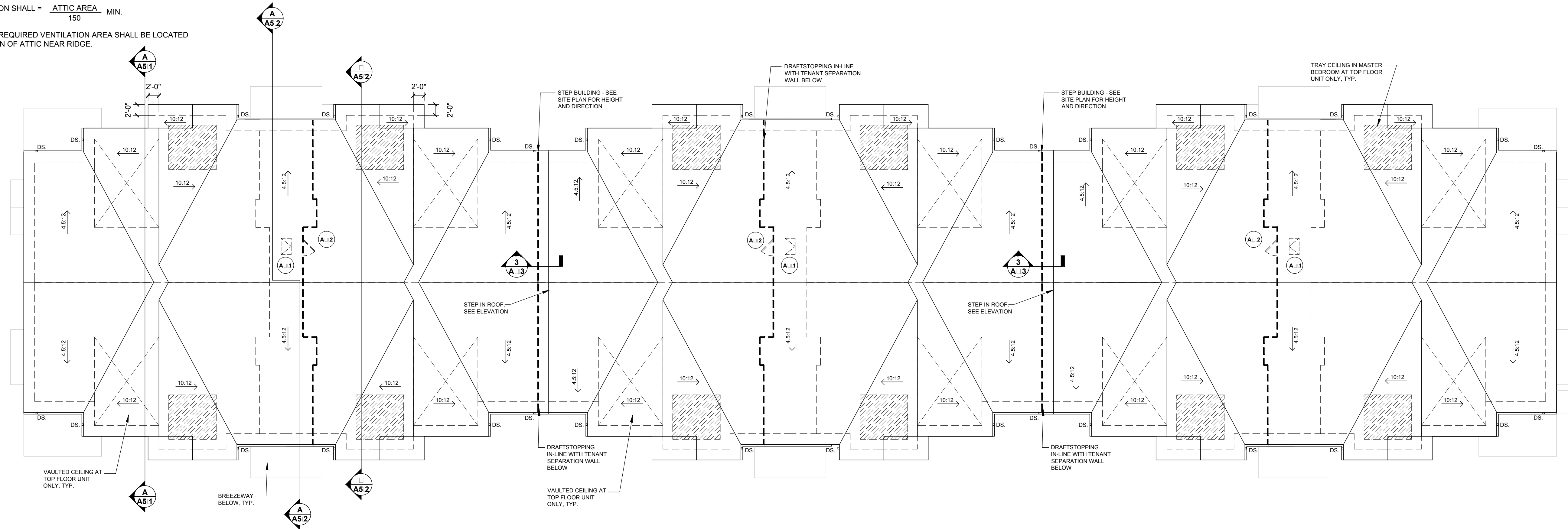


**ATTIC VENTILATION**

SHALL BE PROVIDED WITHIN EACH SECTION OF ATTIC TO MEET THE FOLLOWING REQUIREMENTS:

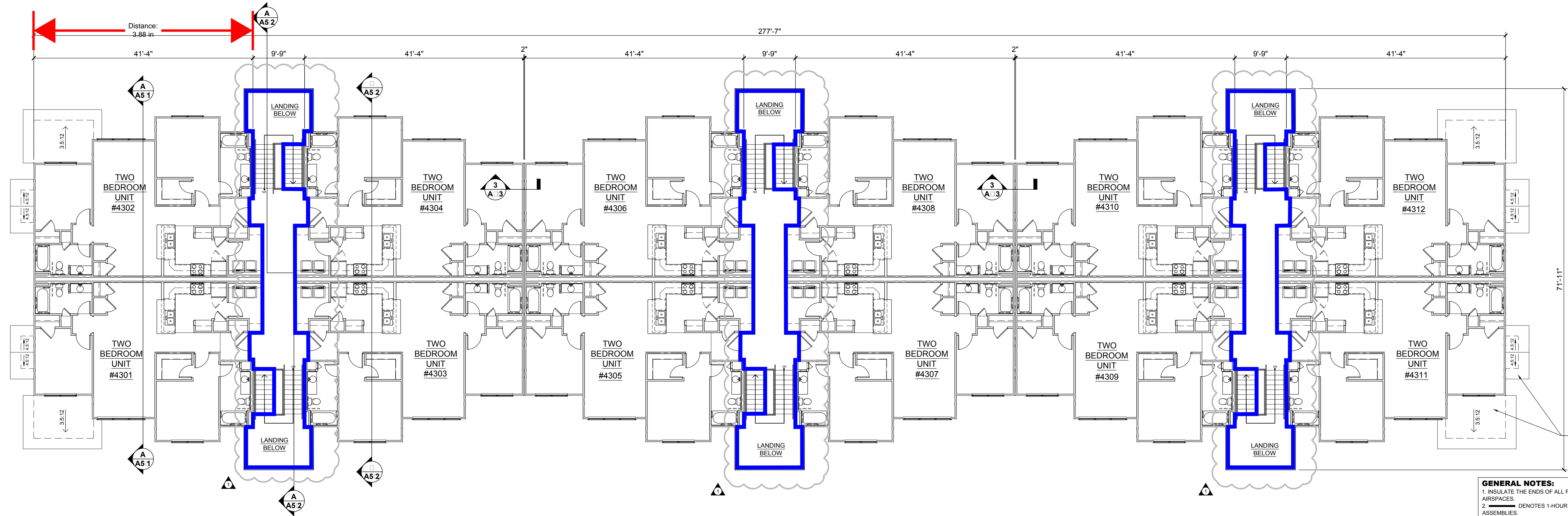
TOTAL VENTILATION SHALL =  $\frac{\text{ATTIC AREA}}{150}$  MIN.

50% MIN. OF THE REQUIRED VENTILATION AREA SHALL BE LOCATED IN UPPER PORTION OF ATTIC NEAR RIDGE.



**BUILDING #4 - ROOF PLAN**

3/32"=1'-0"

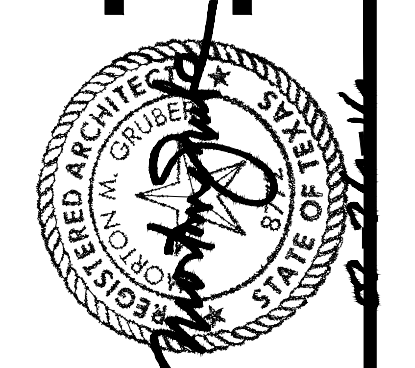


**BUILDING #4 - THIRD FLOOR PLAN**

3/32"=1'-0"

SEE TYPICAL UNIT & BREEZEWAY PLANS FOR ADDITIONAL INFORMATION

- GENERAL NOTES:**
1. INSULATE THE ENDS OF ALL PLUMBING CHASES AND AIRSPACES.
  2. [Symbol] DENOTES 1-HOUR FIRE RATED WALL ASSEMBLIES.  
FOLLOW UL DESIGN #U-341 AT TENANT SEPARATION WALLS.  
FOLLOW GA DESIGN #WP8105 PLUS SOUND BOARD AT BREEZEWAY WALLS.  
FOLLOW UL #U356 AT EXTERIOR WALLS.
  3. DIMENSIONS ARE TO FACE OF STUD UNLESS OTHERWISE NOTED.



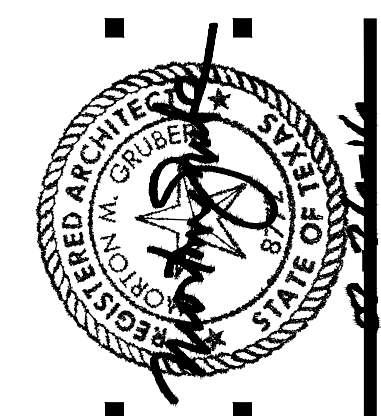
DATE: 2015-12-28  
REVISION: 2016-02-26

*The Residences at Earl Campbell*  
FRANKSTON HWY (STATE HWY 155)  
TYLER, TEXAS

BUILDING #4  
THIRD FLOOR  
ROOF PLAN

**A4.4.2**

MORTON M. GRUBER, AIA, ARCHITECT  
245 PEACHTREE CENTERAVE SUITE 2445 ATLANTA, GA 30303 TEL: 404.984-1880 FAX: 404.984-1895



DATE  
2015-12-28

REVISION  
2016-02-26

*The Residences at Earl Campbell*

FRANKSTON HWY (STATE HWY 155)  
TYLER, TEXAS

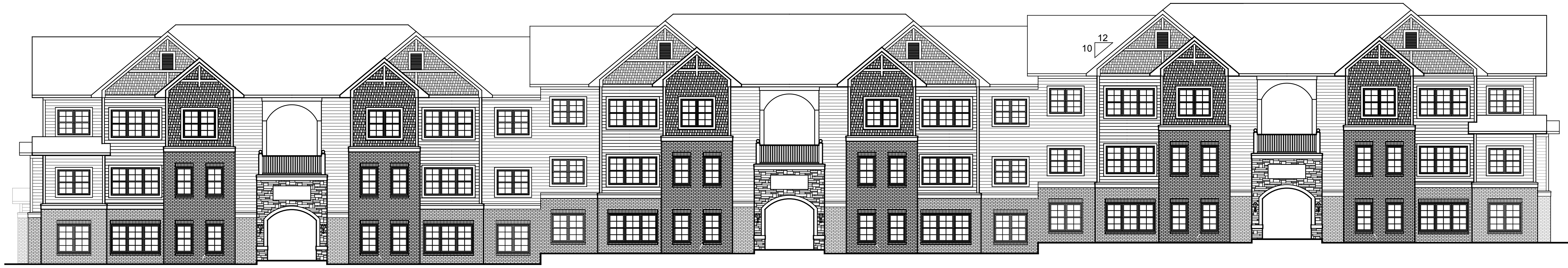
MORTON M. GRUBER, AIA, ARCHITECT  
245 PEACHTREE CENTERAVE SUITE 2445 ATLANTA, GA 30303 TEL: 404/984-1880 FAX: 404/984-1895

BUILDING #4  
ELEVATIONS

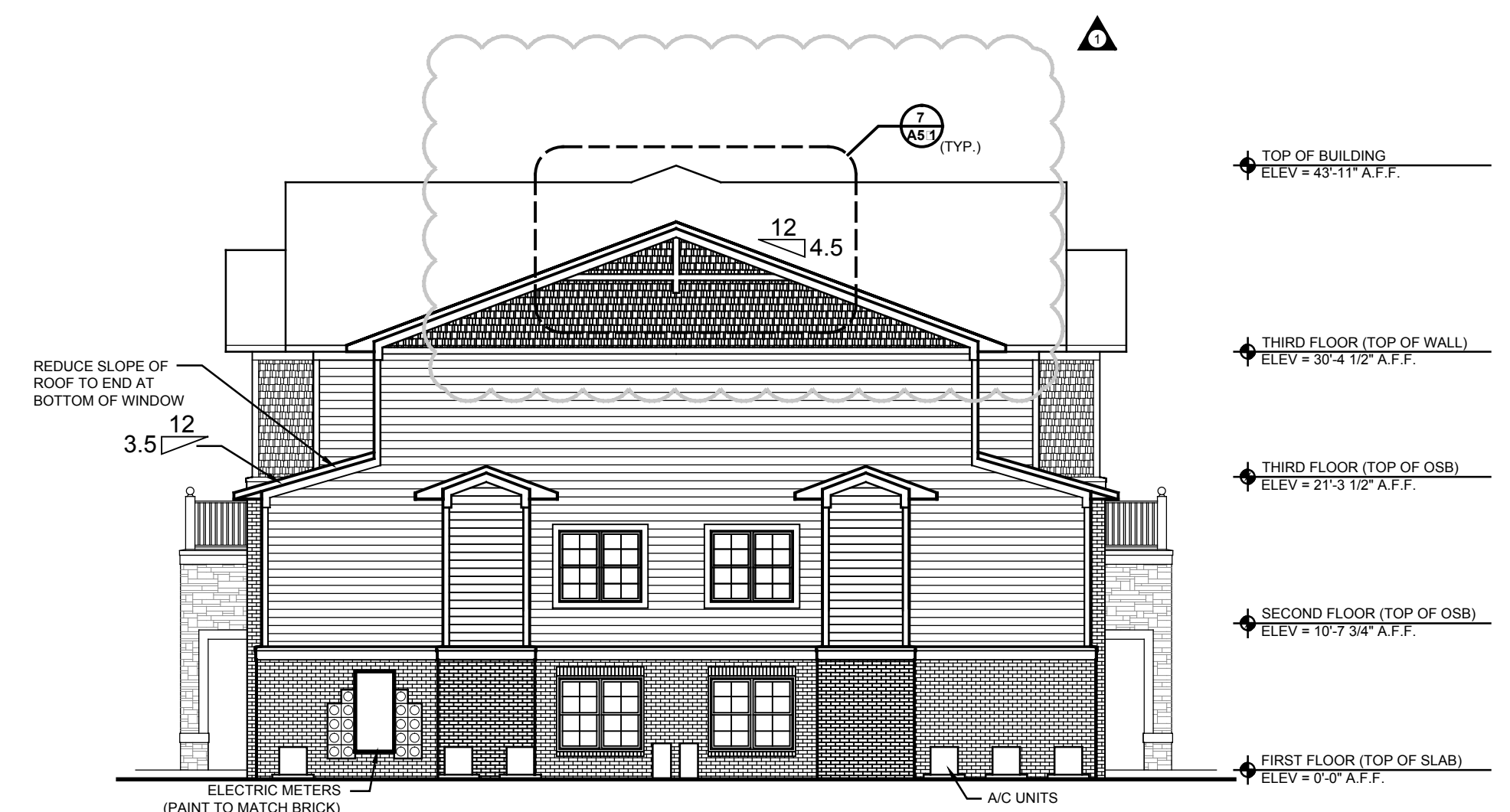
**A4.4.3**



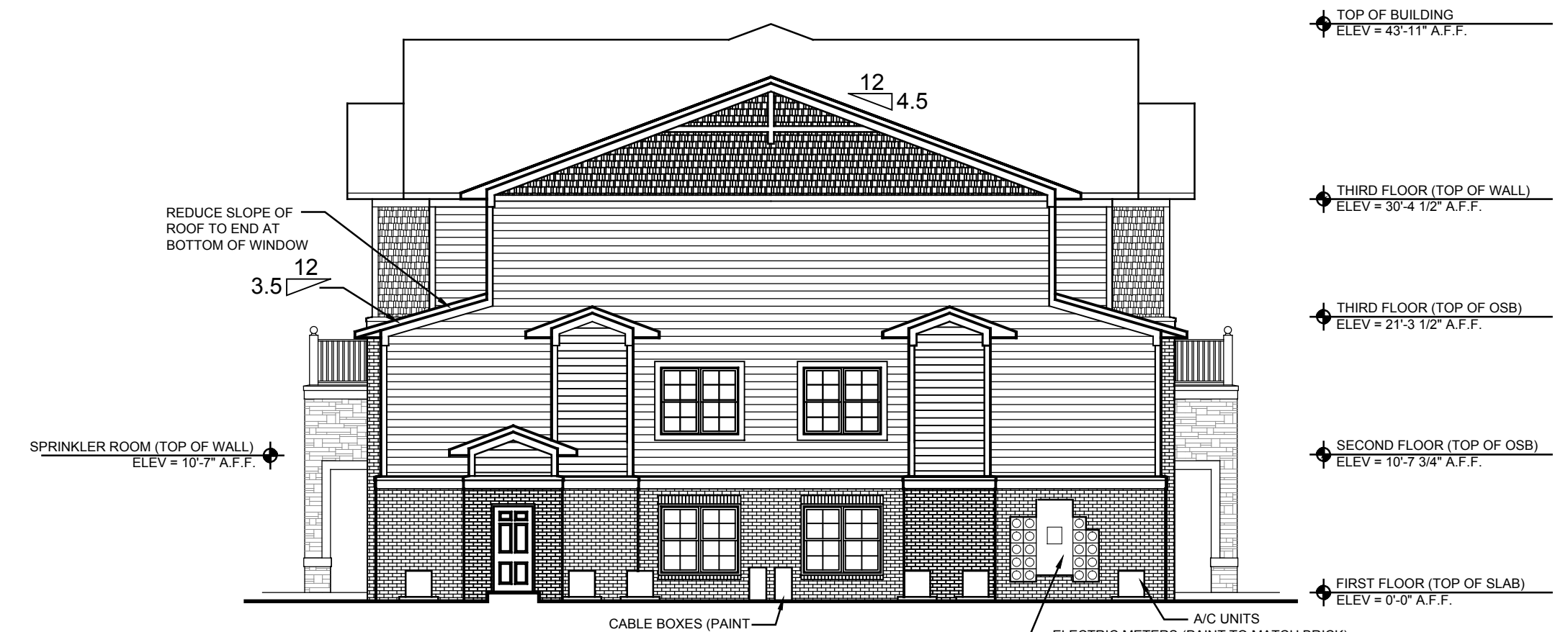
**BUILDING #4 - FRONT ELEVATION** SCALE: 3/32" = 1'-0"



**BUILDING #4 - REAR ELEVATION** SCALE: 3/32" = 1'-0"



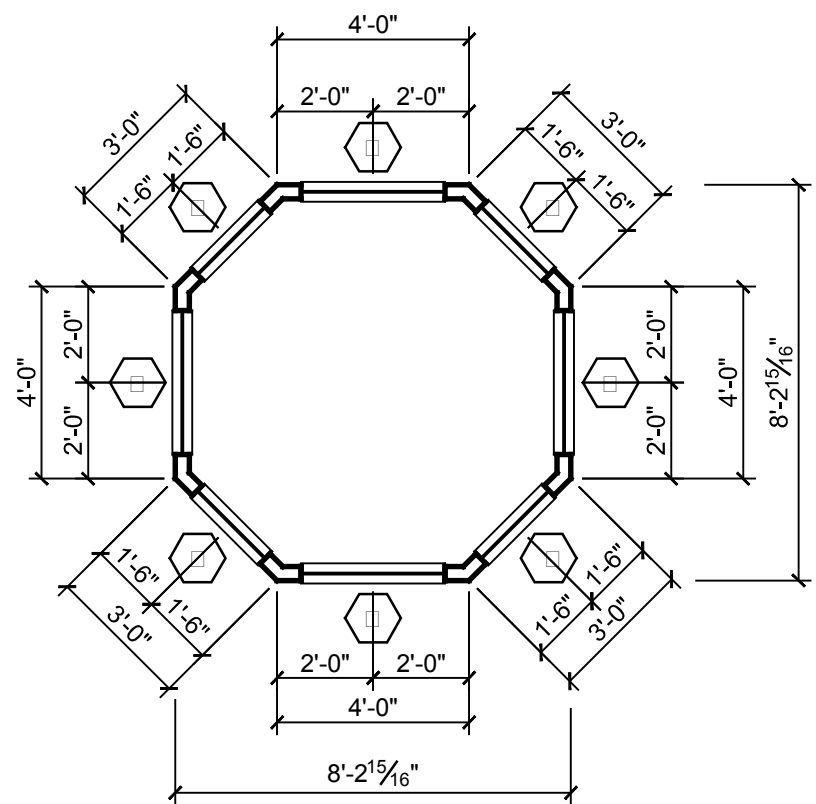
**BUILDING #4 - LEFT ELEVATION** SCALE: 3/32" = 1'-0"



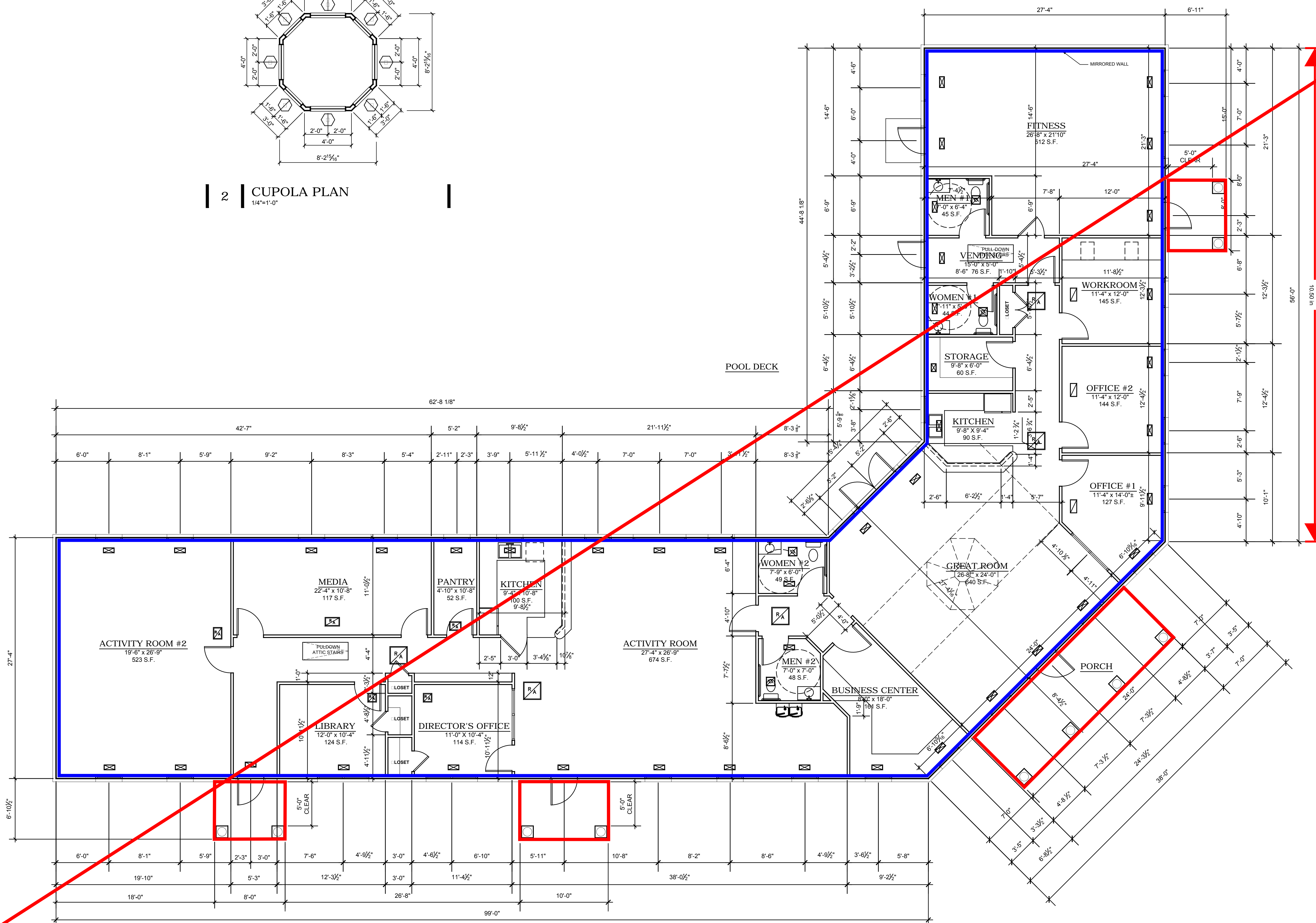
**BUILDING #4 - RIGHT ELEVATION** SCALE: 3/32" = 1'-0"



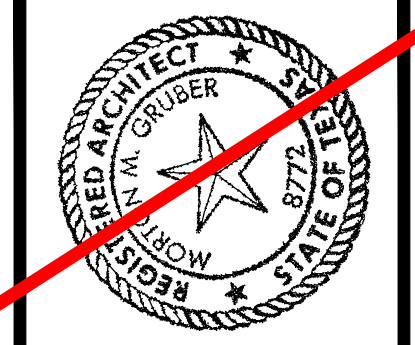
Original



2 CUPOLA PLAN  
1/4"=1'-0"



1 CLUBHOUSE FLOOR PLAN  
SCALE: 3/16"=1'-0"



DATE: 2015-02-25  
 REVISION: PRELIMINARY DESIGN  
 NOT FOR CONSTRUCTION

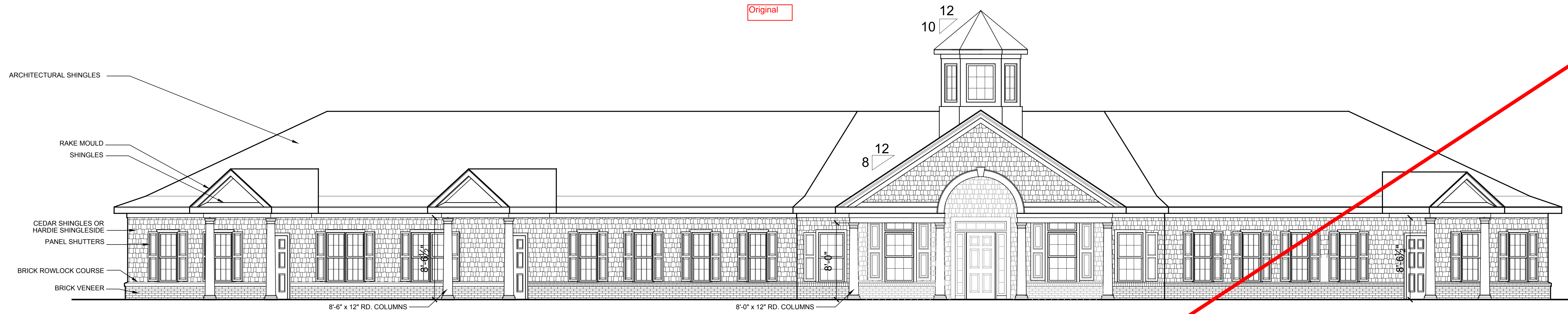
*The Residences at Earl Campbell*  
 FRANKSTON STREET  
 TYLER, TEXAS

CLUBHOUSE FLOOR PLAN

CH-A1  
PRELIMINARY DESIGN

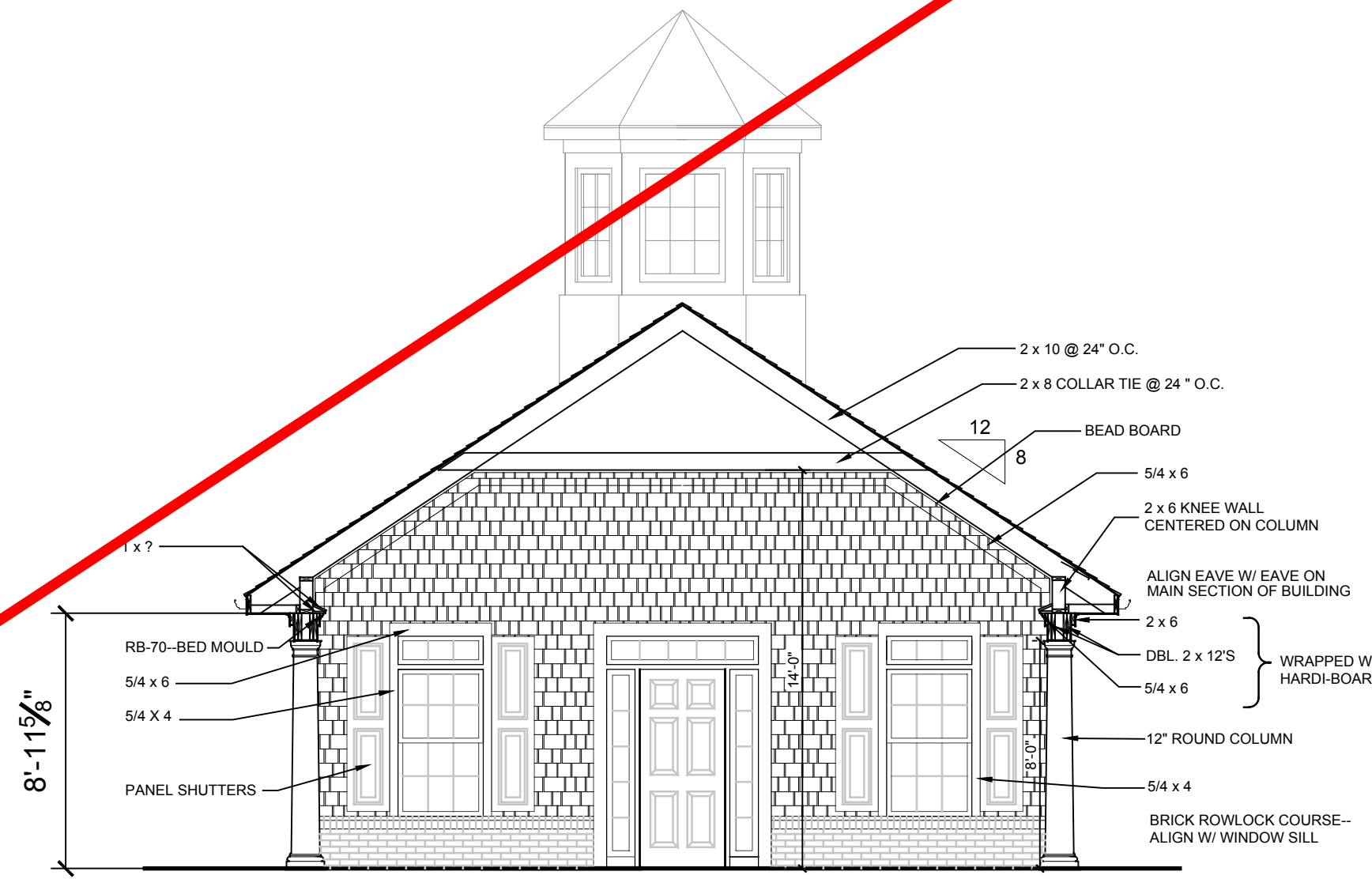
MORTON M. GRUBER, AIA, ARCHITECT  
 245 PEACHTREE CENTERAVE SUITE 2445 ATLANTA, GA 30303 TEL: 404598-1680 FAX: 404598-1695

Original



FRONT ELEVATION SCALE: 3/16"=1'-0"

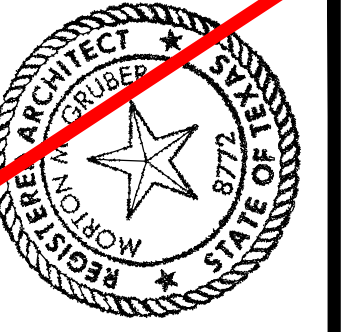
CLUBHOUSE EXTERIOR FINISHES  
BRICK = 60%MIN.  
CEMENT-FIBER SIDING = 40%MAX.



FRONT PORCH ELEVATION SCALE: 3/16"=1'-0"



FRONT LEFT ELEVATION SCALE: 3/16"=1'-0"



DATE: 2015-02-25  
 REVISION: PRELIMINARY DESIGN  
 NOT FOR CONSTRUCTION

*The Residences at Earl Campbell*

FRANKSTON STREET  
 TYLER, TEXAS

MORTON M. GRUBER, AIA, ARCHITECT  
 245 PEACHTREE CENTER AVE SUITE 2415 ATLANTA, GA 30303 TEL: 404.984-1880 FAX: 404.984-1895

CLUBHOUSE  
 ELEVATIONS

CH-  
 A3.1  
 PRELIMINARY  
 DESIGN

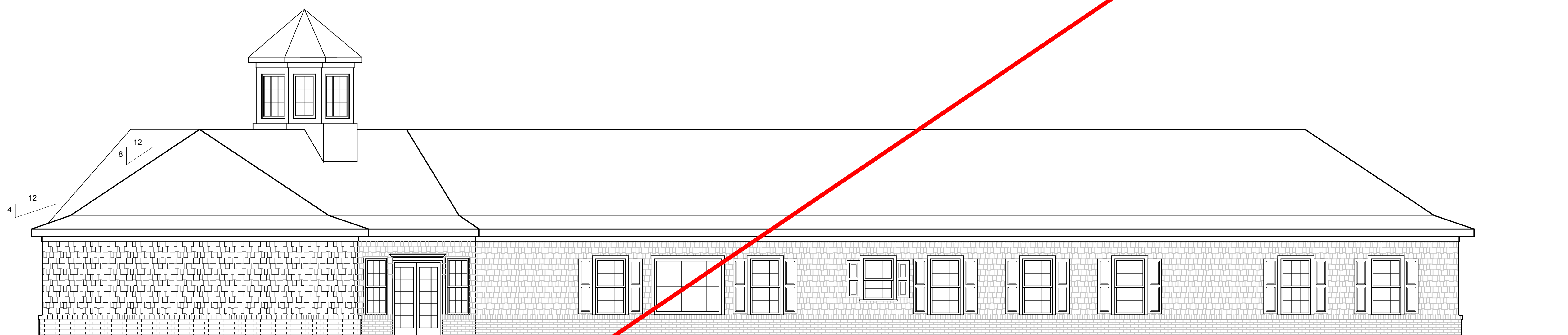


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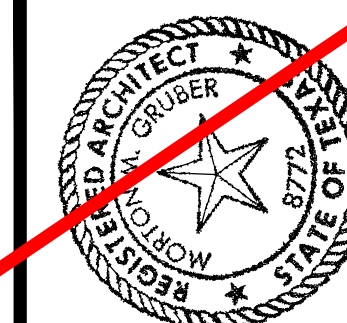
LEFT ELEVATION

SCALE: 3/16"=1'-0"



RIGHT ELEVATION

SCALE: 3/16"=1'-0"



DATE  
2015-02-25  
REVISION  
PRELIMINARY DESIGN  
NOT FOR CONSTRUCTION

*The Residences at Earl Campbell*

FRANKSTON STREET  
TYLER, TEXAS

MORTON M. GRUBER, AIA, ARCHITECT  
245 PEACHTREE CENTER AVE SUITE 2445 ATLANTA, GA 30303 TEL: 404.984-1880 FAX: 404.984-1895

CLUBHOUSE  
ELEVATIONS

CH-  
A3.2  
PRELIMINARY  
DESIGN







DATE  
2016-12-28

REVISION  
2016-02-26

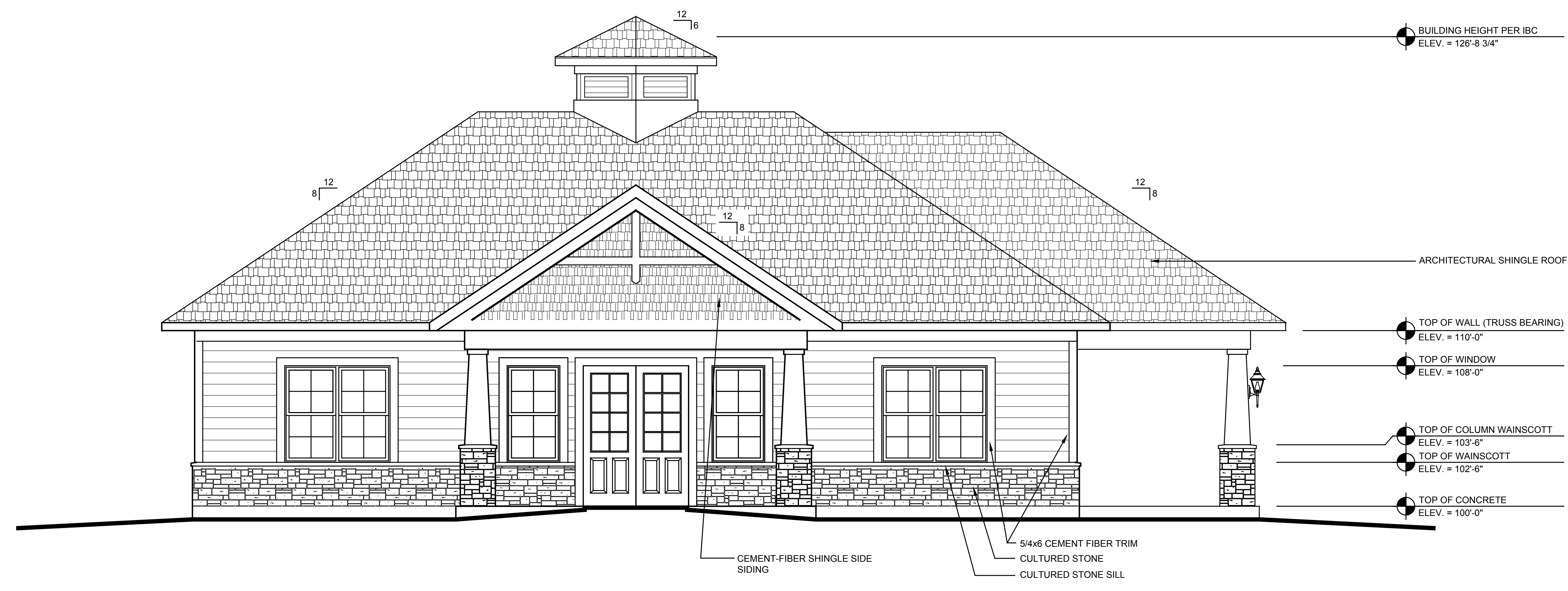
*The Residences at Earl Campbell*

FRANKSTON HWY (STATE HWY 155)  
TYLER, TEXAS

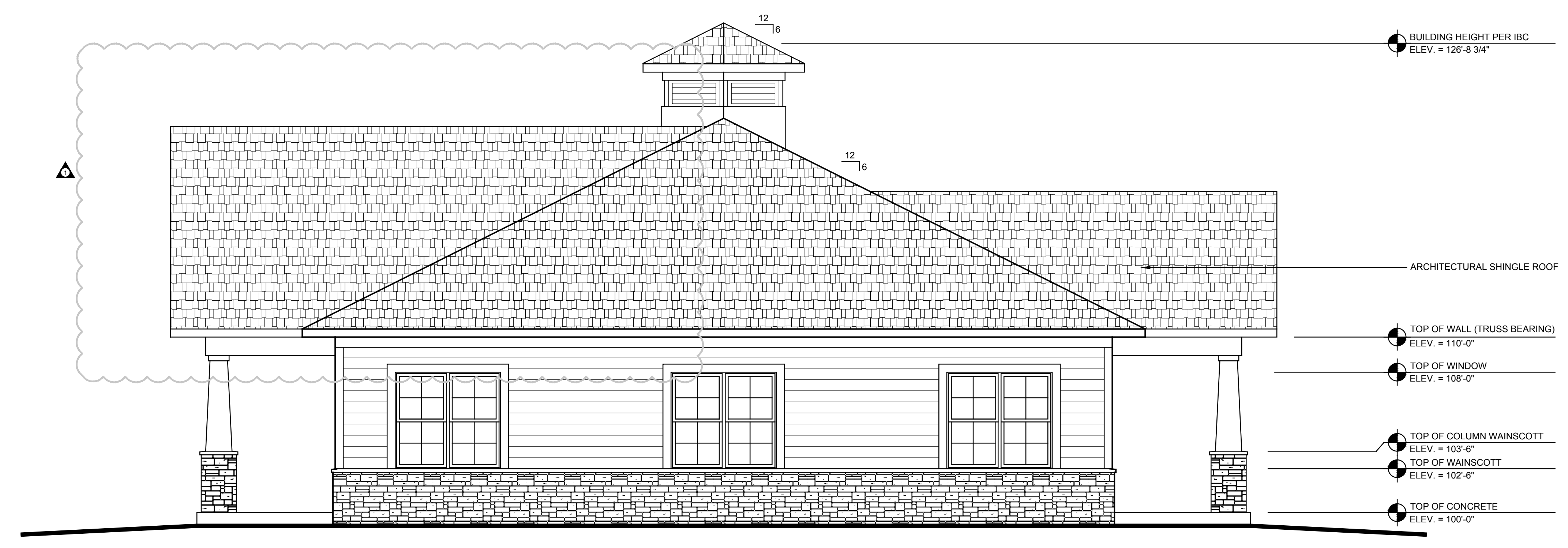
**MORTON M. GRUBER, AIA, ARCHITECT**  
245 PEACHTREE CENTER AVE SUITE 2415 ATLANTA, GA 30303 TEL: 404.584-1680 FAX: 404.584-1695

CLUBHOUSE  
EXTERIOR ELEVATIONS

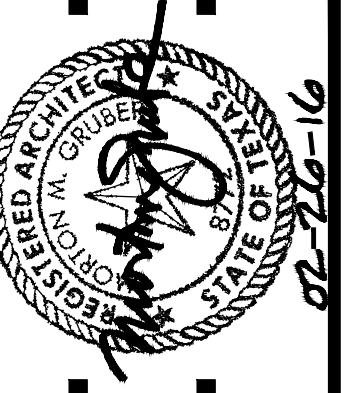
**CH-A2.1**



**FRONT ELEVATION** SCALE = 1/4"=1'-0"



**LEFT ELEVATION** SCALE = 1/4"=1'-0"



DATE  
2015-12-28

REVISION

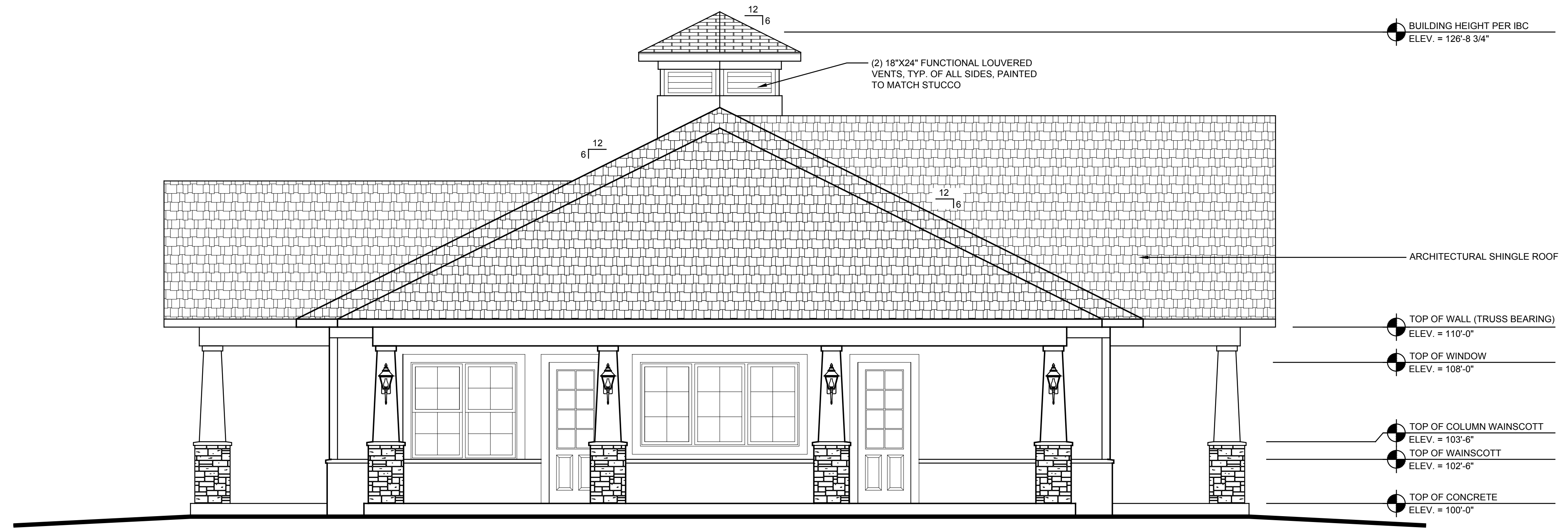
*The Residences at Earl Campbell*

FRANKSTON HWY (STATE HWY 155)  
TYLER, TEXAS

**MORTON M. GRUBER, AIA, ARCHITECT**  
245 PEACHTREE CENTER AVE SUITE 2415 ATLANTA, GA 30303 TEL: 404.584-1880 FAX: 404.584-1895

CLUBHOUSE  
EXTERIOR ELEVATIONS

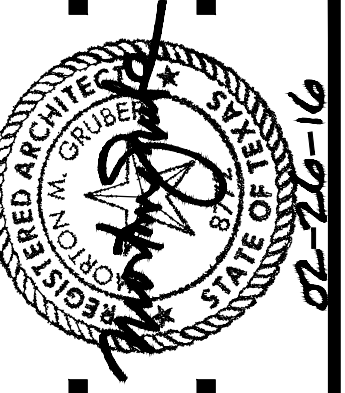
**CH-A2.2**



**RIGHT ELEVATION** SCALE = 1/4"=1'-0"



**RIGHT PORCH ELEVATION** SCALE = 1/4"=1'-0"



DATE  
2015-12-28

REVISION

*The Residences at Earl Campbell*

FRANKSTON HWY (STATE HWY 155)  
TYLER, TEXAS

MORTON M. GRUBER, AIA, ARCHITECT  
245 PEACHTREE CENTER AVE SUITE 2415 ATLANTA, GA 30303 TEL: 404.984-1680 FAX: 404.984-1695

CLUBHOUSE  
EXTERIOR ELEVATIONS

CH-A2.3



**REAR ELEVATION** SCALE = 1/4"=1'-0"



**REAR PORCH ELEVATION** SCALE = 1/4"=1'-0"

1g



**BOARD ACTION REQUEST**

**ASSET MANAGEMENT**

**OCTOBER 13, 2016**

Presentation, Discussion, and Possible Action to approve a material amendment to the Housing Tax Credit (“HTC”) Land Use Restriction Agreement (“LURA”) for Villas at Costa Brava (HTC #99060)

**RECOMMENDED ACTION**

**WHEREAS**, Villas at Costa Brava (the “Development”) received an award of 9% Housing Tax Credits in 1999 to construct 250 multifamily units in San Antonio, Bexar County;

**WHEREAS**, the HTC application for the Development received points and/or other preferences for having a Historically Underutilized Business (“HUB”), namely Investors Management Corp. (“IMC”), participate in the ownership of the Development;

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

**WHEREAS**, the Development is within the extended Compliance Period, as defined in the LURA;

**WHEREAS**, the General Partner has entered into a purchase and sale agreement to sell the property;

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

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

**NOW, therefore, it is hereby**

**RESOLVED**, that the material LURA amendment for Villas at Costa Brava is approved, as presented to this meeting and the Executive Director and his designees are hereby, authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

## **BACKGROUND**

The Development was approved in 1999 to construct 250 multifamily units in San Antonio (Bexar County). The LURA for the Development has a 40-year Extended Use Period, including a 25-year extended Compliance Period. On July 22, 2016, Costa Brava San Antonio, LLC (the General Partner), acting on behalf of Costa Brava Housing, Ltd. (the Development Owner), requested approval for the elimination of the requirement for the HUB to remain as the controlling owner of the Managing General Partner and to maintain regular, continuous, and substantial participation in the development and operation of the Development.

The letter of request dated July 22, 2016, stated that the Owner has entered into a purchase agreement with On Track Ministries, Inc., a Texas non-profit corporation ("OTM"). OTM then seeks to assign the Contract to a new owner, Costa Brava OTM Harmony LP, a Texas limited partnership. The request for approval for the change in the ownership structure cannot be approved until the LURA amendment to remove HUB requirement is approved. Distinguished Care Services, LLC, the selling HUB, is acting of its own volition in choosing to agree to the sale of the Development. The participation of Distinguished Care Services, LLC as the HUB has been substantive and meaningful, and will continue to be so until the sale of the property.

Pursuant to 10 TAC §10.405(b)(4), the Owner notified the tenants, lenders, investors and State and local public officials, and held a public hearing on September 15, 2016. No public comment about the amendment was made. The Owner has complied with the material LURA amendment and notification requirements under the Department's rule at Tex. Gov't Code §2306.6712 and 10 TAC §10.405(b).

Staff recommends approval of the material LURA amendment to eliminate the requirement for participation of a HUB in the ownership structure and operation of the Development.

**Costa Brava Housing, Ltd.**  
11900 Biscayne Blvd., Suite 262  
Miami, Florida 33181

July 22, 2016

**VIA HAND DELIVERY**

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

Re: Villas at Costa Brava (the "**Property**")  
TDHCA File No. 99060

Dear Dee:

The undersigned, being the General Partner (herein so called) of Costa Brava Housing, Ltd., a Florida limited partnership (the "**Owner**"), and the current owner of the Property, hereby submits this letter as a notice of ownership transfer in accordance with Section 10.406(f) of the Uniform Multifamily Rules (the "**Rules**") and a request for material LURA amendment in accordance with Section 10.405(b) of the Rules. Specifically, the LURA for this Property requires ownership participation by a historically underutilized business (a "**HUB**"). The General Partner, acting on behalf of the Owner, requests elimination of that requirement for the reasons set forth below.

**Background Information**

The Owner is currently structured to include the General Partner, Texas Corporate Tax Credit Fund (the "**Investment Partner**"), and BCCC, Inc. (the "**Special Limited Partner**" and collectively with Investment Partner, the "**Limited Partners**"). The General Partner, acting on behalf of the Owner, has determined it is in its best economic interest to sell the Property and has entered into that certain Real Estate Purchase and Sale Agreement with Escrow Instructions (the "**Contract**") with On Track Ministries, Inc., a Texas non-profit corporation ("**OTM**"). OTM then seeks to assign the Contract to Costa Brava OTM Harmony LP, a Texas limited partnership (the "**Proposed Owner**").

**Request**

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

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

**LURA Amendment**

In accordance with Section 10.405(b) of the Rules, the General Partner, acting on behalf of the Owner, is delivering a fee in the amount of \$2500. In addition, the General Partner, acting on behalf of the Owner, commits to hold a public hearing, as required by the Rules, and to notify all residents, investors, lenders, and appropriate elected officials. Drafts of the public hearing notices are attached for your consideration. Upon approval from TDHCA, the General Partner, acting on behalf of the Owner, will proceed to set a date and time for the Public Hearing and will provide TDHCA with evidence that the notice has been delivered and the hearing has been conducted. With that, the General Partner, acting on behalf of the Owner, requests staff recommendation, in support of this request, to be considered at the September 8, 2016 TDHCA Board meeting.

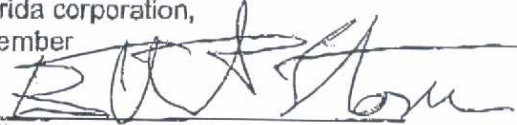
Thank you very much for your assistance. Please do not hesitate to contact us if you require any additional information.

Sincerely,

**COSTA BRAVA HOUSING, LTD.,**  
a Florida limited Partnership

By: Costa Brava San Antonio, LLC,  
a Florida limited liability company,  
its general partner

By: Royal Castle Development Corporation,  
a Florida corporation,  
its member

By:   
Elliot Stone, President

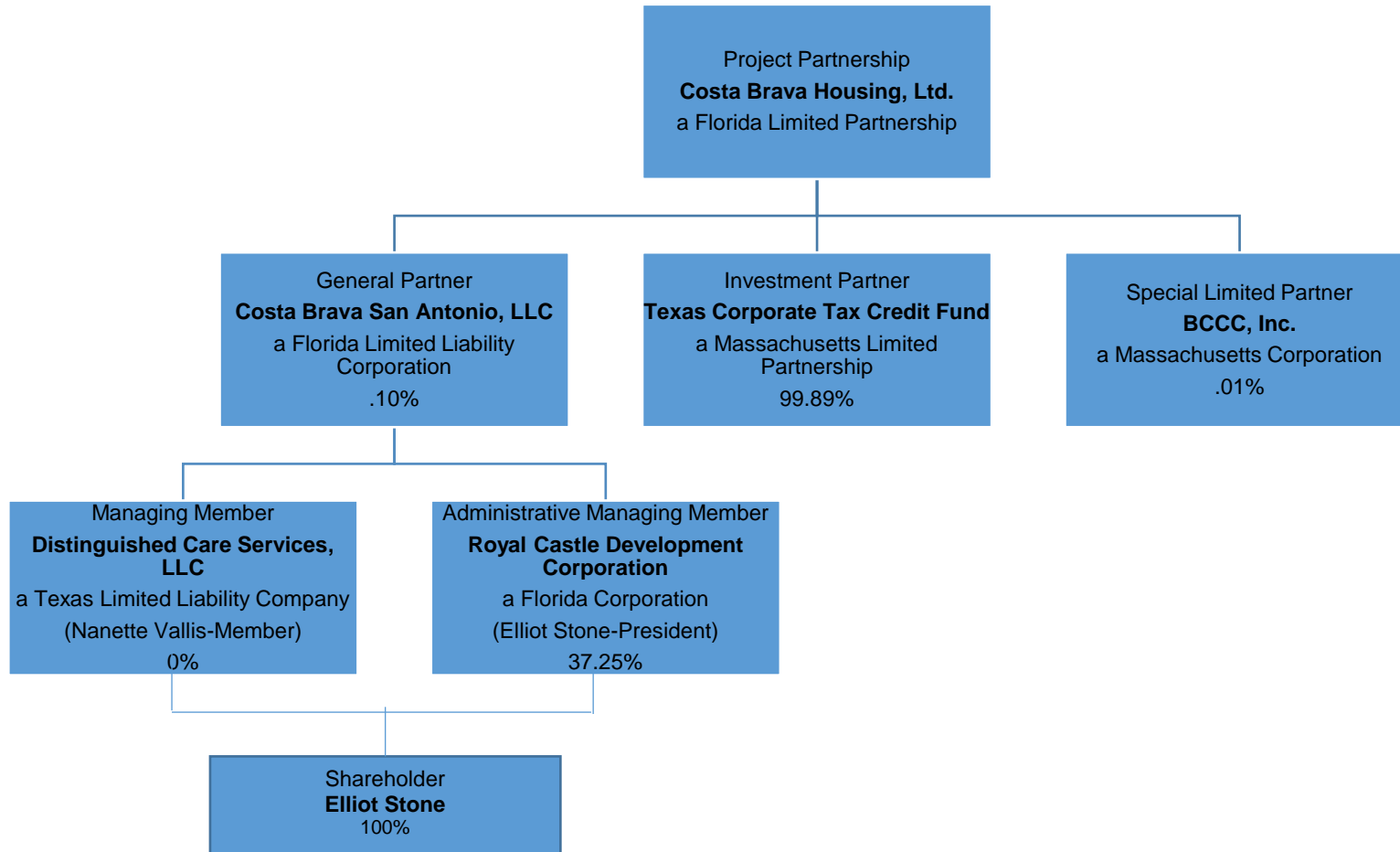
Attachments

cc: Raquel Morales  
Cynthia L. Bast

current

# Villas at Costa Brava

## San Antonio, TX





**COSTA BRAVA OTM HARMONY LP**  
[EIN Pending]  
(A Texas Limited Partnership)  
**(Development Owner) Villas at Costa Brava**  
7333 Potranco Road, San Antonio, TX 78251 (250 units)

Proposed

**OTM COSTA BRAVA GP, LLC**  
[EIN Pending]  
(Texas Limited Liability Company)  
**(General Partner)**

**HARMONY FANNIE FACILITY I LLC**  
37-1829941  
(A Delaware Limited Liability Company)  
**(Limited Partner)**  
152 W 57<sup>th</sup> St., 60<sup>th</sup> Fl., New York, NY 10019

**ON TRACK MINISTRIES, INC.**  
76-0502332  
(A Texas non-profit corporation)  
**(Sole Member of General Partner)**

**FOUNDATION FOR AFFORDABLE RENTAL HOUSING HOLDINGS INC.**  
20-2563055  
(A Delaware Non-Stock, Not-for-Profit Corp.; Qualified in Texas)  
**(Limited Partner)**  
6629 Spring Street, Douglasville, GA 30134

General Partner 0%      Limited Partner 99%      Limited Partner 1%

100% Sole Member

100% Sole Member

Officers and Board Members

Officers and Board Members

- Cliff McDaniel  
President & Board Member  
0%
- David Dominy  
Board Member  
0%
- Clay McDaniel  
Board Member  
0%
- Andrew Colvin  
Board Member  
0%
- Ruama Camp  
Board Member  
0%

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



## TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Rick Perry  
GOVERNOR

Edwina P. Carrington  
EXECUTIVE DIRECTOR

BOARD MEMBERS  
Michael E. Jones, *Chair*  
Elizabeth Anderson  
Shadrick Bogany  
C. Kent Conine  
Vidal Gonzalez  
Norberto Salinas

December 30, 2002

Costa Brava Housing, Ltd.  
C/o Distinguished Care Services, LLC  
Attn: Nannette Vallis  
1544 Sawdust Road, Suite 210-B  
The Woodlands, TX 77380

Re: *First Amendment to Land Use Restrictive Agreement (LURA)*  
*Villas at Costa Brava, TDHCA #99060*

Dear Ms. Vallis,

The enclosed First Amendment to the LURA has been executed by the Department. Please have the document recorded in the county where the development is located. When the LURA has been recorded, **the original must be returned to the Department.**

Thank you for your prompt attention to this matter. If you have any questions, I can be reached at (512) 475-3061.

Sincerely,

A handwritten signature in cursive script that reads "Emily Weilbaecher".

Emily Weilbaecher  
Planner, LIHTC Program  
Email: [eweilbae@tdhca.state.tx.us](mailto:eweilbae@tdhca.state.tx.us)

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

This First Amendment to Declaration of Land Use Restrictive Covenants for Low-Income Housing Credits ("Amendment") is executed to be effective as of February 7, 2002, by and between **COSTA BRAVA HOUSING, LTD.**, 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 department of the State of Texas (together with any successor to its rights, duties and obligations, the "Department").

**WITNESSETH:**

WHEREAS, on February 7, 2002, 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 May 9, 2002, in Volume 9379, Page 440, in the Official Records of Bexar County, Texas; and

WHEREAS, by error or mistake the Declaration failed to correctly identify the Additional Use Restrictions - Handicapped Accessibility; and

WHEREAS, by error or mistake the Declaration failed to correctly identify the Minimum Applicable Fraction By Building; 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 is hereby acknowledged by the Department, the Project Owner and the Department agree as follows:

1. **APPENDIX A - ADDITIONAL USE RESTRICTIONS - HANDICAPPED ACCESSIBILITY**

  x   Handicapped Accessibility for 1999 Allocations, Option §50.6(c)(6)(B)(i) or Handicapped Accessibility for 2000 Allocations, Option §49.6(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 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 7% of the Units are set-aside for persons with physical or mental disabilities; or

  x   at least 10% of the Units are set-aside for persons with physical or mental disabilities.

2. Appendix A - Minimum Applicable Fraction by Building is hereby amended to read as follows:

**“Minimum Applicable Fraction by Building**

<u>Building Number</u>	<u>Building Identification Number (BIN)</u>	<u>Minimum Applicable Fraction</u>
1.	TX-99-06001	25%
2.	TX-99-06002	50%
3.	TX-99-06003	33%
4.	TX-99-06004	25%
5.	TX-99-06005	50%
6.	TX-99-06006	16%
7.	TX-99-06007	0%
8.	TX-99-06008	50%
9.	TX-99-06009	75%

10.	TX-99-06010	50%
11.	TX-99-06011	16%
12.	TX-99-06012	16%
13.	TX-99-06013	50%
14.	TX-99-06014	100%
15.	TX-99-06015	50%
16.	TX-99-06016	83%
17.	TX-99-06017	83%
18.	TX-99-06018	50%
19.	TX-99-06019	50%
20.	TX-99-06020	31%
21.	TX-99-06021	50%
22.	TX-99-06022	50%
23.	TX-99-06023	83%
24.	TX-99-06024	31%
25.	TX-99-06025	50%
26.	TX-99-06026	100%
27.	TX-99-06027	50%
28.	TX-99-06028	50%
29.	TX-99-06029	50%
30.	TX-99-06030	83%
31.	TX-99-06031	75%
32.	TX-99-06032	31%
33.	TX-99-06033	100%
34.	TX-99-06034	100%
35.	TX-99-06035	83%
36.	TX-99-06036	100%
37.	TX-99-06037	50%
38.	TX-99-06038	100%
39.	TX-99-06039	100%
40.	TX-99-06040	83%
41.	TX-99-06041	100%
42.	TX-99-06042	83%
43.	TX-99-06043	100%
44.	TX-99-06044	100%
45.	TX-99-06045	0%
46.	TX-99-06046	100%
47.	TX-99-06047	100%
48.	TX-99-06048	83%
49.	TX-99-06049	50%
50.	TX-99-06050	50%
51.	TX-99-06051	100%
52.	TX-99-05052	31%



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.

**PROJECT OWNER:**

**COSTA BRAVA HOUSING, LTD.** a Texas limited partnership

By: **COSTA BRAVA SAN ANOTNIO, LLC.** a Texas limited liability company, its General Partner

By: **DISTINGUISHED CARE SERVICES, LLC,** a Texas limited liability company, its Managing Member

By: Nannette Vallis  
Name: ~~Deborah Rush~~ Nannette Vallis  
Title: Managing Member

**DEPARTMENT:**

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

By: Edwina P. Carrington  
Name: Edwina P. Carrington  
Title: Executive Director

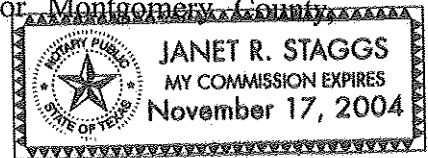
STATE OF TEXAS

COUNTY OF MONTGOMERY

BEFORE ME, the undersigned authority, on this day personally appeared <sup>Nannette Vallis</sup> ~~Deborah Rush~~, Managing Member, of **COSTA BRAVA SAN ANTONIO, LLC**, a Texas limited liability company, 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 the **COSTA BRAVA HOUSING, LTD.**, a Texas limited partnership, and that she executed the same as the Managing Member of such limited partnership, on behalf of **DISTINGUISHED CARE SERVICES, LLC**, a Texas limited liability company, for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 16<sup>th</sup> day of ~~October~~ <sup>December</sup>, 2002.

Janet R. Staggs  
Notary Public in and for Montgomery County,  
Texas



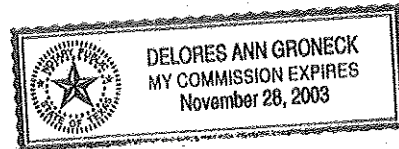
STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this 20<sup>th</sup> day of DECEMBER 2002, by Edwina P. Carrington, Executive Director of the Texas Department of Housing and Community Affairs, a public and official department of the State of Texas, on behalf of said department.

Delores Ann Groneck  
Notary Public, State of Texas

AFTER RECORDING, RETURN TO:  
Texas Department of Housing and Community Affairs  
Attn: LIHTC  
P.O. Box 13941  
Austin, Texas 78711-3941



Doc# 20150109204 Fees: \$46.00  
06/18/2015 12:46PM # Pages 6  
Filed & Recorded in the Official  
Public Records of BEXAR COUNTY  
GERARD C. RICKHOFF COUNTY CLERK

Any provision herein which restricts the sale, or use of the described real property because of race is invalid and unenforceable under Federal law STATE OF TEXAS, COUNTY OF BEXAR  
I hereby Certify that this Instrument was FILED in File Number Sequence on this Date and at the time stamped hereon by me and was duly RECORDED in the Official Public Record of Real Property of Bexar County, Texas on:

JUN 18 2015



*Gerard Rickhoff*  
COUNTY CLERK BEXAR COUNTY, TEXAS

RECORDED  
INDEXED  
JUN 18 2015

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

This First Amendment to Declaration of Land Use Restrictive Covenants for Low-Income Housing Credits ("Amendment") is executed to be effective as of February 7, 2002, by and between **COSTA BRAVA HOUSING, LTD.**, 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 department of the State of Texas (together with any successor to its rights, duties and obligations, the "Department").

**WITNESSETH:**

WHEREAS, on February 7, 2002, 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 May 9, 2002, in Volume 9379, Page 440, in the Official Records of Bexar County, Texas; and

WHEREAS, by error or mistake the Declaration failed to correctly identify the Additional Use Restrictions - Handicapped Accessibility; and

WHEREAS, by error or mistake the Declaration failed to correctly identify the Minimum Applicable Fraction By Building; 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 is hereby acknowledged by the Department, the Project Owner and the Department agree as follows:

1. **APPENDIX A - ADDITIONAL USE RESTRICTIONS - HANDICAPPED ACCESSIBILITY**

  x   Handicapped Accessibility for 1999 Allocations, Option §50.6(c)(6)(B)(i) or Handicapped Accessibility for 2000 Allocations, Option §49.6(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 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 7% of the Units are set-aside for persons with physical or mental disabilities; or

  x   at least 10% of the Units are set-aside for persons with physical or mental disabilities.

2. Appendix A - Minimum Applicable Fraction by Building is hereby amended to read as follows:

**“Minimum Applicable Fraction by Building**

<u>Building Number</u>	<u>Building Identification Number (BIN)</u>	<u>Minimum Applicable Fraction</u>
1.	TX-99-06001	25%
2.	TX-99-06002	50%
3.	TX-99-06003	33%
4.	TX-99-06004	25%
5.	TX-99-06005	50%
6.	TX-99-06006	16%
7.	TX-99-06007	0%
8.	TX-99-06008	50%
9.	TX-99-06009	75%



10.	TX-99-06010	50%
11.	TX-99-06011	16%
12.	TX-99-06012	16%
13.	TX-99-06013	50%
14.	TX-99-06014	100%
15.	TX-99-06015	50%
16.	TX-99-06016	83%
17.	TX-99-06017	83%
18.	TX-99-06018	50%
19.	TX-99-06019	50%
20.	TX-99-06020	31%
21.	TX-99-06021	50%
22.	TX-99-06022	50%
23.	TX-99-06023	83%
24.	TX-99-06024	31%
25.	TX-99-06025	50%
26.	TX-99-06026	100%
27.	TX-99-06027	50%
28.	TX-99-06028	50%
29.	TX-99-06029	50%
30.	TX-99-06030	83%
31.	TX-99-06031	75%
32.	TX-99-06032	31%
33.	TX-99-06033	100%
34.	TX-99-06034	100%
35.	TX-99-06035	83%
36.	TX-99-06036	100%
37.	TX-99-06037	50%
38.	TX-99-06038	100%
39.	TX-99-06039	100%
40.	TX-99-06040	83%
41.	TX-99-06041	100%
42.	TX-99-06042	83%
43.	TX-99-06043	100%
44.	TX-99-06044	100%
45.	TX-99-06045	0%
46.	TX-99-06046	100%
47.	TX-99-06047	100%
48.	TX-99-06048	83%
49.	TX-99-06049	50%
50.	TX-99-06050	50%
51.	TX-99-06051	100%
52.	TX-99-05052	31%

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.

**PROJECT OWNER:**

**COSTA BRAVA HOUSING, LTD.** a Texas limited partnership

By: **COSTA BRAVA SAN ANOTNIO, LLC.**  
a Texas limited liability company, its General Partner

By: **DISTINGUISHED CARE SERVICES, LLC,** a Texas limited liability company, its Managing Member

By: Nannette Vallis  
Name: ~~Deborah Pook~~ Nannette Vallis  
Title: Managing Member

**DEPARTMENT:**

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

By: Edwina P. Carrington  
Name: Edwina P. Carrington  
Title: Executive Director

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

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS FOR LOW-INCOME HOUSING TAX CREDITS (this "Declaration"), dated as of February 7, 2002, is made by and between COSTA BRAVA HOUSING, LTD. (together with its successors and assigns, the "Project Owner") and The Texas Department of Housing & Community Affairs, an instrumentality of the State of Texas and a public corporation (together with any successor to its rights, duties and obligations, the "Department"), and is given by Project Owner as a condition precedent to [the determination that the Project, as defined herein, satisfies the requirements of the State of Texas's Qualified Allocation Plan] the allocation of low-income housing tax credits (the "Tax Credits"), pursuant to Section 42 of the Internal Revenue Code of 1986, as amended, and regulations promulgated pursuant thereto (the "Code"), by the Department. This Declaration incorporates the extended low-income housing commitment required by Section 42(h)(6) of the Code and is promulgated in accordance with the provisions of Chapter 2306, Tex. Gov. Code, (the "Act"), as may be amended from time to time.

**WITNESSETH:**

WHEREAS, the Project Owner is or shall be the Project Owner of a low income rental housing development, known as or to be known as Villas at Costa Brava, (the "Project Improvements"), on real property located in the City of San Antonio, County of Bexar, 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 \$ 806,215 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 60% 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 \$ 756,853;

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

WHEREAS, the Project Owner is subject to the regulatory powers of the Department and other terms and conditions of chapter 2306, Tex. Gov. Code;

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

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

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

## SECTION 1 - DEFINITIONS

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

"Act" means the Texas Government Code, Chap. 2306, as amended or any corresponding provision or provisions of succeeding law as it or they may be amended from time to time.

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

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

"Board" means the governing Board of the Department.

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

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

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

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

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

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

"Low-Income" means, with respect to any Tenant, an income level not exceeding 50% or 60% of Area Median Gross Income, adjusted for family size, as provided in Section 4 hereof, unless an alternative income level shall be set forth at Appendix A hereto.

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

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

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

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

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

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

"State" means the State of Texas.

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

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

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

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

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

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

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

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



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

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

(a) The Project Owner (i) is a Limited Partnership, duly organized and validly existing under the laws of the State of Florida, 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 the premises constituting the Project, free and clear of any lien or encumbrance, except those created by any loan documents relating to the Project, those which are created pursuant to this Declaration and those which are otherwise permitted encumbrances; as specifically set forth at Exhibit B hereto.

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

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

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

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

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

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

(j) The Project Owner agrees to notify the Department in writing prior to any sale, transfer or exchange of the entire Project or any building therein, and to provide to the Department the name(s) and address(es) and financial reports, as applicable, of the prospective successor owner and operator of the Project or building, so the Department can determine the economic viability of such prospective successor and such Project or building and whether such prospective successor is acceptable as Project Owner under the Department Rules. The Project Owner further agrees to notify the Department in writing prior to any change in the identity of a General Partner or other principal of the Project Owner, and to provide to the Department the name(s) and address(es) and financial reports, as applicable, of any successor or additional General Partner or principal, so the Department can determine whether such party is acceptable in such role with the Project Owner under the Department Rules.

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

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

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

(n) The Project Owner agrees, warrants, and covenants to comply with all law, ordinances, statutes, codes, orders, rules, regulations and decrees of any Governmental Authority applicable to the Owner of the Project, including, without limitation, the following: the Civil Rights Act of 1964 (42 U.S.C. 2000(d); Executive Order 11-63, as amended by Executive Order 12259; Executive Order 11246; Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*); Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*); Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*); Fair Housing Act (42 U.S.C. 3601 *et seq.*); the Americans with Disabilities Act of 1990 (P.L. 101-336; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); Architectural Barriers Act of 1968 (42 U.S.C. 4151 *et seq.*); Section 3 of the Housing and Urban Development Act of 1968; Executive Orders 11625, 12432 and 12138, as amended; the Copeland "Anti-Kickback" Act (18 U.S.C. § 874 *et seq.*); the Davis-Bacon Act (40 U.S.C. § 276a *et seq.*); Sections 103 and 107 of the Work Hours and Safety Standards Act. (40 U.S.C. § 327 *et seq.*); the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. § 4201 *et seq.*); the Housing and Community Development Act of 1974; the National Environmental Policy Act (42 U.S.C. § 4321 *et seq.*); ("NEPA"); the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4321 *et seq.*); the State of Texas Senate Bill 1356; Title 8, and Chapter 92 of the Texas Property Code; Solid Waste Disposal Act TEX. HEALTH & SAFETY CODE Ann. Ch. 361 (Vernon's 1992); Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act. TEX. HEALTH & SAFETY CODE Ann. Ch 363 (Vernon's 1992); County Solid Waste Control Act. TEX. HEALTH & SAFETY CODE Ann. Ch 364 (Vernon's 1992); Texas Clean Air Act, TEX. HEALTH AND SAFETY CODE Ann. Ch. 382 (Vernon's 1992); and Hazardous Communication Act, TEXAS HEALTH AND SAFETY CODE Ann. Ch. 502 (Vernon's 1992); and such Governmental Requirements as may be from time to time amended or superseded and all of their implementing regulations, as may be amended.

#### SECTION 4 - INCOME RESTRICTIONS/RENTAL RESTRICTIONS

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

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

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

*(Check applicable percentage election)*

(b) The determination of whether a Tenant is a Low-Income Tenant shall be made by the Project Owner at least annually on the basis of the current income of such Low-Income Tenant. 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 250 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 60% 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.

(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.

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

(j) The Project Owner agrees to indemnify and hold harmless the Board members, Department officers, directors and employees from and against all liabilities, losses, claims, damages, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by the Department as a result of any material inaccuracy in any of the representations and warranties contained in this Declaration, or as a result of any action by the Project Owner, including claims by third parties.

(k) The Project Owner agrees that should any claims, demands, suits or other legal proceedings be made or instituted by any person against the Department which arise out of any of the matters relating to this Declaration, Project Owner will cooperate fully with the Department in the defense or other disposition thereof.

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

(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 action, and such fee shall be payable without respect to whether the Department undertakes or succeeds in judicial enforcement activities, and any right to be compensated therefor, for a period of up to three years following its most recent finding of noncompliance with respect to the Project.

(c) For each successive twelve month period following the initial twelve month period of this Declaration, the administrative fees payable to the Department hereunder shall be the amounts established for the most recent administrative fee, multiplied by the increase in the Consumer Price Index for All Urban Consumers (CPI-U) published by the Bureau of Labor Statistics of the United States Department of Labor (or generally recognized successor to such Index) for the same twelve month period of time.

(d) The Project Owner agrees that it will pay the annual administrative fee at the times required by the Department therefor and that it will pay all additional charges, fees, and expenses assessed hereunder by the Department within ten (10) days of receipt of written notice of any such assessment.



## SECTION 8 - MISCELLANEOUS

(a) Severability. This Declaration is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Declaration or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Declaration and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

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

**To the Department:** Texas Department of Housing & Community Affairs  
507 Sabine, Suite 400  
Austin, Texas 78701  
Attn: Low Income Housing Tax Credit Program

**To the Project Owner:** Costa Brava Housing, Ltd.  
C/o Distinguished Care Services, LLC  
1544 Sawdust Road, Suite 210-B  
The Woodlands, TX 77380  
Attn: Deborah Rush

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

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

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

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

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

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

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

**COSTA BRAVA HOUSING, LTD.**  
By Costa Brava San Antonio, LLC, General Partner,  
By Distinguished Care Services, LLC, Managing Member,

**TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS**

By: Deborah Rush  
Deborah Rush, Managing Member

By: David P Burrell  
DAVID P. BURRELL

STATE OF Texas

STATE OF TEXAS

COUNTY OF Montgomery

COUNTY OF TRAVIS

This instrument was acknowledged before me on the  
7<sup>th</sup> day of February, 2002  
by Deborah Rush  
Name

This instrument was acknowledged before me on the 15<sup>th</sup>  
day of April, 2002  
by DAVID P. BURRELL

Managing Member  
Title

DIRECTOR OF HOUSING PROGRAMS  
Title

of Costa Brava Housing, Ltd.  
Project Owner Name

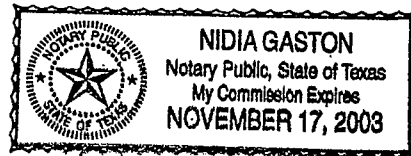
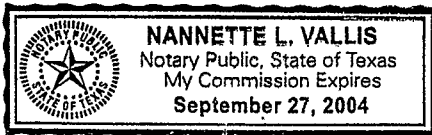
of the Texas Department of Housing and Community  
Affairs, a public and official department of the State of  
Texas, on behalf of said department.

a Limited Partnership  
Type of Partnership

on behalf of said Distinguished Care Services  
Type of Partnership

Nannette L Vallis  
Notary Public

Nidia Gaston  
Notary Public, State of Texas



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 Villas at Costa Brava (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 31<sup>st</sup> day of December, 2001.

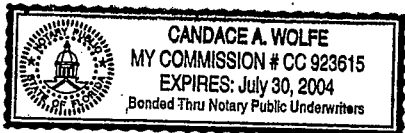
LIENHOLDER: Midland Mortgage Investment Corporation

By: [Signature]  
Name: JANICE H. WETZEL  
Title: VICE PRESIDENT

STATE OF FLORIDA

COUNTY OF PINELLAS

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that JANICE H. WETZEL, 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 14<sup>th</sup> day of FEBRUARY, 2002.



[Signature]  
Notary Public

My Commission expires: 7/30/04

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

**Additional Rent and Occupancy Restrictions**

At least 45% Units in the Project must be occupied by Tenants at or below 50% of Area Median Gross Income. The rents for these Units must not be higher than the allowable tax credit rents at the 50% AMGI level.

**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.

**Longer Compliance Period and Extended Use Period**

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

**Material Participation by Qualified Nonprofit Organization**

Throughout the Compliance Period, a "qualified nonprofit organization" within the meaning of Section 42(h)(5)(C) of the Code shall 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 Distinguished Care Services, LLC. 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.

**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 tenants: Personal Growth Opportunities, Family Skills Development, Education Services, Fun and Freedom Activities and Neighborhood Advancement Programs.

At the time this Declaration is filed, the organization(s) providing these services is TX Inter-Faith Management Corp.

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.

APPENDIX A - ADDITIONAL USE RESTRICTIONS - CONTINUED

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 the City of San Antonio.

**ELDERLY DEVELOPMENTS<sup>1</sup>**

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) 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.

2000 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) 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

---

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



(iii) 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.

**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 1999 Allocations, Option §50.6(c)(6)(B)(i) or  
Handicapped Accessibility for 2000 Allocations, Option §49.6(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 7% of the Units are set-aside for persons with physical or mental disabilities; or  
 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) or  
Handicapped Accessibility for 2000 Allocations, Option §49.6(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.

## APPENDIX A - ADDITIONAL USE RESTRICTIONS - RIGHT OF FIRST REFUSAL

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

### Right of First Refusal to Tenant or Qualified Nonprofit Organizations for 1998, 1999 and 2000 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 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**

Building Number	Building Identification Number (BIN)	Minimum Applicable Fraction
1.	TX-99-06001	60%
2.	TX-99-06002	60%
3.	TX-99-06003	60%
4.	TX-99-06004	60%
5.	TX-99-06005	60%
6.	TX-99-06006	60%
7.	TX-99-06007	60%
8.	TX-99-06008	60%
9.	TX-99-06009	60%
10.	TX-99-06010	60%
11.	TX-99-06011	60%
12.	TX-99-06012	60%
13.	TX-99-06013	60%
14.	TX-99-06014	60%
15.	TX-99-06015	60%
16.	TX-99-06016	60%
17.	TX-99-06017	60%
18.	TX-99-06018	60%
19.	TX-99-06019	60%
20.	TX-99-06020	60%
21.	TX-99-06021	60%
22.	TX-99-06022	60%
23.	TX-99-06023	60%
24.	TX-99-06024	60%
25.	TX-99-06025	60%
26.	TX-99-06026	60%
27.	TX-99-06027	60%
28.	TX-99-06028	60%
29.	TX-99-06029	60%
30.	TX-99-06030	60%
31.	TX-99-06031	60%
32.	TX-99-06032	60%
33.	TX-99-06033	60%
34.	TX-99-06034	60%
35.	TX-99-06035	60%
36.	TX-99-06036	60%
37.	TX-99-06037	60%
38.	TX-99-06038	60%
39.	TX-99-06039	60%
40.	TX-99-06040	60%

41.	TX-99-06041	60%
42.	TX-99-06042	60%
43.	TX-99-06043	60%
44.	TX-99-06044	60%
45.	TX-99-06045	60%
46.	TX-99-06046	60%
47.	TX-99-06047	60%
48.	TX-99-06048	60%
49.	TX-99-06049	60%
50.	TX-99-06050	60%
51.	TX-99-06051	60%
52.	TX-99-06052	60%



LURA REVIEW

VILLAS AT COSTA BRAVA

PROJECT # 99060

DOLORES JONES  
04/04/2002

Need Correction of Appendix A Done 4-9-02  
2nd Review Completed by J. Johnson

Should be 45 units not 18%

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

**Additional Rent and Occupancy Restrictions**

At least 18% Units in the Project must be occupied by Tenants at or below 50% of Area Median Gross Income. The rents for these Units must not be higher than the allowable tax credit rents at the 50% AMGI level.

**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.

**Longer Compliance Period and Extended Use Period**

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

**Material Participation by Qualified Nonprofit Organization**

Throughout the Compliance Period, a "qualified nonprofit organization" within the meaning of Section 42(h)(5)(C) of the Code shall 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 Distinguished Care Services, LLC. 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.

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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 tenants: Personal Growth Opportunities, Family Skills Development, Education Services, Fun and Freedom Activities and Neighborhood Advancement Programs.

At the time this Declaration is filed, the organization(s) providing these services is TX Inter-Faith Management Corp.



## TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Rick Perry  
GOVERNOR

Edwina P. Carrington  
EXECUTIVE DIRECTOR

BOARD MEMBERS  
Michael E. Jones, *Chair*  
Elizabeth Anderson  
Shadrick Bogany  
C. Kent Conine  
Vidal Gonzalez  
Norberto Salinas

April 16, 2002

Donna Warjonen  
Royal Castle Companies  
12550 Biscayne Blvd. #215  
North Miami, FL 33181

Dear Ms. Warjonen:

The enclosed original Declaration of Land Use Restrictive Covenants for Low Income Housing Tax Credits (LURA) has been executed for the multi-family development property known as **Villas at Costa Brava, LIHTC #99060.**

Please ensure the LURA is fully executed and recorded in the county where the development is located. The original LURA (filed and recorded) must be returned with the corresponding Cost Certification to our Department for issuance of the IRS Form 8609.

If you have any questions regarding this matter, please contact me either by telephone or via electronic transmission as indicated.

Thank you for your cooperation during this process.

Sincerely,

A handwritten signature in black ink, appearing to read "Dolores Jones", written over a horizontal line.

Dolores Jones  
512.475.3995  
Email: [djones@tdhca.state.tx.us](mailto:djones@tdhca.state.tx.us)

**Dolores Jones**

---

**From:** NVallis12@aol.com

**Sent:** Tuesday, April 16, 2002 3:05

**To:** djones@tdhca.state.tx.us

**Subject:** Costa Brava

Ms. Jones,

Please send the LURA for the referenced property to Royal Castle Companies for in house processing.

Thank you for your time and continued assistance.

Sincerely,

Nanette Vallis  
Distinguished Care Services, LLC

# LURA REVIEW SHEET

TDHCA #	99060	Development Name	Villas at Costa Brava		
Status	Reviewer	Date	2nd Reviewer	Date	
<input type="checkbox"/> Prior to TDHCA Execution	DOLORIS JONES	2-25-02	SPOTH	4/8/02	
Item	Comments	Deficiency Notice Date	Date Cure Was Reviewed	2nd Review Complete	
1. Paragraph 1 correctly states: <input checked="" type="checkbox"/> Effective date and owner execution date are consistent (same year) <input checked="" type="checkbox"/> Ownership name ties w/ exact name on Carryover or Determination Notice <span style="float: right;">02-26-02</span>		02-26-02	4-4-02	4/8/02	
2. Paragraph 2 correctly states: <input checked="" type="checkbox"/> Project name is identical to name on Application & Carryover or Determination Notice <input checked="" type="checkbox"/> Project's city and county location <span style="float: right;">02-26-02</span>				4/8/02	
3. <input checked="" type="checkbox"/> Paragraph 3 correctly states the amount of tax credits requested at Application. <span style="float: right;">02-26-02</span>				4/8/02	
4. Paragraph 4 correctly states <input checked="" type="checkbox"/> % of units restricted to LIHTC tenants <input checked="" type="checkbox"/> the income category to be served by the project <span style="float: right;">02-26-02</span>				4/8/02	
5. <input checked="" type="checkbox"/> Para. 5 correctly states tax credit amount at Carryover (or indicated in the Commitment or Determination Notice if Carryover did not occur) <span style="float: right;">2/26/02</span>				4/8/02	
6. <input checked="" type="checkbox"/> Paragraph 6 shows the election of additional rent restrictions box (if applicable). <span style="float: right;">2/26/02</span>				4/8/02	
7. <input checked="" type="checkbox"/> Section 3 correctly describes the ownership entity type and state of registry as indicated in the ownership documents at Application. <span style="float: right;">2/26/02</span>				4/8/02	
8. Section 4 correctly states: <input checked="" type="checkbox"/> the set-aside category elected at application <input checked="" type="checkbox"/> the total number of units in the development and the percentage of units to be set aside for low income occupancy <span style="float: right;">2/26/02</span>				4/8/02	
9. <input checked="" type="checkbox"/> Section 8 states correct Owner address. (No P.O. Boxes). <span style="float: right;">2/26/02</span>		2/26/02	4-4-02	4/8/02	
10. <input checked="" type="checkbox"/> Signature block is fully executed and notarized.				4/8/02	
11. <input checked="" type="checkbox"/> Consent and Subordination of Lienholder(s) is fully executed. <span style="float: right;">2/26/02</span>				4/8/02	
12. <input checked="" type="checkbox"/> Legal description matches Carryover (Application for bond allocations) <span style="float: right;">2/26/02</span>				4/8/02	
13. <input checked="" type="checkbox"/> Appendix A acknowledges all applicable representations for which points were awarded. Be sure the proper year selection is made. <input checked="" type="checkbox"/> = Applicable <input type="checkbox"/> = Non-Applicable	<u>In Application</u> <input checked="" type="checkbox"/> Additional Occupancy Restrictions <input checked="" type="checkbox"/> Longer Comp. & Extended Use Period <input checked="" type="checkbox"/> Material Part. by Qualified Nonprofit <input checked="" type="checkbox"/> HUB <input checked="" type="checkbox"/> Supportive Services <input checked="" type="checkbox"/> Transitional Housing for the Homeless <input checked="" type="checkbox"/> Public Housing Waiting Lists <input checked="" type="checkbox"/> Elderly Projects <input checked="" type="checkbox"/> Handicapped Accessibility <input checked="" type="checkbox"/> Right of First Refusal	<u>In LURA</u> <input checked="" type="checkbox"/> 2/26/02 <input checked="" type="checkbox"/> 2/26/02 <input checked="" type="checkbox"/> 2/26/02 <input checked="" type="checkbox"/> 2/26/02 <input checked="" type="checkbox"/> 2/26/02 <input checked="" type="checkbox"/> 2/26/02	4-4-02 4-4-02 4-4-02 4-4-02 4-4-02	4/9/02	
14. Minimum Applicable Fraction table shows: <input checked="" type="checkbox"/> BIN #s match BINs at Carryover or Determination <input checked="" type="checkbox"/> Buildings' Applicable fractions match Carryover Section 1.3 or coincide w. underwriting & Application. <span style="float: right;">2-26-02</span>				4/8/02	





**COSTA BRAVA HOUSING, LTD.**

12550 Biscayne Boulevard., Suite 215

North Miami, Florida 33181

Tel: (305) 891-3331 • Fax: (305) 891-3331

July 22, 1999

Mr. Tom Gouris  
Texas Department of Housing and Community Affairs  
507 Sabine Street  
Austin, Texas 78711-3941

Re: Costa Brava Housing, Ltd.  
San Antonio, Bexar County, Texas  
Villas at Costa Brava Apartments - 250 Units

*Condition  
(diii)*

Via Telefax  
(512) 475-3992

Dear Tom,

Pursuant to our conversation of this morning, we are amending the Villas at Costa Brava, San Antonio, site plan to increase one of the townhouse buildings by two (2) units. As such, one fourplex sized footprint will be eliminated and one of the six unit townhouse buildings will become longer. The unit mix remains the same. We will forward the new site plan to you upon completion.

If you should have any questions regarding this correspondence, do not hesitate to contact me at your convenience.

Very truly yours,

**COSTA BRAVA HOUSING, LTD.**

By: Costa Brava San Antonio, L.L.C., General Partner

By: Royal Costa Brava Corporation Member

  
Daniel B. Markson  
President

DBM:lma

rdocs\sites\texas\sanantonio\costa\072299.ltr

STATE OF TEXAS

COUNTY OF MONTGOMERY

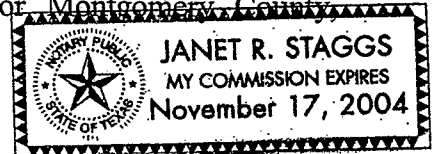
BEFORE ME, the undersigned authority, on this day personally appeared ~~Deborah Rush~~ <sup>Nannette Vallis</sup>, Managing Member, of COSTA BRAVA SAN ANTONIO, LLC, a Texas limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the COSTA BRAVA HOUSING, LTD., a Texas limited partnership, and that she executed the same as the Managing Member of such limited partnership, on behalf of DISTINGUISHED CARE SERVICES, LLC, a Texas limited liability company, for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 16<sup>th</sup> day of ~~October~~ <sup>December</sup>, 2002.

*Janet R. Staggs*

Notary Public in and for ~~Montgomery County~~

Texas



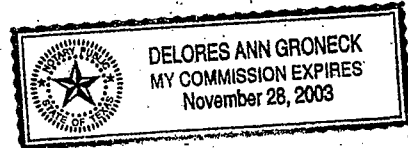
STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this 20<sup>th</sup> day of DECEMBER 2002, by Edwina P. Carrington, Executive Director of the Texas Department of Housing and Community Affairs, a public and official department of the State of Texas, on behalf of said department.

*Delores Ann Groneck*  
Notary Public, State of Texas

AFTER RECORDING, RETURN TO:  
Texas Department of Housing and Community Affairs  
Attn: LIHTC  
P.O. Box 13941  
Austin, Texas 78711-3941



**Certification of Tenant Notification**

Development Name: Villas at Costa Brava Property ID Number: 99060

Section 2306.6713, Texas Government Code, requires development owners to certify that tenants in the Development have been notified in writing of any proposed transfer of ownership. Tenants must be notified at least 30 days before the transfer request is submitted to the Department. A copy of the form letter used as the notification must be attached to this certification for review.

I, the undersigned, being duly sworn, hereby represent and certify under penalty of perjury that tenants in the Development were notified in writing of the proposed transfer on:

Date of Notification: July 6, 2016

The information contained in this statement, including any attachments hereto, is true, correct and complete to the best of my knowledge.

Costa Brava Housing, Ltd.  
Current or Proposed Development Owner Name

By: Jamice Pickard  
Signature of Authorized Representative  
Jamice Pickard  
Printed Name  
Controller  
Title  
July 6, 2016  
Date

Sworn to and subscribed before me on the 6<sup>th</sup> day of July, 2016  
by Diane Laframboise  
(Personalized Seal)



[Signature]  
Notary Public Signature  
Florida  
Notary Public, State of  
Miami-Dade  
County of  
12-06-2019  
My Commission Expires:  
July 6, 2016  
Date



**Villas at Costa Brava**  
**7333 Potranco Rd.**  
**San Antonio, Texas 78251**  
**210-647-1102**

Meeting Minutes; September 15, 2016 2:10 p.m.

Meeting called by: Bill Guessford	Tacuma Robinson
Managing Director	VP/Operations
Harmony House Advisors, Inc.	Greystone Acquisitions

Meeting Facilitator: Adriene Wade  
VP of Operations  
Singer Management, LLC

Purpose of meeting: To discuss with residents the removal of the HUB (Historically Under-utilized Business) as part of the LURA.

Minutes taken by: Rose Williams, Re-certification Specialist

**Minutes:**

\*Adriene Wade explained the removal of the HUB from the ownership entity and opened the meeting for questions.

\*Mrs. Jefferson, Apt# 19-101, stated that she was concerned about the change in staff because she is very comfortable with staff and maintenance. Mr. Guessford reassured her that all staff members who choose to remain may do so and gave them the history and outlook of the company.

\*Mrs. Lackey, Apt#14-202, expressed concerns about a few changes she would like to see on the exterior of the property. Mr. Guessford let her know that he would address her issues after the ownership change.

\*Mr. Guessford verified there were no more questions and the meeting was adjourned.



**COSTA BRAVA HOUSING LTD**  
11900 Biscayne Boulevard, Suite 262  
Miami, FL 33181

July 6, 2016

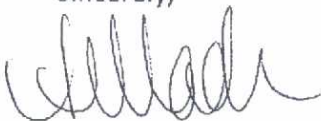
Dear Resident:

Please be advised that Costa Brava Housing, Ltd. is the owner of the Villas at Costa Brava. This letter is to notify you that Costa Brava Housing, Ltd. intends to sell the Villas at Costa Brava to On Track Ministries, Inc., or to its permitted assign, effective on or around September 7, 2016. In the event the sale is completed, you can expect to receive further communications from On Track Ministries, Inc.

This change of ownership would not affect your current lease agreement, rent payments, or security deposit. You would not be required to move out of your apartment, or to take any other action because of this change.

Thank you for being a valued resident, and for making the Villas at Costa Brava your home. Please feel free to contact the leasing office if you have any questions or concerns.

Sincerely,



Adriene Wade  
Senior Property Manager

**Costa Brava Housing, Ltd.**  
11900 Biscayne Blvd., Suite 262  
Miami, Florida 33181

August \_\_\_\_, 2016

Dear Resident:

Villas at Costa Brava (the "**Community**") is owned by Costa Brava Housing, Ltd. (the "**Owner**"). In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the "**Department**") (Phone: 512-475-3800; Website: [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)).

The Owner is currently structured to include Costa Brava San Antonio, LLC, a Florida limited liability corporation (the "**General Partner**"), Texas Corporate Tax Credit Fund, a Massachusetts limited partnership and BCCC, Inc., a Massachusetts corporation. The managing member of the General Partner is Distinguished Care Services, LLC. and is certified in the State of Texas as a Historically Underutilized Business (a "**HUB**"). A contractual restriction imposed by TDHCA mandated that a HUB participate in the ownership of the Community for a designated period of time. The Owner has decided to sell the Property prior to the expiration of this mandatory period. Therefore, Owner is requesting TDHCA approval to remove the ongoing requirement for HUB participation from its contract.

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

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

We appreciate that Villas at Costa Brava is your home and we invite you to attend and give your input on this proposal.

Thank you for choosing Villas at Costa Brava as your home.

Sincerely,

**COSTA BRAVA HOUSING, LTD.,**  
a Florida limited Partnership

By: Costa Brava San Antonio, LLC,  
a Florida limited liability company,  
its general partner

By: Royal Castle Development Corporation,  
a Florida corporation,  
its member

By: \_\_\_\_\_  
Elliot Stone, President

**Costa Brava Housing, Ltd.**  
11900 Biscayne Blvd., Suite 262  
Miami, Florida 33181

[Elected Official]

August \_\_, 2016

Dear [Addressee]:

Costa Brava Housing, Ltd. (the "**Owner**") is the owner of Villas at Costa Brava (the "**Community**") which is located at 7333 Potranco Road, San Antonio, Texas 78251. In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the "**Department**").

The Owner is currently structured to include Costa Brava San Antonio, LLC, a Florida limited liability corporation (the "**General Partner**") as the general partner and Distinguished Care Services, LLC is the managing member of the General Partner. Distinguished Care Services, LLC is certified by the State of Texas as a Historically Underutilized Business (a "**HUB**"). A contractual restriction imposed by TDHCA mandated that a HUB participate in the ownership of the Community for a designated period of time. The Owner has decided to sell the Property prior to the expiration of this mandatory period. Therefore, Owner is requesting TDHCA approval to remove the ongoing requirement for HUB participation from its contract.

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

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

Sincerely,

**COSTA BRAVA HOUSING, LTD.,**  
a Florida limited Partnership

By: Costa Brava San Antonio, LLC,  
a Florida limited liability company,  
its general partner

By: Royal Castle Development Corporation,  
a Florida corporation,  
its member

By: \_\_\_\_\_  
Elliot Stone, President

**Costa Brava Housing, Ltd.**  
11900 Biscayne Blvd., Suite 262  
Miami, Florida 33181

August \_\_, 2016

[Investor/Lender]

Dear [Addressee]:

Costa Brava Housing, Ltd. (the "**Owner**") is the owner of Villas at Costa Brava (the "**Community**") which is located at 7333 Potranco Road, San Antonio, Texas 78251. In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the "**Department**").

The Owner is currently structured to include Costa Brava San Antonio, LLC, a Florida limited liability corporation (the "**General Partner**") as the general partner and Distinguished Care Services, LLC is the managing member of the General Partner. Distinguished Care Services, LLC is certified by the State of Texas as a Historically Underutilized Business (a "**HUB**"). A contractual restriction imposed by TDHCA mandated that a HUB participate in the ownership of the Community for a designated period of time. The Owner has decided to sell the Property prior to the expiration of this mandatory period. Therefore, Owner is requesting TDHCA approval to remove the ongoing requirement for HUB participation from its contract.

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

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

Sincerely,

**COSTA BRAVA HOUSING, LTD.,**  
a Florida limited Partnership

By: Costa Brava San Antonio, LLC,  
a Florida limited liability company,  
its general partner

By: Royal Castle Development Corporation,  
a Florida corporation,  
its member

By: \_\_\_\_\_  
Elliot Stone, President



## **Exhibit A**

**Distinguished Care Services, LLC  
10520 Skyridge Drive  
Conroe, Texas 77385**

July 22, 2016

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

RE: Villas at Costa Brava (the "**Property**")  
TDHCA No. 99060

Dear Ms. Patience:

The undersigned, Distinguished Care Services, LLC ("**Distinguished Care Services**") is the HUB and managing member of the Costa Brava San Antonio, LLC (the "**General Partner**"), the General Partner of Costa Brava Housing, Ltd., a Florida limited partnership (the "**Owner**"). The Owner is the current owner of Villas at Costa Brava.

Texas Corporate Tax Credit Fund, a Massachusetts limited partnership (the "**Investment Partner**") is the Investment Partner and the Special Limited Partner is BCCC, Inc., (the "**Special Limited Partner**", and collectively with Investment Partner, the "**Limited Partners**"). In concert with the Owner and the Limited Partners, Distinguished Care Services has determined that it is in its best economic interest to sell the Property. The Owner has entered into a purchase contract (the "**Contract**") with On Track Ministries, Inc., a Texas non-profit corporation ("**OTM**"). OTM will then assign the Contract to Costa Brava OTM Harmony LP, a Texas limited partnership. Distinguished Care Services' decision to exit the ownership is an action of its own volition and its participation in the development and operation of the Property has been and will continue to be substantive and meaningful until the sale of the Property.

Distinguished Care Services is respectfully requesting TDHCA's approval to remove the ongoing HUB requirement from its contract to facilitate the sale of the Property.

[Remainder of page intentionally left blank]

Distinguished Care Services, LLC,  
a Texas Limited Liability Company

By:   
Name: Nanette Vallis  
Title: President

## RESIDENT SERVICES AGREEMENT

This Resident Services Agreement ("Agreement") entered into this 1st day of September, 2016 (the "Agreement Date") by and between Costa Brava OTM Harmony LP ("Owner") and On Track Ministries, Inc. ("Provider") a Texas non-profit corporation.

WHEREAS, the Owner seeks to provide resident supportive services at a 250 (unit) Multi-Family (type) property known as: Villas of Costa Brava ("Apartments") located, 7333 Potranco RD (address), San Antonio (city) Bexar (county), Texas (state) and 78251 (zip code); , and,

WHEREAS, the Owner wishes to engage the services of Provider in order to provide a resident supportive services program ("Program"), **NOW, THEREFORE**, the parties hereby agree to the following:

### 1. Independent Contractor.

The parties agree that Provider's relationship to the Owner created by this Agreement is that of an independent contractor, and nothing contained in this Agreement shall be construed as establishing a joint venture, partnership or an employer-employee relationship. Owner shall not exercise any control or direction over the methods by which Provider shall perform its services. This Agreement does not authorize Provider to act for the Owner as its agent or make commitments for the Owner. Provider understands and agrees that: (i) Provider shall not participate in any employee fringe benefit or retirement plan provided to Owner's employees; (ii) Owner will not withhold, on behalf of Provider, any sums for income taxes, unemployment insurance, social security, or any other withholding applicable to employees of the Owner; (iii) all local, state, and federal taxes, self-employment income and employment taxes shall be Provider's sole responsibility; and (iv) Owner shall not treat Provider as an employee for purposes of workers' compensation benefits.

### 2. Term.

(a) Services shall commence within thirty (30) calendar days of the latter of the Agreement Date or the date the Apartments first accept an occupant ("Start Date") and shall continue thereafter for one (1) year ("Initial Term"). This Agreement shall continue thereafter on a month-to-month basis ("Renewal Periods"). Owner or Provider may terminate this agreement at any time without cause or penalty by a thirty-day written notice (Termination Notice).

(b) In the event a party provides a Termination Notice, each party shall continue to comply with the terms of this Agreement through the termination date identified in the Termination Notice.

### 3. Services.

The Provider agrees to make available on-site educational and supportive programs for the residents of the Apartments which shall include, at a minimum, the services outlined in any Land Use Restriction. Provider further agrees to assist the owner in the correction, if any, of any compliance or delivery deficiencies reported to Provider. Owner understands and recognizes that the Provider does not function as a daycare facility and all are restricted from promoting the Program as a daycare program.



The Provider shall provide the appropriate Services that will satisfy the LURA requirements of providing services that will consist of; Personal Growth Opportunities, Family Skills Development, Education Services, Fun and Freedom activities, and Neighborhood advancement Programs.

Hiring, staffing and training shall be solely at the discretion of Provider. Owner and its agents at the Apartments agree to coordinate with Provider to inform residents about the Program and specific dates and times of specific services and maintain a professional and civil work environment. To ensure the most efficient and cost effective environment Owner and its agents shall strive to communicate timely and respectfully with Provider's staff. Owner and its agents shall provide the Apartments' occupancy information to Provider so that Provider can show ~~the~~ increase in occupancy and increase in stability as a result of Providers' Program.

4. Compensation.

Owner shall pay the Provider a Monthly Fee of \$1000.00 in advance of service.

Note: previous owner paid its provider \$300/month twice annually

5. Community Room.

(the "Community Center")

- (a) Owner agrees to make available adequate space to provide services on the premises of the Apartments. The space must be a permanent, indoor, air-conditioned space with access to all utilities and restrooms.
- (b) Provider shall take all necessary action to clean the facility after use.
- (c) Owner shall make the Community Center available to Provider, subcontractors or volunteers, for the purpose of performing the services provided under this Agreement;
- (d) Owner shall be responsible for all building and capacity code compliance, maintenance, utility expenses, and providing access and use of fax and copy machines, computers, telephone lines and internet access at no cost to the Provider;
- (e) Once the conditions above have been met by the Owner, the space shall be maintained in a presentable condition by the Provider by means of organizing program supplies and restoring the facility after activities to the orderly condition; and
- (f) Provider agrees not to use the Community Center for any illegal purposes. Use of the facility shall be in compliance with any rules and regulations of Owner for the Apartments or facility, which may be established or revised from time to time.

6. Furnishings.

clean and

- (a) Owner shall provide all necessary furnishings to be used by the Provider in the Community Center including, but not limited to, suitable tables and chairs; one (1) computer and peripheral equipment (monitor, keyboard, mouse and speakers with current Windows Office, current Browser and current operating system); one (1) laser or ink-jet printer; high-speed internet connection via DSL, ISDN or cable; AND access to copy machine, fax, telephone, and secured storage space. Owner agrees to keep all equipment in good working order and provide suitable replacement within seven (7) days, if equipment does not operate, is damaged, lost, or stolen. Provider will adhere to Owner's Computer Policies. Provider shall use reasonable efforts to protect Owner's property when using same. Provider shall cooperate with owner to obtain additional equipment. Owner agrees to keep high-speed internet in good working order and provide suitable replacement within three (3) days, if internet is disrupted.
- (b) Provider shall provide all consumable supplies for use in the Community Center and office at no

of notice from Provider



additional cost to Owner.

- (c) All furnishings and computer equipment provided by Owner shall remain the property of the Owner. All furnishings, copies of records, Provider's proprietary information, and computer equipment provided by Provider shall remain the property of the Provider.

7. Default.

- (a) Owner shall be in default of this Agreement if: (i) Owner defaults in payments of the fees described herein; (ii) fails to provide the space or necessary furnishings and equipment described herein; or (iii) if the Provider, in its sole discretion, determines that the Owner's Managing Agent hinders the reasonable operations of the Provider, resulting in Provider encountering unusual conditions (i.e. excessive Provider's staff turnover as a result of on-site conflict between management and Provider). Cure may occur within fifteen (15) days via a separate agreement between the parties hereto.
- (b) Provider shall be in default of this Agreement if Provider: (i) violates any of the terms, covenants or conditions of this Agreement which is not cured by Provider within thirty (30) days after written notice of such violation from Owner to Provider; (ii) uses the office or community center, as the case may be, in an unlawful manner or in a manner which is a violation of the rules and regulations of the Apartments or which, in any other way is inconsistent with the terms of this Agreement which is not cured by Provider within thirty (30) days after written notice of such violation from Owner to Provider, provided, however, Provider shall not be responsible for the conduct (including criminal acts) of residents, guests, invitees, contractors, subcontractors or other third parties at the Apartments.
- (c) Upon any event of default, either party shall have the right to immediately terminate this Agreement. In the event of such termination by Owner, Provider's right to occupy the office or use the space provided for services shall immediately cease and Provider shall promptly vacate the office.

8. Fair Housing.

Owner and the Provider hereby represent that they will comply with all applicable discrimination laws including those that prohibit discrimination based upon race, color, religion, national origin, sex, disability or familial status.

9. Indemnification.

- (a) Provider hereby indemnifies and holds harmless the Owner, as well as its directors, officers, partners, employees, agents, successors and assigns from and against all suits, fines, penalties, actions or claims of any character, type or description, brought or made on account of any injuries or damages received or sustained by any person(s) or property arising directly out of or occasioned by the negligent acts of Provider at the Apartments under this Agreement.
- (b) Owner hereby indemnifies and saves harmless the Provider, as well as their respective directors, officers, partners, employees, agents, successors and assigns from and against all suits, fines, penalties, actions or claims of any character, type or description, brought or made on account of any injuries or damages received or sustained by any person(s) or property arising directly out of or occasioned by the negligent acts of the Owner, its employees or its agents with regards to the Apartments.

10. Insurance.

- (a) Provider carries a one million dollar (\$1,000,000.00) General Liability Policy that covers

? sentence not finished

- (b) <sup>l</sup> Managers, <sup>m</sup> Landlords, or <sup>l</sup> Lessors of <sup>l</sup> Premises. Also covered is any "person or organization" with respect to their liability arising out of the ownership, maintenance or use of that part of the premises leased, rented, or provided to Provider subject to the following exclusions:
- (c) This coverage does not apply to (i) Any "occurrence" which takes place after Provider ceases to be a tenant in that premises; or (ii) Structural alterations, new construction or demolition operations performed by or on behalf of that "person or organization".
- (d) A copy of the Certificate of Insurance for verification of coverage purposes is attached. Provider does not have a practice of adding named or additional insured, as Provider understands that such additions are not needed. If, however, Owner desires Provider do so, Provider shall require a one hundred dollar (\$100.00) annual fee for this administration.

11. Indemnification / Miscellaneous.

- (a) This Agreement may not be amended, except in writing, signed by the parties hereto. Neither party may assign its rights or obligations hereunder without the written consent of the other.
- (b) All notices required to be given under this Agreement shall be deemed sufficient if given in writing and sent via hand delivery, or certified mail, to the respective address set forth below.
- (c) This Agreement represents the entire Agreements of the parties. This Agreement merges and supersedes all prior and contemporaneous agreements, undertakings, covenants, or conditions, whether written or oral, expressed or implied, between the Owner and Provider.
- (d) This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any action under this Agreement shall be in Harris County, Texas.

**Costa Brava OTM Harmony LP**

Print Name: \_\_\_\_\_  
 Signature: \_\_\_\_\_  
 Date: \_\_\_\_\_

← Address: 152 W 57<sup>th</sup> Street, 60<sup>th</sup> Floor  
 NY, NY 10019

**On Track Ministries, Inc.**

Print Name: Cliff McDaniel  
 Signature: *Cliff McDaniel*  
 Date: 8/15/2016

← Address:

1h

BOARD ACTION REQUEST  
COMMUNITY AFFAIRS DIVISION  
OCTOBER 13, 2016

Presentation, Discussion, and Possible Action on the Use of Program Year 2017 Community Services Block Grant ("CSBG") Discretionary Funds

RECOMMENDED ACTION

WHEREAS, CSBG funds are awarded annually to the State of Texas by the U.S. Department of Health and Human Services ("HHS");

WHEREAS, upon the Department's receipt of the State's annual award of CSBG funds, it reserves 90% of the allotment for CSBG eligible entities to provide services/assistance to the low-income population in all 254 counties; 5% for state administration expenses; and the remaining 5% for state discretionary use;

WHEREAS, the amount of CSBG Discretionary ("CSBG-D") funds for 2017 will be approximately \$1.6 million (however, Congress has not yet appropriated 2017 CSBG funding), and is proposed to be programmed as reflected herein; and

WHEREAS, to make these 2017 CSBG-D funds available for the network and for the ongoing support of historically supported uses, it may be necessary for staff to utilize one or more Notices of Funding Availability ("NOFAs"), Requests for Proposals, or Requests for Applications and any such NOFAs will be separately presented to the Board for approval;

NOW, therefore, it is hereby

RESOLVED, that the 2017 CSBG-D funds be allocated for the historically based uses and the focus areas identified in this resolution as reflected in Table 1, and that the Executive Director and his designees each of them be and they hereby are, authorized, empowered, and directed, for and on behalf of the Department, to cause one or more Requests for Proposal or Requests for Application ("RFP/A") to be issued for some or all of the 5% state discretionary funds, consistent with the policy noted herein;

RESOLVED, that the 2017 CSBG-D funds will be proportionally increased or decreased based on the actual allocation of 2017 CSBG funds; and

FURTHER RESOLVED, that should any funds designated for particular activities remain unused after a reasonable period, those funds, along with any additional unused CSBG-D or CSBG Administrative funds from 2017 or prior years, may be distributed to the same network of agencies.

## BACKGROUND

Each year the Department sets aside 5% (approximately \$1,600,000) of its annual CSBG allocation for state discretionary use. Funds from CSBG-D are used each year for specific identified efforts that the Department supports, and other ongoing initiatives it continues such as employment and education programs for migrant and seasonal farm workers and Native Americans, some staff costs for administration of the Section 8 Housing Choice Voucher Program, Disaster Relief, and Network Transition funds. This year, staff sought out feedback from the network of CSBG providers through a survey on the possible uses of CSBG-D. That feedback supported the use of funds for direct services – with flexibility on the types of populations to receive that direct assistance and respondents indicating a preference that funds not be limited to only assisting households transitioning out of poverty. Feedback also supported an interest in projects that have a long-term impact and result in outcomes relating to education, employment, and transportation. Therefore, funds will be set aside, as indicated in Table 1, for direct client assistance, not including case management salaries. The network may utilize the funds for any type of direct client services; examples in the areas of interest from the survey results would include such things as employment projects (e.g. tuition for clients to attend job skills training or workshops, stipends, uniforms), education projects (e.g., tuition for degrees or certifications, textbooks, etc.), transportation (e.g., bus passes, assistance with minor repairs or tires), and health care (e.g., prescription assistance, eye glasses, dental). These efforts will result in actual dollars being invested in low-income individuals and families.

With the 2017 CSBG-D funds staff recommends programming funds as described below and as further depicted in Table 1. Activities will include \$300,000 targeted for Migrant and Seasonal Farm Worker populations and Native American populations for employment and education programs for which the Department will issue a NOFA. Also, consistent with funding last year \$150,000 will be held to support disaster recovery, and \$150,000 will be held to support issuance of Department-administered housing vouchers for persons with disabilities, including the possible non-competitive contracting of minimal CSBG-D funds with eligible entities or other community affairs network providers to assist in the waiting list process including availability, intake and processing, in those counties within TDHCA's PHA jurisdiction.. In most cases these amounts are substantively unchanged from the amounts programmed for these activities last year.

To support the focus of the funds into network investment, four different types of activities are identified that will focus on different aspects of the assistance an Eligible Entity may need.

- \$650,000 will be targeted to Direct Client Assistance. Each CSBG eligible entity will be given the opportunity to accept a share of these funds for direct assistance. The \$650,000 will then be divided equally among all of those entities who have indicated their interest in accepting these funds for this purpose. The entity will then have access to those funds upon execution of a contract, limited only to direct client assistance, excluding case management salaries. Examples of how funds may be used might include assisting eligible clients with obtaining job associated uniforms and training; assisting eligible clients with direct educational expenses (e.g., tuition, textbooks, etc.); assisting clients with the cost of transportation to and from work and other necessary functions; and assisting eligible clients in the cost of certain health care needs. The Department will require a budget and performance statement from each eligible entity prior to execution of contracts for these funds.



- \$100,000 will support an intensive assessment of three to four network agencies' operations and procedures through the use of a previously procured assessment and training entity for organizations that may be identified by the Department, and/or the assessment may be requested by an agency. It is anticipated that the opportunity to request such an assessment will be provided to all eligible entities but may also include identification of an agency by the Department.
- \$150,000 will be held to provide support for transitional costs agencies may incur if they choose to merge and absorb programs from other agencies.
- \$100,000 will be held to support comprehensive regional training and technical assistance activities provided by the Department or by entities that may be procured for this purpose. This may include funds being used to support training data analysis to improve performance and efficiencies among other things – a subject on which technical assistance in the survey was frequently requested.

With the exception of the Migrant and Seasonal Farm Worker populations and Native American populations, the Department does not intend to release funds competitively, but this approval authorizes the release of a NOFA and/or RFP/A if needed.

TABLE 1: Estimated Uses of 2017 CSBG-D Funds	
Direct Client Assistance	\$650,000
Intensive Community Action Agency Support Assessments	\$100,000
Network Transitions Fund	\$150,000
Network Training and Technical Assistance Fund	\$100,000
Migrant Seasonal Farm Worker and Native American Populations Education and Employment Initiative	\$300,000
Housing Voucher Program Support Fund	\$150,000
Disaster Recovery Fund	\$150,000
<b>Total CSBG Discretionary Estimate</b>	<b>\$1,600,000</b>

As the Department has not yet received its 2017 CSBG award, amounts on Table 1 are estimated dollars. The Department will proportionally increase or decrease these amounts based on the final 2017 CSBG allocation.

In the event that the Department does not have sufficient eligible applications to fund in one or more categories, or should other uncommitted CSBG-D funds remain, the Department may, at the discretion of the Executive Director, reprogram the funds from one of the eligible categories into another category approved with this action to award additional funds, with subsequent ratification by the Board.

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BOARD ACTION REQUEST  
COMMUNITY AFFAIRS DIVISION  
OCTOBER 13, 2016

Presentation, Discussion, and Possible Action on the Release of a Request for Applications for Continuum of Care Lead Agencies to Locally Manage the 2017/2018 Emergency Solutions Grants ("ESG") Program Award Process

RECOMMENDED ACTION

WHEREAS, ESG funds are annually awarded to the State of Texas by the U.S. Department of Housing and Urban Development ("HUD");

WHEREAS, the Texas Legislature designated the Texas Department of Housing and Community Affairs (the "Department") to administer the ESG pursuant to Tex. Gov't Code §2306.094;

WHEREAS, eligible activities under the 2017 ESG grant will be approved by the Board as part of the 2017 One Year Action Plan ("OYAP") and contemplation of a two year funding cycle will be provided in that OYAP, but the 2017 plan has not yet gone through the citizen participation process;

WHEREAS, ESG funds will be made available to eligible applicants to carry out the purpose of the ESG based on a competitive process; and

WHEREAS, consistent with the use of the Continuum of Care ("CoC") regions as the geographic approach to disseminating funds statewide, the Department is providing an opportunity for CoC lead agencies to perform the local competition and award processes so that homelessness fund decision making can stay focused at the local level;

NOW, therefore, it is hereby

RESOLVED, that the Executive Director be granted the authority to release a Request for Applications ("RFA") for CoC lead agencies to locally manage the 2017/2018 Emergency Solutions Grants ("ESG") Program Award Process on behalf of the Department; and

FURTHER RESOLVED, that staff is authorized, empowered, and directed, for and on behalf of the Department to execute such documents, instruments, writings and perform such other acts as may be necessary to effectuate the foregoing.

## BACKGROUND

The ESG Program focuses on assisting people to regain stability quickly in permanent housing after experiencing a housing crisis and/or homelessness and also assists persons who are at-risk of homelessness. ESG funds can be used for the rehabilitation or conversion of buildings for use as emergency shelter for persons experiencing homelessness; the payment of certain expenses related to operating emergency shelters; essential services related to emergency shelters and street outreach for persons experiencing homelessness; and homelessness prevention and rapid re-housing assistance.

In order to support local decision making in 2016, the Department contracted with five of the eleven CoC lead agencies to administer a local competition of ESG funds on behalf of the Department. The CoC lead agencies released applications, some of which were adjusted by the CoC lead agency based on local priorities, ranked the applications, and recommended awards to the Department. Due to the success of the process in 2016, and the wide support for this approach from HUD and the CoCs, the Department will again pursue this approach. To do so, it will release an RFA for CoC lead agencies (or their designees) to locally manage the 2017/2018 ESG Program Award Process. Organizations administering a local competition will be called ESG Coordinators.

The RFA for ESG Coordinators will be available from approximately October 14 to November 14, 2016. No more than one ESG Coordinator will be awarded per CoC region. The ESG Coordinators must meet the criteria in the RFA, which establishes eligibility of the ESG Coordinator to administer a local competition, and guidelines for the local competition. ESG Coordinators are expected to be presented for Board approval at the Board meeting of December 15, 2016.

ESG is funded by HUD, and for Program Year ("PY") 2017 and 2018 the Department expects to allocate level funding of approximately \$8,454,517. Federal program rules require the Department to commit annual funds within 60 days of receipt of an award letter from HUD; the Department anticipates receipt of PY 2017 letter by summer 2017.

The Department is proposing to release one NOFA for 2017 and 2018 providing for two-year awards of funds. Additionally, several other changes are being made to the 2017 and 2018 ESG NOFA. Public input may be provided on the proposed changes via an online forum at <https://tdhca.websitetoolbox.com> for approximately two weeks that are anticipated to start in late October. That NOFA will be provided to the Board for approval in the future. If, as a result of public input, the Board determines it does not want to move forward with a two year award competition the ESG Coordinators will run local competitions for one-year awards. Additionally, if Congress does not authorize 2017 ESG funding, no contracts will be executed as a result of the RFA for ESG Coordinators.



Request for Applications for  
Continuum of Care Lead Agencies to Locally Manage the  
2017/2018 Emergency Solutions Grants Program  
Award Process

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
Street Address: 221 East 11th Street, Austin, TX 78701  
Mailing Address: PO Box 13941, Austin, TX 78711  
Main Number: 512-475-3800 Toll Free: 1-800-525-0657  
Email: [info@tdhca.state.tx.us](mailto:info@tdhca.state.tx.us) Web: [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)



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## A. OVERVIEW

The Texas Department of Housing and Community Affairs (the "Department") anticipates receiving Emergency Solutions Grant ("ESG") funds from the U.S. Department of Housing and Urban Development ("HUD") for the Program Years ("PY") 2017 and 2018. The purpose of the ESG Program is to provide funding to local organizations to assist individuals experiencing homelessness or persons at risk of homelessness to quickly regain stability in permanent housing after experiencing a housing crisis and/or homelessness.

Historically, the Department has released a Notice of Funding Availability ("NOFA") annually and made awards through a statewide competition. However, the Department strongly encourages local decision-making and supports the importance of Continuum of Care ("CoC") members being the primary stakeholders in making key funding priorities within their CoC; therefore, the Department is encouraging CoC lead agencies to locally administer the Department's ESG fund competition and distribution when possible.

In order to localize the distribution of ESG funds, the Department is accepting Applications from CoC lead agencies willing and able to manage the competition of funds in the CoC region. This Application is for CoC lead agencies, or an organization designated by the lead agency, to apply for and be authorized to manage the CoC's local competition for the Department's 2017 and 2018 ESG funds to be released in winter of 2017. The entities approved will be called ESG Coordinators.

For areas of the state in which the CoC lead agency chooses not to apply to be an ESG Coordinator, the local agencies in that CoC region – and the CoC lead agency - will have the opportunity to apply directly to the Department for ESG funding during the ESG NOFA released in winter of 2017.

This Request For Applications ("RFA") is based on the Department receiving 2017 and/or 2018 funds ESG funds from HUD. If the Department does not receive such funding, or receives such funding with conditions that do not allow distribution of funds statewide, it reserves the right in its sole determination to cancel this RFA or the work to be performed under this RFA.

Questions pertaining to the content of this Application may be directed to Naomi Trejo, Coordinator for Homelessness Programs and Policy, by email at [naomi.trejo@tdhca.state.tx.us](mailto:naomi.trejo@tdhca.state.tx.us) or by phone at 512-475-3975.

2017/2018 ESG COORDINATOR TIMETABLE

Date(s)*	Activity
October 14, 2016	Application Materials Released at: <a href="http://www.tdhca.state.tx.us/community-affairs/esgp/index.htm">http://www.tdhca.state.tx.us/community-affairs/esgp/index.htm</a>
October 18, 2016	Application webinar starting at 10:00 a.m. Austin Local Time
November 8, 2016	Deadline to submit Application questions
November 8, 2016	Deadline to request a password and username for electronic submission of Application at 5:00 p.m. Austin Local Time
November 9, 2016	Deadline to submit 2017/2018 CoC Applications at 5:00 p.m. Austin Local Time
January, 2017 – March, 2017 (tentative)	The Department Releases the ESG NOFA. Applications are due to the Department by early March, 2017.
January, 2017 – March, 2017 (tentative)	ESG Coordinators will open their local competitions by releasing NOFAs jointly for 2017 and 2018 that designate their priorities, while still using several key TDHCA forms.
March 20, 2017 (tentative)	ESG Coordinators submit Previous Participation Review (“PPR”) documentation to the Department for each ESG applicant.
May 17, 2017 (tentative)	The ESG Coordinators complete their ESG application reviews, can notify local applicants that they are being recommended to the Department if PPR has been cleared, and submit budgets and targets to the Department.
July 27, 2017 (tentative)	Department’s Board approval of the ESG awards.
September 1, 2017	PY2017 ESG contract start date **
August 31, 2018	PY2017 ESG contract end date, and PY2018 ESG contract start date

\*Dates may change depending on TDHCA’s receipt of HUD Grant Award Notification. TDHCA must obligate funds within 60 days of execution of grant agreement by HUD.

\*\*Dates may change depending on TDHCA’s receipt of HUD Grant Award Notification, the extent of changes in the final ESG regulations, and whether such changes are applicable to 2017 ESG awards.

## B. BACKGROUND

The Department is designated by the Texas Legislature to administer the ESG Program. For Program Year ("PY") 2016, the Department awarded \$8,454,517. For PY2017 and PY2018, the Department expects to award either a similar level of funding or less. Using an allocation formula, the Department is making available a certain percentage of the State's ESG allocation to each CoC region to be awarded on a competitive basis within that region. The ESG funds can be used for the following purposes:

- The rehabilitation or conversion of buildings for use as emergency shelter for the homeless;
- The payment of certain expenses related to operating emergency shelters;
- Essential services related to emergency shelters and street outreach for the homeless; and,
- Homelessness prevention and rapid re-housing assistance.

A CoC lead agency responding to this Application will, if approved, be designated as an ESG Coordinator to manage a local competition of State ESG funds for its CoC region, which includes:

- setting priority populations to be served;
- designing the local ESG Notice of Funding Availability ("NOFA") and application, while also using TDHCA key forms as required;
- receiving and reviewing local ESG applications;
- coordinating budgets for all ESG applicants;
- making documented and objective recommendations during the award process of ESG funds;
- maintaining a list of unsuccessful applicants ranked by priority; and
- responding to appeals for applicants that did not receive recommendations for ESG funding.

The Department is considering releasing an ESG NOFA in winter of 2017 for a two year funding cycle for both PY2017 funds and PY2018 funds. If TDHCA releases a PY2017/2018 NOFA, the ESG Coordinators running a local competition will likewise release their regional ESG funds for the two year cycle. If TDHCA releases a one-year NOFA for PY2017, the ESG Coordinators will release their regional funds for one year.

Prior to submitting an Application, CoC lead agencies should carefully analyze all ESG Program requirements and be in compliance with the CoC Regulations. The Department expects the CoC lead agencies to understand all ESG regulations. Capitalized terms in this RFA are defined in the applicable federal or state regulations or rules. A list of regulations includes, but is not limited to, the below:

- [Interim CoC Regulations: 24 Code of Federal Regulations \("C.F.R."\) Part 578](#) – The CoC interim rule, published in the Federal Register on July 31, 2012, establishes the regulations for the CoC Program.
- [Interim ESG Regulations: 24 C.F.R. Part 576](#) – The ESG interim rule, published in the Federal Register on December 5, 2011, establishes the regulations for the ESG Program.
- [HEARTH Homeless Definition Final Rule: 24 C.F.R. Parts 91, 582 and 583](#) – The final rule, published in the Federal Register on December 5, 2011, provides the homeless definition which applies to the ESG Program.

- [Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Final Rule: 2 C.F.R. Part 200](#) – sets standard requirements for federal awards and supersedes OMB Circulars A-21, A-87, A-89, A-110, A-102, A-122, A-133.
- Uniform Grant Management Standards – (unit of government only)  
[https://www.comptroller.texas.gov/purchasing/docs/ugms.pdf?\\_ga=1.75045013.645075894.1422985640](https://www.comptroller.texas.gov/purchasing/docs/ugms.pdf?_ga=1.75045013.645075894.1422985640)
- [Texas Administrative Code: Administration and Enforcement](#) – The provisions in Title 10, Part 1, Chapters 1 and 2 apply to administrators of TDHCA programs.
- [Texas Administrative Code: ESG Rules](#) - The provisions in Title 10, Part 1, Chapter 7, currently out for comment, are anticipated to be the rules that govern the administration of the Department’s 2017 ESG funds.
- Program Requirements – There are numerous grant requirements that will apply to 2017 and 2018 ESG funds. CoC lead agencies should review and understand the implications of complying with all grant requirements listed in this Application and the 2017/2018 ESG NOFA when released.<sup>1</sup>

Elements of the ESG Program are subject to change once final or further interim regulations for 24 C.F.R. Parts 578? and 576 are released by HUD. The most current guidance and rules and regulations issued by HUD for the ESG Program will supersede what is in this Application. Program requirements may also be subject to change consistent with any changes to the rules for ESG in the [Texas Administrative Code](#). The Department reserves the right, at its sole discretion, to suspend or amend the provisions of this Application during the Application period. If such an action occurs, the Department will post revisions to the Application on its website (<http://www.tdhca.state.tx.us/nofa.htm>).

#### C. ELIGIBLE APPLICANTS FOR MANAGING THE LOCAL COMPETITION

Eligible applicants are CoC lead agencies, or another organization designated by the CoC lead agencies that meets the general eligibility requirements detailed below. Applications that do not substantially complete any of the required submissions will not be awarded. Only one ESG Coordinator will be awarded per CoC Region.

During the ESG NOFA process released in winter of 2017, an ESG Coordinator will not be eligible to also apply for ESG funds except for Homelessness Management Information System (“HMIS”) Funds, since the HMIS Lead and CoC lead agency can be the same entity.

In order to administer a local competition, ESG Coordinators must meet the requirements below, many of which are required in the CoC Application Process to HUD. The Application Forms include space for CoC lead agencies to detail the applicable policies, procedures and strategies for meeting these requirements.

#### 1. CoC Operation

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<sup>1</sup> The Applicant will be required to comply with program requirements as they exist at the start of the Contract Term.



- a) CoC Structure. The CoC has a collaborative applicant, also called a lead agency, which is the eligible applicant designated by the CoC to apply for a grant for CoC planning funds on behalf of the continuum, per 24 C.F.R. §578.3. The lead agency should be designated by the CoC Board.
- b) Performance Targets. The ESG Coordinator must consult with CoC member agencies to establish ESG performance targets appropriate for each population and ESG Program activity.

## 2. ESG Awardee Selection Process

- a) The lead agency must provide evidence of an application process that, at minimum:
  - I. Describes the ESG Coordinator's process for setting local goals and creating the Local Competition ESG NOFA;
  - II. Will be developed in consultation with CoC member organizations;
  - III. Describes the ESG Coordinator's process for evaluating applications and making ESG awardee recommendations, including scoring customization;
  - IV. Will be widely advertised to potential applicants;
  - V. Ensures that the selected organizations have the capacity to report performance measures and outcomes to the Department; and
  - VI. Will be adopted by the ESG Coordinator's Board of Directors.
- b) Award minimums and contract maximums.  
ESG Coordinators must use in their local announcement of funds the award and contract minimums and maximums required in the Department's NOFA.
- c) Appeals Process. The ESG Coordinators must establish standards to evaluate appeals from ESG applicant organizations that submitted an ESG application to the ESG Coordinators in response to the applicant's proposal submission requirements by the established deadline that were not awarded funds.

## 3. Written Standards

- a) In consultation with local stakeholders, the CoC lead agency must establish and consistently follow written standards for organizations providing assistance within the CoC and that will be applicable to those organizations that may be awarded ESG funds. At a minimum, these written standards must include:
  - I. Policies and procedures for evaluating individuals' and families' eligibility for assistance with ESG funds;
  - II. Policies and procedures for determining and prioritizing which eligible individuals and families will receive transitional housing assistance;
  - III. Policies and procedures for determining and prioritizing which eligible individuals

and families will receive rapid re-housing assistance;

- IV. Policies and procedures for determining and prioritizing which eligible individuals and families will receive homelessness prevention;
- V. Standards for determining what percentage or amount of rent, if any, each program participant must pay while receiving rapid re-housing assistance or homelessness prevention; and
- VI. Policies and Procedures regarding how a program participant would request a reasonable accommodation.

- b) Note that organizations which are awarded funds will be required to establish their own written standards or certify that they will adhere to the CoC's written standards.

#### 4. Centralized or Coordinated Assessment System

- a) In consultation with organizations that provide services typical of potential recipients of ESG Program funds within the geographic area, the CoC must ensure that potential ESG recipients use a centralized or coordinated assessment system established and operated by the CoC that provides an initial, comprehensive assessment of the needs of individuals and families for housing and services. The CoC must develop a specific policy to guide the operation of the centralized or coordinated assessment system on how its system will address the needs of individuals and families who are fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, or stalking, but who are seeking shelter or services from non-victim service providers. The centralized or coordinated assessment system should take into account HUD's February 2015 Policy Brief and the requirements of 24 C.F.R. §578.3 and §578.7.

#### 5. Other Departmental Requirements

- a) The lead agency and its Board must pass a Previous Participation Review, as determined by the Department.
- b) The lead agency must show evidence of sound fiscal management, as evidenced by the latest audit or third-party Certified Public Accountant financials.

#### D. GRANT PERIOD

The contract period for ESG Coordinator will be for approximately eight months to coincide with the ESG award process and contract execution, anticipated to be from January 1, 2017 to September 30, 2017.

#### E. ADMINISTRATIVE AWARD AMOUNTS

As compensation for administering a local competition, ESG Coordinators will receive a percentage of the administrative funds set aside for the CoCs according to the funding formula. Approximately .25% of 2017 ESG administrative funds are anticipated to be used for the purpose of funding the

administration of the local competitions. The ESG Coordinators will receive an amount based on the formula distribution to each CoC region based on the 2017 allocation formula to be applied to an estimated \$8,454,517 of the allocated ESG funding.

Fund Distribution for ESG Coordinators by CoC Region

CoC Number	CoC Name	Approximate Admin Funds for 2017/2018 ESG Coordinator
TX-500	San Antonio/ Bexar County	\$ 2,302
TX-503	Austin/Travis County	\$ 1,456
TX-600	Dallas City & County/ Irving	\$ 2,723
TX-601	Fort Worth/Arlington/ Tarrant County	\$ 1,638
TX-603	El Paso City & County	\$ 979
TX-604	Waco/McLennan County	\$ 500
TX-607	Texas Balance of State	\$ 6,901
TX-611	Amarillo	\$ 500
TX-624	Wichita Falls/Wise, Palo Pinto, Wichita, Archer Counties	\$ 500
TX-700	City of Houston/Harris County	\$ 4,044
TX-701	Bryan/College Station/Brazos Valley	\$ 500
	Total	\$ 22,043

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**BOARD ACTION REQUEST**  
**COMPLIANCE DIVISION**  
**OCTOBER 13, 2016**

Presentation, Discussion, and Possible Actions on: first, amendments to 10 TAC Chapter 1 Administration, Subchapter B, §1.201 (concerning Purpose), §1.202 (concerning Definitions), §1.203 (concerning General Certifications and Effect of Non Compliance), §1.204 (concerning Reasonable Accommodations), §1.205 (concerning Compliance with the Fair Housing Act), §1.206 (concerning Applicability of the Construction Standards for Compliance with §504 of the Rehabilitation Act of 1978), and §1.212 (concerning Resources); and, second, the proposed repeal of §1.208 (concerning Public and Common Use Areas in Multifamily Developments) and §1.211 (concerning Additions of Units to Existing Multifamily Housing Developments), and directing that these be published for public comment in the *Texas Register*

**RECOMMENDED ACTION**

**WHEREAS**, at the Board meeting of July 28, 2016, the Department proposed amendments to §1.204 (concerning Reasonable Accommodations) to clarify, through rule, items identified by the U.S. Department of Justice (“DOJ”) that housing providers would be responsible for the cost (when such cost is *de minimis*) and acceptable time frames for responding to reasonable accommodation requests;

**WHEREAS**, at the Board meeting of August 25, 2016, the Department withdrew that rulemaking as a result of regulations published by the DOJ on August 11, 2016, that impacted the Department’s rules in this Subchapter; and,

**WHEREAS**, through a review of the Subchapter, the Department identified the opportunity to consolidate and clarify existing requirements for better compliance with federal and state regulation and guidance;

**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 amendments to 10 TAC Chapter 1 Administration, Subchapter B, §1.201 (concerning Purpose), §1.202 (concerning Definitions), §1.203 (concerning General Certifications and Effect of Non Compliance), §1.204 (concerning Reasonable Accommodations), §1.205 (concerning Compliance with the Fair Housing Act), §1.206 (concerning Applicability of the Construction Standards for Compliance with §504 of the Rehabilitation Act of 1978), and §1.212 (concerning Resources) in the form presented to this meeting, to be published in the *Texas Register* for review and public comment and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing; 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 propose the repeal of 10 TAC Chapter 1 Administration, Subchapter B, §1.208 (concerning Public and Common Use Areas in Multifamily Developments) and §1.211 (concerning Additions of Units to Existing Multifamily Housing Developments), and notice of the repeal be published in the *Texas Register*

## **BACKGROUND**

The Department originally proposed amendments at the Board meeting of July 28, 2016, to 10 TAC §1.204 to codify a time frame by which a housing provider must respond to a reasonable accommodation request and provide clarification related to *de minimus* cost for such alternations to ensure persons with disabilities have full and equal access to programs. The amendments were published in the *Texas Register* (41 Tex.Reg. 5860) with a public comment period from August 12, 2016, to September 12, 2016. During the public comment period, the DOJ released (RIN 1190-AA59) guidance to address incorporating the ADA Amendments Act's changes to titles II (nondiscrimination in State and local government services) and III (nondiscrimination by public accommodations and commercial facilities) of the ADA into the ADA regulations and to provide additional guidance on how to apply those changes.

**Attachment 1. Preamble and proposed amendments to 10 TAC Chapter 1 Administration, Subchapter B, §1.201 (concerning Purpose), §1.202 (concerning Definitions), §1.203 (concerning General Certifications and Effect of Non Compliance), §1.204 (concerning Reasonable Accommodations), §1.205 (concerning Compliance with the Fair Housing Act), §1.206 (concerning Applicability of the Construction Standards for Compliance with §504 of the Rehabilitation Act of 1978), and §1.212 (concerning Resources)**

The Texas Department of Housing and Community Affairs (the “Department”) proposes amendments to 10 TAC Chapter 1 Administration, Subchapter B, §1.201 (concerning Purpose), §1.202 (concerning Definitions), §1.203 (concerning General Certifications and Effect of Non Compliance), §1.204 (concerning Reasonable Accommodations), §1.205 (concerning Compliance with the Fair Housing Act), §1.206 (concerning Applicability of the Construction Standards for Compliance with §504 of the Rehabilitation Act of 1978), and §1.212 (concerning Resources) for the following reasons:

The Department has established the Disability Advisory Workgroup and that group and individual members of that group have worked with staff to help them understand the ways in which this rule operates can more effectively meet the needs of persons with disabilities.

§1.201 (Purpose), §1.202 (Definitions), and §1.203 (General Certifications and Effect of Non Compliance) have been amended to provide additional clarification and take into account the revised definition of “disability” based the guidance recently published by the U.S. Department of Justice (“DOJ”) related to Amendments of Americans with Disabilities Act (“ADA”) Title II and Title III Regulations to implement ADA Amendments Act of 2008 (RIN 1190-AA59). The revised language clarifies that the term “disability” shall be interpreted broadly so that persons with disabilities who were denied coverage previously under the ADA would again be able to rely on the protections of the ADA.

Regarding §1.204 (concerning Reasonable Accommodations), the amendments made herein to this subsection are consistent to those proposed at the Board meeting of July 28, 2016; which, were originally proposed to codify a time frame by which a housing provider must respond to a reasonable accommodation request and provide clarification related to financial responsibility when the cost of the accommodation is *de minimis*.

§1.208 (concerning Public and Common Use Areas in Multifamily Developments) and 1.211 (concerning Additions of Units to Existing Multifamily Housing Developments) are being repealed as the content was already covered or is merged into another Subchapter.

Other than §1.212 (concerning Resources) that is only being amended to renumber the section from §1.212 to §1.211, all other amendments include no substantive changes not required by federal law, but rather provide further clarification specific to the expectations, including examples of the unit distribution requirement, and to address all current Department programs.

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

**PUBLIC BENEFIT/COST NOTE.** Mr. Irvine also has determined that, for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the amendments will be improved compliance with affordable housing program administered by the Department. There will not be any increased economic cost to any individuals required to comply with the new section that are not required by participating in a federal program.

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

**REQUEST FOR PUBLIC COMMENT.** The public comment period will be held October 28, 2016, through November 28, 2016, to receive input on the proposed repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Stephanie Naquin, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-3359. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time NOVEMBER 28, 2016.

**STATUTORY AUTHORITY.** The amendments are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed amendments affect no other code, article, or statute.

## TITLE 10 COMMUNITY DEVELOPMENT

### PART 1 TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS CHAPTER 1 ADMINISTRATION

#### ~~SUBCHAPTER B AMERICANS WITH DISABILITIES ACT of 1990, SECTION 504 OF THE REHABILITATION ACT OF 1973, AND THE FAIR HOUSING ACT~~ ACCESSIBILITY AND REASONABLE ACCOMODATIONS

##### §1.201 Purpose

(a) The purpose of this subchapter is to provide guidance regarding the requirements of the Americans with Disabilities Act, §504 of the 1973 Rehabilitation Act and the Fair Housing Act by all recipients of awards from the Texas Department of Housing and Community Affairs ("the Department") including but not limited to:

(1) Community Services Block Grant (CSBG);

(2) Low Income Home Energy Assistance Program (LIHEAP) (including the two (2) programs utilizing this funding source: the LIHEAP Weatherization Assistance Program (LIHEAP WAP) and the Comprehensive Energy Assistance Program (CEAP));

(3) Emergency Solutions Grant (ESG);

(4) State Housing Trust Fund (SHTF);

(5) Low Income Housing Tax Credit (LIHTC);

(6) Multifamily Bond Programs (Bond);

(7) National Housing Trust Fund (NHTF)

(78) Neighborhood Stabilization Program (NSP);

(82) HOME;

(10) TCAP

(11) TCAP- Returned Funds (TCAP RF)

(912) Section 8;

(4013) Department of Energy Weatherization Assistance Program (DOE WAP); and

(4414) Homeless Housing and Services Program (HHSP).

(b) Unless otherwise indicated in the funding announcement, this subchapter does not apply to contracts for the procurement of goods or services by the Department.

## §1.202 Definitions

~~(a) The following terms are used for purposes of this subchapter. Capitalized words in this Subchapter have the meaning assigned in the specific Chapter and Rules of the Title that govern the program associated with matter or assigned by federal or state law. In addition, the following terms are used for the purposes of this Subchapter:~~

(1) 2010 ADA Standards--The term 2010 ADA Standards refers to the 2010 ADA Standards for Accessible Design implementing Title II of the Americans with Disabilities Act of 1990, including the ADA Amendments of 2008, found at 28 CFR Part 35. This term includes both the Title II (28 CFR §35.151) and 2004 ADAAG (36 CFR Part 1991). If there is a conflict between 2004 ADAAG and Title II the requirements of Title II prevail.

(2) Accessible Route--A continuous unobstructed path connecting accessible elements and spaces in a facility or building that complies with the space and reach requirements of the applicable ~~construction~~-accessibility standard. ~~(Source: 24 CFR Subtitle A Subpart A §8.3 Definitions. Definition of Accessible Route)~~

(3) Alteration--Any physical change in a facility or its permanent fixtures or equipment. It includes, but is not limited to, remodeling, renovation, rehabilitation, reconstruction, changes or rearrangements in structural parts and extraordinary repairs. It does not include normal maintenance or repairs, reroofing, interior decoration, or changes to mechanical systems. ~~(Source: 24 CFR Subtitle A Subpart A §8.3 Definitions. Definition of Alteration)~~

(4) Disability--A physical or mental impairment that substantially limits one or more major life activities; or having a record of such an impairment; or being regarded as having such an impairment. Nothing in this definition requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others. Included in this meaning is the term handicap as defined in the Fair Housing Act, and the term disability as defined in the Americans with Disabilities Act. ~~(Source: 24 CFR Subtitle A Subpart A §8.3 Definitions. Definition of Individual with Handicaps. 24 CFR §100.201 and §100.202(d), 28 CFR §35.108)~~

(5) Multifamily Housing Development--A project that includes five or more dwelling units. A project may consist of five single family homes, a single building with five or more units, or five or more units in multiple buildings each with one or more units. A project includes the whole of one or more residential structures and appurtenant structures, equipment, roads, walks, and parking lots which are covered by a single contract or application, or which are treated as a whole for processing purposes, whether or not located on a common site. ~~(Source: 24 CFR Subtitle A Subpart A §8.3 Definitions. Definition of multifamily housing project and definition of project)~~

(6) Reasonable Accommodation--An accommodation and/or modification that is an alteration, change, exception, or adjustment to a program, service, building, dwelling unit, that will allow a qualified person with a Disability to:

- (A) Participate fully in a program;
- (B) Take advantage of a service;
- (C) Live in a dwelling; or
- (D) Use and enjoy a dwelling.

(7) Recipient--Includes a Subrecipient or Administrator and means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to whom assistance or an award is extended for any program or activity directly or through another Recipient, including any successor, assignee, or transferee of a Recipient, but excluding the ultimate beneficiary of the assistance. Recipients include private entities in partnership with Recipients to own or operate a program or service. This term includes Development Owner.

(8) Replacement Cost--The total development cost for construction and equipment for a newly constructed housing facility of the size and type being altered. Construction and equipment costs do not include the cost of land, demolition, site improvements, non-dwelling facilities or administrative costs for project development activities. (Source: 24 CFR Subtitle A Subpart A §8.4 Definitions. Definition of replacement cost)

~~(b) Other capitalized words used herein have the meaning assigned in §10.3 of this title (relating to Definitions), or assigned by federal or state law.~~

### **§1.203 General Certifications and Effect of Non Compliance**

(a) No individual with a Disability shall, by reason of their Disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any Department awarded program or activity.

(b) There are additional requirements for compliance with §504 of the 1973 Rehabilitation Act; Title VI of the Civil Rights Act of 1964; the Fair Housing Act; the Americans with Disabilities Act; and other civil rights laws, regulations and Executive Orders by Recipients of Department program or activities. This subchapter addresses only the requirements relating to physical accessibility in new construction, alterations, and reasonable accommodations under §504, the American with Disabilities Act, and the Fair Housing Act. Other disability-related requirements include but are not limited to:

(1) Operating housing that is not segregated based upon disability or type of disability, unless authorized by federal statute or executive order;

(2) Providing auxiliary aids and services necessary for effective communication with persons with disabilities; and

(3) Operating programs in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

(c) Compliance with accessibility requirements, as applicable, including compliance with the Fair Housing Act, the Americans with Disabilities Act, and §504 of the Rehabilitation Act of 1973, other civil rights laws, regulations and Executive Orders; and Chapters 2105 and 2306 of the Texas Government Code is the sole responsibility of the Recipient. By providing guidance and monitoring for compliance, the Department in no way assumes any liability whatsoever for any action or failure to act by the Recipient.

(d) Failure to comply with the provisions of this subchapter may result in the assessment of administrative penalties and/or debarment.

### **§1.204 Reasonable Accommodations**

(a) To show that a requested Reasonable Accommodation may be necessary, there must be an identifiable relationship between the requested accommodation and the individual's Disability.



(b) Responses to Reasonable Accommodation requests must be provided within a reasonable amount of time, not to exceed 14 calendar days. The response must either be to grant the request, deny the request, offer alternatives to the request, or request additional information to clarify the Reasonable Accommodation request. Should additional information be required and an interactive process is necessary, this process must also be completed within a reasonable amount of time. An undue delay in responding to a reasonable accommodation request may be a failure to provide a reasonable accommodation.

(1) EXAMPLE: A resident requests to move their rent due date to coincide with their social security disability check. It would not be considered reasonable to wait 14 calendar days to respond to this request.

(2) EXAMPLE: A resident requests a designated accessible parking space. An individual's Disability status and the connection to the Reasonable Accommodation request are not clear. Documentation must be requested within 14 calendar days to clarify the resident's request, engaging in an interactive process to determine the nature of the request and the needs of the resident.

(3) EXAMPLE: An applicant with a Disability requires a service animal to alert of impending seizures. The shelter has a no pets policy. It would not be reasonable to wait 14 calendar days to respond to this request.

(4) EXAMPLE: A person with a Disability requests modifying door knobs to levers. The property must respond to the request within 14 calendar days, although it is reasonable that it may take additional time to install the modified door knobs.

(5) EXAMPLE: A housing provider requires that tenants sign 12 month leases. A household signs the lease, but after a few months has to move out in order to live in a nursing home. The household requests a reasonable accommodation to be let out of his lease early without a fee. The property may request additional information if the Disability and relationship between the request is not clear, but must ask for this information within 14 calendar days.

(6) EXAMPLE: An applicant requests a reasonable accommodation to have assistance in filling out a program application for the Housing Trust Fund Program. It would not be reasonable to wait 14 calendar days to respond to this request.

(bc) When a resident or applicant requires an accessible unit, feature, space or element, or a policy modification, or other Reasonable Accommodation to accommodate a Disability, the Recipient must provide and pay for the requested accommodation, unless doing so would result in a fundamental alteration in the nature of the program or an undue financial and administrative burden. A fundamental alteration is an accommodation that is so significant that it alters the essential nature of the Recipient's operations. A Recipient that owns a LIHTC or Multifamily Bond Development with no federal or state funds awarded before September 1, 2001 must allow but may not need to not pay for the Reasonable Accommodation, except if unless the accommodation requested should have been made as part of the original design and construction requirements under the Fair Housing Act, or is a Reasonable Accommodation identified by the U.S. Department of Justice with a *de minimis* cost (e.g., assigned parking spot, no deposit for service/assistance animals, etc).

(ed) A Recipient may not charge a fee or place conditions on a resident or applicant in exchange for making the accommodation. For example, while housing providers may require applicants or residents to pay a pet deposit they may not require applicants and residents to pay a deposit for a service/assistance animal.

(de) A Reasonable Accommodation request of an individual with a Disability that amounts to an Aalteration should be made to meet the needs of the individual with a Disability, rather than any particular accessible code specification.

(1) Recipients are not required to make structural changes where other methods, which may not cost as much, are effective in making ~~federally assisted housing~~ programs or activities readily accessible to and usable by persons with Disabilities.

(2) In choosing among available methods for meeting the requirements of this section, the Recipient shall give priority to those methods that offer programs and activities to qualified individuals with Disabilities in the most integrated setting appropriate.

(3) Undue burden.

(A) The determination of undue financial and administrative burden will be made by the Department on a case-by-case basis, involving various factors, such as the cost of the reasonable accommodation, the financial resources of the Development, the benefits the accommodation would provide to the requester, and the availability of alternative accommodations that would adequately meet the requester's Disability-related needs. ~~(For more examples of undue financial and administrative burden, see HUD Handbook 4350.3, Exhibit 2-6.)~~

(B) In considering whether an expense would constitute an undue burden the Department may, as applicable, consider the following items (though it may consider factors not on this list):

(i) Payment for Alterations from operating funds, residual receipts accounts, or reserve replacement accounts must be sought using appropriate approval procedures.

(ii) The approved amount must normally be able to be replenished through property rental income within one year without a corresponding raise in rental rates.

(iii) A projected inability to replenish an operating fund account or the reserve for replacement account within one year for funds spent in providing alterations under this subchapter is some evidence that the Alteration would be an undue financial and administrative burden. *(Source: HUD Handbook 4350.3, §2-43(C), and §2-43(D, Example A))*

~~(iv) Whether the requested accommodations is an eligible cost for the fundings source used to pay for the activity.~~

(C) If providing accessibility would result in an undue financial and administrative burden, the Recipient must still take other reasonable steps to achieve accessibility.

(D) If a structural change would constitute an undue financial and administrative burden, and the tenant/requestor still wants that particular change to be made, the tenant/requestor must be allowed to make and pay for the accommodation. *(Source: HUD Handbook 4350.3, §2-4546)*

(4) Recipients are not required to install an elevator solely for the purpose of making units accessible as a reasonable accommodation. *(Source: HUD Handbook 4350.3, §2-37(E))*

(5) Recipients do not have to make mechanical rooms and similar spaces accessible when, because of their intended use, they do not require accessibility by the public, by tenants, or by employees with physical disabilities. *(Source: HUD Handbook 4350.3, §2-37(D))*

~~(6) Recipients are not required to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member. *(Source: 24 CFR §8.32(e), HUD Handbook 4350.3, §2-37(B))*~~

(ef) If a Recipient refuses to provide a requested accommodation because it is either an undue financial and administrative burden or would result in a fundamental alteration to the nature of the program, the Recipient must make a reasonable attempt to engage in an interactive dialogue with the requester to determine if there is an alternative accommodation that would adequately address the requester's Disability-related needs. If an alternative accommodation would meet the individual's needs and is reasonable, the Recipient must provide it.

(1) EXAMPLE: A resident requires an accessible parking space that will accommodate her wheelchair-equipped van. A Reasonable Accommodation includes relocating and enlarging an existing parking space that will serve the van.

~~(2) EXAMPLE: A colonia self-help center operates a tool lending program. The tools are located on the second floor of a building with no elevator. As an alternative to installing a lift or elevator, center staff may retrieve tools for residents who use wheelchairs. The aides must be available during the operating hours of the center.~~ A Colonia Self-Help Center provides computer lab classes with laptops at the Center for eligible Colonia residents to learn computer skills. A participant with a Disability is unable to leave their home to participate in the class due to their Disability. The participant requests a reasonable accommodation to borrow a laptop computer to participate in the class from home. Providing a loan of the laptop computer with the training software is a reasonable accommodation because it allows the prospective participant with a disability to fully participate in the Colonia Self-Help Center program. However, it would be fundamental alteration to renovate the participant's home for broadband (unless the home is being rehabilitated for other reasons).

(3) EXAMPLE: A family has a young child with asthma. A certain sealant used by a weatherization provider has been known to trigger asthma attacks. The weatherization provider should see if a comparable sealant could be used that would not trigger asthma.

(4) EXAMPLE: A Development has five parking spaces located outside the main entrance to the building and another parking lot with 20 spaces a half block away. All five of the parking spaces near the entrance to the building have been assigned to residents with Disabilities who need a parking space near their door because of their Disabilities. A sixth tenant with difficulty in walking long distances moves into the Development and requests a parking space near his door. The Recipient has explored the options and concluded that the only way to provide more parking spaces near the door would be to widen the parking area by purchasing valuable real estate next door. It would be an undue financial and administrative burden for the Recipient to provide the sixth tenant with a parking space near the entrance. An alternative accommodation could be to provide the sixth tenant with an assigned parking space in the lot half block away until such time as one of the five spaces near the door becomes available.

(5) EXAMPLE: A resident needs grab bars at the toilet in her bathroom. She does not require other accessible features. The Recipient must install grab bars consistent with the resident's needs in the bathroom.

(6) EXAMPLE: A resident needs a ramped entrance to her ground floor unit to accommodate her wheelchair. She does not wish to move to an accessible unit. The Recipient must provide an accessible entrance at the resident's current unit, unless it would be an undue financial and administrative hardship or a fundamental alteration of the program to do so.

(7) EXAMPLE: A resident uses a scooter type wheelchair which is 38 inches in width. She requests a ramp to enter her ground floor unit. The ramp which she requests must be at least 40 inches wide, it must have a slope of no more than 3%, and the landing at the front door, which opens outward, must be enlarged to provide adequate maneuvering space to enter the doorway. The changes must be provided, even though they may exceed the usual specifications for such alterations, unless it would be an undue financial and administrative hardship or a fundamental alteration of the program to do so.

(8) EXAMPLE: A resident with quadriplegia requests replacement of a bathtub in his unit with a roll-in shower. Due to the location of existing plumbing in the building and the size of the existing bathroom, a plumber confirms that installation of a roll-in shower in that unit is impossible. The on-site manager should meet with the resident to explain why the roll-in shower cannot be installed and to explore alternative accommodations with the resident.

(f) Recipients must follow federal and state regulations regarding service/assistance animals.

### §1.205 Compliance with the Fair Housing Act

(a) Generally, housing designed and constructed for first occupancy after March 13, 1991 must comply with the Fair Housing Act. This includes Units, common areas, and amenities added to existing buildings, or on land under common ownership and contiguous with housing otherwise exempt from the Fair Housing Act.

(b) Compliance with the Fair Housing Act makes it unlawful to discriminate based on a person's disability, race, color, religion, sex, familial status, or national origin unless there is an exception in federal law.

(c) Although HUD recognizes seven safe harbors for compliance with the design and construction requirements, the Department requires compliance with HUD's Fair Housing Act Design Manual.

### §1.206 Applicability of the Construction Standards for Compliance with §504 of the Rehabilitation Act of 1978

(a) The following types of Multifamily Housing Developments must comply with the construction standards of §504 of the Rehabilitation Act of 1973, as further defined through the Uniform Federal Accessibility Standards (UFAS):

(1) New construction and reconstruction HOME and NSP Multifamily Housing Developments that began construction before March 12, 2012;

(2) Rehabilitation HOME and NSP Multifamily Housing Developments that submitted a full application for funding before January 1, 2014; and

(3) All Housing Tax Credit and Tax Exempt Bond Developments that were awarded after September 1, 2001, and submitted a full application before January 1, 2014.

(b) The following types of Multifamily Housing Developments must comply with the construction requirements of 2010 ADA standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" *Federal Register* 79 FR 29671 and not otherwise modified in this subchapter:

(1) New construction and reconstruction HOME and NSP Multifamily Housing Developments that began construction after March 12, 2012; and

(2) ~~Rehabilitation HOME and NSP Multifamily Housing~~ All Multifamily Housing Direct Loan Developments that submit a full application for funding after January 1, 2014; ~~and~~

(3) ~~All Housing Tax Credit and Tax Exempt Bond Developments that submit a full application for funding after January 1, 2014.~~

(c) After March 12, 2012, Recipients of ~~Emergency Solutions Grant~~ ESG and ~~Homeless Housing and Services Program~~ HHSP funds must comply with the 2010 ADA Standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" *Federal Register* 79 FR 29671 and not otherwise modified in this subchapter.

(d) Effect on LURAs. These rules do not serve to amend contractual undertakings memorialized in a recorded LURA but may, by operation of law, place requirements on a property owner beyond those contained in the LURA.

**§1.212211 Resources**

Materials on the Department's website are available as resources for the underlying topic of this subchapter.

**Attachment 2: Preamble and proposed repeal 10 TAC Chapter 1 Administration, Subchapter B, §1.208 (concerning Public and Common Use Areas in Multifamily Developments) and §1.211 (concerning Additions of Units to Existing Multifamily Housing Developments)**

The Texas Department of Housing and Community Affairs (the “Department”) proposes repeal 10 TAC Chapter 1 Administration, Subchapter B, §1.208 (concerning Public and Common Use Areas in Multifamily Developments) and §1.211 (concerning Additions of Units to Existing Multifamily Housing Developments). The information covered in §1.208 (concerning Public and Common Use Areas in Multifamily Developments) and §1.211 (concerning Additions of Units to Existing Multifamily Housing Developments) is now addressed in other sections as a result of changes made to the Department’s rule due to the newly published guidance from the DOJ on August 11, 2016.

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

**PUBLIC BENEFIT/COST NOTE.** Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, there will be no change in the public benefit anticipated as a result of the repeal. There will be no economic impact to any individuals required to comply with the repeal.

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

**REQUEST FOR PUBLIC COMMENT.** The public comment period will be held October 28, 2016, through November 28, 2016, to receive input on the proposed repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Stephanie Naquin, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-3359. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time NOVEMBER 28, 2016.

**STATUTORY AUTHORITY.** The repeal is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed repeal affects no other code, article, or statute.

**§1.208 Public and Common Use Areas in Multifamily Developments**

**§1.211 Additions of Units to Existing Multifamily Housing Developments**

1k



**BOARD ACTION REQUEST**

**SINGLE FAMILY OPERATIONS & SERVICES**

**OCTOBER 13, 2016**

Presentation, Discussion, and Possible Action on an Order Proposing the repeal of 10 TAC Chapter 21, Minimum Energy Efficiency Requirements for Single Family Construction Activities, and an Order Proposing new 10 TAC Chapter 21, Minimum Energy Efficiency Requirements for Single Family Construction Activities and directing its 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 §2306.187, the Department is required to develop and adopt rules relating to Minimum Energy Efficiency requirements for new construction, reconstruction, and rehabilitation activities for Single Family dwellings;

**WHEREAS**, the Department's Governing Board adopted 10 TAC Chapter 21 on December 12, 2013, to be effective on January 1, 2015;

**WHEREAS**, the Department's Governing Board amended 10 TAC Chapter 21 on October 15, 2015, to be effective on November 11, 2015, and

**WHEREAS**, the proposed repeal of 10 TAC Chapter 21 and the proposed new 10 TAC Chapter 21, regarding Minimum Energy Efficiency Requirements for Single Family Construction Activities, clarifies definitions, corrects dates of applicability, updates citations referring to the International Residential Code requirements, and improves readability;

**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 the current 10 TAC Chapter 21 and the proposed new 10 TAC Chapter 21, regarding Minimum Energy Efficiency Requirements for Single Family Construction Activities, in the form presented to this meeting, to be published in the *Texas Register* for public comment and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles.

## **BACKGROUND**

The purpose of repealing and replacing the Minimum Energy Efficiency Requirements for Single Family Construction Activities is to further clarify construction requirements. The attached proposed rule is shown as a blackline so the Board and public can see what is being changed. The significant updates to 10 TAC Chapter 21 are:

- §21.2 General Requirements. This section was moved higher up in the rule to improve readability of the document.
- §21.3 Definitions. This section now defines "Start of Construction Date" as the "date of first excavation into readied soil, or any construction work other than site clearance and site preparation."
- §21.5 Manufactured Housing Unit Activities. This new section has been separated from §21.4, New Construction and Reconstruction Activities, to clarify date of applicability of ENERGY STAR certification for Manufactured Housing Units and to improve readability of the document.
- §21.6 Rehabilitation Activities. This section amends the date of applicability of the 2015 International Residential Code and updates citations referring to sections of International Residential Code requirements for central heating and cooling and window installation.

**Attachment A: Preamble of 10 TAC Chapter 21 Minimum Energy Efficiency Requirements for Single Family Construction Activities; proposed new**

The Texas Department of Housing and Community Affairs (the “Department”) proposes new TAC Chapter 21, §§21.1 - 21.6, concerning Minimum Energy Efficiency Requirements for Single Family Construction Activities. The purpose of the proposed new rule is to clarify definitions, correct dates of applicability, update citations referring to the International Residential Code requirements, and improve readability. The proposed repeal of existing Chapter 21 is published concurrently with this rulemaking.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that for each year of the first five years the amendments are in effect, enforcing or administering new sections do not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the new sections will be clarity of construction requirements, adherence to state governing statute, and increased home affordability via reduced household utility costs. There will be minimal economic cost to entities complying with the amendments, and lower utility costs to households.

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

REQUEST FOR PUBLIC COMMENT. The public comment period for the proposed amendments will be from October 28, 2016, to November 28, 2016. Written comments may be mailed to the Texas Department of Housing and Community Affairs, Attention: Mark Leonard, Energy Efficiency Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941; emailed to [htf@tdhca.state.tx.us](mailto:htf@tdhca.state.tx.us); or faxed to (512) 475-1162.

ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M Austin Local Time, NOVEMBER 28, 2016.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules, and §2306.187, which authorizes the Department to develop and adopt rules relating to Minimum Energy Efficiency requirements for new construction, reconstruction, and rehabilitation activities for Single Family dwellings.

The proposed amendments affect no other code, article, or statute.

TITLE 10. COMMUNITY DEVELOPMENT.  
PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS.  
CHAPTER 21. MINIMUM ENERGY EFFICIENCY REQUIREMENTS FOR SINGLE FAMILY CONSTRUCTION ACTIVITIES.

§21.1. Purpose.

§21.2. ~~Applicability.~~ General Requirements.

§21.3. Definitions.

~~§21.4. General Requirements.~~

~~§21.45. New Construction and Reconstruction Activities and Manufactured Housing Unit Activities.~~

§21.5. Manufactured Housing Unit Activities.

§21.6. Rehabilitation Activities.

§21.1. Purpose.

- (a) Texas Government Code, §2306.187 requires that the Department develop and adopt rules relating to Minimum Energy Efficiency requirements for new construction, reconstruction, and rehabilitation activities in Single Family Programs.
- (b) This chapter describes the Minimum Energy Efficiency Requirements for all single family construction activities, which includes the Department's HOME Investments Partnership Program (HOME), Housing Trust Fund (HTF), Neighborhood Stabilization Program (NSP), Office of Colonia Initiatives (OCI) Programs, and other single family programs as developed by the Department.
- ~~(c) Single family programs are designed to improve and provide affordable housing opportunities to low-income individuals in Texas in accordance with Texas Government Code, §2306, and any applicable statutes and federal regulations.~~

§21.2. General Requirements. ~~Applicability.~~

- (a) Unless otherwise noted, this ~~Chapter~~chapter only applies to single family programs. Program rules may impose additional requirements related to any provision of this ~~Chapter~~chapter.
- ~~(a)~~ (b) Local residential building codes that exceed some or all parts of this ~~Chapter~~chapter shall take precedence.
- (c) A final inspection conducted by Administrators confirming compliance with this ~~Chapter~~chapter shall be required for release of final payment from the Department.

§21.3. Definitions.

- (a) Any capitalized terms that are defined in Texas Government Code, §2306, and Chapter 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), Chapter 20 of this title (relating to Single Family Programs Umbrella Rule), or other applicable Department program rules, have, when capitalized, the meanings ascribed to them therein.
- (b) The following words and terms, when used in this chapter, shall have the following meanings unless the context or the Notice of Funding Availability (NOFA) indicates otherwise.

- (1) ENERGY STAR Certified Appliances, Equipment, and Products--Labeled appliances, equipment, and products that are independently certified to save energy without sacrificing features or functionality, meeting the US EPA's specifications for energy efficiency and performance.
- (2) ENERGY STAR Certified Home--A new home that has earned the ENERGY STAR label and has undergone a process of inspections, testing, and verification to meet requirements set forth by the US EPA.
- (3) ENERGY STAR Certified Manufactured Housing Unit -- A home that has been designed, produced and installed by the home manufacturer to meet ENERGY STAR requirements for energy efficiency.
- (4) RESNET--Residential Energy Services Network. RESNET is an independent, nonprofit organization established in 1995 to help homeowners reduce the cost of their utility bills by making their homes more energy efficient. RESNET-certified Home Energy Systems Raters are required to inspect, test, and verify homes for ENERGY STAR certification.
- (5) Start of Construction Date – The date of the first excavation into readied soil, or any construction work other than site clearance and site preparation.
- (6) WaterSense Labeled Fixtures--Labeled products that are backed by independent, third-party testing and certification, meeting the US EPA's specifications for water efficiency and performance.
- (7) US EPA--United States Environmental Protection Agency.

#### §21.4. General Requirements.

~~The following general requirements shall apply to all single family construction activities.~~

- ~~(1) This chapter shall go into effect on January 1, 2015. All construction activities funded by a Contract with an effective date on or after January 1, 2015, or a Reservation of Department funds submitted on or after January 1, 2015 shall comply with this chapter.~~
- ~~(2) Local residential building codes that exceed some or all parts of this chapter shall take precedence.~~
- ~~(3) A final inspection conducted by Administrators confirming compliance with this chapter shall be required for release of final payment from the Department.~~

#### §21.45. New Construction and, Reconstruction Activities ~~and Manufactured Housing Unit Activities.~~

- (a) Single family residential dwellings, as defined in §388.002 of the Health and Safety Code, that are newly constructed or reconstructed shall comply with §388 of the Health and Safety Code (Texas Building Energy Performance Standards).
- (b) Effective January 1, 2012, the Texas State Energy Conservation Office adopted the 2009 International Residential Code (Chapter 11) as the state-mandated energy code for all residential construction, one- and two-family residences of three stories or less above grade.
- (c) For construction activities that have a Start of Construction Date ~~start~~ on or after September 1, 2016, the Texas State Energy Conservation Office through Health and Safety Code, Chapter 388 has adopted Chapter 11 of the 2015 International Residential Code ~~is adopted~~ as the energy code in Texas for single family residential construction.

~~(d) Manufactured Housing Units that are installed as replacement for sub-standard housing shall be ENERGY STAR certified.~~

§21.5. Manufactured Housing Unit Activities.

Manufactured Housing Units installed on or after January 5, 2017, the date of adoption of this rule, as replacement for sub-standard housing shall be ENERGY STAR certified.

§21.66. Rehabilitation Activities.

- (a) All ~~Rehabilitation~~rehabilitation activities ~~with a Start of Construction Date funded by a Contract with an effective date~~ on or after January 5, 2017, the date of adoption of this rule, ~~or a Reservation of Department funds submitted on or after the date of adoption of this rule~~, shall comply with ~~this Chapter~~chapter. ~~Chapter 11 of the 2015 International Residential Code as the energy code in Texas for single family residential construction.~~
- (b) If the proposed scope of work or the awarded construction contract for the Rehabilitation of an existing single family residential unit includes an item described in paragraphs (1) – (9) of this section, the following requirements shall apply:
- (1) Replacement or installation of central heating and cooling equipment and appliances shall be installed in accordance with the manufacturer's instructions and the requirements of sized as specified in Chapter 14, ~~Section M1401.3~~ of the ~~2015~~2009 International Residential Code;
  - (2) Replacement or installation of duct systems serving heating, cooling and ventilation equipment shall be installed in accordance with the provisions of Chapter 16 of the 2015 International Residential Code.~~If central heating and cooling equipment is replaced or installed, ductwork located in unconditioned spaces shall be sealed in accordance with Chapter 14, Section M1601.4.1 of the 2009 International Residential Code. Ductwork located in unconditioned spaces shall be insulated to R-8;~~
  - (3) If central heating and cooling equipment is replaced or installed, attic insulation shall be installed or increased according to R-30 (R-38 in Climate Zone 4 as defined by Chapter 11, Figure N1102.1.2 of the 2015 International Residential Code~~N1101.2 of the 2009 International Residential Code~~), including insulation covering the top plates of exterior walls. Eave baffles~~Baffles~~ and access hatches shall be installed ~~in framing bays of existing soffit vents~~, as specified in Chapter 11, Sections N1102.2.3 – N1102.2.4 of the 2015 International Residential Code~~N1102.2.1 – N1102.2.3 of the 2009 International Residential Code~~.
  - (4) If ductless heating and cooling systems (also known as mini-split, multi-split or variable refrigerant flow (VRF) heat pump systems) are replaced or installed, they shall be ENERGY STAR certified;
  - (5) If exhaust fans are replaced or installed in bathrooms or kitchens, they shall be ENERGY STAR certified and installed in accordance with Chapter 15 of the 2015~~2009~~ International Residential Code;



- (6) If windows are installed, they shall be ENERGY STAR certified windows, meeting the U-factor and Solar Heat Gain Coefficient for the climate zone of the dwelling as identified in Chapter 11, Table N1102.1.2 of the 2015 International Residential Code~~N1101.2 of the 2009 International Residential Code~~;
- (7) Electrical fixtures, equipment and appliances that are replaced or installed, where applicable, shall be ENERGY STAR certified products;
- (8) Plumbing fixtures that are replaced or installed, where applicable, shall be WaterSense labeled products;
- (9) Domestic water heaters, storage and tankless, when replaced or installed, shall meet the Federal Energy Conservation Standards required by 10 CFR 430.32, ~~and~~ as they may be revised from time to time.

11

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**OCTOBER 13, 2016**

Presentation, Discussion and Possible Action regarding the proposed repeal of 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules, and a proposed new 10 TAC Chapter 12, concerning the Multifamily Housing Revenue Bond Rules and directing its publication for public comment in the *Texas Register*.

**RECOMMENDED ACTION**

**WHEREAS**, the Texas Department of Housing and Community Affairs (“Department”) is authorized to issue multifamily housing revenue bonds for the State of Texas; and

**WHEREAS**, the Department developed the Multifamily Housing Revenue Bond Rules to establish the procedures and requirements relating to the issuance of bonds;

**NOW, therefore, it is hereby**

**RESOLVED**, that the proposed repeal of the current 10 TAC Chapter 12 and the proposed new 10 TAC Chapter 12, regarding the Multifamily Housing Revenue Bond Rules, together with the preamble in the form presented to this meeting, are approved to be published 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 draft Multifamily Housing Revenue Bond Rules, together with the preamble in the form presented to this meeting, to be published in the *Texas Register* for public comment and, in connection therewith, make sure non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

**BACKGROUND**

Attached to this Board Action Request is the 2017 Draft Multifamily Housing Revenue Bond Rules (“Bond Rules”) which reflect staff’s recommendations for the Board’s consideration. Changes to the draft rule make the Bond Rules consistent with the proposed changes to the 2017 Draft Uniform Multifamily Rules and Qualified Allocation Plan (“QAP”), as applicable. To the extent there are changes made by the Board to these aforementioned rules that would coincide with the Bond program, the Uniform Multifamily Rules and QAP would take precedence over the 2017 Bond Rules as applicable.

Rule-Making Timeline: Upon Board approval, the draft Bond Rules will be posted to the Department’s website and published in the *Texas Register*. Public comment will be accepted between October 28, 2016, and November 18, 2016. The Bond Rules will be brought before the Board in December for final approval and will be subsequently published in the *Texas Register*.

*Summary of Proposed Changes to the Bond Rule:* This section outlines some of the more significant recommendations by staff. It should be noted that there are other changes in the Bond Rules that are not specifically mentioned herein; such changes are being made to ensure consistency with those changes proposed in Chapter 10 relating to the Uniform Multifamily Rules and Chapter 11 relating to the Qualified Allocation Plan. The applicable sections and page references are indicated for ease of reference.

1. **§12.4 - Pre-Application Process and Evaluation – Undesirable Neighborhood Characteristics (page 2 of 11)**. This section was modified to include additional language to be consistent with the proposed 2017 Uniform Multifamily Rules.
2. **§12.5 - Pre-Application Threshold Requirements (page 4 of 11)**. This section was modified to remove the proximity to mandatory community assets requirement, as well as clarifying the number of days an Applicant has to notify any newly elected public officials. Additionally, language has been added to the Tenant Supportive Services item. These modifications were made to be consistent with the proposed 2017 Uniform Multifamily Rules.
3. **§12.6 - Pre-Application Scoring Criteria (page 5 of 11)**. The term Affordability Period was replaced with the term State Restrictive Period which is a defined term in Tex. Gov't Code Chapter 2306 and more accurately reflects the restrictive period for bond-financed developments by the Department. Similar changes have been made to the requirements for unit and development features and tenant services.

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC Chapter 12, §§12.1 - 12.10, concerning the 2017 Multifamily Housing Revenue Bond Rules. The purpose of the proposed new rule is to implement changes that will improve the 2017 Private Activity Bond Program. The Multifamily Housing Revenue Bond Rules outline the threshold and scoring related requirements associated with private activity bond funding from the Department. The proposed repeal of existing Chapter 12 is published concurrently with this rulemaking.

**FISCAL NOTE.** Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections will be 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.

**PUBLIC BENEFIT/COST NOTE.** Mr. Irvine also has determined that, for each year of the first five years the new sections will be in effect, the public benefit anticipated as a result of the new sections will be the adoption of new rules for multifamily housing revenue bonds; providing updates and greater clarity and thereby enhancing the state’s ability to provide decent, safe and sanitary housing administered by the Department. The 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.

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

**REQUEST FOR PUBLIC COMMENT.** The public comment period will be held October 28, 2016, to November 18, 2016, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Shannon Roth, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-1895. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. November 18, 2016.**

**STATUTORY AUTHORITY.** The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

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

## Multifamily Housing Revenue Bond Rules

### §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 ~~Texas Government Code~~ [Tex. Gov't Code](#), Chapter 2306. Notwithstanding anything in this ~~e~~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 ~~Texas Government Code~~ [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) and Chapter 10 of this title (relating to Uniform Multifamily Rules) for the current program year. In general, the Applicant will be required to satisfy the requirements of the Qualified Allocation Plan ("QAP") and Uniform Multifamily Rules in effect at the time the Certificate of Reservation is issued by the Texas Bond Review Board. If the applicable QAP or Uniform Multifamily Rules contradict rules set forth in this ~~e~~Chapter, the applicable QAP or Uniform Multifamily Rules will take precedence over the rules in this ~~e~~Chapter. The Department encourages participation in the Bond program by working directly with Applicants, lenders, Bond Trustees, legal counsels, local and state officials and the general public to conduct business in an open, transparent and straightforward manner.

**(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 stage 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.

**(e) Waivers.** Requests for waivers of program rules must be made in accordance with §10.207 of this title (relating to Waiver of Rules for Applications).

### §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 ~~Texas Government Code~~ [Tex. Gov't Code](#), Chapter 2306, §§141, 142, and 145 of the Internal Revenue Code, and Chapter 10 of this title (relating to Uniform Multifamily Rules).



(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(aA), promulgated under the Securities Act of ~~1933~~1935, as amended.

(2) Persons with Special Needs--Shall have the meaning prescribed under ~~Texas Government Code~~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, a division of The McGraw-Hill Companies, Inc. 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 shall also be qualified as Institutional Buyers and shall 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 shall carry a legend requiring any purchasers of the Bonds to 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 get 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 ~~important~~ 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) Undesirable Neighborhood Characteristics.** If the Development Site has any of the characteristics described in §10.101(a)(43)(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 undesirable neighborhood characteristics become available while the full 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. The Application may be subject to termination should staff conclude that the Development Site has any characteristics found in §10.101(a)(43)(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 accepted by the Department. Department review at the time of the pre-application is limited and not all issues of eligibility and documentation submission requirements pursuant to Chapter 10 of this title (relating to Uniform Multifamily Rules) 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 ~~Texas Government Code~~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 ~~e~~Chapter, reflect a structure which gives priority consideration to specific criteria as outlined in ~~Texas Government Code~~Tex. Gov't Code, §2306.359. In the event two or more pre-applications receive the same score, the Department will use the tie breaker factors as outlined in §11.7 of this title (relating to Tie Breaker Factors) in the order they are presented 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 ~~and proposed financing structure~~ 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 undesirable neighborhood characteristics 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) - (98) of this section. As the Department reviews the pre-application the assumptions as reflected in Chapter 10, 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 multifamily bond pre-application in the form prescribed by the Department;

(2) Completed Bond Review Board Residential Rental Attachment for the current program year;

(3) Site Control, evidenced by the documentation required under §10.204(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 §10.204(10) of this title at the time of Application;

(4) Boundary survey or plat clearly identifying the location and boundaries of the subject Property;

~~(5) Local area map that shows the location of the Development Site and the location of at least six (6) community assets within a one mile radius (two miles if in a Rural Area). Only one community asset of each type will count towards the number of assets required. The mandatory community assets and specific requirements are identified in §10.101(a)(2) of this title (relating to Site and Development Requirements and Restrictions);~~

(65) Organizational Chart showing the structure of the Development Owner and of any Developer ~~or~~and Guarantor, providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner, ~~or the~~ Developer ~~or~~and Guarantor, as applicable.

(76) Distribution List Form, as provided in the pre-application, to include the anticipated financing participants;

(87) Evidence of Entity Registration or Reservation with the Texas Office of the Secretary of State;

(98) A certification, as provided in the pre-application, that the Applicant met the requirements and deadlines for public notifications as identified in §10.203 of this title (relating to Public Notifications (§2306.6705(9))). Notifications must not be older than three (3) 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 5 percent increase in density (calculated as units per acre) as a result of a change in the size of the Development Site. In addition, should a change in elected official occur between the submission of a pre-application and the submission of an Application, Applicants are required to notify the newly elected (or appointed) official within fourteen (14) days of when they take office.

#### **§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 ~~Texas Government Code~~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) Set aside 50 percent of Units rent capped at 50 percent AMGI and the remaining 50 percent of units rents capped at 60 percent AMGI; or

(ii) Set aside 15 percent of units rent capped at 30 percent AMGI and the remaining 85 percent of units rent capped at 60 percent AMGI; or

(iii) Set aside 100 percent of units rent capped at 60 percent 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 percent of the Units capped at 60 percent 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 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 (1) 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) provided they are requested in the Private Activity Bond Pre-Application Scoring Form.

(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 ~~Affordability Period~~ State Restrictive Period for a Development to a total of thirty-five (35) years.

(5) Unit and Development Construction Features. A minimum of (7 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 §10.101(b)(6)(B) of this title (relating to Site and Development Requirements and Restrictions). The amenities selected at pre-application may change at Application so long as the overall point structure remains the same. The points selected at pre-application and/or Application and corresponding list of amenities will be required to be identified in the LURA and the points selected must be maintained throughout the ~~Affordability-Period~~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 §10.101(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. For Developments with 41 Units or more, at least two (2) of the required threshold points must come from the Green Building Features as identified in §10.101(b)(5)(C)(xxxii) of this title.

- (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) Tenant Supportive Services. (8 points) By electing points, the Applicant certifies that the Development will provide supportive services, which are listed in §10.101(b)(7) of this title, appropriate for the proposed tenants 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 ~~Affordability-Period~~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. The services provided should be those that will directly benefit the Target Population of the Development and accessible to all. No fees may be charged to the tenants 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. ~~All services must be provided by a person on the premises. 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.~~

(8) Underserved Area. An Application may qualify to receive up to (2 points) if the Development Site is located in an Underserved Area as further described in §11.9(c)(6)(A)-(E) of this title.

(9) Development Support/Opposition. (Maximum +24 to -24 points) Each letter will receive a maximum of +3 to -3 and must be received ten (10) business days prior to the date of the Board meeting at which the pre-

application will be considered. Letters must clearly state support or opposition to the specific Development. State Representatives or Senators as well as local elected officials to be considered are those in office at the time 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 Site will not qualify for points under this exhibit. Neutral letters, letters that do not specifically refer to the Development or do not explicitly state support will receive (zero (0) points). A letter that does not directly express support but expresses it indirectly by inference (i.e., a letter that says "the local jurisdiction supports the Development and I support the local jurisdiction") will be treated as a neutral 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 (2) years or for which there has been a rent restriction requirement in the past ten (10) years may qualify for points under this item. Evidence must be submitted in the pre-application.

(11) Declared Disaster Areas. (7 points) If at the time the complete pre-application is submitted or at any time within the two-year period preceding the date of submission, the proposed Development Site is located in an area declared to be a disaster area under ~~Texas Government Code~~[Tex. Gov't Code](#), §418.014.

### **§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 §10.201 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 10 of this title (relating to Uniform Multifamily Rules). 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 10 of this title (relating to Uniform Multifamily Rules) and Chapter 11 of this title (relating to Housing Tax Credit Program



Qualified Allocation Plan) in addition to ~~Texas Government Code~~[Tex. Gov't Code](#), Chapter 1372, the applicable requirements of ~~Texas Government Code~~[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 costs, the Department's bond counsel shall draft Bond documents.

**(d) Public Hearings.** For every Bond issuance, the Department will hold a public hearing in order to receive comments from the public pertaining to the Development and the issuance of the Bonds. The Applicant or 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 contain at a minimum, a description of the Development, maximum rents and income restrictions. If the proposed Development is Rehabilitation then the presentation should include the proposed scope of work that is planned for the Development. All handouts must be submitted to the Department for review at least two (2) 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 Staff Appeals Process) and §1.8 of this title (relating to Board 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 ~~Texas Government Code~~[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 must be submitted to the Department.

#### **§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 costs, the Department's bond counsel will draft the ~~required~~[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 requirements pursuant to Chapter 10 of this title (relating to Uniform Multifamily Rules) and 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 §10.101 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. Regulatory and Land Use Restrictions.**

**(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 thirty (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 ~~Texas Government Code~~ [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:
  - (A) at least 20 percent 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 percent of the area median income; or
  - (B) at least 40 percent 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 of the area median income.

(2) The Development Owner must designate at the time of Application which of the two set-asides will apply to the Development and must also designate the selected priority for the Development in accordance with ~~Texas Government Code~~[Tex. Gov't Code](#), §1372.0321. Units intended to satisfy set-aside requirements must be distributed ~~evenly~~[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 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; provided, however, that should a tenant's income, as of the most recent determination thereof, exceed 140 percent of the applicable 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 (BRB) pursuant to ~~Texas Government Code~~[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 to the BRB.

**(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/unit](#) and \$10,000 for the bond application fee (for multiple site Applications the application fee shall be \$10,000 or \$30 [per unit based on the total number of units/unit](#), whichever is greater). 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 part of a portfolio such application fees may be reduced on a case by case basis at the discretion of the Executive Director.

**(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. 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 and a Bond compliance fee equal to \$25/unit [\(excludes market rate units\)](#) ~~(such~~ [Such](#) compliance fee shall be applied to the third year following closing).

**(d) Application and Issuance Fees for Refunding Applications.** For refunding Applications the 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 on its date of calculation and is paid as long as the Bonds are outstanding.

**(f) Bond Compliance Fee.** The Bond compliance monitoring fee is equal to \$25/Unit [\(excludes market rate units\)](#).

The Texas Department of Housing and Community Affairs (the “Department”) proposes the repeal of 10 TAC Chapter 12, §§12.1 - 12.10, concerning the 2016 Multifamily Housing Revenue Bond Rules. The purpose of the repeal is to allow for the proposal and adoption of new sections. The proposed new Chapter 12, concerning the 2017 Multifamily Housing Revenue Bond Rules is published concurrently with this proposed repeal in this issue of the *Texas Register*.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal will be in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be the adoption of new rules for multifamily housing revenue bonds; providing updates and greater clarity, and enhancing the state’s ability to provide decent, safe and sanitary housing administered by the Department. There will not be any economic cost to any individuals required to comply with the repeal.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held October 28, 2016, to November 18, 2016, to receive input on the repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Shannon Roth, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. November 18, 2016.

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed repeal affects no other code, article, or statute.

- §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. Regulatory and Land Use Restrictions.
- §12.10. Fees.

2a



## TDHCA Outreach Activities, September 2016

*A compilation of activities designed to increase the awareness of TDHCA programs and services or increase the visibility of the Department among key stakeholder groups and the general public*

<b>Event</b>	<b>Location</b>	<b>Date</b>	<b>Division</b>	<b>Purpose</b>
Disability Advisory Workgroup Meeting	Austin	Sept 2	Housing Resource Center; Fair Housing, Data Mgmt, & Reporting	Presentation, Participant
Texas Assoc. of Realtors Annual Conference/Realtor Expo	Galveston	Sept 9	Homeownership	Exhibitor
Online Forum/2017 Multifamily Direct Loan Rule	Austin	Sept 9-Oct 3	Multifamily Finance	Moderator
Dallas MetroTex Assoc. of Realtors	Dallas	Sept 14	Homeownership	Presentation
Roundtable/Creating Regions in the Balance of State Continuum of Care	Austin	Sept 19	Community Affairs	Roundtable Hearing
Webinar/My First Texas Home program Lender Training	Austin	Sept 19-21	Homeownership	Training
Houston Assoc. of Realtors	Sugar Land	Sept 20	Homeownership	Training
Faith & Community Based Organizations, Interagency Coordinating Group	Austin	Sept 20	Housing Resource Center	Participant
Texas Interagency Council for the Homeless Quarterly Meeting	Austin	Sept 21	Housing Resource Center	Participant
Teleconference/Texas Assoc. of Realtors	Austin	Sept 21	Homeownership	Training
Roundtable/Multifamily Direct Loan Rule	Austin	Sept 22	Multifamily Finance	Roundtable Hearing
HOME TBRA/Combined Community Action	Giddings	Sept 28	HOME	Training
Accessible Housing Austin!/Section 811 Property Management Training	Austin	Sept 29	Fair Housing, Data Mgt, & Reporting	Training
Public Hearing/Community Affairs Division	Austin	Sept 29	Community Affairs	Public Hearing
HOME TBRA-PWD/Easter Seals of Central Texas	Austin	Sept 30	HOME	Training
El Paso Realtor Expo	El Paso	Sept 30	Homeownership	Exhibitor

## Internet Postings of Note, September 2016

*A list of new or noteworthy documents posted to the Department's website*

**Community Services Block Grant Program: 2017 Community Action Plan and Requirements —**  
*outlining planned course of action for CSBG Subrecipient activities for the coming year:*

[www.tdhca.state.tx.us/community-affairs/csbg/additional-requirements.htm](http://www.tdhca.state.tx.us/community-affairs/csbg/additional-requirements.htm)

**Comprehensive Energy Assistance Program: Poverty Population Analysis Tool** — *used by CEAP subrecipients to analyze poverty data by county, percentage of service area, direct service in terms of dollars, and other metrics:*  
[www.tdhca.state.tx.us/community-affairs/ceap/guidance.htm](http://www.tdhca.state.tx.us/community-affairs/ceap/guidance.htm)

**Low Income Home Energy Assistance Program: 2017 State Plan** — *detailing the manner in which the Department will utilize LIHEAP funds in providing utility and weatherization assistance to income-eligible residents:*  
[www.tdhca.state.tx.us/community-affairs/ceap/index.htm](http://www.tdhca.state.tx.us/community-affairs/ceap/index.htm)

**HOME Program: Main Web Page** — *updating information regarding HOME, including information regarding eligible activities, funding distribution, eligible applicants, and a brief explanation of its various programs:*  
[www.tdhca.state.tx.us/home-division/index.htm](http://www.tdhca.state.tx.us/home-division/index.htm)

**Housing Tax Credit Consultants List** — *updating list of consultants approved by the Department and serving the tax credit development community:*  
[www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/index.htm](http://www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/index.htm);  
[www.tdhca.state.tx.us/multifamily/housing-tax-credits-4pct/index.htm](http://www.tdhca.state.tx.us/multifamily/housing-tax-credits-4pct/index.htm)

**Comprehensive Energy Assistance Program: PY 2017 Service Delivery Plans** — *outlining the proposed delivery of services by agencies administering funds through the Department's CEAP contracts:*  
[www.tdhca.state.tx.us/community-affairs/ceap/guidance.htm](http://www.tdhca.state.tx.us/community-affairs/ceap/guidance.htm)

**Housing Tax Credit Property Inventory: Sept 2016** — *listing properties financed through the Department's tax credit program by city, TDHCA file number, and development contact:*  
[www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/index.htm](http://www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/index.htm);  
[www.tdhca.state.tx.us/multifamily/housing-tax-credits-4pct/index.htm](http://www.tdhca.state.tx.us/multifamily/housing-tax-credits-4pct/index.htm)

**Emergency Solutions Grant Program: 2016 Awardees** — *detailing local cities and nonprofit organizations administering ESG funds, listed by Continuum of Care region, agency name and partners, contact information, and counties served:*  
[www.tdhca.state.tx.us/community-affairs/esgp/index.htm](http://www.tdhca.state.tx.us/community-affairs/esgp/index.htm)

**2016 Comprehensive Energy Assistance Program: Subrecipient Contacts** — *listing entities currently administering CEAP funds sorted by agency name, city, counties served, and contact information:*  
[www.tdhca.state.tx.us/community-affairs/ceap/index.htm](http://www.tdhca.state.tx.us/community-affairs/ceap/index.htm)

**2016 Weatherization Assistance Program: Subrecipient Contacts** — *listing entities currently administering WAP funds sorted by agency name, city, counties served, and contact information:*  
[www.tdhca.state.tx.us/community-affairs/wap/index.htm](http://www.tdhca.state.tx.us/community-affairs/wap/index.htm)

2b

**BOARD REPORT ITEM**  
**MULTIFAMILY FINANCE DIVISION**  
**OCTOBER 13, 2016**

Report Regarding Status of Appeal Rights for 2016 Competitive Housing Tax Credit #16040  
Parklane Villas

**BACKGROUND**

10 TAC §10.201(5) sets forth the evaluation process for staff to use in determining which applications are likely to be competitive. As described in the rule, each application receives an initial assessment where staff considers the applicant's self-score as well as the application's potential for scoring points for items not included in the self-score. After this initial assessment, staff ranks the applications by score within the set-aside or subregion. For each application that is determined to be competitive, staff completes a review of the application and a scoring notice is customarily sent to the applicant. Applicants may appeal any loss of points indicated on the scoring notice or at any time the scores are posted in a log or Board item.

In the case of the Parklane Villas application, staff initially reviewed the application and determined that it did not provide evidence to score one point under 10 TAC §11.9(c)(5) Educational Excellence. Staff issued a deficiency notice on June 9, 2016, and the applicant submitted further information on the noticed deficiency, but staff did not change its determination. This determination left the application with a noncompetitive score in the At-Risk Set-Aside. The application was fully scored, but the applicant was inadvertently not sent a scoring notice. While the Department generally provides an individual scoring notice to applicants, there is no statutory or rule-based requirement that the Department issue such a notice. In this case, the Department published the results of the application review process for this application on several occasions:

- On July 13, 2016, the Department posted the Full Application Log of the same date. This log indicated that the assigned score of the application was 153 points, and that the application was no longer under review.
- On July 15, 2016, the Department posted an updated Full Application Log indicating the same score and review status for the application.
- On July 25, 2016, the Department posted the Recommended Awards List and the Award and Waiting List in advance of the board meeting of July 28, 2016, on the board meeting information page of the Department's website. The Recommended Awards List did not include this application, and the Award and Waiting List indicated the same score and review status for the application.
- On July 26, 2016, the Department posted the Award and Waiting List to the 9% application page on the Department's website, indicating the same score and review status for the application.

- Finally, on July 28, 2016, the Department's Governing Board approved the Recommended Awards List without the Parklane Villas application included.

Pursuant to Tex. Gov't Code §2306.6715 related to Appeals, and 10 TAC §10.902(c), the applicant must file a written appeal with the Department not later than the seventh day after the date the Department publishes the results of the application evaluation process. At no time after the Department posted the above information did the Applicant file an appeal, or indicate to staff that they questioned the scoring of the application. Once the Board approved the Awards and Waiting List with the assigned score of 153 indicated for the application, any opportunity for an appeal or any other way to affect the score was lost.

The Applicant contacted staff on August 24, 2016, to discuss the application. At this meeting the Applicant made it clear that they questioned the scoring, but with no remaining option for appeal, the rules do not provide for any further action the Department can take. Staff will continue to track returned credits, and should there be enough credits returned to the At-Risk Set-Aside to fund another application, this application is currently the next ranked At-Risk application to be funded from the waiting list.

While staff is presenting a report on this matter, the related rules make clear that the period of time during which an appeal or a Third Party Request for Administrative Deficiency can be filed is now past. Accordingly, this report does not represent an appeal of the application score or the review process, nor any of the awards made at the Board meeting of July 28, 2016.

**From:** Sharon Gamble  
**To:** "[Jackson, Toni](#)"  
**Subject:** RE: Parklane Villas, TDHCA #16040 - Status Query  
**Date:** Saturday, July 16, 2016 9:38:00 AM

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Hi Toni:

Parklane is the next application that would be considered for an award if one of the non-USDA deals ahead of it falters. We are reviewing the application in order to be prepared should that happen.

Regards,

Sharon D. Gamble MSW, PMP  
Competitive Housing Tax Credit Program Administrator  
Texas Department of Housing and Community Affairs  
(512) 936-7834

Any person receiving guidance from TDHCA staff should be mindful that, as set forth in 10 TAC Section 11.1(b) there are important limitations and caveats (Also see 10 TAC §10.2(b)).

About TDHCA

The Texas Department of Housing and Community Affairs administers a number of state and federal programs through for-profit, nonprofit, and local government partnerships to strengthen communities through affordable housing development, home ownership opportunities, weatherization, and community-based services for Texans in need. For more information, including current funding opportunities and information on local providers, please visit [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)

---

**From:** Jackson, Toni [<mailto:TJackson@joneswalker.com>]  
**Sent:** Friday, July 15, 2016 4:22 PM  
**To:** Sharon Gamble  
**Subject:** Parklane Villas, TDHCA #16040 - Status Query

Hi Sha,

I just saw the new scoring log come out but noticed that it still shows Parklane Villas as not under review. However, the client has received 2 deficiency notices. Is this application under review and in the money?

Thanks.

Toni



**Antoinette M. "Toni" Jackson**  
*Partner*  
**Jones Walker LLP**  
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TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

[www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)

Greg Abbott  
GOVERNOR

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August 31, 2016

*Writer's direct phone # (512) 936-7834*  
*Email: [sbaron.gamble@tdhca.state.tx.us](mailto:sbaron.gamble@tdhca.state.tx.us)*

Ms. Marvalette Hunter  
HuntJon, LLC  
6802 Champion Village Court  
Houston, Texas 77069

RE: 2016 9% HOUSING TAX CREDIT APPLICATION #16040, PARKLANE VILLAS

Dear Ms. Hunter:

On August 24, 2016, I participated in a meeting with you (via telephone) and Ms. Antoinette "Toni" Jackson (in person) regarding the status of the application named above. During that meeting, I was informed that there remained questions about the scoring of the application, specifically about the loss of one point under §11.9(c)(5) Educational Excellence. At the close of our conversation, I pledged to review the matter thoroughly and contact you regarding any next steps that may be taken. I reviewed the scoring of the application and determined that there did appear to be a potential error in the final scoring of the application prior to the July 28, 2016, awards. Though I communicated this potential error to you yesterday in the form of a pre-award scoring notification showing the full 154 points, the rules and award timeline do not afford the appeal rights contained in this scoring notification and should be disregarded. I have consulted executive staff to see what steps, if any, may be taken since the awards had been made and the application cycle was over.

We first looked into what right of appeal might exist for the applicant. We considered the fact that a scoring notice in the form recently sent to you had not been issued for the application, and whether this might provide an avenue for an appeal. Pursuant to Tex. Gov't Code §2306.6715 related to Appeals, an applicant may appeal the scoring of the application, but the applicant must file a written appeal with the department not later than the seventh day after the date the department publishes the results of the application evaluation process. While the Department generally provides an individual scoring notice to applicants, there is no statutory or rule-based requirement that the Department issue such a notice. In this case, the Department published the results of the application review process for this application on several occasions:



- On July 13, 2016, the Department posted the Full Application Log of the same date. This log indicated that the assigned score of the application was 153 points, and that the application was no longer under review.
- On July 15, 2016, the Department posted an updated Full Application Log indicating the same score and review status for the application.
- On July 25, 2016, the Department posted the Recommended Awards List and the Award and Waiting List in advance of the July 28, 2016, board meeting on the board meeting information webpage of the Department's website. The Recommended Awards List did not include this application, and the Award and Waiting List indicated the same score and review status for the application.
- On July 26, 2016, the Department posted the Award and Waiting List to the 9% application webpage on the Department's website, indicating the same score and review status for the application.
- Finally, on July 28, 2016, the Department's Executive Board approved the Recommended Awards List without the Parklane Villas application included, and the Awards and Waiting List indicating the same score and review status for the application.

Under the rules, the applicant had seven (7) calendar days from the posting of the July 13 or the July 15 logs to file an appeal of the assigned score with the Department. No appeal was filed. After the July 15, 2016 posting, I received an email from Ms. Jackson asking if the application was under review and if it was "in the money." My response was that the application would be considered for an award if one of the non-USDA applications ahead of it falters. There was no mention of questions about the score and no mention of an appeal. The Department was not contacted when the board materials were posted, and no comment was made prior to the board's approval of the awards. Once the Board approved the Awards and Waiting List with the assigned score of 153 indicated for the application, any opportunity for an appeal or any other way to affect the score was lost; a fact that renders the scoring notice I sent to you on August 29, 2016, moot.

With no remaining option for appeal, the rules do not offer any further action the Department can take. We will continue to track returned credits, and should there be enough credits returned to the At-Risk Set-Aside to fund another application, this application is currently the next At-Risk application to be funded. Please do not hesitate to contact me if you have further questions.

Sincerely,



Sharon D. Gamble  
Competitive HTC Administrator

cc: Toni Jackson



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Antoinette "Toni" Jackson  
Direct Dial: 713-437-1888  
Direct Fax: 713-437-1938  
tjackson@joneswalker.com

September 6, 2016

**VIA ELECTRONIC TRANSMITTAL**

Texas Department of Housing and  
Community Affairs  
221 East 11th Street  
Austin, Texas 78701  
Attn: Timothy Irvine

RE: 2016 9% Housing Tax Credit Application  
Parklane Villas  
TDHCA Application #16040

Dear Mr. Irvine:

I am writing on behalf of my client, Parklane Villas, LP ("Applicant") in response to the letter received from Sharon Gamble, Competitive HTC Administrator, dated August 31, 2016 and a follow-up call held on September 1, 2016 with Marni Holloway, Director of Multifamily Programs and Beau Eccles, General Counsel, regarding the status of TDHCA Application #16040, Parklane Villas. I am also writing to appeal the decision of the August 31, 2016 letter and request that this matter be reviewed by you. The letter dated August 31 indicated that the Applicant is without an option for appeal, but it is our contention that this is incorrect.

Pursuant to §10.201, Procedural Requirements for Application Submission, of the 2016 Uniform Multifamily Rules ("Rules"), it states that:

*(7) Administrative Deficiency Process. Final determinations regarding the sufficiency of documentation submitted to cure an Administrative 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.*

Additionally, in §10.902, Appeals Process of the Rules, it further states:

{HD080029.2}

JONES WALKER LLP

*(a) An Applicant or Development Owner may appeal decisions made by the Department pursuant to the process identified in this section. Matters that can be appealed include:...*

*(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.*

And it further instructs that:

*(c) An Applicant or Development Owner must file its appeal in writing with the Department not later than seven (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 to appeal.*

Therefore, it is our contention that the Applicant's right of appeal has been reserved under both §10.201 and §10.902 and is eligible for Executive Director review and decision. We further request that, based upon these same sections of the Rules, in the event this matter is not satisfactorily resolved by you, we would like to be placed on the October 13, 2016 board agenda and heard by the Board.

As we have mentioned to the staff, we are concerned that the staff has come to the conclusion that we are without any appeal rights in this matter. More important, we are concerned that we continued to be in contact with the staff and no one ever pulled the application to find out the exact status but instead gave us an account of the application based upon memory and what was believed to be the status. When we finally asked for a meeting to sit down and discuss the matter, staff acknowledged that several mistakes had been made but then determined that the Applicant did not address the matter timely so there was no recourse to resolve the matter.

The Applicant is in agreement with some of the representations made in Ms. Gamble's August 31 letter. However, there are some facts that are missing that we would like to bring to your attention:

- June 9, 2016 - The Applicant received a deficiency notice regarding the Educational Excellence self-score point;

- June 16, 2016 - Applicant responded to the June 9 deficiency and provided supporting evidence for the Educational Excellence category of 1 point: an email from Walter Jackson, Ed.D., Superintendent of the Brenham ISD, explaining the computer selection process used to place students and a distance map of the two schools in question from the site location;
- June 21, 2016 – Applicant received a second deficiency notice asking for clarification of information and submitted the information to staff on June 28, 2016;
- June 29- Applicant receives an email from Ben Sheppard stating that the application had been forwarded for supervisory review;
- June 30, 2016 – TDHCA released an updated award log showing Applicant’s 154 point score but the application status showed an “N” indicating that the application was not under review;
- June 30, 2016 – Applicant’s counsel asked staff about the “N” and was told that the log may not have been changed in time to reflect that the application was in fact being reviewed by staff;
- July 13, 2016 – TDHCA posted an updated award log showing Applicant’s score of 153 and status “N”;
- July 14, 2016 – Applicant contacted Ben Sheppard who confirmed that the documentation supporting the Educational Excellence point had been accepted but that it was still under supervisory review by Nicole Fisher;
- July 15, 2016 – Ms. Fisher sent another deficiency requesting clarification of the Applicant’s organizational chart;
- July 15, 2016 – Applicant’s counsel sent an email asking about the status of the application because the Applicant had yet received another request to respond to deficiencies but the application status had not changed and Applicant had not been sent a scoring notice confirming that the score had been decreased;

- July 16, 2016 – Ms. Gamble responded to email indicating that the application was next up and under review although the log did not confirm this;
- July 28, 2016 – Applicant’s counsel again approached Ms. Gamble and Ms. Holloway about the status of the application because Applicant had not received notice and the log indicated that the application was not under review;
- August 17, 2016 – Applicant and Applicant’s counsel contacted TDHCA because we had still not received any further information about the status of the application;
- August 23, 2016 – Ms. Gamble responded to request for a meeting which was scheduled for August 24, 2016;
- August 24, 2016 – Ms. Gamble meets with Applicant and recognizes that there are some discrepancies in the file and acknowledges that she will research the issue and get back to Applicant;
- August 26, 2016 – Ms. Gamble contacts Applicant and acknowledges that the staff had made a mistake and that the scoring notice had not been mailed nor had the log been properly updated. She further indicated that the staff was trying to determine if the application needed to go back to the board in September or wait until October to rectify the issue and Applicant would receive a letter confirming next steps;
- August 30, 2016 – Applicant receives scoring notice (for the first time since responding to June 9, June 16 and July 15 deficiencies) along with appeal form;
- August 31, 2016 – Applicant receives a letter indicating that there is no option for appeal;

Again, our concern is that the staff is indicating that there is no option for appeal and the only remedy for Applicant is to wait to see if there will be enough credits returned in the At-Risk Set Aside to fund another application. This remedy is not acceptable and does not assure that the staff’s mistake has been rectified with a rightful award of credits. The staff has acknowledged that several mistakes have been made yet placed the burden on the Applicant by indicating that the Applicant did not notify the staff of the mistakes in a timely fashion. However, the Applicant



further contends, as set forth above in this appeal, that the Applicant did in fact inquire about the status of the application no fewer than four (4) times but the staff never looked into these inquiries other than a simple response that the application “is under review” or “up next”.

If the Applicant had received a final scoring notice after review of the deficiencies, the Applicant would have known that there was in fact a problem. The staff has indicated that the Applicant should have been watching the award log. The Applicant continued to watch the log and because of this continued to inquire about the application. Additionally, the award log has not been an absolute way to determine status as has been shown in the case of this application. The award log is not static and we recognize that during the application process, it can change based upon the status of review and incoming information. Applicants rely on the final scoring notices received to confirm their score and application status. We do not agree that “there is no statutory or rule-based requirement that the Department issue such a notice” as stated in the August 31 letter. The §10.201(7)(A) of the Rules clearly states that “*to the extent that the review of Administrative Deficiency documentation alters the score assigned to an application, Applicants will be re-notified of their final adjusted score.*”

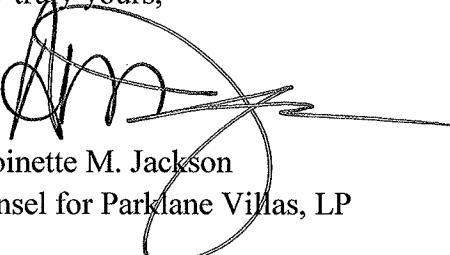
Even if it were the burden of the Applicant to bring this to the attention of staff, we did notify the staff on numerous occasions and even finally met with staff prior to the release of the award letters. Historically, similar issues would not go before the board but would be corrected administratively as a wait-listed application as long as the application is under review. It is our belief that this matter should have been handled in that same manner and corrected prior to the release of the award letters. However, the award letters have now been distributed and the Applicant is being left with no relief to acknowledged mistakes on the behalf of staff.

The Applicant believes that Parklane Villas is not only eligible for an award but in fact had a winning score and successful tie breaker factors. This was further confirmed by the Scoring Notice provided on August 30, 2016. Therefore, it is the Applicant’s request that this matter be rectified by the immediate issuance of an award of 2016 credits.

Mr. Timothy Irvine  
Texas Department of Housing and Community Affairs  
September 6 2016  
Page 6

Thank you for your prompt attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to be 'AMJ', with a long horizontal flourish extending to the right. The signature is written over the printed name and title.

Antoinette M. Jackson  
Counsel for Parklane Villas, LP

AMJ/

Attachments:

Appeal Form  
Email correspondence from TDHCA to Applicant  
Scoring Notice

cc: Marvalette Hunter, HuntJon, LLC  
Vince Michel, Brenham Housing Authority  
Barry J. Palmer, Coats Rose



**MULTIFAMILY FINANCE PRODUCTION DIVISION**  
**Housing Tax Credit Program - 2016 Application Round**  
**Scoring Notice - Competitive Housing Tax Credit Application**

---

**Appeal Election Form: 16040, Parklane Villas**

**Note:** If you do not wish to appeal this notice, you do not need to submit this form.

I am in receipt of my 2016 scoring notice and am filing a formal appeal to the Executive Director on or before Tuesday, September 6, 2016.

**If my appeal is denied by the Executive Director:**

- I do wish to appeal to the Board of Directors and request that my application be added to the Department Board of Directors meeting agenda. My appeal documentation, which identifies my specific grounds for appeal, is attached. If no additional documentation is submitted, the appeal documentation to the Executive Director will be utilized.
- I do not wish to appeal to the Board of Directors.

Signed

*Manatella Hurler*

Title

*Managing Member*

Date

*9/6/16*

**Please email to Sharon Gamble:**  
**mailto:sharon.gamble@tdhca.state.tx.us**

## Jackson, Toni

---

**From:** Marvalette Hunter <marvalette@3dvisionsconsultants.com>  
**Sent:** Tuesday, September 06, 2016 10:26 AM  
**To:** Jackson, Toni  
**Cc:** tjones@mjlm.com  
**Subject:** FW: TDHCA #16040 Parklane Transfer and Relocation Budget

Toni,

See below the last email received regarding Parklane from Ben Sheppard.

---

**From:** Ben Sheppard [<mailto:ben.sheppard@tdhca.state.tx.us>]  
**Sent:** Wednesday, June 29, 2016 12:34 PM  
**To:** Marvalette Hunter  
**Subject:** RE: TDHCA #16040 Parklane Transfer and Relocation Budget

Received and reviewed. The application has been forwarded for supervisory review.

Thanks,

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

*Any person receiving guidance from TDHCA staff should be mindful that, as set forth in [10 TAC Section 11.1\(b\)](#) there are important limitations and caveats (Also see [10 TAC §10.2\(b\)](#)).*

---

**From:** Marvalette Hunter [<mailto:marvalette@3dvisionsconsultants.com>]  
**Sent:** Wednesday, June 29, 2016 11:54 AM  
**To:** Ben Sheppard  
**Subject:** TDHCA #16040 Parklane Transfer and Relocation Budget

Ben,

In response to the 2nd deficiency notice, please see attached the transfer and reallocation budget for Parklane Villas.

Thanks.

Marvalette Hunter  
713-545-8840  
Sent from my iPhone

Begin forwarded message:

**From:** "Vince Michel" <[vincem@brenhamhousing.org](mailto:vincem@brenhamhousing.org)>  
**Date:** June 29, 2016 at 12:38:52 PM EDT  
**To:** "'Marvalette Hunter'" <[marvalette@3dvisionsconsultants.com](mailto:marvalette@3dvisionsconsultants.com)>  
**Subject:** Parklane Transfer and Relocation Budget

See attached.

## Jackson, Toni

---

**From:** Sharon Gamble <sharon.gamble@tdhca.state.tx.us>  
**Sent:** Saturday, July 16, 2016 9:38 AM  
**To:** Jackson, Toni  
**Subject:** RE: Parklane Villas, TDHCA #16040 - Status Query

Hi Toni:

Parklane is the next application that would be considered for an award if one of the non-USDA deals ahead of it falters. We are reviewing the application in order to be prepared should that happen.

Regards,

Sharon D. Gamble MSW, PMP  
Competitive Housing Tax Credit Program Administrator  
Texas Department of Housing and Community Affairs  
(512) 936-7834

Any person receiving guidance from TDHCA staff should be mindful that, as set forth in 10 TAC Section 11.1(b) there are important limitations and caveats (Also see 10 TAC §10.2(b)).

### About TDHCA

The Texas Department of Housing and Community Affairs administers a number of state and federal programs through for-profit, nonprofit, and local government partnerships to strengthen communities through affordable housing development, home ownership opportunities, weatherization, and community-based services for Texans in need. For more information, including current funding opportunities and information on local providers, please visit [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)

---

**From:** Jackson, Toni [<mailto:TJackson@joneswalker.com>]  
**Sent:** Friday, July 15, 2016 4:22 PM  
**To:** Sharon Gamble  
**Subject:** Parklane Villas, TDHCA #16040 - Status Query

Hi Sha,

I just saw the new scoring log come out but noticed that it still shows Parklane Villas as not under review. However, the client has received 2 deficiency notices. Is this application under review and in the money?

Thanks.

Toni



Antoinette M. "Toni" Jackson  
Partner  
Jones Walker LLP  
D: 713.437.1888 F: 713.437.1938  
M: 713.515.3443

1001 Fannin St, Ste 2450  
Houston, TX 77002  
T: 713.437.1800  
[www.joneswalker.com](http://www.joneswalker.com)

## Jackson, Toni

---

**From:** Sharon Gamble <sharon.gamble@tdhca.state.tx.us>  
**Sent:** Monday, August 29, 2016 5:38 PM  
**To:** Marvalette Hunter  
**Cc:** Jackson, Toni  
**Subject:** RE: Parklane

Talked with Tom. We will have to take this to the Board meeting, so I am not sure what I can give you right now to help with the land issue. Can we have a call tomorrow?

Regards,

Sharon D. Gamble MSW, PMP  
Competitive Housing Tax Credit Program Administrator Texas Department of Housing and Community Affairs  
(512) 936-7834

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-----Original Message-----

From: Marvalette Hunter [<mailto:marvalette@3dvisionsconsultants.com>]  
Sent: Monday, August 29, 2016 1:57 PM  
To: Sharon Gamble  
Cc: Jackson, Toni  
Subject: Re: Parklane

Thanks Sharon!

Marvalette Hunter  
713-545-8840  
Sent from my iPhone

> On Aug 29, 2016, at 1:56 PM, Sharon Gamble <[sharon.gamble@tdhca.state.tx.us](mailto:sharon.gamble@tdhca.state.tx.us)> wrote:  
>  
> I am waiting to meet with Tom. Hope to have something later this afternoon.  
>  
> Regards,  
>  
> Sharon D. Gamble MSW, PMP  
> Competitive Housing Tax Credit Program Administrator Texas Department



> of Housing and Community Affairs

> (512) 936-7834

>

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>

>

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> more information, including current funding opportunities and

> information on local providers, please visit [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)

>

>

> -----Original Message-----

> From: Jackson, Toni [<mailto:TJackson@joneswalker.com>]

> Sent: Monday, August 29, 2016 7:30 AM

> To: Sharon Gamble

> Cc: Marvalette Fentress Hunter

> Subject: Parklane

>

> Hi Sharon,

>

> I just wanted to follow up to see if you had any information for is about Parklane. I'm out of the office today but will be back in front of email later this afternoon. Thanks.

>

> Toni J.

> Sent from my iPhone

>

>

## Jackson, Toni

---

**From:** Sharon Gamble <sharon.gamble@tdhca.state.tx.us>  
**Sent:** Monday, August 29, 2016 6:05 PM  
**To:** Marvalette Hunter  
**Cc:** Jackson, Toni  
**Subject:** Re: Parklane

At this point the recommendation is to hold the last award made in at risk pending underwriting and previous participation. Be advised that This is still under discussion internally so is not a done deal.

Sent from my iPhone

> On Aug 29, 2016, at 5:54 PM, Marvalette Hunter <[marvalette@3dvisionsconsultants.com](mailto:marvalette@3dvisionsconsultants.com)> wrote:

>

> Sharon,

>

> Question - Would you be taking the item to the board as a recommendation from Staff to allocate the credits? If so, can we get something from TDHCA regarding a timeline for approval to assist us with the seller?

>

> Thanks.

> Marvalette Hunter

> HuntJon, LLC

> 713-545-8840

>

> -----Original Message-----

> From: Sharon Gamble [<mailto:sharon.gamble@tdhca.state.tx.us>]

> Sent: Monday, August 29, 2016 5:38 PM

> To: Marvalette Hunter

> Cc: Jackson, Toni

> Subject: RE: Parklane

>

> Talked with Tom. We will have to take this to the Board meeting, so I am not sure what I can give you right now to help with the land issue. Can we have a call tomorrow?

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> Regards,

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> Competitive Housing Tax Credit Program Administrator Texas Department

> of Housing and Community Affairs

> (512) 936-7834

>

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>

>

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> -----Original Message-----

> From: Marvalette Hunter [<mailto:marvalette@3dvisionsconsultants.com>]  
> Sent: Monday, August 29, 2016 1:57 PM  
> To: Sharon Gamble  
> Cc: Jackson, Toni  
> Subject: Re: Parklane

>

> Thanks Sharon!

>

> Marvalette Hunter  
> 713-545-8840  
> Sent from my iPhone

>

>> On Aug 29, 2016, at 1:56 PM, Sharon Gamble <[sharon.gamble@tdhca.state.tx.us](mailto:sharon.gamble@tdhca.state.tx.us)> wrote:

>>

>> I am waiting to meet with Tom. Hope to have something later this afternoon.

>>

>> Regards,

>>

>> Sharon D. Gamble MSW, PMP  
>> Competitive Housing Tax Credit Program Administrator Texas Department  
>> of Housing and Community Affairs  
>> (512) 936-7834

>>

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>> more information, including current funding opportunities and  
>> information on local providers, please visit [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)

>>

>>

>> -----Original Message-----

>> From: Jackson, Toni [<mailto:TJackson@joneswalker.com>]  
>> Sent: Monday, August 29, 2016 7:30 AM  
>> To: Sharon Gamble  
>> Cc: Marvalette Fentress Hunter  
>> Subject: Parklane

>>

>> Hi Sharon,

>>

>> I just wanted to follow up to see if you had any information for is about Parklane. I'm out of the office today but will be back in front of email later this afternoon. Thanks.

>>

>> Toni J.

>> Sent from my iPhone

>

>

>

> -----

> No virus found in this message.

> Checked by AVG - [www.avg.com](http://www.avg.com)

> Version: 2016.0.7752 / Virus Database: 4649/12904 - Release Date:

> 08/29/16

>

## Jackson, Toni

---

**From:** Sharon Gamble <sharon.gamble@tdhca.state.tx.us>  
**Sent:** Tuesday, August 30, 2016 1:42 PM  
**To:** Marvalette Hunter  
**Cc:** Jackson, Toni  
**Subject:** RE: Parklane  
**Attachments:** 16040\_2016 Final Scoring Notice 9%HTC.pdf; 16040\_2016 Appeal Election Form.pdf

See attached.

Regards,

Sharon D. Gamble MSW, PMP  
Competitive Housing Tax Credit Program Administrator Texas Department of Housing and Community Affairs  
(512) 936-7834

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### -----Original Message-----

**From:** Marvalette Hunter [<mailto:marvalette@3divisionsconsultants.com>]  
**Sent:** Tuesday, August 30, 2016 11:45 AM  
**To:** Sharon Gamble  
**Cc:** Jackson, Toni  
**Subject:** Re: Parklane

Sharon,

Just following up on the scoring notice. If you could please send it today, that would be great. We have a board meeting this evening with the Brenham Housing Authority and will review this matter.

Thanks.

Marvalette Hunter  
713-545-8840  
Sent from my iPhone

> On Aug 30, 2016, at 7:52 AM, Sharon Gamble <[sharon.gamble@tdhca.state.tx.us](mailto:sharon.gamble@tdhca.state.tx.us)> wrote:  
>

> Excellent. I have a call line for us:

>

> Call 877-226-9790

> access code 9749661

>

> Regards,

>

> Sharon D. Gamble MSW, PMP

> Competitive Housing Tax Credit Program Administrator Texas Department

> of Housing and Community Affairs

> (512) 936-7834

>

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>

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>

>

>

> -----Original Message-----

> From: Marvalette Hunter [<mailto:marvalette@3dvisionsconsultants.com>]

> Sent: Tuesday, August 30, 2016 7:42 AM

> To: Sharon Gamble

> Cc: Jackson, Toni

> Subject: Re: Parklane

>

> Great! Let talk then.

>

> Marvalette Hunter

> 713-545-8840

> Sent from my iPhone

>

>> On Aug 30, 2016, at 7:16 AM, Sharon Gamble <[sharon.gamble@tdhca.state.tx.us](mailto:sharon.gamble@tdhca.state.tx.us)> wrote:

>>

>> 9 works for me.

>>

>> Regards,

>>

>> Sharon D. Gamble MSW, PMP

>> Competitive Housing Tax Credit Program Administrator Texas Department

>> of Housing and Community Affairs

>> (512) 936-7834

>>



>> Any person receiving guidance from TDHCA staff should be mindful that, as set forth in 10 TAC Section 11.1(b) there are important limitations and caveats (Also see 10 TAC §10.2(b)).

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>> more information, including current funding opportunities and

>> information on local providers, please visit [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)

>>

>>

>> -----Original Message-----

>> From: Jackson, Toni [mailto:TJackson@jones



**MULTIFAMILY FINANCE PRODUCTION DIVISION**  
**Housing Tax Credit Program - 2016 Application Round**  
**Scoring Notice - Competitive Housing Tax Credit Application**

---

Date: August 30, 2016

Phone #:

Email: [marvalette@3divisionsconsultants.com](mailto:marvalette@3divisionsconsultants.com)

Second Email: [tjones@mjlm.com](mailto:tjones@mjlm.com)

**THIS NOTICE WILL ONLY BE  
TRANSMITTED VIA EMAIL**

**RE: 2016 Competitive Housing Tax Credit (HTC) Application for Parklane Villas, TDHCA Number: 16040**

The Texas Department of Housing and Community Affairs has completed its program review of the Application referenced above as further described in the 2016 Qualified Allocation Plan ("QAP"). This scoring notice provides a summary of staff's assessment of the application's score. The notice is divided into several sections.

Section 1 of the scoring notice provides a summary of the score requested by the Applicant followed by the score staff has assessed based on the Application submitted. You should note that four scoring items are not reflected in this scoring comparison but are addressed separately.

Section 2 of the scoring notice includes each of the four scoring criteria for which points could not be requested by the Applicant in the application self-score form and include: §11.9(d)(1) Local Government Support, §11.9(d)(4) Quantifiable Community Participation, §11.9(d)(5) Community Support from State Representative, and §11.9(d)(6) Input from Community Organizations.

Section 3 provides information related to any point deductions assessed under §11.9(f) of the QAP or §10.201(7)(A) of the Uniform Multifamily Rules.

Section 4 provides the final cumulative score in bold.

Section 5 includes an explanation of any differences between the requested and awarded score as well as any penalty points assessed.

The scores provided herein are merely informational at this point in the process and may be subject to change. For example, points awarded under §11.9(e)(2) "Cost of Development per Square Foot" and §11.9(e)(4) "Leveraging of Private, State, and Federal Resources" may be adjusted should the underwriting review result in changes to the Application that would affect these scores. If a scoring adjustment is necessary, staff will provide the Applicant a revised scoring notice.

Be further advised that if the Applicant failed to properly disclose information in the Application that could have a material impact on the scoring information provided herein, the score included in this notice may require adjustment and/or the Applicant may be subject to other penalties as provided for in the Department's rules.

This preliminary scoring notice is provided by staff at this time to ensure that an Applicant has sufficient notice to exercise any appeal process provided under §10.902 of the Uniform Multifamily Rules. All information in this scoring notice is further subject to modification, acceptance, and/or approval by the Department's Governing Board.



**MULTIFAMILY FINANCE PRODUCTION DIVISION**  
**Housing Tax Credit Program - 2016 Application Round**  
**Scoring Notice - Competitive Housing Tax Credit Application**

**Page 2 of Final Scoring Notice: 16040, Parklane Villas**

**Section 1:**

Score Requested by Applicant (Does not include points for §11.9(d)(1), (4), (5), or (6) of the 2016 QAP):	121
Score Awarded by Department staff (Does not include points for §11.9(d)(1), (4), (5), or (6) of the 2016 QAP):	121
Difference between Requested and Awarded:	0

**Section 2:**

Points Awarded for §11.9(d)(1) Local Government Support:	17
Points Awarded for §11.9(d)(4) Quantifiable Community Participation:	4
Points Awarded for §11.9(d)(5) Community Support from State Representative:	8
Points Awarded for §11.9(d)(6) Input from Community Organizations:	4

**Section 3:**

Points Deducted for §11.9(f) of the QAP or §10.201(7)(A) of the Uniform Multifamily Rules:	0
--	---

**Section 4:**

<b>Final Score Awarded to Application by Department staff:</b>	<b>154</b>
--	------------

**Section 5:**

**Explanation for Difference between Points Requested and Points Awarded by the Department as well as penalties assessed:**

Restrictions and requirements relating to the filing of an appeal can be found in §10.902 of the Uniform Multifamily Rules. If you wish to appeal this scoring notice, you must file your appeal with the Department no later than 5:00 p.m. Austin local time, Friday, June 10, 2016. If an appeal is denied by the Executive Director, an Applicant may appeal to the Department's Board.

In an effort to increase the likelihood that Board appeals related to scoring are heard at the Board meeting, the Department has provided an Appeal Election Form for all appeals submitted to the Executive Director. In the event an appeal is denied by the Executive Director, the Applicant is able to request that the appeal automatically be added to the Board agenda.

If you have any concerns regarding potential miscalculations or errors made by the Department, please contact Sharon Gamble at (512) 936-7834 or by email at <mailto:sharon.gamble@tdhca.state.tx.us>.

Sincerely,

*Sharon Gamble*

Sharon Gamble  
 9% Competitive HTC Program Administrator

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD OF DIRECTORS MEETING

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

September 8, 2016  
9:00 a.m.

MEMBERS:

J. PAUL OXER, Chair  
JUAN MUÑOZ, Vice-Chair  
LESLIE BINGHAM ESCAREÑO, Member (Absent)  
T. TOLBERT CHISUM, Member  
TOM H. GANN, Member  
J.B. GOODWIN, Member

TIMOTHY K. IRVINE, Executive Director

1 (No response.)

2 MR. OXER: Motion to consider?

3 MR. CHISUM: So moved.

4 MR. OXER: Motion by Mr. Chisum to approve  
5 staff recommendation on Item 6(b). Do I hear a second?

6 DR. MUÑOZ: Second.

7 MR. OXER: Dr. Muñoz says he seconds. There  
8 has been no request for public comment. Motion by Mr.  
9 Chisum, second by Dr. Muñoz to approve staff  
10 recommendation on Item 6(b). Those in favor?

11 (A chorus of ayes.)

12 MR. OXER: Opposed?

13 (No response.)

14 MR. OXER: There are none.

15 MR. SINNOTT: Thank you.

16 MR. OXER: Okay. We are at that point in the  
17 agenda I see Toni is coming, because she has got something  
18 to tell us. We will ask for public comment.

19 MS. JACKSON: And I am here for public  
20 comments, and I will make it quick.

21 Good afternoon, gentlemen. My name is Toni  
22 Jackson. And I am here on behalf of my client, Parklane  
23 Villas, LP in Brenham, Texas, in response to the letter  
24 received on August 31, 2016, and a follow-up call held on  
25 September 1, 2016, regarding the status of TDHCA

1 application 16040, Parklane Villas.

2 Parklane Villas did not receive a 2016 award of  
3 tax credits, despite having a competitive score and  
4 tiebreaker factors.

5 Although the Department informed applicant that  
6 the application was under consideration on the numerous  
7 times the applicant inquired about the application, the  
8 applicant never received a final scoring notice, and the  
9 Department never caught that there were scoring and  
10 deficiency mistakes until the applicant requested a  
11 meeting with the Department.

12 The staff has ruled that the applicant has no  
13 appeal rights. Pursuant to Section 10.201, procedural  
14 requirements for application submission, of the rules, it  
15 states that the final determinations regarding the  
16 sufficiency of documentation submitted to cure an  
17 administrative deficiency, as well as the distinction  
18 between material and nonmaterial missing information, are  
19 reserved for the director of Multifamily Finance,  
20 executive director and the Board.

21 Additionally, under appeals process, it  
22 indicates that an applicant or development owner may  
23 appeal decisions made by the Department if misplacement of  
24 an application or parts of an application, mathematical  
25 errors in scoring and application, or procedural errors



1 resulting in unequal consideration of the applicant's  
2 proposal, they may be also considered for appeal.

3 Therefore, it is our contention that the  
4 applicant's right of appeal has been reserved under both  
5 10.201 and 10.902 and is eligible for the executive  
6 director's review and decision.

7 I am here to ask for that relief by the  
8 executive director and, in the event an administrative  
9 decision is not made, that we be placed on the October 13  
10 agenda.

11 And we -- actually, I am not going to go on.  
12 But I just wanted to come before the Board, because this  
13 is a matter that is before the executive director.  
14 However, as indicated, the staff has indicated that we do  
15 not have an appeal right. We have indicated that we do.  
16 And I, again, just want to reserve the right to be on the  
17 October 13 Board agenda.

18 MR. OXER: Okay. Your comments are  
19 appreciated. We understand we can receive your comments.  
20 Toni, we can't act.

21 MS. JACKSON: Right.

22 MR. OXER: Or I can't respond to it.

23 MS. JACKSON: No.

24 MR. OXER: Counselor?

25 MR. ECCLES: Well, just a quick point of

1 clarification: You sent in an actual appeal. Was it this  
2 past week?

3 MS. JACKSON: Yes, it was on Tuesday, the 6th.

4 MR. ECCLES: Okay. Thank you.

5 MS. JACKSON: Yes. Thank you.

6 MR. OXER: All right. Thank you.

7 Okay. We are at the end of the formal agenda.  
8 We have received public comment. Is there any other  
9 public comment?

10 (No response.)

11 MR. OXER: For the purpose of constructing our  
12 future agenda for the October 13 meeting and beyond?

13 (No response.)

14 MR. OXER: Anybody on staff or in the audience?  
15 It looks like mostly staff out there. Anybody in staff  
16 want to say anything?

17 (No response.)

18 MR. OXER: Crank the tractor up. Tom's getting  
19 anxious out there. All right. Any member of the Board or  
20 executive director or general counsel?

21 (No response.)

22 MR. OXER: All right. One more time I get the  
23 last word. It's a good thing we do here, and it's  
24 hard sometimes, but it is worth the effort.

25 I would entertain a motion to adjourn.



TEXAS HOUSE OF REPRESENTATIVES

*Borris L. Miles*

STATE REPRESENTATIVE, DISTRICT 146

*"Your voice in Austin"*

September 12, 2016

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

**RE: Parklane Villas, TDHCA Application #16040**

Dear Mr. Irvine:

I am writing on behalf of my constituents, Marvalette Hunter and Thomas Jones, who are a part of the Parklane Villas application, TDHCA Application No. 16040. They have brought some information to my attention that I am hopeful that you and the department are prepared to address and rectify. Mrs. Hunter has indicated to me that despite receipt of a winning score and successful tie-breaker factor, the application did not receive its rightful award due to several administrative errors that were acknowledged by your staff. She has further indicated that the department has stated that the applicant cannot appeal the decision of no award despite he and his partner being advised to the contrary.

I recognize that TDHCA receives numerous applications for a very competitive tax credit program. I am hopeful that when applicants voice concerns and raise inquiries about their applications, that the department is willing to listen and work with the applicants within the confines of the Multifamily Rules and Qualified Allocation Plan. Unfortunately it appears that was not the case here. However, I am also hopeful that the department will work to administratively correct any errors that it has admitted to making without causing further delay and possible harm to the applicant.

I understand that the applicant has informed the staff of certain deadlines as it relates to the purchase of the land for this development. Also, because this transaction is a part of an overall plan for the Brenham Housing Authority, it is important for the developers to be able to clearly articulate how its winning application is without an award. I recognize that every application received is important to the communities in which they reside, as this application is important to the City of Brenham. But when an application has followed the rules and been successful in following those rules, applicants should be able to know that their hard work will be fairly awarded. The applicant followed the rules and provided all of the information requested without response from the department. It is important that the integrity of the process be maintained and applicants be able to rely on the department fixing its mistakes when they occur.



I have spoken to my colleague, Sen. Lois Kolkhorst and understand that she intends to also reach out to you regarding this matter.

Therefore, I am writing to strongly urge you to address this issue in a timely manner without creating further delay to this award.

Sincerely,

A handwritten signature in black ink, appearing to be 'Borris Miles', with a stylized, cursive 'B' and a long horizontal stroke extending to the right.

Rep. Borris Miles

cc: Sen. Lois Kolkhorst  
Rep. Leighton Schubert  
State Office of Administrative Hearings

P.S. I would also like to add more Senior Citizen Tax Credit projects to House District 146 if possible.



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

[www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)

Greg Abbott  
GOVERNOR

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Leslie Bingham-Escareño  
T. Tolbert Chisum  
Tom H. Gann  
J.B. Goodwin

September 15, 2016

*Writer's direct phone # (512) 475-3296*  
*Email: [tim.irvine@tdhca.state.tx.us](mailto:tim.irvine@tdhca.state.tx.us)*

Ms. Antoinette M. Jackson  
Counsel for Parklane Villas, LP  
Jones Walker  
1001 Fannin Street, Ste 2450  
Houston, Texas 77002-6707

RE: 2016 HOUSING TAX CREDIT APPLICATION 16040, PARKLANE VILLAS

Dear Ms. Jackson:

The Texas Department of Housing and Community Affairs (the "Department") is in receipt of your letter, dated September 6, 2016, in response to the August 31, 2016, letter from Sharon Gamble, Competitive Housing Tax Credit ("HTC") Administrator, received by your client, the applicant for HTC application 16040 Parklane Villas. This Application was denied one point under §11.9(c)(5) of the 2016 Qualified Allocation Plan ("QAP"), related to Educational Excellence, and your letter seeks to appeal the loss of the point on behalf of the Applicant.

The letter from Ms. Gamble explained to the Applicant that at this stage of the award process, the appeal was filed too late. Pursuant to TEX. GOV'T CODE §2306.6715(c) related to Appeals, an applicant may appeal the scoring of the application, but the applicant must file a written appeal with the Department not later than the seventh day after the date the Department publishes the results of the application evaluation process. The letter noted the dates on which the results were published, each representing opportunities the applicant had to file an appeal within the statutorily-required time frames and before the Department's Executive Board approved awards for the recommended applications.

In your letter you cite §10.201(7) of the 2016 Uniform Multifamily Rules, Administrative Deficiency Process, correctly pointing out that, per those rules, final determinations regarding the sufficiency of documentation submitted to cure an Administrative 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. In order to make such a determination, those persons would have to consider information provided by the applicant in the form of an appeal.

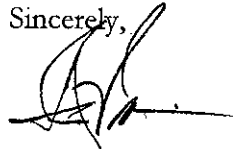
I am aware of, and truly apologize that staff did not issue a "scoring notice" to the applicant as a follow up to the phone calls, e-mails, and posted scoring logs that indicated that Parklane Villas would not receive a tax credit award this year. I am also aware that staff was contacted by you and by the Applicant several times regarding the status of the application. Per your letter, you were aware of the application score



by July 13, 2016, at the latest, but no appeal was filed. Finally, there was no comment from the applicant or from you at the July 28, 2016, meeting of the Department's Executive Board where the Recommended Awards List and the Awards and Waiting List were approved. By statute (Tex. Gov't Code §2306.6724(f)), the board must issue the tax credit awards "not later than July 31." No appeal was filed until September 6<sup>th</sup>, and the rules do not offer any further action the Department can take at this time.

I do not find that the points raised in your letter clearly demonstrate that there remains an option for the Applicant to appeal staff's decision. You have indicated that you wish to appeal this decision directly to the Governing Board. We are working to provide a report on this matter which would be on the agenda for the meeting scheduled for October 13, 2016. TEX. GOV'T CODE §2306.6715(c), and the related rule, 10 TAC §10.902(c), make clear that your request to review this matter can only be considered an "appeal" if it is made in writing within seven days of the published result of the scoring stage of the Application evaluation. As discussed, above, the deadline for your letter to be considered an appeal occurred over a month before your September 6<sup>th</sup> letter, and too late to be considered an "appeal" under our governing statute and rules. Accordingly, though you will certainly be able to offer public comment before the Board on this matter, it is not an appeal of the application score or any of the awards made at the July 28, 2016, Board meeting. As Ms. Gamble stated in her August 31<sup>st</sup> letter, we will continue to track returned credits, and should there be enough credits returned to the At-Risk Set-Aside to fund another application, this application is currently the next At-Risk application to be funded. Additionally, we have been contacted directly by Mr. Michel and agreed to meet with him about any other possible mechanisms that might be used to assist this development. Should you have any questions, please contact Marni Holloway at [marni.holloway@tdhca.state.tx.us](mailto:marni.holloway@tdhca.state.tx.us) or by phone at 512-475-1676.

Sincerely,



Timothy K. Irvine  
Executive Director





TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

[www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)

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T. Tolbert Chisum  
Tom H. Gann  
J.B. Goodwin

September 15, 2016

Writer's direct phone # (512) 475-3296  
Email: [tim.irvine@tdhca.state.tx.us](mailto:tim.irvine@tdhca.state.tx.us)

The Honorable Borris L. Miles  
State Representative, District 146  
Texas House of Representatives  
Capitol Extension, Room E2.718  
Austin, TX 78701

RE: PARKLANE VILLAS, TDHCA APPLICATION #16040

Dear Representative Miles:

I am writing in response to your letter of September 12, 2016, regarding Parklane Villas, TDHCA Application #16040. First, we are sorry for the anxiety that has accompanied this situation. TDHCA staff strive to communicate clearly and directly with applicants, and beyond the telephone and e-mail communications, and public posting of scoring log sheets that have been referenced in this matter, we try to provide applicants with the courtesy of a particular "scoring notice" regarding the Department's position on a score. In this instance, the particular "scoring notice" was not sent as a follow up to the phone calls, e-mails, and posted scoring logs that indicated that Parklane Villas would not receive a tax credit award this year. The applicant, through their counsel, has submitted what they are treating as a letter of appeal, and although we believe that this applicant is well outside of statutorily established appeal time line, we believe they are due a thorough response. Further, we are continuing to see if we can identify any possible way that their proposed development might be assisted under the rules and laws that govern the programs administered by and through the Department.

In June of this year TDHCA communicated to the applicant that there were concerns over a particular scoring item, and the applicant responded with information regarding the item. Then, in accordance with our governing statute, specifically TEX. GOV'T CODE §2306.6715(c)(copy attached and emphasis supplied), when staff posted a tax credit scoring log on July 13<sup>th</sup> that showed the final score of this application was 153 points and was no longer under review, this triggered a seven day right of appeal. The applicant's only written communication on the subject was the July 16<sup>th</sup> email (copy attached) and our reply, which made clear that staff did not view Parkview Villas as competitive – a fact supported by the scoring log that had been updated, with the same status, on July 15<sup>th</sup>. Moreover, when recommended awards were published as part of the agenda on July 21<sup>st</sup>, the recommended awards list and award and waiting list was published on July 25<sup>th</sup>, and then the final awards and waiting list was presented to and voted on by the Board at a public meeting on July 28, 2016, none of these award recommendations showed Parklane Villas



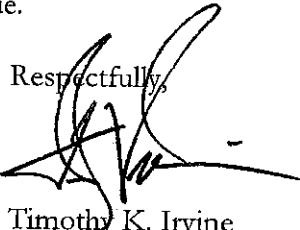
as receiving an award. Despite these clear and repeated indications that the Parklane Villas score would not qualify it for an award, the applicant did not escalate the scoring issue or make an appeal either in the weeks before the making of awards or offer any comment at the July 28<sup>th</sup> meeting.

In late August, the applicant had communications with staff regarding the score and staff communicated the potential of an error in one of the scoring items. A "scoring notice" reflecting an elevated score was mistakenly issued to the applicant on August 30, 2016, indicating that there was an opportunity to appeal. However, this notice was invalid as the funding cycle had been completed with the awards made on July 28, 2016. As much as we regret not sending the particular "scoring notice" form to the applicant back in early July, we also regret that one of our staff led the applicant to believe that there was somehow hope of revising an application score for credits that had already been awarded to another applicant a month before. We promptly communicated this error to the applicant in a letter dated August 31, 2016, advising the applicant that the only opportunities to appeal the score occurred during the funding cycle.

On September 6, 2016, the Department received an appeal from the applicant. Additionally, during the Board meeting of September 8, 2016, the applicant requested that the Board include Parklane Villas appeal on the Board agenda of October 13, 2016. Our response to the September 6<sup>th</sup> letter is attached. Also, our Chair has agreed, as requested by Ms. Jackson, to have a report on this matter placed on the October 13<sup>th</sup> Board agenda, although, for the reasons described herein, it will not be treated as an appeal.

In the meantime, Parklane Villas is first on the waiting list in its particular set-aside, should credits be returned. Additionally, the Department will continue to explore whether alternative funding structures are a viable option and will quickly evaluate any revised application submitted for this development.

As we move forward on this issue, we will keep your office informed. Please do not hesitate to contact me if you need additional information on issue.

Respectfully,  
  
Timothy K. Irvine  
Executive Director

cc: The Honorable Lois Kolkhorst, Texas Senate  
The Honorable Leighton Schubert, Texas House of Representatives  
Antoinette Jackson, Counsel for the Applicant

2c

**BOARD REPORT ITEM**  
**MULTIFAMILY FINANCE DIVISION**  
**OCTOBER 13, 2016**

Report Regarding Ranking of Applications in Region 2, Rural, from the 2016 Competitive Housing Tax Credit Application Cycle

**BACKGROUND**

The Department's Governing Board approved an award of competitive housing tax credits for #16026 Laguna Hotel Lofts at the meeting of July 28, 2016, and #16237 Hawks Landing Apartments was approved for the waiting list. Review of the ranking of the applications indicates that the application for the Laguna Hotel Lofts scored 159 points, while the application for the Hawks Landing Apartments scored 156 points. The ranking of the applications was determined by the application scores, and no tie-breaker was applied.

The Department has received correspondence from Casa Tierra SA-1 Incorporated, the Applicant for Hawks Landing Apartments, and from the City Manager of the City of Iowa Park requesting that the Governing Board reconsider the ranking of the applications by considering information provided regarding Laguna Hotel Lofts, the other application in the subregion, and award tax credits accordingly. By statute (Tex. Gov't Code §2306.6724(f)), the Board must issue the tax credit awards "not later than July 31." The letters were received on September 2, 2016, and the rules do not offer any further action the Department can take at this time.

The letters stated that the Department improperly accepted information from the Applicant for Laguna Hotel Lofts after the application submission deadline of March 1, 2016. Per 10 TAC §10.201(7) of the 2016 Uniform Multifamily Rules regarding the Administrative Deficiency Process, staff may request that an Applicant provide clarification, correction, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application. The Department requested further information from the Applicant regarding 10 TAC §10.101, Mandatory Development Requirements, related to the provision of free parking spaces for the tenants. The request was made through the Administrative Deficiency process during application review as well as in relation to a Third Party Request for Administrative Deficiency filed for the Application (as allowed under 10 TAC §11.10 of the QAP). In response, the Applicant provided sufficient documentation for the Department to determine that the requirements were met within the time frame required by each notice. The information provided did not affect the scoring of the application, and the Department determined it to be "non-material missing information to resolve inconsistencies in the original Application" as the rules allow. The Board received and accepted a report regarding the Third Party Request for Administrative Deficiency at their meeting of June 30, 2016.

While staff is presenting a report on this matter, under 10 TAC §10.902(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." Accordingly, this report does not represent an appeal of the application score or the review process, nor any of the awards made at the Board meeting of July 28, 2016.



## **City of Iowa Park**

103 N. Wall • P.O. Box 190 | Iowa Park, Texas 76367-0190  
PHONE (940) 592-2131 | FAX (940) 592-4793  
jflemming@iowapark.com • www.iowapark.com

**Jerry Flemming, City Manager**

September 2, 2016

Tim Irvine, Executive Director TDCHA Governing Board  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
P.O. Box 13941  
Austin, Texas 78711-3941

Re: TDHCA Application #16237  
RRAH Hawks Landing, LP-Hawks Landing Apartments  
Iowa Park, Wichita County, Texas

Dear TDHCA Governing Board:

The City of Iowa Park respectfully requests that the TDHCA Governing Board reconsider the ranking of the referenced application. It is our understanding that the application was approved, but placed on the waiting list for tax credits at the Board's meeting on July 28, 2016. For the previous two years, this project has scored at the highest level along with another competing project within Rural Region 2. Based upon the tie breaker rule, the tax credit award was presented to the other competing project. It is our understanding that this was due to an existing 24-unit apartment project located in Iowa Park which was developed under the Rural Development Program, initially approved by the Department in 1997. Despite its age, the project continuously maintains a 100 percent occupancy level due in large part to the lack of affordable housing in Iowa Park.

In reviewing documentation compiled by the Hawks Landing development group, it is questioned why the tax credits were not awarded to the Iowa Park project over the competing project in Cisco. The documentation indicates that the Cisco applicant was allowed to submit documents and conduct important local government meetings past the March 1, 2016 application deadline date. This appears to be a violation of the TDHCA 2016 Qualified Allocation Plan and the TDHCA 2016 Uniform Multifamily Rules.



The Hawks Landing development group and the City of Iowa Park have diligently and repeatedly attempted to follow the TDHCA rules but have been placed on the waiting list, yet once again. We respectfully request that the TDHCA Governing Board reconsider the ranking of the Hawks Landing Apartments (#16237) in Iowa Park, Wichita County, and award the tax credits accordingly.

If any further discussion is required on this matter, I may be reached at (940) 592-2131.

Sincerely,

A handwritten signature in black ink, appearing to read "Jerry Flemming". The signature is fluid and cursive, with the first name "Jerry" being more prominent than the last name "Flemming".

Jerry Flemming, City Manager  
City of Iowa Park

CC: RRAH Hawks Landing, LP-Hawks Landing Apartments

**CASA TIERRA SA-1, INCORPORATED  
A 501 (C) (3) NON-PROFIT HOUSING CORPORATION  
P.O. BOX 700115  
SAN ANTONIO, TEXAS 78270-0115  
(210) 912-0070**

August 30, 2016

Texas Department of Housing and Community Affairs Governing Board  
c/o Mr. Tim Irvine  
Executive Director  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
P.O. Box 13941  
Austin, Texas 78711-3941

Re: TDHCA Application #16237  
RRAH Hawks Landing, LP-Hawks Landing Apartments  
Iowa Park, Wichita County, Texas

Dear TDHCA Board and Mr. Irvine:

On July 28, 2016, Housing Tax Credit Application #16026 and our Housing Tax Credit Application #16237 were recommended and approved by both TDHCA Staff and the TDHCA Board for Region 2 Rural. However, application #16026 was approved to move forward with tax credits while application #16237 was placed on the waiting list despite our presentation of numerous issues regarding this project.

Recently obtained documents from the City of Cisco indicate numerous rules to the 2016 TDHCA Qualified Allocation Plan and the TDHCA 2016 Uniform Multifamily Rules were violated by the applicant for application #16026. Key issues include the following:

- Documentation required to be submitted with the application was submitted several months after the March 1, 2016 application deadline date.
- Local government meetings addressing key parking ordinance issues were also organized and conducted well past the March 1, 2016 application deadline date.
- Most importantly, the applicant failed to disclose pertinent information to TDHCA Staff that had a material impact on the scoring information of the application while knowingly orchestrating these significant changes with the local government well past the March 1, 2016 deadline date.

Based upon the supporting documentation attached with this letter, the tax credit award should have been awarded to our application #16237 for Region 2 Rural. It is our hope the TDHCA Board recognizes this fact based upon the attached documentation and takes the appropriate action in awarding tax credits to application #16237.

If you have any questions or comments, I may be reached at the above telephone number.

Sincerely,



Mark C. Temple  
Managing Director/President

Attachment

CC: Mr. Jerry Flemming-City Manager  
Mr. David Owen-Director of Economic Development  
City of Iowa Park

Mr. Randy Stevenson  
Mr. Matt Stevenson  
RRAH Hawks Landing, LP

Ms. Gwynn P. Martin-Attorney  
McWhorter Cobb and Johnson LLP

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**Tab 1-DOCUMENTS FOUND WITHIN THE SUBMITTED APPLICATION  
#16026**

The following pages were obtained from the submitted TDHCA application #16026:

**SECTION A**

TDHCA application documents and architect documents indicate the applicant is only providing 14 parking spaces for the hotel building and 11 parking spaces for the second off-site building. (Attachments-TDHCA Application and Architect Documents)

TDHCA application documents indicate the applicant is stating there is no zoning designation within the City of Cisco, indicating no parking ordinance or local code exists, too. (TDHCA Application Documents)

Due to this fact, the applicant must provide sixty (60) parking spaces or one and a half (1.5) spaces per unit as required by the TDHCA 2016 Uniform Multifamily Rules. If the applicant wished to address this issue and request the necessary change to the local code, a letter indicating such a request should have been submitted to the City of Cisco with a copy included with the application prior to the March 1, 2016 deadline date.

**SECTION B**

This letter was received from the City of Cisco and submitted within the application. The letter states the City of Cisco has no zoning within the city limits and advises the applicant to adhere to state standards. (Attachment-City of Cisco Letter dated 02/05/2016)

**SECTION C**

This letter from the City of Cisco was not submitted within the applicant's application but was received and submitted in the application approximately one month past the application deadline date of March 1, 2016. Further documents found in the following Tabs 2-4 will show this letter was submitted to cover the fact that no local code or parking ordinance did exist within the City of Cisco prior to the March 1, 2016 deadline date. (Attachment-City of Cisco Letter dated 03/29/2016)

# Site Information Form Part I

Self Score Total:

## 1. Development Address (All Programs)

400 Conrad Hilton Boulevard & 105 E 7th Street

Cisco

Address

City

Eastland

Participating Jurisdiction?

Region

Zip

County

Rural/Urban

(MF Direct Loan applicants only)

## 2. Census Tract Information (All Programs)

48133950300

Median Household Income:

Quartile:

Poverty Rate:

Census Tract Number

QCT?

## 3. Mandatory Community Assets (All Programs) - §10.101(a)(2)

Development Site is within a 1 mile radius (urban) or 2 mile radius (rural) of at least 6 eligible amenities and/or services pursuant to §10.101 of the Uniform Multifamily Rules. A map showing the Development Site, scale showing radius, and the location of the amenities is included behind this tab.

## 4. Resolutions (All Programs, if applicable) - §11.3

Check the boxes of true statements below. Resolutions must be provided to demonstrate eligibility for any **unchecked** item.

**Twice the State Average Per Capita.** The proposed Development is **NOT** located in a municipality or a county that has more than twice the state average of units per capita supported by Tax Credits or Private activity Bonds. (QAP §11.3(b))

**One Mile Three Year Rule.** The proposed Development is located outside an MSA or in a county with a population of less than one million **OR** is **NOT** a New Construction or Adaptive Reuse development that will be located one mile or less from a new construction or terminated/withdrawn HTC or Bond development serving the same type of household. (QAP §11.3(c))

**Limitations on Developments in Certain Census Tracts.** The proposed Development is **NOT** a New Construction or Adaptive Reuse development that will be located in a census tract that has more than 20% HTC units per total households. (QAP §11.3(d))

## 5. Zoning [§10.204(11)] and Flood Zone Designation [§10.101(a)(1)] (All Programs)

Development Site is appropriately zoned?

Zoning Designation: None

Flood Zone Designation:

X unshaded

Development is outside the 100 year floodplain?



## Supporting Documentation for the Site Information Form Part I

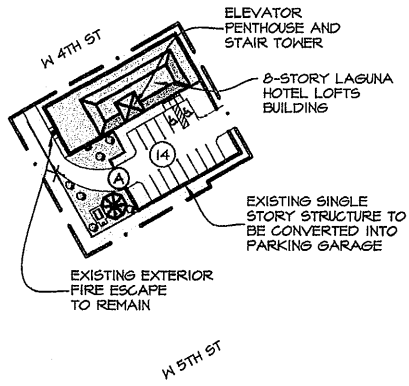
- Street Map with Site Drawn and Identified
- Census Tract Map with Development Site Identified
- Community Assets Map (with radius and identifying which type of service each location offers pursuant to §10.101(a)(2))
- n/a Twice the State Average of Units Per Capita Resolution
- n/a One Mile Three Year Resolution or evidence of other exception
- n/a Housing Tax Credit Units per Total Household Resolution
- Evidence of Zoning and/or Evidence of Re-Zoning Process
- Evidence of Flood Zone Designation
- n/a For Tax-Exempt Bond Applications the resolution of no objection to satisfy requirements of §10.204(4) of the Uniform Multifamily Rules is included
- n/a For Tax-Exempt Bond Applications the resolution of no objection to satisfy requirements of §10.204(4) of the Uniform Multifamily Rules is not included and will be provided under separate cover no later than 14 days prior to the Board meeting selected in Tab 1b





Rec'd 3/24/2016 5:40 PM - EH

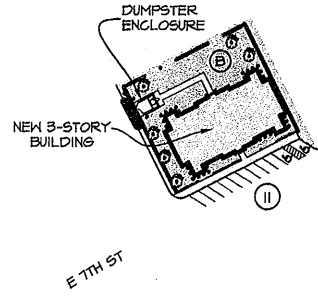
Tract 1 is 0.396 acre - bps



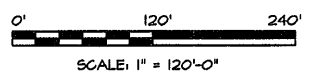
- (A) TRACT 1 - 0.396 ± ACRES**
- (1) 8 STORY BUILDING HISTORIC RENOVATION
  - (12) 1-BR UNITS (INCLUDING 1 UFAS)
  - (18) 2-BR UNITS (INCLUDING 1 UFAS)
  - (14) TOTAL COVERED PARKING SPACES INCLUDING (2) UFAS PARKING SPACE
- DEVELOPMENT AMENITIES:**
- FURNISHED COMMUNITY ROOM
  - FURNISHED FITNESS ROOM
  - COVERED OUTDOOR SITTING AREA
  - W/ BBQ GRILLE & PICNIC TABLE

- (B) TRACT 2 - 0.26 ± ACRES**
- (1) 3 STORY BUILDING (NEW CONSTRUCTION)
  - (10) 2-BR UNITS (INCLUDING 1 UFAS)
  - (11) TOTAL PARKING SPACES INCLUDING (2) UFAS PARKING SPACE
- DEVELOPMENT AMENITIES:**
- LIBRARY
  - COVERED PATIO

NOTE: THERE ARE NO KNOWN EXISTING OR PROPOSED BUILDING SETBACK OR EASEMENT ENCROACHMENT ISSUES. SITE IS NOT LOCATED WITHIN FLOODPLAIN.



✓ NOTE: THE PLAN MATERIALLY ADHERES TO ALL APPLICABLE ZONING, SITE DEVELOPMENT AND BUILDING CODE ORDINANCES.

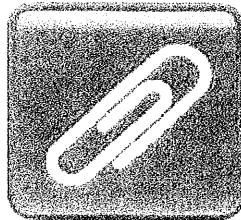


# MASTER SITE PLAN



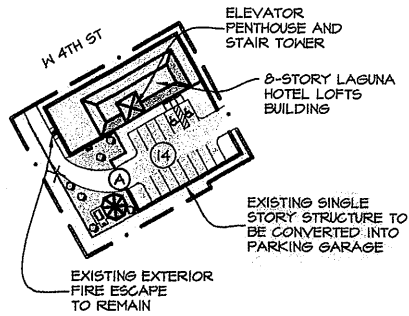
**Architectural Drawings Must be Submitted Behind this Tab [§10.204(b)(9)]**

- Site Plan which:
  - includes a unit and building type table matrix that is consistent with the Rent Schedule and Building/Unit Configuration forms
  - identifies all residential and common buildings
  - clearly delineates the flood plain boundary lines
  - identifies all easements
  - if applicable, indicates probable placement of detention/retention pond(s)
  - indicates the location of parking spaces
  - includes information regarding local parking requirements
- Building Floor Plans - including a separate tabulation of the square footages of each of these areas: breezeways, corridors, utility closets, porches and patios, and any other square footage not included in NRA
- Unit Floor Plans for each type of Unit
- Elevations for each side of each building type and must include:
  - a percentage estimate of the exterior composition of each elevation
  - roof pitch
- Photos of building elevations (for Rehab and Adaptive Reuse developments that will not alter the unit configuration)





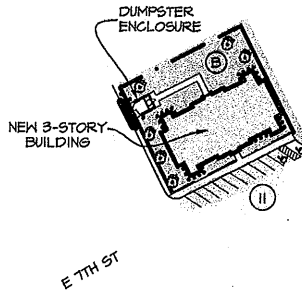




- (A) TRACT 1 - 0.51 ± ACRES**  
 (1) 3 STORY BUILDING HISTORIC RENOVATION  
 (12) 1-BR UNITS (INCLUDING 1 UFAS)  
 (18) 2-BR UNITS (INCLUDING 1 UFAS)  
 (14) TOTAL COVERED PARKING SPACES INCLUDING (2) UFAS PARKING SPACE
- DEVELOPMENT AMENITIES:**  
 -FURNISHED COMMUNITY ROOM  
 -FURNISHED FITNESS ROOM  
 -COVERED OUTDOOR SITTING AREA  
 TV BBQ GRILLE & PICNIC TABLE

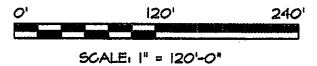
- (B) TRACT 2 - 0.26 ± ACRES**  
 (1) 3 STORY BUILDING (NEW CONSTRUCTION)  
 (10) 2-BR UNITS (INCLUDING 1 UFAS)  
 (11) TOTAL PARKING SPACES INCLUDING (2) UFAS PARKING SPACE
- DEVELOPMENT AMENITIES:**  
 -LIBRARY  
 -COVERED PATIO

NOTE: THERE ARE NO KNOWN EXISTING OR PROPOSED BUILDING SETBACK OR EASEMENT ENCROACHMENT ISSUES. SITE IS NOT LOCATED WITHIN FLOODPLAIN.



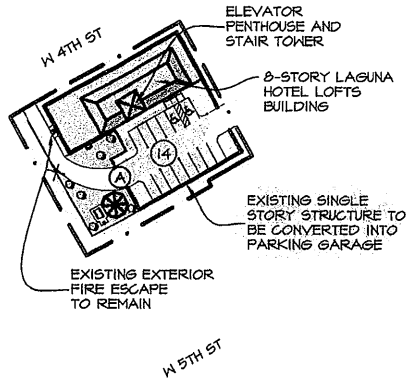
NOTE: THE PLAN MATERIALLY ADHERES TO ALL APPLICABLE ZONING, SITE DEVELOPMENT AND BUILDING CODE ORDINANCES.

# MASTER SITE PLAN



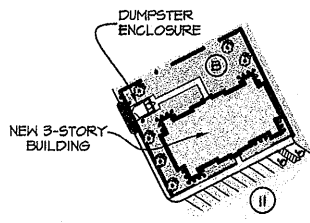
MARCH 2016





CONRAD HILTON BLDG

E 6TH ST

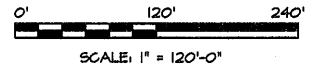


NOTE: THE PLAN MATERIALLY ADHERES TO ALL APPLICABLE ZONING, SITE DEVELOPMENT AND BUILDING CODE ORDINANCES.

- A** TRACT 1 - .396 ACRES
- (1) 8 STORY BUILDING HISTORIC RENOVATION
  - (12) 1-BR UNITS (INCLUDING 1 UFAS)
  - (18) 2-BR UNITS (INCLUDING 1 UFAS)
  - (14) TOTAL COVERED PARKING SPACES INCLUDING (2) UFAS PARKING SPACE
- DEVELOPMENT AMENITIES:**
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  - FURNISHED FITNESS ROOM
  - COVERED OUTDOOR SITTING AREA
  - W/ BBQ GRILLE & PICNIC TABLE

- B** TRACT 2 - 0.26 ± ACRES
- (1) 3 STORY BUILDING (NEW CONSTRUCTION)
  - (10) 2-BR UNITS (INCLUDING 1 UFAS)
  - (11) TOTAL PARKING SPACES INCLUDING (2) UFAS PARKING SPACE
- DEVELOPMENT AMENITIES:**
- LIBRARY
  - COVERED PATIO

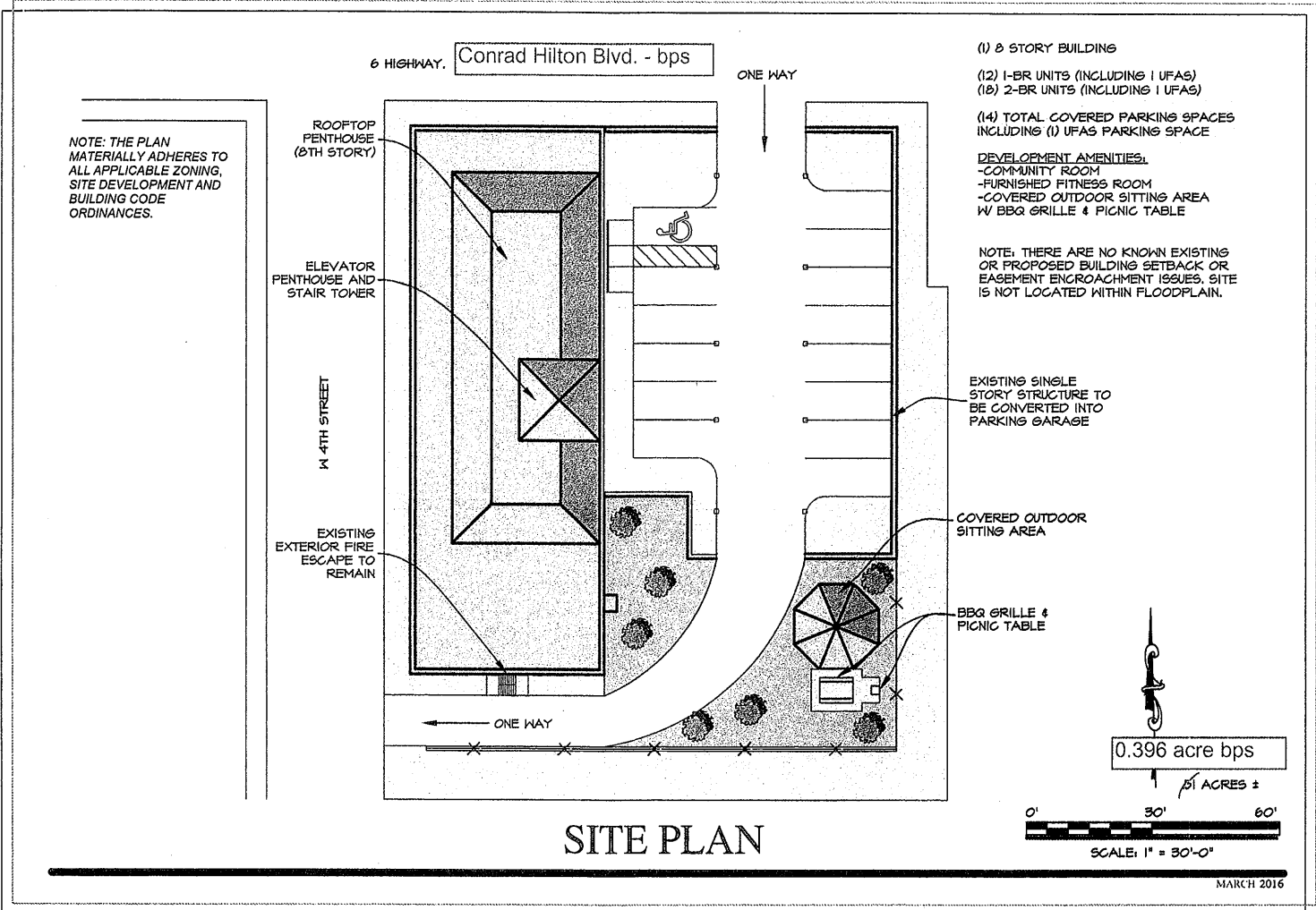
NOTE: THERE ARE NO KNOWN EXISTING OR PROPOSED BUILDING SETBACK OR EASEMENT ENCROACHMENT ISSUES. SITE IS NOT LOCATED WITHIN FLOODPLAIN.

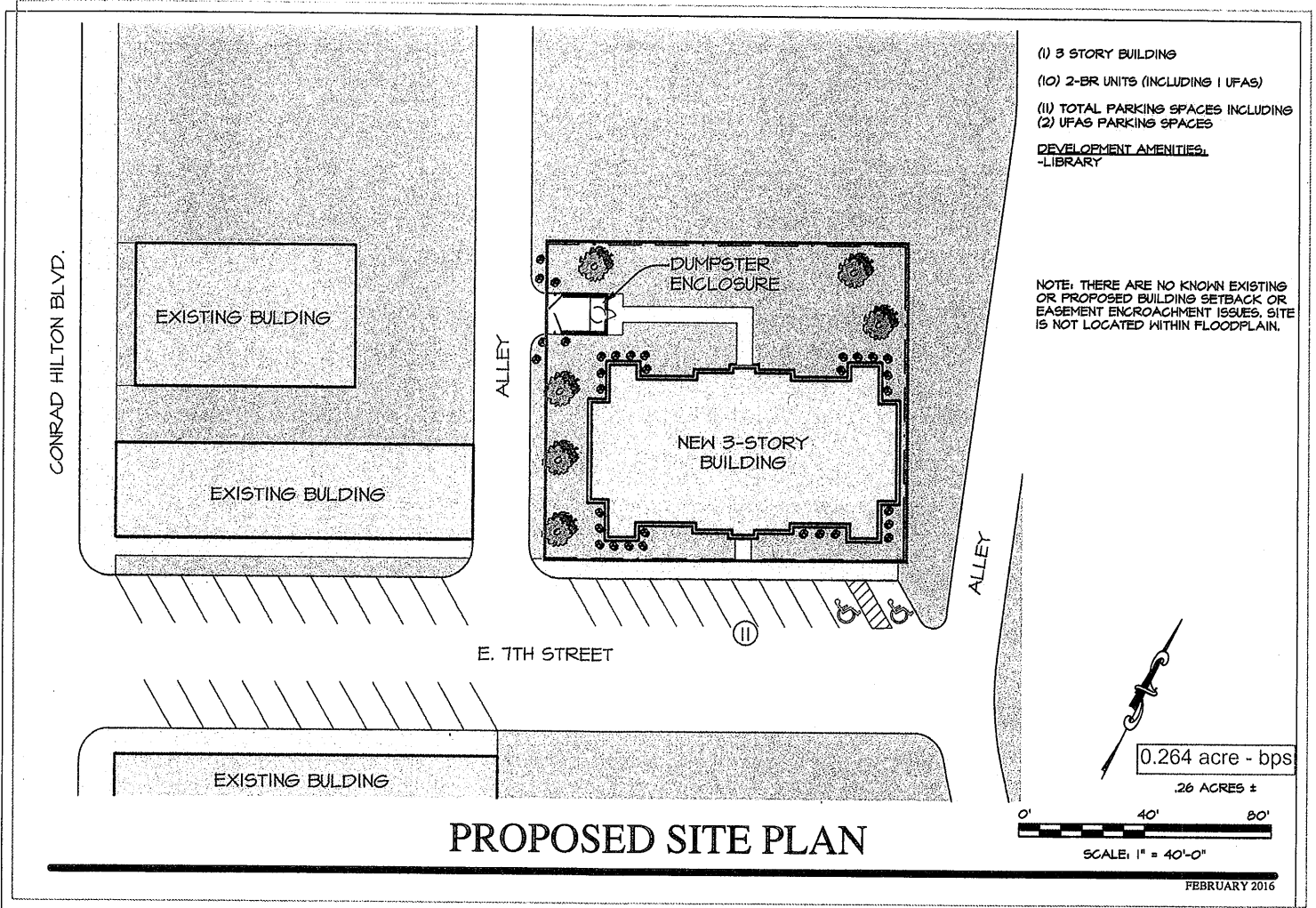


# MASTER SITE PLAN

MARCH 2016





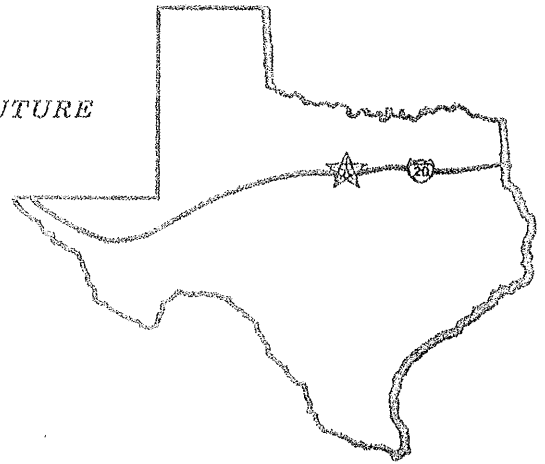


PLANNING AND ARCHITECTURAL SERVICES



# City of Cisco

WHERE A PROUD PAST GREET'S A PROMISING FUTURE



02/05/16

To Whom It May Concern:

The City of Cisco has no zoning within the city limits including the properties located at 400 Conrad Hilton Blvd. and 105 E. 7<sup>th</sup> St. Within the city limits, the city does require a building permit with plans, as well as a plumbing and gas permit for any work done on those items. I will also say that if your project includes any signage that would be viewed from Conrad Hilton, it would need to adhere to State standards as that is a State Highway and the City Council reserves final approval of any signage as well. If I can be of further assistance, please feel free to contact me at 254-442-2111.

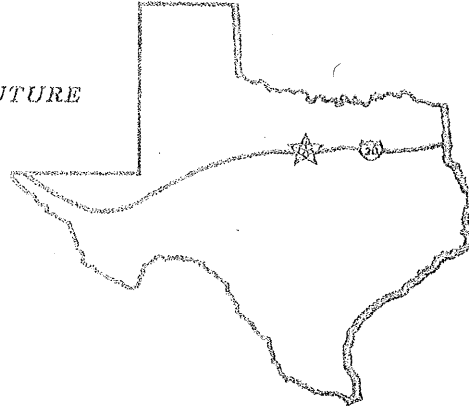
Thank you.

A handwritten signature in cursive script that reads "Tammy Osborne".

Tammy Osborne  
City Secretary  
City of Cisco

# City of Cisco

WHERE A PROUD PAST GREETES A PROMISING FUTURE



03/29/16


Ms. Sharon Gamble  
9% Competitive Housing Tax Credit Program Administrator  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> St.  
Austin, TX 78701

Re: Laguna Hotel Lofts 16026  
City of Cisco Parking Requirements

Dear Ms. Gamble,

The Laguna Hotel Lofts proposed parking for both sites is consistent with our code of ordinances. Please feel free to contact me if you have any questions or concerns.

Sincerely,

  
Darwin Archer  
City Manager  
City of Cisco



**TAB 2-AGENDA MINUTES TO CISCO CITY COUNCIL MEETINGS**

The following documents were obtained from the City of Cisco's web site and includes agenda minutes for the January 25, 2016, February 8, 2016, February 22, 2016 and March 14, 2016 City Council Meetings:

**SECTION D**

On January 25, 2016, a Resolution of Support from the City of Cisco for application #16026 was considered, discussed and approved under Item #VI.A. As indicated with the agenda minutes, the Resolution of Support was the only item discussed and no other items related to the subject project such as local parking codes were discussed. (Attachment-City of Cisco City Council Regular Called Meeting on January 25, 2016)

**SECTION E**

Agenda minutes to the Cisco City Council Regular Called Meetings on February 8, 2016, February 22, 2016 and March 14, 2016 indicate no further discussions ever occurred in reference to the subject project and related local parking codes. (Attachments-City of Cisco City Council Regular Called Meetings on February 8, 2016, February 22, 2016 and March 14, 2016)

THE CITY OF CISCO  
CITY COUNCIL, REGULAR CALLED MEETING  
January 25, 2016

CISCO, TEXAS §  
EASTLAND, COUNTY §

The City Council of the City of Cisco met in a regular called *session* at the Cisco City Hall in Cisco as scheduled, and notice was posted 72 hours in advance and prior to the meeting.

MEMBERS PRESENT:

MAYOR	JAMES KING
COUNCILMEMBER PLACE I	JASON WEGER
COUNCILMEMBER PLACE II	DENNIS CAMPBELL
COUNCILMEMBER PLACE IV	RANDY BOLES
COUNCILMEMBER PLACE V	TAMMY DOUGLAS
COUNCILMEMBER PLACE VI	PHILIP GREEN

PERSONNEL PRESENT:

CITY MANAGER	DARWIN ARCHER
CITY SECRETARY	TAMMY OSBORNE

PERSONNEL ABSENT:

COUNCILMEMBER PLACE III	WILLARD JOHNSON
-------------------------	-----------------

Guests: Sam Guthrie, Del Brandt, Peggy Ledbetter, Ed King, Bobby Martin, Julie Elrod, John Diers, Scott Williamson, Cheryl Ramirez

I. MEETING CALLED TO ORDER:

Mayor King called the meeting to order at 6:00 p.m.

II. PLEDGES

- A. Pledge of Allegiance
- B. Pledge to the Texas Flag

III. INVOCATION:

Councilmember Green gave the invocation.

IV. CITIZEN-VISITOR COMMENTS:

None

V. APPROVE THE MINUTES OF THE MEETING CONDUCTED:

January 11, 2016

Motion was made by Councilmember Campbell to accept the minutes as presented, second was made by Councilmember Weger. Motion prevailed by the following vote:

Ayes: Councilmembers: Weger, Campbell, Boles, Douglas, Green, King  
Nays: None/Motion Carries  
Voted: 6 to 0  
Absent: Johnson

VI. REPORTS:

Quarterly Financial Report-Mr. Archer presented the financial report.

Motion was made by Councilmember Weger to accept the report as presented, second was made by Councilmember Campbell. Motion prevailed by the following vote:

Ayes: Councilmembers: Weger, Campbell, Boles, Douglas, Green, King  
Nays: None/Motion Carries  
Voted: 6 to 0  
Absent: Johnson

**Quarterly Court Report**-Judge Cheryl Ramirez presented the Quarterly Court Report.

Motion was made by Councilmember Boles to accept the report as presented, second was made by Councilmember Weger. Motion prevailed by the following vote:

Ayes: Councilmembers: Weger, Campbell, Boles, Douglas, Green, King  
Nays: None/Motion Carries  
Voted: 6 to 0  
Absent: Johnson

**Quarterly Police Report**-Sergeant Investigator Doyle Seabourn presented the Quarterly Police report.

Motion was made by Councilmember Weger to accept the report as presented, second was made by Councilmember Boles. Motion prevailed by the following vote:

Ayes: Councilmembers: Weger, Campbell, Boles, Douglas, Green, King  
Nays: None/Motion Carries  
Voted: 6 to 0  
Absent: Johnson

**VI. THE CITY COUNCIL MAY DISCUSS AND/OR TAKE ACTION ON ANY OF THE FOLLOWING AGENDA ITEMS:**

**A. Consider and Discuss Resolution No 2016-01-25**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CISCO, TEXAS, SUPPORTING AN APPLICATION FROM LAGUNA HOUSING PARTNERS, LP, TO THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS FOR 2016 COMPETITIVE NINE-PERCENT HOUSING TAX CREDITS FOR THE LAGUNA HOTEL LOFTS WORKFORCE HOUSING DEVELOPMENT LOCATED AT 400 CONRAD HILTON BLVD. AND 105 EAST 7<sup>TH</sup> STREET IN THE CITY OF CISCO, TEXAS.**

Mr. Diers discussed that this item was in regard to a new application made by MRE Capital to turn the old Laguna Hotel into housing. He further stated that an application was made last year and not awarded to MRE Capital, but this year was looking very promising.

Motion was made by Councilmember Boles to accept the resolution as presented, second was made by Councilmember Douglas. Motion prevailed by the following vote:

Ayes: Councilmembers: Weger, Campbell, Boles, Douglas, Green, King  
Nays: None/Motion Carries  
Voted: 6 to 0  
Absent: Johnson

**B. Consider and Discuss Cisco Development Corporation Fiscal Year 2014-2015 Significant Action Report-John Diers**

Mr. Diers again addressed the Council and presented the Significant Action Report for both the Cisco Development Corporation and the Cisco 4A Development Corporation.

Motion was made by Councilmember Boles to accept the report as presented, second was made by Councilmember Campbell. Motion prevailed by the following vote:

Ayes: Councilmembers: Weger, Campbell, Boles, Douglas, Green, King  
Nays: None/Motion Carries  
Voted: 6 to 0  
Absent: Johnson

**C. Consider and Discuss Resolution No. 2016-01-25-01**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CISCO, TEXAS, APPROVING A FINANCE CONTRACT WITH GOVERNMENT CAPITAL CORPORATION FOR THE PURPOSE OF FINANCING "WATER METERS".**

Mayor King explained that this resolution was necessary to move forward with the financing for the water meter project and explained that First Financial Bank would be involved in the financing through Government Capital Corporation.

Motion was made by Councilmember Campbell to accept the resolution as presented, second was made by Councilmember Douglas. Motion prevailed by the following vote:

Ayes: Councilmembers: Weger, Campbell, Boles, Douglas, Green, King  
Nays: None/Motion Carries  
Voted: 6 to 0  
Absent: Johnson

**D. Consider Approval of Sales and Service Agreement with Capstone Metering.**

Mayor King explained that the City Attorney had approved this Sales and Service Agreement with Capstone Metering.

Motion was made by Councilmember Green to approve the Sales and Service Agreement with Capstone Metering, second was made by Councilmember Boles. Motion prevailed by the following vote:

Ayes: Councilmembers: Weger, Campbell, Boles, Douglas, Green, King  
Nays: None/Motion Carries  
Voted: 6 to 0  
Absent: Johnson

**E. Consider Approval of Public Property Finance Act Contract With Government Capital.**

Mayor King explained that there were two different options for the contract, a ten year payout and a fifteen year payout. Mr. Archer continued by saying he and the Finance Director had discussed both options at length, and both agreed that the fifteen year payout would benefit the city until those savings guaranteed on the new water meter system could be realized and put toward the cost of that system. He also expected that the city might be able to pay the loan off early once those savings did start to materialize to save on interest costs.

Motion was made by Councilmember Boles to approve the Property Finance Act Contract with Government Capital with the fifteen year payout, second was made by Councilmember Weger. Motion prevailed by the following vote:

Ayes: Councilmembers: Weger, Campbell, Boles, Douglas, Green, King  
Nays: None/Motion Carries  
Voted: 6 to 0  
Absent: Johnson

**F. Consider and Discuss Accepting Resignation of Place 1 on the Planning and Zoning Board.**

Mayor King informed the Council that Mr. Matt Johnson had resigned from the Planning and Zoning Board and Mr. Archer indicated that the Planning and Zoning Board had already accepted Mr. Johnson's resignation. Mr. Archer further commented that the city had advertised the need to fill the vacated seat and also seat two alternates on social media, in the newspaper, and on the radio to solicit interest from citizens. Councilmember Boles questioned the necessity of the Planning and Zoning Board at this time when the city was facing so many other issues and the Council discussed its merits and faults.

Motion was made by Councilmember Campbell to accept the resignation, second was made by Councilmember Green. Motion prevailed by the following vote:

Ayes: Councilmembers: Weger, Campbell, Boles, Douglas, Green, King  
Nays: None/Motion Carries  
Voted: 6 to 0  
Absent: Johnson

**G. Consider and Discuss Going Out for Bids for Oil Changes on City Vehicles**

Mr. Archer notified to the Council that he felt it would be beneficial to go out for bids for oil changes on city vehicles since the city's mechanic, Nolan, was working on too many other things to be able to perform them in a timely manner.

Motion was made by Councilmember Campbell to go out for bids for oil changes on city vehicles, second was made by Councilmember Boles. Motion prevailed by the following vote:

Ayes: Councilmembers: Weger, Campbell, Boles, Douglas, Green, King  
Nays: None/Motion Carries  
Voted: 6 to 0  
Absent: Johnson

**H. Consider and Discuss Street Improvements.**

Mr. Archer inquired if the Council had any questions regarding street improvement projects. He explained that currently the city was working on drainage issues because he will not release funds for more major projects until those funds became available and the drainage projects have a low economic impact. Councilmember Green asked about the demonstration of the culvert cleaner and Mr. Archer said that it had been extremely effective and suggested the city look to purchase that piece of equipment in the next budget year.

**I. Consider and Discuss TEAM Building and Long Range Planning.**

Councilmember Green asked for clarification of dates and times for the public tax meetings and it was reiterated that the first one would be February 8, 2016 at 3:00 and discussed again at the 6:00 meeting that night. Subsequently, another was scheduled for April 11, 2016 also at 3:00 and during the 6:00 meeting.

Councilmember Boles asked if Mr. Archer could look into lots that the city owned and see about dealing with those in an effective way. Mr. Archer explained that he had already begun scheduling meetings with the other entities who hold lots "in trust" with the city to figure out what to do with them. Councilmember Weger asked if there had been any word on the monofil permit and Mr. Archer commented that we had not yet received approval or denial of that permit.

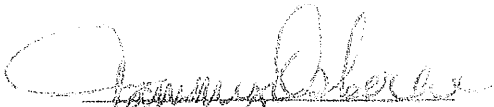
Councilmember Green asked if the surplus items had gone online yet and Mr. Archer said that there had not been time yet to set that up, but it would be forthcoming.

Mayor King informed the Council that an Opening Day ceremony would be scheduled soon for the new ball fields and he would let them know when that was scheduled.

**VII. ADJOURNMENT**

Motion was made by Councilmember Boles to adjourn, second made by Councilmember Green. Motion passed unanimously and the meeting adjourned at 7:01 p.m.

ATTEST:

  
Tammy Osborne, City Secretary  
\*\*\*\*\*

  
James King, Mayor  
\*\*\*\*\*

RESOLUTION NO. 2016-01-25

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CISCO, TEXAS, SUPPORTING AN APPLICATION FROM LAGUNA HOUSING PARTNERS, LP, TO THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS FOR 2016 COMPETITIVE NINE-PERCENT HOUSING TAX CREDITS FOR THE LAGUNA HOTEL LOFTS WORKFORCE HOUSING DEVELOPMENT LOCATED AT 400 CONRAD HILTON BOULEVARD AND 105 EAST 7<sup>TH</sup> STREET IN THE CITY OF CISCO, TEXAS.

WHEREAS, Laguna Housing Partners, LP has proposed a development for affordable rental housing located at 400 Conrad Hilton Boulevard and 105 East 7<sup>th</sup> Street named Laguna Hotel Lofts in the City of Cisco; and

WHEREAS, Laguna Housing Partners, LP has advised that it intends to submit an application to the Texas Department of Housing and Community Affairs (TDHCA) for 2016 Competitive 9% Housing Tax Credits for Laguna Hotel Lofts; and

WHEREAS, Laguna Housing Partners, LP has requested from the City of Cisco support for its application to TDHCA and for the development of the Project; and

WHEREAS, in accordance with Section 11.9(d)(1) of the 2016 Qualified Allocation Plan, an application may qualify for points with a resolution voted on and adopted from the governing body expressly setting forth a support by the political subdivision;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CISCO, TEXAS:

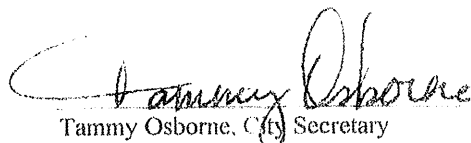
Section 1. The City of Cisco, acting through its governing body, hereby confirms that it supports the proposed Laguna Hotel Lofts and that this formal action has been taken to put on record the opinion expressed by the City of Cisco on January 25, 2016, and

Section 2. That for and on behalf of the Governing Body, James King, Mayor, is hereby authorized, empowered and directed to certify these resolutions to the Texas Department of Housing and Community Affairs.

Section 3. Should any portion or part of this Resolution be held for any reason invalid or unenforceable by a court of competent jurisdiction, the same shall not be construed to affect any other valid portion hereof, but all valid portions hereof shall remain in full force and effect.

CONSIDERED AND RESOLVED on this 25th day of January, 2016.

ATTEST:

  
Tammy Osborne, City Secretary

  
James King, Mayor



THE CITY OF CISCO  
CITY COUNCIL, REGULAR CALLED MEETING  
February 8, 2016

CISCO, TEXAS §  
EASTLAND, COUNTY §

The City Council of the City of Cisco met in a regular called *session* at the Cisco City Hall in Cisco as scheduled, and notice was posted 72 hours in advance and prior to the meeting.

MEMBERS PRESENT:

MAYOR	JAMES KING
COUNCILMEMBER PLACE I	JASON WEGER
COUNCILMEMBER PLACE II	DENNIS CAMPBELL
COUNCILMEMBER PLACE III	WILLARD JOHNSON
COUNCILMEMBER PLACE IV	RANDY BOLES
COUNCILMEMBER PLACE V	TAMMY DOUGLAS
COUNCILMEMBER PLACE VI	PHILIP GREEN

PERSONNEL PRESENT:

CITY MANAGER DARWIN ARCHER

PERSONNEL ABSENT:

CITY SECRETARY TAMMY OSBORNE

Guests: Sam Guthrie, Stephen Forester, John Diers, Doyle Seabourn

I. MEETING CALLED TO ORDER:

Mayor King called the meeting to order at 6:00 p.m.

II. PLEDGES

- A. Pledge of Allegiance
- B. Pledge to the Texas Flag

III. INVOCATION:

Councilmember Green gave the invocation.

IV. CITIZEN-VISITOR COMMENTS:

None

V. APPROVE THE MINUTES OF THE MEETING CONDUCTED:

January 25, 2016

Motion was made by Councilmember Campbell to accept the minutes as presented, second was made by Councilmember Boles. Motion prevailed by the following vote:

Ayes: Councilmembers: Weger, Campbell, Johnson, Boles, Douglas, Green, King  
Nays: None/Motion Carries  
Voted: 7 to 0  
Absent:

VI. REPORTS:

**Racial Profiling Report.—Sergeant Investigator Seabourn**

Sergeant Seabourn presented the Racial Profiling Report.

Motion was made by Councilmember Weger to accept the report as presented, second was made by Councilmember Campbell. Motion prevailed by the following vote:

Ayes: Councilmembers: Weger, Campbell, Johnson, Boles, Douglas, Green, King  
Nays: None/Motion Carries  
Voted: 7 to 0  
Absent:

**VI. THE CITY COUNCIL MAY DISCUSS AND/OR TAKE ACTION ON ANY OF THE FOLLOWING AGENDA ITEMS:**

**A. Consider and Discuss Resolution No 2016-02-08**

**A RESOLUTION OF THE CITY OF CISCO, TEXAS, EASTLAND COUNTY, AUTHORIZING AND ORDERING A (REGULAR) MUNICIPAL ELECTION TO BE HELD ON MAY 7, 2016 FOR THE PURPOSE OF ELECTING MAYOR AND TWO (2) CITY COUNCILMEMBERS, PLACE I AND PLACE II, BY THE QUALIFIED VOTERS OF THE CITY OF CISCO, TEXAS; APPOINTING ELECTION OFFICIALS; DESIGNATING THE POLLING PLACES; ESTABLISHING PAY RATES FOR ELECTION WORKERS; PROVIDING FOR NOTICE OF SAID ELECTION; PROVIDING FOR THE USE OF DIRECT RECORDING ELECTRONIC VOTING MACHINES; PROVIDING FOR EARLY VOTING; ESTABLISHING REGULAR BUSINESS HOURS OF THE CITY SECRETARY'S OFFICE ON THE FINAL TWO DAYS OF EARLY VOTING BY PERSONAL APPEARANCE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

Motion was made by Councilmember Weger to accept the resolution as presented, second was made by Councilmember Green. Motion prevailed by the following vote:

Ayes: Councilmembers: Weger, Campbell, Johnson, Boles, Douglas, Green, King  
Nays: None/Motion Carries  
Voted: 7 to 0  
Absent:

**B. Consider and Discuss 508 Conrad Hilton Blvd.—John Diers**

Mr. Diers explained that the Board of the Cisco Development Corporation had approved an expenditure for the property located at 508 Conrad Hilton Blvd. that would require Council approval.

Motion was made by Councilmember Boles to approve expenditure by the CDC, second was made by Councilmember Campbell. Motion prevailed by the following vote:

Ayes: Councilmembers: Weger, Campbell, Johnson, Boles, Douglas, Green, King  
Nays: None/Motion Carries  
Voted: 7 to 0  
Absent:

**C. Consider and Discuss 700 Conrad Hilton Blvd.—John Diers**

Mr. Diers again discussed what the CDC Board had voted to approve an expenditure for the property located at 700 Conrad Hilton Blvd. as well and would need Council approval.

Motion was made by Councilmember Green to approve expenditure by the CDC, second was made by Councilmember Douglas. Motion prevailed by the following vote:

Ayes: Councilmembers: Weger, Campbell, Johnson, Boles, Douglas, Green, King  
Nays: None/Motion Carries  
Voted: 7 to 0  
Absent:

**D. Consider and Discuss Bailey Property.—John Diers**

Lastly, Mr. Diers addressed the Council regarding the Bailey property in Humbletown saying that the Board had approved a Phase II Environmental Study be completed.

Motion was made by Councilmember Boles to approve a Phase II Environmental Study be conducted on the Bailey Property, second was made by Councilmember Johnson. Motion prevailed by the following vote:

Ayes: Councilmembers: Weger, Campbell, Johnson, Boles, Douglas, Green, King  
Nays: None/Motion Carries  
Voted: 7 to 0  
Absent:

**E. Consider Potential Award of Bid for Highway 6 Project.**

Mayor King opened the one bid received. The bid was from Arnold and Son Construction for \$36,000.00. Mayor King commented that the city had worked with Arnold and Son before. Councilmember Campbell asked if the amount of the bid was in line with the City's estimate and Mr. Archer replied affirmatively.

Motion was made by Councilmember Johnson to accept the bid from Arnold and Son Construction second was made by Councilmember Campbell. Motion prevailed by the following vote:

Ayes: Councilmembers: Weger, Campbell, Johnson, Boles, Douglas, Green, King  
Nays: None/Motion Carries  
Voted: 7 to 0  
Absent:

**F. Consider Potential Award of Bid for Water Tower Lighting.**

Mr. Archer informed the Council that the city had received no bids for this project. He had reached out to the engineers to try to further advertise to a larger audience.

No action was taken on this item.

**G. Consider and Discuss Appointing Members to the Planning and Zoning Board.**

Mayor King explained that the Council had received two letters of interest to serve on the planning and zoning board. Councilmember Campbell expressed a desire to be fair in the appointment process by selecting the person who submitted their letter first to Place 1 and selecting the remaining candidate as an alternate. Councilmember Green suggested drawing names. Councilmember Boles inquired about those people who had expressed an interest when the Council was appointing members before.

Motion was made by Councilmember Weger to appoint Kenneth Preston to Place 1 and Christopher Johnson as an alternate to the Planning and Zoning Board, second was made by Councilmember Green. Motion prevailed by the following vote:

Ayes: Councilmembers: Weger, Campbell, Johnson, Douglas, Green, King  
Nays: Boles/Motion Carries  
Voted: 6 to 0  
Absent:

The Council asked to have the City Secretary contact those others that had expressed an interest during the previous Board appointments and see if any of them are still interested in filling the remaining alternate position.

**H. Consider and Discuss RFP's on New Sewer Truck.**

Mr. Archer explained that the Council had budgeted \$50,000.00 for repairs to Wastewater vehicles for this fiscal year. It would take \$15,000.00 to make one unit operational and recently spent \$3,000.00 on the second unit to keep it operational. He feels it would be more beneficial to buy a new Wastewater vehicle which would cost around \$100,000.00, but the budgeted amount for repairs could be used toward that purchase.

Motion was made by Councilmember Johnson to go out for bids on a new sewer truck, second was made by Councilmember Boles. Motion prevailed by the following vote:

Ayes: Councilmembers: Weger, Campbell, Johnson, Boles, Douglas, Green, King  
Nays: None/Motion Carries  
Voted: 7 to 0  
Absent:

**I. Consider and Discuss Street Improvements.**

Mr. Archer spoke about current street improvement projects currently happening in the city including addressing drainage issues on the east side of town and the hill at W. 4<sup>th</sup> Street. He further commented that the street department was constantly blading and patching the streets.

No action was taken on this item.

**J. Consider and Discuss Real Property. (Executive Session)**

The Council retired into Executive Session under Section 551.072 Real Property at 6:46 p.m.

The Council reconvened into Regular Session at 6:54 p.m. and took no action.

**K. Consider and Discuss TEAM Building and Long Range Planning.**

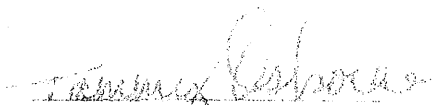
Mayor King discussed the tax meeting held earlier in the day summarizing what was discussed about the potential tax rate increase in the next year. The Council discussed the legalities of offering Frac-Tec a continuance of their original tax abatement to try and secure the city's tax base.


Councilmember Green brought up an issue regarding Fought Automotive and their compliance with code enforcement ordinances. Mr. Archer stated that he would check with the Code Enforcement Officer for additional information.

**VII. ADJOURNMENT**

Motion was made by Councilmember Wegner to adjourn. Second made by Councilmember Green. Motion passed unanimously and the meeting adjourned at 7:23 p.m.

ATTEST:

  
Tammy Osborne, City Secretary

  
James King, Mayor

\*\*\*\*\*

THE CITY OF CISCO  
CITY COUNCIL, REGULAR CALLED MEETING  
February 22, 2016

CISCO, TEXAS §  
EASTLAND, COUNTY §

The City Council of the City of Cisco met in a regular called *session* at the Cisco City Hall in Cisco as scheduled, and notice was posted 72 hours in advance and prior to the meeting.

**MEMBERS PRESENT:**

MAYOR	JAMES KING
COUNCILMEMBER PLACE I	JASON WEGER
COUNCILMEMBER PLACE II	DENNIS CAMPBELL
COUNCILMEMBER PLACE III	WILLARD JOHNSON
COUNCILMEMBER PLACE V	TAMMY DOUGLAS
COUNCILMEMBER PLACE VI	PHILIP GREEN

**PERSONNEL PRESENT:**

CITY MANAGER	DARWIN ARCHER
CITY SECRETARY	TAMMY OSBORNE

**PERSONNEL ABSENT:**

COUNCILMEMBER PLACE IV	RANDY BOLES
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Guests: Sam Guthrie, Doyle Scabourn, Howard White, Carolyn Elmore, Walter Fairbanks, Greg White

**I. MEETING CALLED TO ORDER:**

Mayor King called the meeting to order at 6:00 p.m.

**II. PLEDGES**

- A. Pledge of Allegiance
- B. Pledge to the Texas Flag

**III. INVOCATION:**

Mayor King gave the invocation.

**IV. CITIZEN-VISITOR COMMENTS:**

None

**V. APPROVE THE MINUTES OF THE MEETING CONDUCTED:**

February 8, 2016

Motion was made by Councilmember Weger to accept the minutes as presented, second was made by Councilmember Campbell. Motion prevailed by the following vote:

Ayes: Councilmembers: Weger, Campbell, Johnson, Douglas, Green, King  
Nays: None/Motion Carries  
Voted: 6 to 0  
Absent: Boles

**VI. REPORTS:**

**Financial Report—Darwin Archer**

Mr. Archer presented the Financial Report.

**City Manager's Report—Darwin Archer**

Mr. Archer also presented the City Manager's Report discussing the following topics:

- Capstone meter update—a full study of the water meter system is currently being conducted and the city is housing equipment for Capstone to help with the logistics of the project. The project is progressing on schedule.

- Water Treatment Plant update—plant operators are still working on the chlorine dioxide issues and conducting some fine tuning of the system with the help of the engineers to correct that process. Otherwise, the plant is running smoothly.
- Wastewater System update—a meeting is being held with the engineers regarding costs on the new wastewater treatment plant and those figures will be brought to the Council after those details are assembled.
- Airport update—Engineers have inspected the airport and found that it needs extensive rehabilitation. Mr. Archer has sent a letter of interest for a Capital Improvements Project Grant which is a 90%-10% grant for needed repairs. Later in the meeting, the Council will discuss a 50/50 RAMP Grant proposal. Councilmember Weger asked about the benefit the city received by keeping the airport operational. Upon this, the Council discussed the pros and cons of expending funds to maintain the airport.

Motion was made by Councilmember Weger to accept the reports as presented, second was made by Councilmember Green. Motion prevailed by the following vote:

Ayes: Councilmembers: Weger, Campbell, Johnson, Douglas, Green, King  
 Nays: None/Motion Carries  
 Voted: 6 to 0  
 Absent: Boles

**VI. THE CITY COUNCIL MAY DISCUSS AND/OR TAKE ACTION ON ANY OF THE FOLLOWING AGENDA ITEMS:**

**A. Consider and Discuss Resolution No 2016-02-08**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CISCO, TEXAS, AMENDING CHAPTER 9 "FLOOD HAZARD PREVENTION", RESTRUCTURING THE CHAPTER TO INCLUDE ADDITIONAL ARTICLES AND UPDATES TO EXISTING ARTICLES; AND ESTABLISHING AN EFFECTIVE DATE.**

Mayor King explained that the Council would be skipping this item.

**B. Consider Potential Award of Bid for Oil Changes on City Vehicles.**

Mayor King informed the Council that the city had received on bid from White's Auto Repair. After looking at the bid, the Council expressed confusion at the format of the bid and discussed clarifying the bid request and going out for bids again. The Council thanked Mr. White for submitting the bid and asked him to consider re-bidding after the bid request was amended.

Motion was made by Councilmember Green to pass awarding the bid, second was made by Councilmember Johnson. Motion prevailed by the following vote:

Ayes: Councilmembers: Weger, Campbell, Johnson, Douglas, Green, King  
 Nays: None/Motion Carries  
 Voted: 6 to 0  
 Absent: Boles

**C. Consider and Discuss RAMP Grant Approval.**

Mr. Archer explained again that the RAMP Grant was a 50/50 grant up to \$100,000.00. This does not mean we have to make any expenditure, but allows us to be reimbursed for any expenditure made.

Motion was made by Councilmember Campbell to move forward with the RAMP Grant approval, second was made by Councilmember Douglas. Motion prevailed by the following vote:

Ayes: Councilmembers: Campbell, Johnson, Douglas, King  
 Nays: Weger, Green/Motion Carries  
 Voted: 4 to 2  
 Absent: Boles

**D. Consider and Discuss Appointing Members to the Planning and Zoning Board.**

Mayor King explained that the two individuals the Council wanted to consider had been approached and both are still interested in serving. He further commented that the structure of the Board only allowed one remaining spot to be filled so the Council would need to choose one. The Council discussed who would best serve the Board and agreed that they wanted to look at additional candidates.



Motion was made by Councilmember Green to continue looking for an appropriate candidate for the Planning and Zoning Board, second was made by Councilmember Weger. Motion prevailed by the following vote:

Ayes: Councilmembers: Weger, Campbell, Johnson, Douglas, Green, King  
Nays: None/Motion Carries  
Voted: 6 to 0  
Absent: Boles

**E. Consider and Discuss Street Improvements.**

Mr. Archer explained to the Council that culverts had been ordered to be installed by Herman's. The streets are still continually being patched and the bricks have been replaced at 6<sup>th</sup> St. and Conrad Hilton Blvd. The hill on W. 4<sup>th</sup> St. will begin after the drainage project on the east side of town is complete. Councilmember Green asked if Mr. Archer could send the Dura-Patcher to the Webbwood Addition to fill potholes. Councilmember Weger commented that some of the pothole patches have left humps in the road and wondered if they could be smoothed out. Mayor King pointed out that the manhole near the new apartment complex was tilted at an angle and probably needs to be looked at. Lastly, Councilmember Johnson said that repair needed to be made to Conrad Hilton where the city had had to do some work on utility lines. Mr. Archer answered that both of these issues would be addressed.

**F. Consider and Discuss TEAM Building and Long Range Planning.**

Councilmember Green inquired about the city election. The City Secretary explained that as of the filing deadline, all seats were unopposed, but the cancellation of the election would have to wait until the write-in deadline had passed.

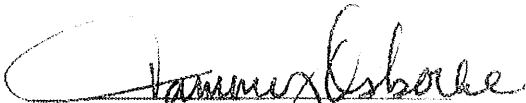
Councilmember Green suggested planning another event for city employees and the Council agreed.

Mayor King informed the Council of the Opening Ceremony for the new ballpark on March 20, 2016 at 1:00 p.m.

**VII. ADJOURNMENT**

Motion was made by Councilmember Green to adjourn, second made by Councilmember Campbell. Motion passed unanimously and the meeting adjourned at 7:00 p.m.

ATTEST:

  
Tammy Osborne, City Secretary

  
James King, Mayor

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THE CITY OF CISCO  
CITY COUNCIL, REGULAR CALLED MEETING  
March 14, 2016

CISCO, TEXAS §  
EASTLAND, COUNTY §

The City Council of the City of Cisco met in a regular called *session* at the Cisco City Hall in Cisco as scheduled, and notice was posted 72 hours in advance and prior to the meeting.

**MEMBERS PRESENT:**

MAYOR	JAMES KING
COUNCILMEMBER PLACE II	DENNIS CAMPBELL
COUNCILMEMBER PLACE III	WILLARD JOHNSON
COUNCILMEMBER PLACE IV	RANDY BOLES
COUNCILMEMBER PLACE V	TAMMY DOUGLAS
COUNCILMEMBER PLACE VI	PHILIP GREEN

**PERSONNEL PRESENT:**

CITY MANAGER	DARWIN ARCHER
CITY SECRETARY	TAMMY OSBORNE

**PERSONNEL ABSENT:**

COUNCILMEMBER PLACE I	JASON WEGER
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Guests: Walter Fairbanks, John Diers, Sam Guthrie, Carolyn Elmore, Josh Berryhill, Scott Hay, Richard Harrison, Stephen Forrester, Dion White

**I. MEETING CALLED TO ORDER:**

Mayor King called the meeting to order at 6:00 p.m.

**II. PLEDGES**

- A. Pledge of Allegiance
- B. Pledge to the Texas Flag

**III. INVOCATION:**

Councilmember Green gave the invocation.

**IV. CITIZEN-VISITOR COMMENTS:**

None

**V. APPROVE THE MINUTES OF THE MEETING CONDUCTED:**

February 22, 2016

Motion was made by Councilmember Campbell to accept the minutes as presented. second was made by Councilmember Green. Motion prevailed by the following vote:

Ayes: Councilmembers: Campbell, Johnson, Boles, Douglas, Green, King  
Nays: None/Motion Carries  
Voted: 6 to 0  
Absent: Weger

**VI. THE CITY COUNCIL MAY DISCUSS AND/OR TAKE ACTION ON ANY OF THE FOLLOWING AGENDA ITEMS:**

- A. Consider and Discuss Wastewater Treatment Plant.—Scott Hay & Josh Berryhill

Mr. Hay and Mr. Berryhill presented information on the different options for the new wastewater treatment plant, including cost benefits up front and over the twenty year life cycle of the plant.

Motion was made by Councilmember Green to choose the MBR System for the Wastewater Treatment Plant, second was made by Councilmember Campbell. Motion prevailed by the following vote:

Ayes: Councilmembers: Campbell, Johnson, Boles, Douglas, Green, King  
Nays: None/Motion Carries  
Voted: 6 to 0  
Absent: Weger

**B. Consider and Discuss Ordinance No 0-2016-1**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CISCO, TEXAS, AMENDING CHAPTER 9 "FLOOD HAZARD PREVENTION", RESTRUCTURING THE CHAPTER TO INCLUDE ADDITIONAL ARTICLES AND UPDATES TO EXISTING ARTICLES; AND ESTABLISHING AN EFFECTIVE DATE. (First Reading)**

Mr. Archer explained that the Flood Hazard Group found that we were a few years behind on the Flood Hazard Ordinance. This action would bring the city up to date on current state requirements for flood hazard prevention.

Motion was made by Councilmember Campbell to accept the ordinance as presented, second was made by Councilmember Boles. Motion prevailed by the following vote:

Ayes: Councilmembers: Campbell, Johnson, Boles, Douglas, Green, King  
Nays: None/Motion Carries  
Voted: 6 to 0  
Absent: Weger

**C. Consider and Discuss Resolution No. 2016-03-14**

**A RESOLUTION OF THE CITY OF CISCO, TEXAS, DECLARING UNOPPOSED CANDIDATES IN THE MAY 7, 2016 GENERAL CITY ELECTION ELECTED TO OFFICE; CANCELLING THE ELECTION; AND PROVIDING AN EFFECTIVE DATE.**

Mayor King informed the Council that all candidates were unopposed in their respective races and that there were no write in candidates.

Motion was made by Councilmember Campbell to accept the resolution as presented, second was made by Councilmember Douglas. Motion prevailed by the following vote:

Ayes: Councilmembers: Campbell, Johnson, Boles, Douglas, Green, King  
Nays: None/Motion Carries  
Voted: 6 to 0  
Absent: Weger

**D. Consider and Discuss Folklife Festival Proclamation.**

Motion was made by Councilmember Boles to accept the proclamation, second was made by Councilmember Douglas. Motion prevailed by the following vote:

Ayes: Councilmembers: Campbell, Johnson, Boles, Douglas, Green, King  
Nays: None/Motion Carries  
Voted: 6 to 0  
Absent: Weger

**E. Consider and Discuss Developmental Disabilities Awareness Month Proclamation.**

Mayor King invited Mr. Dion White from the Center for Life Resources to discuss the proclamation. Mr. White thanked the Council and discussed his organization and the services they provide.

Motion was made by Councilmember Boles to accept the proclamation, second was made by Councilmember Johnson. Motion prevailed by the following vote:

Ayes: Councilmembers: Campbell, Johnson, Boles, Douglas, Green, King  
Nays: None/Motion Carries  
Voted: 6 to 0  
Absent: Weger

**F. Consider and Discuss Appointing Members to the Planning and Zoning Board.**

Mayor King explained that there were three prospective members to fill the one remaining position on the board.

Motion was made by Councilmember Boles to appoint Richard Harrison to the Planning and Zoning Board, second was made by Councilmember Campbell. Motion prevailed by the following vote:

Ayes: Councilmembers: Campbell, Johnson, Boles, Douglas, Green, King  
Nays: None/Motion Carries  
Voted: 6 to 0  
Absent: Weger

**G. Consider and Discuss Street Improvements.**

Mr. Archer commented that the recent rainfall had hindered street repair and the Dura-Patcher was not operational so mostly, hand patching had been done. Councilmember Green informed the Council that there were potholes on the new portion of W. 13<sup>th</sup> Street and Mr. Archer countered that it would be fixed. Councilmember Douglas had been approached about the alley on the north side of 5<sup>th</sup> Street in the 800 block being blocked by roadwork. Councilmember Johnson related that the street crew had done a good job on Conrad Hilton Blvd.

**H. Consider and Discuss TEAM Building and Long Range Planning.**

Mayor King opened discussion on airport upgrades. Mr. Archer explained that in discussions with TxDot, it has been suggested that if the city is awarded a grant, the runway should be updated. The city's portion of this project would be around \$35,000.00. Mayor King brought up how much the airport is used from a previous conversation saying there were currently nine aircraft being housed at the airport and four more would be kept there if there was room. Mr. Diers spoke from the audience saying that having an airport is beneficial from an economic development standpoint. The Council continued discussing ways to make the airport more profitable and a benefit to the city.

Mayor King further commented about annexing the property at the lake. He has long been a proponent of the annexation, but would like to begin seriously considering it and using the funds from the sale of the lake lots to pave North Shore Drive. The Council asked if annexing the property would then require the city to provide city utilities. Mayor King said that would be something that would have to be addressed.

Councilmember Douglas asked for the date of the opening ceremony for the new ballpark and was told it would be Sunday, March 20 at 1:00 p.m.

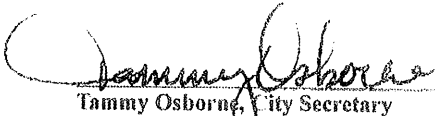
Mr. Archer talked about his desire to re-brand the city and change the city's logo. He presented the Council with a prototype of a logo for the Council to look at and provide feedback

Councilmember Boles thanked the Fire Department for their hard work recently with several different structure fires.

**VII. ADJOURNMENT**

Motion was made by Councilmember Boles to adjourn, second made by Councilmember Johnson. Motion passed unanimously and the meeting adjourned at 7:07 p.m.

**ATTEST:**

  
Tammy Osborn, City Secretary

  
James King, Mayor

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**TAB 3-TDHCA, CONSULTANT AND CITY OF CISCO DOCUMENTS FROM MARCH 22, 2016 THROUGH MARCH 29, 2016**

The following documents were obtained from the TDHCA web site and the City of Cisco's web site:

**SECTION F**

On March 22, 2016, TDHCA Staff issued a Deficiency Notice for Application #16026. One of the items listed under Tab 23 requested evidence from the City of Cisco that the number of parking spaces proposed for the subject project was in conformance with the local city code. Of particular interest was the hotel's building site consisting of 30 apartment units but only providing 14 parking spaces. (Attachment-TDHCA Staff Deficiency Notice dated March 22, 2016)

**SECTION G**

On March 24, 2016, the consultant to the project submitted a letter addressing eleven items listed on the TDHCA Deficiency Notice. In reference to the parking documentation requested by TDHCA Staff under Tab 23, the letter from the consultant stated a letter was forthcoming from the City of Cisco and would be submitted under a separate cover. (Attachment-Project Consultant's Letter Dated March 24, 2016)

**SECTION H**

Due to the TDHCA Deficiency Notice and no local code in place addressing a parking ordinance, the applicant was able to have the issue rapidly placed on the City Council Meeting scheduled on March 28, 2016. Such a meeting of this nature addressing the parking issue at this stage was conducted well past the TDHCA application submitted date of March 1, 2016. (Attachments-City of Cisco City Council Notice of Meeting and Agenda Minutes to the City Council Regular Called Meeting on March 28, 2016)

**SECTION I**

As a result of the Cisco City Council Meeting conducted on March 28, 2016 as well as to provide a response to the TDHCA Deficiency Notice, the Cisco City Manager issued a letter on March 29, 2016 stating the parking for both project sites were consistent with city codes. However, no evidence of a formal ordinance or any other documentation was provided with this letter to support this claim. Upon submittal, the letter was placed within the application on March 29, 2016, well past the March 1, 2016 application deadline date. (Attachment-City of Cisco letter dated 03/29/2016)

**From:** Elizabeth Henderson  
**To:** "dsailer@mrecapital.com"; "jmooney@mrecapital.com"; "sarah@structuretexas.com"  
**Subject:** 16026 - 9% HTC Application Deficiency Notice - TIME SENSITIVE - Laguna Hotel Lofts  
**Date:** Tuesday, March 22, 2016 11:23:00 AM

In the course of the Department's Housing Tax Credit **Eligibility/Selection/Threshold** and/or Direct Loan review of the above referenced application, a possible Administrative Deficiency as defined in §10.3(a)(2) and described in §10.201(7)(A) and/or §10.201(7)(B) of the 2016 Uniform Multifamily Rules was identified. By this notice, the Department is requesting documentation to correct the following deficiency or deficiencies. Any issue initially identified as an Administrative Deficiency may ultimately be determined to be beyond the scope of an Administrative Deficiency, and the distinction between material and non-material missing information is reserved for the Director of Multifamily Finance, Executive Director, and Board.

Tab 9, Opportunity Index – Please explain how the Application qualifies for Opportunity Index points based upon the selection made. You are free to revise your selection.

Tab 13, Multiple Site Info – I did not find the plats of both sites in the Application or among any of the Third Party Reports. Provide the plats or tell me where I've missed them.

Tab 17, Staff Determination – Provide the staff determination letter that you received for this Application.

Tab 22 & 23, Unit Floor Plans and Bldg/Unit Configuration Form – The Bldg/Unit Configuration form does not have unit labels on it and neither do the unit or building plans. The units need to be labeled in the plans and those labels should match those given on the Bldg/Unit Configuration form.

Tab 22 & 24, Unit Plans and Rent Schedule – The square footages given to the units in both the building and unit plans, do not all match the square footages given on the Rent Schedule. These measurements should be consistent.

Tab 23, Parking – Provide evidence from the City of Cisco that the number of parking spaces available is in conformance with city code on a site by site basis. I am particularly interested in the hotel's site since there will be 30 units and apparently only 14 spaces.

Tab 25, Utility Allowances – Provide the utility allowances from the Cisco Housing Authority.

Tab 26, Annual Operating Expenses – Provide the name of the debt source in the blank provided. It still reads "Describe".

Tab 3, Applicant Eligibility Certification – There are two certifications missing. Provide the missing forms.

0. Tab 38, List of Organizations – The list was provided for the wrong Application. Provide the correct list.



1. Site Design and Feasibility – The survey was not in the report and the site plan did not include the statement about materially adhering to all zoning, site development and building code ordinances. Provide the missing items.

**The above list may not include all Administrative Deficiencies such as those that may be identified upon a supervisory review of the application. Notice of additional Administrative Deficiencies may appear in a separate notification.**

All deficiencies must be corrected or otherwise resolved by 5 pm CST on the fifth business day following the date of this deficiency notice. Deficiencies resolved after 5 pm on the fifth business day will have 5 points deducted from the final score. For each additional day beyond the fifth day that any deficiency remains unresolved, the application will be treated in accordance with §10.201(7)(A) of the 2016 Uniform Multifamily Rules.

All deficiencies related to the Direct Loan portion of the Application must be corrected or clarified by 5pm CST on the fifth business day following the date of this deficiency notice. Deficiencies resolved after 5pm CST on the fifth business day will be subject to a \$500 fee for each business day that the deficiency remains unresolved. Applications with unresolved deficiencies after 5pm CST on the tenth day may be terminated.

Unless the person that issued this deficiency notice, named below, specifies otherwise, submit all documentation at the same time and in only one file using the Department's Serv-U HTTPs System. Once the documents are submitted to the Serv-U HTTPs system, please email the staff member issuing this notice. If you have questions regarding the Serv-U HTTPs submission process, contact Liz Cline at [liz.cline@tdhca.state.tx.us](mailto:liz.cline@tdhca.state.tx.us) or by phone at (512)475-3227. You may also contact Jason Burr at [jason.burr@tdhca.state.tx.us](mailto:jason.burr@tdhca.state.tx.us) or by phone at (512)475-3986.

**All applicants should review §§11.1(b) and 10.2(b) of the 2016 QAP and Uniform Multifamily Rules as they apply to due diligence, applicant responsibility, and the competitive nature of the program for which they are applying.**

**\*\*All deficiencies must be corrected or clarified by 5 pm on March 29, 2016. Please respond to this email as confirmation of receipt.\*\***

**About TDHCA**

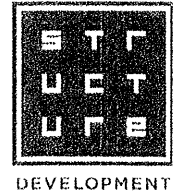
The Texas Department of Housing and Community Affairs administers a number of state and federal programs through for-profit, nonprofit, and local government partnerships to strengthen communities through affordable housing development, home ownership opportunities, weatherization, and community-based services for Texans in need. For more information, including current funding opportunities and information on local providers, please visit [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us).

*Elizabeth Henderson*

*Program Specialist III*

*Texas Department of Housing and Community Affairs*

*221 E. 11th Street | Austin, TX 78701*



March 24, 2016

Ms. Elizabeth Henderson  
Specialist, Multifamily Finance  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, TX 78701

Via: elizabeth.henderson@tdhca.state.tx.us

Re: Laguna Hotel Lofts16026 Deficiency Response

Dear Ms. Henderson:

Please see the following responses and associated attachments regarding the deficiency notice for HTC application 16026, Laguna Hotel Lofts, dated March 22, 2016.

1. *Tab 9, Opportunity Index – Please explain how the Application qualifies for Opportunity Index points based upon the selection made. You are free to revise your selection.*

The application qualifies for high opportunity because it is in a rural place and in quartile 1.

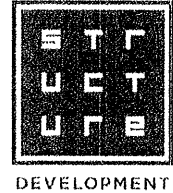
Revised. See attached.

2. *Tab 13, Multiple Site Info – I did not find the plats of both sites in the Application or among any of the Third Party Reports. Provide the plats or tell me where I've missed them.*

See attached plats for both sites. Originally we did not submit a plat for the historic site since it is rehabilitation and did not believe it was required. You may have missed the new construction site plat because it different from what we are used to seeing. It is the original town plat of Cisco from 1897. They are legally platted lots and I have highlighted the plat recording information on the document. It is attached with a blow up of the area and associated tax sheets with legal description of the lots.

3. *Tab 17, Staff Determination – Provide the staff determination letter that you received for this Application.*

See attached.



4. *Tab 22 & 23, Unit Floor Plans and Bldg/Unit Configuration Form – The Bldg/Unit Configuration form does not have unit labels on it and neither do the unit or building plans. The units need to be labeled in the plans and those labels should match those given on the Bldg/Unit Configuration form.*

See attached building unit configuration form. See attached full architectural plan set that includes site plan, building plans, and unit plans to address items 4, 5, and 11.

5. *Tab 22 & 24, Unit Plans and Rent Schedule – The square footages given to the units in both the building and unit plans, do not all match the square footages given on the Rent Schedule. These measurements should be consistent.*

See attached building and unit plans in architectural plan set referenced above in item 4.

6. *Tab 23, Parking – Provide evidence from the City of Cisco that the number of parking spaces available is in conformance with city code on a site by site basis. I am particularly interested in the hotel's site since there will be 30 units and apparently only 14 spaces.*

We are waiting on a letter that is forthcoming from the City of Cisco and will submit under separate cover. Please let us know if this requires an extension request.

7. *Tab 25, Utility Allowances – Provide the utility allowances from the Cisco Housing Authority.*

See revised Utility Allowance and documentation from the Cisco Housing Authority. During the application cycle, after numerous photos calls and inquiries we were unable to obtain any utility allowances from the City Housing Authority. Based on past experience with TDHCA, we utilized utility allowances by Cisco's neighbor, the Abilene Housing Authority. The \$3 negligible modifications are evidenced in the attached rent schedule, operating expenses, and proforma.

8. *Tab 26, Annual Operating Expenses – Provide the name of the debt source in the blank provided. It still reads "Describe".*

See attached.

9. *Tab 3, Applicant Eligibility Certification – There are two certifications missing. Provide the missing forms*

See attached.



10. *Tab 38, List of Organizations – The list was provided for the wrong Application. Provide the correct list.*

See attached.

11. *Site Design and Feasibility – The survey was not in the report and the site plan did not include the statement about materially adhering to all zoning, site development and building code ordinances. Provide the missing items.*

The rules require a survey or current plat. As discussed in item 2 above a current plat is part of the Site Design and Feasibility Report. It is the original town plat from 1897 and valid plat for development purposes. Refer to item 2 documentation for the plat and item 4 architectural plans for required statement.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah H. Andre", with a long horizontal flourish extending to the right.

Sarah H. Andre,  
Consultant to the Project

CITY OF CISCO

Notice is hereby given that a Regular meeting of the governing body of the City of Cisco will be held on the 28th day of March, 2016 at 6:00 P.M. in the Council Chambers at City Hall at which time the following subjects will be discussed, to wit:

I. MEETING CALLED TO ORDER:

"I call this meeting of the Cisco Council to order and declare that a quorum of Council Members are present that the meeting has been duly posted according to the Texas Open Meeting Act, and the meeting will be conducted in conformity with the Texas Government Code Chapter 551."

II. PLEDGES:

- A. Pledge of Allegiance
- B. Pledge to the Texas Flag

III. INVOCATION

IV. CITIZEN-VISITOR COMMENTS:

Pursuant to policy set by the City Council a five (5) Minute time limit per person is established for anyone wishing to address the Council on subjects pertaining to the City.

V. APPROVE MINUTES OF THE MEETING CONDUCTED ON:

March 14, 2016

VI. REPORTS:

- Financial Report Darwin Archer
- City Manager's Report Darwin Archer
  - o Airport Rehabilitation
  - o Water Treatment Plant Improvements
  - o Street Repairs and Drainage Repairs Update
  - o City Pool Repair Update

VII. THE CITY COUNCIL MAY DISCUSS AND/OR TAKE ACTION ON ANY OF THE FOLLOWING AGENDA ITEMS:

A. Consider and Discuss Ordinance No 0-2016-02

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CISCO, TEXAS AMENDING CHAPTER 13 "MOTOR VEHICLES AND TRAFFIC", SPECIFICALLY SECTION 13-52 "SPECIFIC ZONES ESTABLISHED" OF THE CITY'S CODE OF ORDINANCES, AMENDING THE LIST OF PARKING CONTROL ZONES; AND ESTABLISHING AN EFFECTIVE DATE.—*First Reading*

B. Consider and Discuss Ordinance No. 0-2016-01

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CISCO, TEXAS, AMENDING CHAPTER 9 "FLOOD HAZARD PREVENTION", RESTRUCTURING THE CHAPTER TO INCLUDE ADDITIONAL ARTICLES AND UPDATES TO EXISTING ARTICLES; AND ESTABLISHING AN EFFECTIVE DATE.—*Second Reading*

C. Consider and Discuss Resolution No. 2016-03-28

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CISCO, TEXAS, APPROVING APPLICATION FOR A CRIMINAL JUSTICE DIVISION GRANT THROUGH THE OFFICE OF THE GOVERNOR FOR THE PURCHASE OF BODY WORN CAMERAS FOR THE CISCO POLICE DEPARTMENT.

D. Consider and Discuss Possible Acceptance of Bid for Oil Changes on City Vehicles.

E. Consider and Discuss Planning & Zoning Board Appointments, Method of Appointment, and/or Dismissals (Executive Session)

F. Consider and Discuss TEAM Building and Long Range Planning.

G. Consider and Discuss Ordinance No. 0-2016-02

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CISCO, TEXAS AMENDING CHAPTER 13 "MOTOR VEHICLES AND TRAFFIC", SPECIFICALLY SECTION 13-52 "SPECIFIC ZONES ESTABLISHED" OF THE CITY'S CODE OF ORDINANCES, AMENDING THE LIST OF PARKING CONTROL ZONES; AND ESTABLISHING AN EFFECTIVE DATE.—*Second Reading*

VIII. ADJOURNMENT

*The Council may vote and or act upon each of the items listed in this Agenda. The Council reserves the right to retire into executive session concerning any of the items listed on this Agenda, whenever it is considered necessary and legally justified under the Open Meetings Act*

The following is an agenda of an Executive Session of the City of Cisco, Texas, held pursuant to the Texas Open Meetings Act, Government Code Section:

551.071 - Consultation w/Attorney	551.072 - Real Property
551.073 - Prospective Gift	551.074 - Personnel Matters
551.076 - Security Personnel or Devices	551.086 - Test item (SB 595)
551.087 - Economic Development Negotiations (SB1851)	

<p align="center"><b>CERTIFICATION</b></p> <p>I certify that a copy of this agenda was posted on the <u>bulletin board</u> and on the <u>window</u> adjacent to the front door at the City Hall of the City of Cisco, Texas by <u>5:00 p.m.</u> on <u>March 25, 2016.</u></p> <p>Name: <u>Tammy Osborne</u> City Secretary, City of Cisco, Texas</p>	<p align="center"><b>NOTICE OF ASSISTANCE</b></p> <p>The Cisco City Hall and Council Chamber are wheelchair accessible and accessible parking spaces are available. Request for accommodation or interpretive services must be made 48 hours prior to this meeting. Please contact the city secretary's office at (254)442-2111 for information or assistance.</p>
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THE CITY OF CISCO  
CITY COUNCIL, REGULAR CALLED MEETING  
March 28, 2016

CISCO, TEXAS §  
EASTLAND, COUNTY §

The City Council of the City of Cisco met in a regular called *session* at the Cisco City Hall in Cisco as scheduled, and notice was posted 72 hours in advance and prior to the meeting.

MEMBERS PRESENT:

MAYOR	JAMES KING
COUNCILMEMBER PLACE I	JASON WEGER
COUNCILMEMBER PLACE II	DENNIS CAMPBELL
COUNCILMEMBER PLACE III	WILLARD JOHNSON
COUNCILMEMBER PLACE IV	RANDY BOLES
COUNCILMEMBER PLACE V	TAMMY DOUGLAS

PERSONNEL PRESENT:

CITY MANAGER	DARWIN ARCHER
CITY SECRETARY	TAMMY OSBORNE

PERSONNEL ABSENT:

COUNCILMEMBER PLACE VI	PHILIP GREEN
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Guests: Sam Guthrie, John Diers, Stephen Forrester, Jed Keck

I. MEETING CALLED TO ORDER:

Mayor King called the meeting to order at 6:00 p.m.

II. PLEDGES

- A. Pledge of Allegiance
- B. Pledge to the Texas Flag

III. INVOCATION:

Councilmember Douglas gave the invocation.

IV. CITIZEN-VISITOR COMMENTS:

None

V. APPROVE THE MINUTES OF THE MEETING CONDUCTED:

March 14, 2016

Motion was made by Councilmember Campbell to accept the minutes as presented, second was made by Councilmember Boles. Motion prevailed by the following vote:

Ayes: Councilmembers: Weger, Campbell, Johnson, Boles, Douglas, King  
Nays: None/Motion Carries  
Voted: 6 to 0  
Absent: Green

VI. REPORTS:

**Financial Report—Darwin Archer**

Mr. Archer presented the Financial Report.

**City Manager's Report—Darwin Archer**

Mr. Archer also presented the City Manager's Report discussing the following topics:

- o Airport Rehabilitation—the entire rehabilitation of the airport runway taxi-way, and apron will be a \$356,400.00 with the city paying \$35,640.00 with the TxDot Aviation Grant. The Council also discussed working on the hangars at the airport and a debate ensued regarding sinking additional funds into the airport when it isn't a profitable venture.



- o Water Treatment Plant Improvements—the Water Treatment Plant is currently running smoothly. They have been trying new treatment methods and internal testing shows no violations.
- o Street Repairs and Drainage Repairs Update—the project on the east side of town near Herman's is almost complete. After it is complete, the Street Department will begin work on the 4<sup>th</sup> Street hill. The Dura-Patcher is back to being operational so it is being utilized again for street repair. Councilmember Boles proposed to Mr. Archer the idea of letting civic groups utilize the city's materials to conduct civic projects for street repair. Mr. Archer will be looking at the liability issues associated with that type of project before the city moves ahead with it. Mayor King brought up W. 13<sup>th</sup> Street and Mr. Archer countered that the potholes are being repaired and once complete, it will be sealed to preserve the integrity of the newly repaired street. Councilmember Weger expressed that W. 17<sup>th</sup> Street was in need of repair for large potholes.
- o City Pool Repair Update—Mr. Archer explained that the city was looking for a new Pool Manager since the previous manager declined to do the job this summer. The pump has been sent for repair and other maintenance is being performed in anticipation of the pool opening this summer.

Motion was made by Councilmember Boles to accept the reports as presented, second was made by Councilmember Johnson. Motion prevailed by the following vote:

Ayes: Councilmembers: Weger, Campbell, Johnson, Boles, Douglas, King  
 Nays: None/Motion Carries  
 Voted: 6 to 0  
 Absent: Green

**VII. THE CITY COUNCIL MAY DISCUSS AND/OR TAKE ACTION ON ANY OF THE FOLLOWING AGENDA ITEMS:**

**A. Consider and Discuss Ordinance No. 0-2016-02**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CISCO, TEXAS AMENDING CHAPTER 13 "MOTOR VEHICLES AND TRAFFIC", SPECIFICALLY SECTION 13-52 "SPECIFIC ZONES ESTABLISHED" OF THE CITY'S CODE OF ORDINANCES, AMENDING THE LIST OF PARKING CONTROL ZONES; AND ESTABLISHING AN EFFECTIVE DATE. --First Reading**

Mayor King explained that the current ordinance restricts on street parking to two hour intervals downtown. This ordinance would do away with that restriction around the Laguna Hotel. Councilmember Weger interjected that he feels the current ordinance is unenforceable and ineffective and would like to see the entire thing repealed or reworked. Mr. Archer commented that while that was possible for the future, the current ordinance before the Council was time sensitive and would need to be voted on today.

Motion was made by Councilmember Boles to accept the ordinance as presented, second was made by Councilmember Campbell. Motion prevailed by the following vote:

Ayes: Councilmembers: Weger, Campbell, Johnson, Boles, Douglas, King  
 Nays: None/Motion Carries  
 Voted: 6 to 0  
 Absent: Green

**B. Consider and Discuss Ordinance No. 0-2016-1**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CISCO, TEXAS, AMENDING CHAPTER 9 "FLOOD HAZARD PREVENTION". RESTRUCTURING THE CHAPTER TO INCLUDE ADDITIONAL ARTICLES AND UPDATES TO EXISTING ARTICLES; AND ESTABLISHING AN EFFECTIVE DATE.---  
 Second Reading**

Motion was made by Councilmember Campbell accept the ordinance as presented, second was made by Councilmember Douglas. Motion prevailed by the following vote:

Ayes: Councilmembers: Weger, Campbell, Johnson, Boles, Douglas, King  
 Nays: None/Motion Carries  
 Voted: 6 to 0  
 Absent: Green

**C. Consider and Discuss Resolution No. 2016-03-38**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CISCO, TEXAS, APPROVING APPLICATION FOR A CRIMINAL JUSTICE DIVISION GRANT THROUGH THE OFFICE OF THE GOVERNOR FOR THE PURCHASE OF BODY WORN CAMERAS FOR THE CISCO POLICE DEPARTMENT.**

Mayor King explained that this item had been discussed during budgeting and the state now had approved a grant for the purchase of body cameras making the city's expenditure only \$980.00.

Motion was made by Councilmember Weger to accept the resolution as presented, second was made by Councilmember Campbell. Motion prevailed by the following vote:

Ayes: Councilmembers: Weger, Campbell, Johnson, Boles, Douglas, King  
Nays: None/Motion Carries  
Voted: 6 to 0  
Absent: Green

**D. Consider and Discuss Possible Acceptance of Bid for Oil Changes on City Vehicles.**

Mayor King informed the Council that the city had received one bid from White's Automotive listing the prices for a quart of each type of oil and a quote for \$5.00 per filter and \$18.00 in labor for each oil change.

Motion was made by Councilmember Weger to accept the bid from White's Automotive for oil changes on city vehicles, second was made by Councilmember Johnson. Motion prevailed by the following vote:

Ayes: Councilmembers: Weger, Campbell, Johnson, Boles, Douglas, King  
Nays: None/Motion Carries  
Voted: 6 to 0  
Absent: Green

**E. Consider and Discuss Planning & Zoning Board Appointments, Method of Appointment, and/or Dismissals. (Executive Session)**

Mayor King explained that the Council had been presented with a resignation from Board Member Harrison and suggested further discussion of the resignation be held in Executive Session.

The Council retired into Executive Session under Section 551.074 Personnel Matters at 6:44 p.m.

The Council reconvened into Open Session at 7:15 p.m. and took the following action:

Motion was made by Councilmember Boles to accept the resignation of Board Member Harrison, second was made by Councilmember Campbell. Motion prevailed by the following vote:

Ayes: Councilmembers: Weger, Campbell, Johnson, Boles, Douglas, King  
Nays: None/Motion Carries  
Voted: 6 to 0  
Absent: Green

Motion was made by Councilmember Boles to appoint Misty Bussell to the Planning & Zoning Board, second was made by Councilmember Douglas. Motion prevailed by the following vote:

Ayes: Councilmembers: Weger, Campbell, Johnson, Boles, Douglas, King  
Nays: None/Motion Carries  
Voted: 6 to 0  
Absent: Green

Motion was made by Councilmember Douglas to amend the Planning & Zoning Board ordinance to allow the Board to nominate its own members with an application process to include background checks before final approval by the City Council, second was made by Councilmember Weger. Motion prevailed by the following vote:

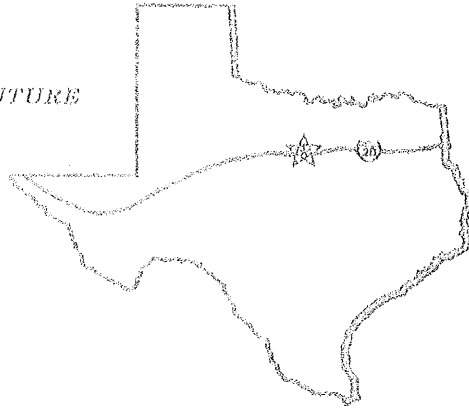
Ayes: Councilmembers: Weger, Campbell, Johnson, Boles, Douglas, King  
Nays: None/Motion Carries  
Voted: 6 to 0  
Absent: Green

Motion was made by Councilmember Weger to amend the Planning & Zoning Board ordinance making the alternate members full members of the Board with voting privileges, second was made by Councilmember Douglas. Motion prevailed by the following vote:

Ayes: Councilmembers: Weger, Campbell, Johnson, Boles, Douglas, King  
Nays: None/Motion Carries  
Voted: 6 to 0  
Absent: Green

# City of Cisco

WHERE A PROUD PAST GREET'S A PROMISING FUTURE



03/29/16


Ms. Sharon Gamble  
9% Competitive Housing Tax Credit Program Administrator  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> St.  
Austin, TX 78701

Re: Laguna Hotel Lofts 16026  
City of Cisco Parking Requirements

Dear Ms. Gamble,

The Laguna Hotel Lofts proposed parking for both sites is consistent with our code of ordinances.  
Please feel free to contact me if you have any questions or concerns.

Sincerely,

  
Darwin Archer  
City Manager  
City of Cisco

**TAB 4-TDHCA, CONSULTANT AND CITY OF CISCO DOCUMENTS FROM JUNE 14, 2016 THROUGH JUNE 20, 2016**

The following documents were obtained from the TDHCA web site and the City of Cisco's web site:

**SECTION J**

On June 14, 2016, TDHCA Staff issued another Deficiency Notice to the applicant regarding three items that included the local city parking ordinance in relation to the parking spaces of the subject project. TDHCA Staff noted the March 29, 2016 letter from the Cisco City Manager did not provide the necessary ordinance information as requested with the March 22, 2016 TDHCA Deficiency Notice. The new notice requested that the applicant provide a local code related to the number of parking spaces that such a local code would require. If a local code did provide such a requirement, the applicant must provide evidence how the project will meet the requirements of the TDHCA 2016 Multifamily Uniform Rules regarding the provision of adequate parking spaces. (Attachment-TDHCA Staff Deficiency Notice dated June 14, 2016)

**SECTION K**

Due to the TDHCA Deficiency Notice of June 14, 2016, a hastily called Cisco City Council Special Meeting was conducted on June 17, 2016. As the only item on the agenda, the purpose of the City Council Special Meeting was to pass some type of parking ordinance since no such ordinance existed as TDHCA Staff had been led to believe during the review and underwriting process. On June 20, 2016, a second Cisco City Council Special Meeting was conducted regarding the parking ordinance issue related to the subject project. Once again, both City Council Special Meetings were conducted well past the March 1, 2016 application deadline date. (Attachments-City of Cisco City Council Special Called Meeting Agenda and Minutes dated June 17, 2016 and June 20, 2016)

Several discussion comments during the Cisco City Council Special Meeting on June 17, 2016 are extremely noteworthy and further confirm that such a parking ordinance did not exist with the city. As Cisco Mayor King noted with his statement, this was more of a zoning requirement. Since the city did not have zoning, it would need to be regulated by this ordinance being discussed. A Mr. Diers stated that there would be some off-street parking, but not enough to meet the state requirement of one and a half spaces per unit. Mayor King then stated he would encourage the developers to continue looking for off-street parking alternatives even if this ordinance passed. (Attachments- City of Cisco City Council Special Called Meeting Agenda and Minutes dated June 17, 2016 and June 20, 2016)

In researching the City of Cisco government documents related to the two City Council Special Meetings, two troubling issues stand out and question the validity of any action taken at these meetings. Despite finding Notice of Meetings for previous scheduled and special meetings, on-line research indicates no such notices were provided for the two Special Meetings on June 17 and June 20, 2016. Similar to previous meetings, all Cisco City Council Meetings are attested and signed by the Mayor and City Secretary. Both agenda minutes to these two meetings are unsigned by the Mayor and City Secretary. (Attachments- City of Cisco City Council Special Called Meeting Agenda and Minutes dated June 17, 2016 and June 20, 2016)

**SECTION L**

On June 20, 2016, the project consultant provided her response to the TDHCA Deficiency Notice of June 14, 2016. In reference to the City of Cisco parking ordinance, a letter from Cisco Mayor King along with Ordinance No.0-2016-6 was submitted to TDHCA. Both documents were dated June 20, 2016 and corresponded with the June 17 and June 20, 2016 Cisco City Council Special Meetings. Along with these City Council Special Meetings, both documents were written and submitted several months well past the March 1, 2016 TDHCA Housing Tax Credit Application Deadline Date. Furthermore, application #16026 was approved for tax credits in Region 3 Rural on July 28, 2016 despite these serious and extremely questionable issues. (Attachments-Project Consultant's Letter dated June 20, 2016 and City of Cisco Letter and attached Ordinance dated June 20, 2016)

**From:** Sharon Gamble  
**To:** "dsailer@mrecapital.com"; "jmooney@mrecapital.com"  
**Cc:** Sarah Andre  
**Subject:** 16026 Laguna Hotel Lofts - 9% HTC Application Deficiency Notice - TIME SENSITIVE  
**Date:** Tuesday, June 14, 2016 11:20:00 AM  
**Attachments:** [16026.pdf](#)  
**Importance:** High

In the course of the Department's Housing Tax Credit **Eligibility/Selection/Threshold** and/or Direct Loan review of the above referenced application, a possible Administrative Deficiency as defined in §10.3(a)(2) and described in §10.201(7)(A) and/or §10.201(7)(B) of the 2016 Uniform Multifamily Rules was identified. By this notice, the Department is requesting documentation to correct the following deficiency or deficiencies. Any issue initially identified as an Administrative Deficiency may ultimately be determined to be beyond the scope of an Administrative Deficiency, and the distinction between material and non-material missing information is reserved for the Director of Multifamily Finance, Executive Director, and Board.

The Department has received a Third Party Request for Administrative Deficiency regarding the Application referenced above (see attached). The request includes information that was not previously provided to the Department, and, pursuant to §11.10 of the QAP, staff believes that a Notice of Administrative Deficiency should be issued.

1. In response to an earlier deficiency notice, the Applicant provided a letter from the City of Cisco stating that parking is consistent with the "code of ordinances". Submit City of Cisco local code related to the number of parking spaces their local code requires.

If local code does not have include such a requirement, provide evidence of how the Development will meet the requirements of §10.101(b)(4)(M) regarding the provision of adequate parking spaces.

2. The Development Cost Schedule includes a site acquisition cost of \$200,000 while the contract extension amendment indicates that the price will rise to \$250,000. Please update the required document(s) to address the inconsistency.
3. The Development Cost Schedule includes demolition and asbestos abatement in Site Work Costs but none in Building Costs. The ESA and the PCA indicate that the presence asbestos and lead is a concern.

Submit evidence of how much demolition and asbestos cost will be attributable to work outside the building versus how much will be attributable to work within the walls of the building. If the cost is not adequately allocated, revise and resubmit the appropriate document(s).

Submit evidence of any further study(ies) performed regarding the presence of lead and asbestos within the building walls.

4. The building floor plans indicate that there is an accessible unit on the second floor of the hotel site. Submit an explanation of how the second-floor location of this unit will be consistent with Uniform Federal Accessibility Standards ("UFAS") requirement 4.3.10\*

EGRESS, considering that the elevator would be the only means of egress in an emergency.

**About TDHCA**

The Texas Department of Housing and Community Affairs administers a number of state and federal programs through for-profit, nonprofit, and local government partnerships to strengthen communities through affordable housing development, home ownership opportunities, weatherization, and community-based services for Texans in need. For more information, including current funding opportunities and information on local providers, please visit [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us).

Regards,

Sharon D. Gamble MSW, PMP  
Competitive Housing Tax Credit Program Administrator  
Texas Department of Housing and Community Affairs  
(512) 936-7834

Any person receiving guidance from TDHCA staff should be mindful that, as set forth in 10 TAC Section 11.1(b) there are important limitations and caveats (Also see 10 TAC §10.2(b)).

**About TDHCA**

The Texas Department of Housing and Community Affairs administers a number of state and federal programs through for-profit, nonprofit, and local government partnerships to strengthen communities through affordable housing development, home ownership opportunities, weatherization, and community-based services for Texans in need. For more information, including current funding opportunities and information on local providers, please visit [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)



THE CITY OF CISCO  
CITY COUNCIL, SPECIAL CALLED MEETING  
June 17, 2016

CISCO, TEXAS §  
EASTLAND, COUNTY §

The City Council of the City of Cisco met in a regular called *session* at the Cisco City Hall in Cisco as scheduled, and notice was posted 72 hours in advance and prior to the meeting.

MEMBERS PRESENT:

MAYOR	JAMES KING
COUNCILMEMBER PLACE I	JASON WEGER
COUNCILMEMBER PLACE II	DENNIS CAMPBELL
COUNCILMEMBER PLACE III	WILLARD JOHNSON
COUNCILMEMBER PLACE IV	RANDY BOLES
COUNCILMEMBER PLACE V	TAMMY DOUGLAS

PERSONNEL PRESENT:

CITY SECRETARY TAMMY OSBORNE

PERSONNEL ABSENT:

COUNCILMEMBER PLACE VI	PHILIP GREEN
CITY MANAGER	DARWIN ARCHER

Guests: John Diers, Kolton Preston

I. MEETING CALLED TO ORDER:

Mayor King called the meeting to order at 6:00 p.m.

II. PLEDGES

1. Pledge of Allegiance
2. Pledge to the Texas Flag

III. INVOCATION:

Mayor King gave the invocation.

IV. THE CITY COUNCIL MAY DISCUSS AND/OR TAKE ACTION ON ANY OF THE FOLLOWING AGENDA ITEMS:

A. Consider and Discuss Ordinance No. 0-2016-6

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CISCO, TEXAS, AMENDING CHAPTER 6 "BUILDINGS AND BUILDING REGULATIONS", ARTICLE I "IN GENERAL" TO INCLUDE SECTION 6-2 "PARKING REQUIREMENTS FOR DOWNTOWN DEVELOPMENT" SPECIFYING THAT NEW DEVELOPMENTS IN THE DOWNTOWN CORRIDOR ARE NOT REQUIRED TO PROVIDE OFF-STREET PARKING.—*First Reading***

Mayor King explained that the ordinance was a technicality in order to secure development of the Laguna Hotel property. He further explained that this was more of a zoning requirement, but as the city did not yet have zoning, it would need to be regulated by this ordinance. Councilmember Weger asked how many units would be built and inquired if any off-street parking would be provided. Mr. Diers commented that there would be some off-street parking available, but not enough to meet the state requirement of one and a half spaces per unit. Mayor King said he would encourage the developers to continue looking for off-street parking alternatives even if this ordinance was passed.

Motion was made by Councilmember Johnson to accept the ordinance as presented, second was made by Councilmember Boles. Motion prevailed by the following vote:

Ayes: Councilmembers: Weger, Campbell, Johnson, Boles, Douglas, King  
Nays: None/Motion Carries  
Voted: 6 to 0  
Absent: Green

VI. ADJOURNMENT:

Councilmember Johnson made the motion to adjourn, second was made by Councilmember Boles.  
Motion passed unanimously and the meeting was adjourned at 6:08 p.m.

ATTEST:

Tammy Osborne, City Secretary

James King, Mayor

\*\*\*\*\*

THE CITY OF CISCO  
CITY COUNCIL, SPECIAL CALLED MEETING  
June 20, 2016

CISCO, TEXAS §  
EASTLAND, COUNTY §

The City Council of the City of Cisco met in a regular called *session* at the Cisco City Hall in Cisco as scheduled, and notice was posted 72 hours in advance and prior to the meeting.

MEMBERS PRESENT:

MAYOR \_\_\_\_\_ JAMES KING  
COUNCILMEMBER PLACE I \_\_\_\_\_ JASON WEGER  
COUNCILMEMBER PLACE II \_\_\_\_\_ DENNIS CAMPBELL  
COUNCILMEMBER PLACE III \_\_\_\_\_ WILLARD JOHNSON  
COUNCILMEMBER PLACE IV \_\_\_\_\_ RANDY BOLES  
COUNCILMEMBER PLACE V \_\_\_\_\_ TAMMY DOUGLAS

PERSONNEL PRESENT:

CITY MANAGER \_\_\_\_\_ DARWIN ARCHER  
CITY SECRETARY \_\_\_\_\_ TAMMY OSBORNE

PERSONNEL ABSENT:

COUNCILMEMBER PLACE VI \_\_\_\_\_ PHILIP GREEN

Guests: John Diers, Kolton Preston, Keith Kindle, Larry Weikel, Randy Johnson, Liz Murphy, Peggy Ledbetter, Erick Macha, Rudy Segura

I. MEETING CALLED TO ORDER:

Mayor King called the meeting to order at 6:00 p.m.

II. PLEDGES

1. Pledge of Allegiance
2. Pledge to the Texas Flag

III. INVOCATION:

Mayor King gave the invocation.

IV. THE CITY COUNCIL MAY DISCUSS AND/OR TAKE ACTION ON ANY OF THE FOLLOWING AGENDA ITEMS:

A. Consider and Discuss Ordinance No. 0-2016-6

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CISCO, TEXAS, AMENDING CHAPTER 6 "BUILDINGS AND BUILDING REGULATIONS", ARTICLE I "IN GENERAL" TO INCLUDE SECTION 6-2 "PARKING REQUIREMENTS FOR DOWNTOWN DEVELOPMENT" SPECIFYING THAT NEW DEVELOPMENTS IN THE DOWNTOWN CORRIDOR ARE NOT REQUIRED TO PROVIDE OFF-STREET PARKING.—*Second Reading***

Motion was made by Councilmember Campbell to accept the ordinance as presented, second was made by Councilmember Boles. Motion prevailed by the following vote:

Ayes: Councilmembers: Weger, Campbell, Johnson, Boles, Douglas, King  
Nays: Nonc/Motion Carries  
Voted: 6 to 0  
Absent: Green

B. Consider and Discuss Update on Local Disaster Declaration and Emergency Funding related to Disaster Response and New Water Treatment Plant.

Mr. Kindle made presentation to the Council regarding the current status of the portable Water Treatment Plant and interim funding for getting the new Water Treatment Plant started until FEMA and grant funds are available. Mr. Macha further explained that the city would issue Certificates of Obligation for sixteen million dollars to fund that project and as emergency funds come in, they will be put toward the loan to pay it off as quickly as possible. Mr. Segura explained how the city can sell debt on an emergency basis without an election or public notice.

The Council also discussed letting citizens draw raw water out of the lake for outdoor watering purposes. There was concern that this practice would create a safety hazard with no available parking for vehicles pumping water.

No action was taken on this item.

**VI. ADJOURNMENT:**

Councilmember Boles made the motion to adjourn, second was made by Councilmember Weger. Motion passed unanimously and the meeting was adjourned at 6:51 p.m.

**ATTEST:**

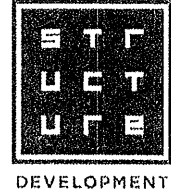
*Tammy Osborne*

*James King*

**Tammy Osborne, City Secretary**

**James King, Mayor**

\*\*\*\*\*



June 20, 2016

Sharon Gamble  
Competitive Housing Tax Credit Program Administrator  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, TX 78701

*Re: Application #16026, Laguna Hotel Lofts, Cisco, Texas*

Dear Ms. Gamble:

Please see the following responses and associated attachments regarding the deficiency notice for HTC application 16026, Laguna Hotel Lofts, dated June 14, 2016.

1. *In response to an earlier deficiency notice, the Applicant provided a letter from the City of Cisco stating that parking is consistent with the "code of ordinances". Submit City of Cisco local code related to the number of parking spaces their local code requires.*

*If local code does not have include such a requirement, provide evidence of how the Development will meet the requirements of §10.101(b)(4)(M) regarding the provision of adequate parking spaces.*

See attached code from the City of Cisco Code of Ordinances.

2. *The Development Cost Schedule includes a site acquisition cost of \$200,000 while the contract extension amendment indicates that the price will rise to \$250,000. Please update the required document(s) to address the inconsistency.*

See attached Development Cost Schedule.

3. *The Development Cost Schedule includes demolition and asbestos abatement in Site Work Costs but none in Building Costs. The ESA and the PCA indicate that the presence asbestos and lead is a concern.*

*Submit evidence of how much demolition and asbestos cost will be attributable to work outside the building versus how much will be attributable to work within the walls of the building. If the cost is not adequately allocated, revise and resubmit the appropriate document(s).*

The attached Development Cost Schedule with abatement costs listed under both site work and building costs is now consistent with the PCA. Also, see attached letter from the General Contractor certifying the reasonableness of the scope and costs outlined in the PCA.

Submit evidence of any further study(ies) performed regarding the presence of lead and asbestos within the building walls.

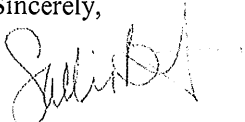
The attached letter from the environmental testing service provider who performed the ESA details the typical schedule for further studies regarding the presence of lead and asbestos in the historic building.

4. *The building floor plans indicate that there is an accessible unit on the second floor of the hotel site. Submit an explanation of how the second-floor location of this unit will be consistent with Uniform Federal Accessibility Standards ("UFAS") requirement 4.3.10\* EGRESS, considering that the elevator would be the only means of egress in an emergency.*

The attached letter and floor plan from the architect describe how the project will be consistent with the UFAS standards.

As always, thank you for your time and please let us know if you require any additional information.

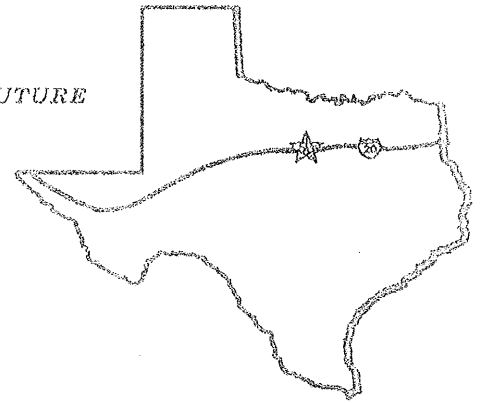
Sincerely,



Sallie Burchett, AICP

# City of Cisco

WHERE A PROUD PAST GREET'S A PROMISING FUTURE



June 20, 2016

To Whom It May Concern:

The following excerpt is from the City of Cisco Code of Ordinances regarding parking requirements for new development in the Downtown Corridor:

Chapter 6 "Buildings and Building Regulations"

Article I "In General"

Section 6-2 "Parking Requirements for Downtown Development"

a) Definitions. For this article the following definitions will apply:

*Downtown Corridor* means the area of land that extends from one (1) block west of Conrad Hilton Boulevard to one (1) block east of Conrad Hilton Boulevard bounded by 3<sup>rd</sup> Street to the north to 9<sup>th</sup> Street to the south.

b) Off-street motor vehicle parking is not required for the City of Cisco Downtown Corridor. For purposes of this subsection, off-street parking is defined as any parking that is not located in a public right-of-way, regardless of whether the parking is on site or offsite.

c) If any off-street parking is provided, it must include parking for persons with disabilities.

If you have any questions or need further information, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "James King".

James King  
Mayor  
City of Cisco



ORDINANCE NO. 0-2016-6

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CISCO, TEXAS AMENDING CHAPTER 6 "BUILDINGS AND BUILDING REGULATIONS", ARTICLE I "IN GENERAL" TO INCLUDE SECTION 6-2 "PARKING REQUIREMENTS FOR DOWNTOWN DEVELOPMENT" SPECIFYING THAT NEW DEVELOPMENTS IN THE DOWNTOWN CORRIDOR ARE NOT REQUIRED TO PROVIDE OFF-STREET PARKING.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CISCO, TEXAS:

Chapter 6, Article 1, is amended by adding Section 6-2 as follows:

Section 6-2 "Parking Requirements for Downtown Development"

a) Definitions. For this article the following definitions will apply:

*Downtown Corridor* means the area of land that extends from one (1) block west of Conrad Hilton Boulevard to one (1) block east of Conrad Hilton Boulevard bounded by 3<sup>rd</sup> Street to the north to 9<sup>th</sup> Street to the south.

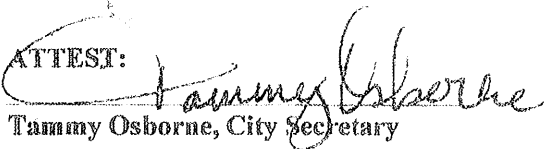
b) Off-street motor vehicle parking is not required for the City of Cisco Downtown Corridor. For purposes of this subsection, off-street parking is defined as any parking that is not located in a public right-of-way, regardless of whether the parking is on site or offsite.

c) If any off-street parking is provided, it must include parking for persons with disabilities.

PASSED AND APPROVED on the 20<sup>th</sup> day of the June, 2016.

  
James King, Mayor

ATTEST:

  
Tammy Osborne, City Secretary

APPROVED AS TO FORM:

  
Wm. B. Wright, Jr., City Attorney

## **TAB 5-OVERVIEW OF TDHCA RULES**

The previous documents presented in Tabs 1-4 demonstrate the applicant of application #16026 along with associated third parties were in clear violation of a number of rules clearly stated in the TDHCA 2016 Qualified Allocation Plan and the TDHCA 2016 Uniform Multifamily Rules. Key issues include the following:

- Documentation required to be submitted with the application was submitted several months after the March 1, 2016 application deadline date.
- Local government meetings addressing key parking ordinance issues were also organized and conducted well past the March 1, 2016 application deadline date.
- Most importantly, the applicant failed to disclose pertinent information to TDHCA Staff that had a material impact on the scoring information of the application while knowingly orchestrating these significant changes with the local government well past the March 1, 2016 deadline date.

A copy of the scoring notice for application #16026 is included in Section M. The paragraph related to properly disclose information and the consequences for such action is highlighted. In addition, specific rules from the TDHCA 2016 Qualified Allocation Plan and the TDHCA 2016 Uniform Multifamily Rules pertinent to the previous discussed issues are included and highlighted in Sections N and O.



**MULTIFAMILY FINANCE PRODUCTION DIVISION**  
**Housing Tax Credit Program - 2016 Application Round**  
**Scoring Notice - Competitive Housing Tax Credit Application**

Daniel Sailer III

Date: June 14, 2016

Phone #:

**THIS NOTICE WILL ONLY BE  
TRANSMITTED VIA EMAIL**

Email: [dsailer@mrecapital.com](mailto:dsailer@mrecapital.com)

Second Email: [jmooney@mrecapital.com](mailto:jmooney@mrecapital.com)

**RE: 2016 Competitive Housing Tax Credit (HTC) Application for Laguna Hotel Lofts, TDHCA Number:  
16026**

The Texas Department of Housing and Community Affairs has completed its program review of the Application referenced above as further described in the 2016 Qualified Allocation Plan ("QAP"). This scoring notice provides a summary of staff's assessment of the application's score. The notice is divided into several sections.

Section 1 of the scoring notice provides a summary of the score requested by the Applicant followed by the score staff has assessed based on the Application submitted. You should note that four scoring items are not reflected in this scoring comparison but are addressed separately.

Section 2 of the scoring notice includes each of the four scoring criteria for which points could not be requested by the Applicant in the application self-score form and include: §11.9(d)(1) Local Government Support, §11.9(d)(4) Quantifiable Community Participation, §11.9(d)(5) Community Support from State Representative, and §11.9(d)(6) Input from Community Organizations.

Section 3 provides information related to any point deductions assessed under §11.9(f) of the QAP or §10.201(7)(A) of the Uniform Multifamily Rules.

Section 4 provides the final cumulative score in bold.

Section 5 includes an explanation of any differences between the requested and awarded score as well as any penalty points assessed.

The scores provided herein are merely informational at this point in the process and may be subject to change. For example, points awarded under §11.9(e)(2) "Cost of Development per Square Foot" and §11.9(e)(4) "Leveraging of Private, State, and Federal Resources" may be adjusted should the underwriting review result in changes to the Application that would affect these scores. If a scoring adjustment is necessary, staff will provide the Applicant a revised scoring notice.

Be further advised that if the Applicant failed to properly disclose information in the Application that could have a material impact on the scoring information provided herein, the score included in this notice may require adjustment and/or the Applicant may be subject to other penalties as provided for in the Department's rules.

This preliminary scoring notice is provided by staff at this time to ensure that an Applicant has sufficient notice to exercise any appeal process provided under §10.902 of the Uniform Multifamily Rules. All information in this scoring notice is further subject to modification, acceptance, and/or approval by the Department's Governing Board.



**MULTIFAMILY FINANCE PRODUCTION DIVISION**  
**Housing Tax Credit Program - 2016 Application Round**  
**Scoring Notice - Competitive Housing Tax Credit Application**

**Page 2 of Final Scoring Notice: 16026, Laguna Hotel Lofts**

**Section 1:**

Score Requested by Applicant (Does not include points for §11.9(d)(1), (4), (5), or (6) of the 2016 QAP):

126

Score Awarded by Department staff (Does not include points for §11.9(d)(1), (4), (5), or (6) of the 2016 QAP):

126

Difference between Requested and Awarded:

0

**Section 2:**

Points Awarded for §11.9(d)(1) Local Government Support:

17

Points Awarded for §11.9(d)(4) Quantifiable Community Participation:

4

Points Awarded for §11.9(d)(5) Community Support from State Representative:

8

Points Awarded for §11.9(d)(6) Input from Community Organizations:

4

**Section 3:**

Points Deducted for §11.9(f) of the QAP or §10.201(7)(A) of the Uniform Multifamily Rules:

0

**Section 4:**

**Final Score Awarded to Application by Department staff:**

159

**Section 5:**

**Explanation for Difference between Points Requested and Points Awarded by the Department as well as penalties assessed:**

NA

Restrictions and requirements relating to the filing of an appeal can be found in §10.902 of the Uniform Multifamily Rules. If you wish to appeal this scoring notice, you must file your appeal with the Department no later than 5:00 p.m. Austin local time, Friday, June 10, 2016. If an appeal is denied by the Executive Director, an Applicant may appeal to the Department's Board.

In an effort to increase the likelihood that Board appeals related to scoring are heard at the Board meeting, the Department has provided an Appeal Election Form for all appeals submitted to the Executive Director. In the event an appeal is denied by the Executive Director, the Applicant is able to request that the appeal automatically be added to the Board agenda.

If you have any concerns regarding potential miscalculations or errors made by the Department, please contact Sharon Gamble at (512) 936-7834 or by email at <mailto:sharon.gamble@tdhca.state.tx.us>.

Sincerely,

*Sharon Gamble*

Sharon Gamble

9% Competitive HTC Program Administrator

2016

Qualified

Allocation Plan



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All rights reserved. No part of this document may be reproduced without the prior written permission of the Board of Trustees.

**(d) Definitions.** The capitalized terms or phrases used herein are defined in §10.3 of this title (relating to Definitions), unless the context clearly indicates otherwise. Any capitalized terms that are defined in Texas Government Code, Chapter 2306, §42 of the Code, or other Department rules have, when capitalized, the meanings ascribed to them therein. Defined terms when not capitalized, are to be read in context and construed according to common usage.

**(e) Census Data.** Where this chapter requires the use of census or American Community Survey data, the Department shall use the most current data available as of October 1, 2015, unless specifically otherwise provided in federal or state law or in the rules. The availability of more current data shall generally be disregarded.

**(f) Deadlines.** Where a specific date or deadline is identified in this chapter, the information or documentation subject to the deadline must be submitted 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.

**§11.2. Program Calendar for Competitive Housing Tax Credits.**

Non-statutory deadlines specifically listed in the Program Calendar may be extended by the Executive Director 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 Executive Director 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.

Deadline	Documentation Required
01/04/2016	Application Acceptance Period Begins.
01/08/2016	Pre-Application Final Delivery Date (including waiver requests).
03/01/2016	<p>Full Application Delivery Date (including Quantifiable Community Participation documentation; Environmental Site Assessments (ESAs), Property Condition Assessments (PCAs); 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).</p> <p>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).</p>

(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) - (VI) of this clause.

(I) the Applicant's name, address, an individual contact name and phone number;

(II) the Development name, address, city and county;

(III) a 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 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, townhomes, high-rise etc.); and

(VI) the approximate total number of Units and approximate total number of low-income Units.

(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 exclusively a Target Population unless such targeting or preference is in full compliance with all applicable state and federal laws, including state and federal fair housing laws.

**(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 Texas Government Code, Chapter 2306, §42 of the Code, and other criteria established in a manner consistent with Chapter 2306 and §42 of the Code. 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.



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. When providing a pre-application, Application or other materials to a state representative, local governmental body, Neighborhood Organization, or anyone else to secure support or approval that may affect the Applicant's competitive posture, an Applicant must disclose that in accordance with the Department's rules aspects of the Development may be subject to change, including, but not limited to, changes in the amenities ultimately selected and provided.

**(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 (8 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 (7 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 §10.101(b)(6)(B) of this title (relating to Site and Development Requirements and Restrictions) 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 three (3) 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 one (1) point if the ownership structure contains a HUB certified by the Texas Comptroller of Public Accounts by the Full Application Delivery Date, or 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 the General Partner of the Applicant, cash flow from operations, and developer fee which taken together equal at least 80 percent and no less than 5 percent for any category. For example, a HUB or Qualified Nonprofit Organization may have 20 percent ownership interest, 30 percent of the developer fee, and 30 percent of cash flow from operations. 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. A Principal of the HUB or Qualified Nonprofit Organization cannot be a Related

# 2016 Uniform Multifamily Rules



Texas Department of Housing and Community Affairs  
Multifamily Housing Rental Programs

electrical; and heating, ventilation, and air conditioning), and lead based paint must be implemented;

(ii) all accessibility requirements pursuant to 10 TAC §1.206 (relating to Applicability of the Construction Standards for Compliance with §504 of the Rehabilitation Act of 1973) and §1.209 (relating to Substantial Alteration of Multifamily Developments) must be met;

(iii) properties located in the designated catastrophe areas specified in 28 TAC §5.4008 must comply with 28 TAC §5.4011 (relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After January 1, 2008); and

(iv) should IEBC be more restrictive than local codes, or should local codes not exist, then the Development must meet the requirements imposed by IEBC.

**(4) Mandatory Development Amenities.** (§2306.187) New Construction, Reconstruction or Adaptive Reuse Units must include all of the amenities in subparagraphs (A) - (M) of this paragraph. Rehabilitation (excluding Reconstruction) Developments must provide the amenities in subparagraphs (D) - (M) of this paragraph unless stated otherwise. Supportive Housing Developments are not required to provide the amenities in subparagraph (B), (E), (F), (G), (I), 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 tenants. Tenants must be provided written notice of the applicable required amenities for the Development.

(A) All Units must be wired with RG-6/U COAX or better and CAT3 phone cable or better, wired to each bedroom, dining room and living room;

(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 rated dishwasher (not required for USDA; Rehabilitation Developments exempt from dishwasher if one was not originally in the Unit);

(F) Energy-Star rated refrigerator;

(G) Oven/Range;

(H) Blinds or window coverings for all windows;

(I) At least one Energy-Star rated ceiling fan per Unit;

(J) Energy-Star rated lighting in all Units which may include compact fluorescent or LED light bulbs;

(K) Plumbing fixtures must meet performance standards of Texas Health and Safety Code, Chapter 372;

(L) All Units must have central heating and air-conditioning (Packaged Terminal Air Conditioners meet this requirement for SRO or Efficiency Units only); and

(M) 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.

**(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. For Developments with 41 Units or more, at least two (2) of the required threshold points must come from subparagraph (C)(xxxi) of this paragraph.

(i) Developments with 16 to 40 Units must qualify for four (4) points;

(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 tenants and made available throughout normal business hours and maintained throughout the Affordability Period. Tenants must be provided written notice of the elections made by the Development Owner. If fees 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 accessibility standards and spaces for activities must be sized appropriately to serve the proposed Target Population. Applications for non-contiguous scattered site housing, excluding non-contiguous single family sites, will have the test applied based on the number of Units per individual site, which includes those amenities required under subparagraph (C)(xxxi) of this paragraph. If scattered site with fewer than 41 Units per site, at a minimum at least some of the amenities required under subparagraph (C)(xxxi) of this paragraph must be distributed proportionately across all sites. In the 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

## Subchapter C

### Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications

**§10.201.Procedural Requirements for Application Submission.** The purpose of this section is to identify 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. Applicants are subject to the schedule of fees as set forth in §10.901 of this chapter (relating to Fee Schedule). When providing a pre-application, Application or other materials to a state representative, local governmental body, Neighborhood Organization, or anyone else to secure support or approval that may affect the Applicant's competitive posture, an Applicant must disclose that in accordance with the Department's rules aspects of the Development may be subject to change, including, but not limited to, changes in the amenities ultimately selected and provided.

#### **(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 §10.901 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.

(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 physically to the Department, it is the Applicant's responsibility to be within the Department's doors by the appointed deadline. Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Applicants should ensure that all documents are legible, properly organized and tabbed, and that digital media is fully readable by the Department. Department staff receiving an application may perform a cursory review to see if there are any glaring problems. This is a cursory review and may not be relied upon as confirmation that the Application was complete or in proper form.

(C) The Applicant must 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 in the order required by 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, mystery glitches, etc. that prevents 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 may be submitted to the Department as described in subparagraphs (A) and (B) of this paragraph. Multiple site applications for Tax-Exempt Bond Developments will be considered to be one Application as identified in Texas Government Code, Chapter 1372. Applications will be required to satisfy the requirements of the Qualified Allocation Plan (QAP) and Uniform Multifamily Rules in place at the time the Application is received by the Department. 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 Uniform Multifamily Rules in place at the time the Application is received by the Department.

(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 §10.4 of this chapter (relating to Program Dates). The complete Application, accompanied by the Application Fee described in §10.901 of this chapter must be submitted no later than the Applications Associated with Lottery Delivery Date described in §10.4 of this chapter.

(B) Waiting List Applications. 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 Application Fee described in §10.901 of this chapter prior to the issuance of the Certificate of Reservation by the TBRB. The remaining parts of the Application must be submitted at least seventy-five (75) days prior to the 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 following additional timeframes:

(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 Executive Director may, for good

Requirements). The Department may have an external party perform all or part or none of the underwriting evaluation 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. Applications will undergo a previous participation review in accordance with Chapter 1 Subchapter C of this title (relating to Previous Participation) and Development Site conditions may be evaluated through a physical site inspection by the Department or its agents.

**(6) Prioritization of Applications under various Programs.** This paragraph identifies how ties or other prioritization matters will be handled when dealing with de-concentration requirements, capture rate calculations, and general 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) For Tax-Exempt Bond Developments, the issuance date of the Certificate of Reservation issued by the TBRB; and
- (ii) For all other Developments, the date the Application is received by the Department; and
- (iii) Notwithstanding the foregoing, after July 31, 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. Review 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. In general, 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 will take longer to process due to the statutory constraints on the award and allocation of competitive tax credits.

**(7) Administrative Deficiency Process.** The purpose of the Administrative Deficiency process is to allow staff to request that an Applicant provide clarification, correction, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application. Staff will request such information via a deficiency notice. The review may occur in several phases and 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. 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 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 an Administrative 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) Administrative Deficiencies for Competitive HTC Applications. Unless an extension has been timely requested and granted, if an Administrative Deficiency is not 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 points) shall be deducted from the selection criteria score for each additional day the deficiency remains unresolved. If Administrative 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. 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 Administrative Deficiency documentation alters the score assigned to the Application, Applicants will be re-notified of their final adjusted score.

(B) Administrative Deficiencies for all other Applications or sources of funds. If Administrative Deficiencies are not 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 an Administrative Deficiency Notice Late Fee of \$500 for each business day the deficiency remains unresolved will be assessed, and the Application will not be presented to the Board for consideration until all outstanding fees have been paid. Applications with unresolved deficiencies after 5:00 p.m. on the tenth day following the date of the deficiency notice may be terminated. The Applicant will be responsible for the payment of fees accrued pursuant to this paragraph regardless of any termination. Department staff may or may not assess an Administrative Deficiency Notice Late Fee for or terminate Applications for Tax-Exempt Bond or Direct Loan Developments during periods when private activity bond volume cap or Direct Loan funds are undersubscribed. Applicants should be prepared for additional time needed for completion of staff reviews as described in paragraph (2)(B) of this section.

Department, and does not represent an exhaustive list of ineligibility criteria that may otherwise be identified in applicable rules or a NOFA specific to the programmatic funding.

**(1) Applicants.** An Applicant shall be considered ineligible if any of the criteria in subparagraphs (A) - (N) of this paragraph apply to the Applicant. If any of the criteria apply to any other member of the Development Team, the Applicant will also be deemed ineligible unless a substitution of that Development Team member is specifically allowable under the Department's rules and sought by the Applicant or appropriate corrective action has been accepted and approved by the Department. An Applicant is ineligible if the Applicant:

(A) has been or is barred, suspended, or terminated from procurement in a state or Federal program or listed in HUD's System for Award Management (SAM); (§2306.0504)

(B) 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 Application submission;

(C) is, at the time of Application, subject to an enforcement or disciplinary action under state or federal securities law or by the NASD; subject to a federal tax lien; 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 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 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) has 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;

(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;

(H) has failed to cure any past due fees owed to the Department at least ten (10) days prior to the Board meeting at which the decision for an award is to be made;

(I) is in violation of a state revolving door or other standard of conduct or conflict of interest statute, including Texas Government Code, §2306.6733, or a provision of Texas Government Code, Chapter 572, in making, advancing, or supporting the Application;

(J) has 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 provided fraudulent information, knowingly falsified documentation, or other intentional or negligent material misrepresentation or omission in an Application or Commitment, as part of a challenge to another Application or any other information provided to the Department for any reason. The conduct described in this subparagraph is also a violation of this chapter and will subject the Applicant to the assessment of administrative penalties under Texas Government Code, Chapter 2306 and this title;

(L) was the owner or Affiliate of the owner of a Department HOME or NSP-assisted rental development for which the federal affordability requirements were prematurely terminated and the affordability requirements have not re-affirmed or HOME or NSP funds repaid;

(M) fails 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 terminated based upon factors in the disclosure. The Executive Director shall make an initial determination whether the person or persons should be involved in the Application within thirty (30) days after the date on which the Applicant receives a preliminary deficiency notice with respect to the Application, including providing information responsive to any supplemental Department requests. The decision of the Executive Director may be appealed in accordance with §10.902 of this chapter. In the Executive Director's making an initial determination or the Board's making a final determination as to a person's fitness to be involved as a principal with respect to an Application, the factors described in clauses (i) - (v) of this subparagraph shall be considered:

(i) 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 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; or

(N) is found to have participated in the dissemination of misinformation about affordable housing and the persons it serves or about a competing Applicant that would likely have the effect of fomenting opposition to an Application where such opposition is not based in substantive and legitimate concerns that do not implicate potential violations of fair housing laws. Nothing herein shall be construed or effectuated in a manner to deprive a person of their right of free speech, but it is a requirement of those who voluntarily choose to participate in this program that they refrain from participating in the above-described inappropriate behaviors. Applicants may inform Department staff about activities potentially prohibited by this provision outside of the Third Party Request for Administrative Deficiency process described in §11.10 of this title (relating to Third Party Request for Administrative Deficiency for Competitive HTC Applications). An Applicant submitting documentation of a potential violation may not appeal any decision that is made with regard to another competing Applicant's application.

**(2) Applications.** An Application shall be ineligible if any of the criteria in subparagraphs (A) - (C) of this paragraph apply to the Application:

(A) a violation of Texas Government 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 Texas Government 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. 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 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 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 member of the Board or employed by the Department as the Executive Director, Chief of Staff, General Counsel, a Deputy Executive Director, the Director of Multifamily Finance, the Chief of Compliance, the Director of Real Estate Analysis, a manager over the program for which an Application has been submitted, or any person exercising such responsibilities regardless of job title; or (§2306.6703(a)(1); §2306.6733);

(ii) the Applicant proposes to replace in less than fifteen (15) years any private activity bond financing of the Development described by the Application, unless the exceptions in §2306.6703(a)(2) of the Texas Government Code are met.

**§10.203. 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 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 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 Application that reflects a total Unit increase of greater than 10 percent or a 5 percent increase in density (calculated as units per acre) as a result of a change in the size of the Development Site. In addition, should a change in elected official occur between the submission of a pre-application and the submission of an Application, Applicants are required to notify the newly elected (or appointed) official.

**(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 Full Application Delivery Date and whose boundaries include the proposed Development Site.

(B) The Applicant must list, in the certification form provided in the Application, all Neighborhood Organizations on record with the county or state as of 30 days prior to the Full Application Delivery Date and whose boundaries include the proposed Development Site as of the submission of the Application.

- (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, townhomes, high-rise etc.); and
- (vi) the total number of Units proposed and total number of low-income Units proposed.

(B) 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 exclusively a Target Population unless such targeting or preference is in full compliance with all applicable state and federal laws, including state and federal fair housing laws.

**§10.204. Required Documentation for Application Submission.** The purpose of this section is to identify the 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 of Development Owner.** This form, as provided in the Application, must be executed by the Development Owner and address 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, that they have given it with all required authority and with actual knowledge of the matters certified. Applicants must read the certification carefully as it contains certain construction and Development specifications that each Development must meet.

(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 Texas Government Code, Chapter 552, and the Texas Public Information Act.

(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 tenants of the Development, including enforcement by administrative penalties for failure to perform, 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 percent of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses as further described in Texas Government Code, §2306.6734.

(G) The Development Owner will affirmatively market to veterans through direct marketing or contracts with veteran's organizations. The Development Owner will be required to identify how they will affirmatively 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.** This form, as provided in the Application, must be executed by any individuals required to be listed on the organizational chart and also identified in subparagraphs (A) - (D) below. The form identifies the various criteria relating to eligibility requirements associated with multifamily funding from the



(C) If the acquisition can be characterized as an identity of interest transaction, as described in §10.302 of this chapter, then the documentation as further described therein must be submitted in addition to that of subparagraph (B) of this paragraph.

**(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.

(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.

(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 is in the process of seeking a zoning change, that a zoning application was received by the political subdivision, and that the jurisdiction received a release agreeing to hold the political subdivision and all other parties harmless in the event the appropriate zoning is denied. Documentation of final approval of appropriate zoning must be submitted to the Department with the Commitment or Determination Notice.

(D) Zoning for Rehabilitation Developments. 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) - (iv) of this subparagraph:

- (i) a detailed narrative of the nature of non-conformance;
- (ii) the applicable destruction threshold;
- (iii) Owner's rights to reconstruct in the event of damage; and
- (iv) 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 beginning of the Application Acceptance Period, 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.

**TAB 6-CHALLENGE DOCUMENTS TO APPLICATION #16026**

On May 27, 2016, the partnership of application #16237 submitted challenge documents to TDHCA regarding application #16026. Items addressed in the challenge included parking requirements, development cost schedule, handicap accessibility and undesirable site and neighborhood characteristics. In addition, serious issues regarding not only the 2016 market feasibility study but the 2015 market feasibility study address the exceptionally high capture rates and the questionable parameters used in determining market demand for application #16026. A copy of the challenge documents is included in Section P. The TDHCA Staff response to our challenge documentation is included in Section Q.

Rocky Ridge Affordable Housing, LLC  
2400 A Roosevelt Dr  
Arlington, TX 76016

Phone: (817) 261-5088  
Fax: (817) 261-5095

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May 27, 2016

TDHCA  
Multifamily Finance  
221 East 11<sup>th</sup> St  
Austin, TX 78701

**RE: 16026 Laguna Hotel Lofts Third Party Deficiencies**

Dear Multifamily Finance Staff:

I have been reviewing the application TDHCA# 16026 Laguna Hotel Lofts and several items in their application have raised some concern.

**Parking Requirements-** under the 10.101 Subchapter B Mandatory Development Requirements all new construction and adaptive re-use must provide 1.5 parking spaces free of charge to the tenants unless there is an overriding local code. After researching the local code for the City of Cisco there is no local code that designates the required number of parking spaces for Multifamily Dwellings, therefore the application must adhere to the requirements of the above section of the 2016 Multifamily Rules. Attached you will see the site plan for both the Re-use and New Construction building which lists only 25 parking spots total when it required to provide 60 spots. There are a couple of issues with them trying to make up the missing 35 spots; one is they do not have enough land for the required spots without removing some other site amenities or building a parking garage which would increase the development cost considerably causing the deferred developer fee to surpass the available cash flow. The other issue is the simple fact that the development does not meet the requirements. Another point of concern is that the architect, civil engineer, and development owner/applicant signed off that the project's parking meets the local codes when in fact there are no local codes for it to meet, then on a deficiency they stated the same thing while the City of Cisco changed its parking zone ordinance to remove a couple of blocks of restricted parking, but this did not happen until after the application was turned in and even with the change they still did not create or change a local ordinance that states required multifamily parking spaces.

**Development Cost Schedule-** upon review of the 2015 Development Cost schedule and the 2016 Development Cost schedule for the proposed development there are several areas that are of concern. First is the Acquisition cost; it is listed as \$200,000 on the schedule but the extension of contract dated in Sept 2015 states the price was raised to \$250,000. This will increase overall development cost thus raising the deferred developer fee even higher. Secondly, there are some issues between the 2015 and 2016 site work costs specifically, the Demolition and Asbestos Abatement. During the 2015 application cycle they had \$3500 in Site work demolition and nothing in asbestos abatement, yet in the building cost area they had \$40,892 in asbestos and \$13,444 in lead

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based paint abatement. In the 2016 cycle they increased the Site work demolition to \$160,981 and asbestos abatement to \$38, 829, but they removed both abatements from the building cost. These items and the demolition should be in the building cost as the majority of the work will take place inside the walls of the Dwelling unit; site work cost is only applicable to items outside the walls of the buildings. Also given the age of the Hotel, the asbestos abatement could cost hundreds of thousands of dollars to properly complete, plus the cost of the lead based paint. If all of these items are taken in account in the development cost, the total building cost would rise more than \$145,719 which would cause the cost per foot to exceed \$90.00, thus causing the development to lose its points under the cost of development section and becoming non-competitive in the region. The developer even acknowledges the need for a more extensive asbestos and lead based paint report based on the finding of the ESA Phase I. They state the additional costs will be covered under the contingency, but if they are a known item they should be covered in the actual building costs and leave the contingency for items that will arise that are unknown. The building costs associated with the new Dwelling they are building based on the building costs from 2015 to the building costs of 2016, are \$420,000. The new dwelling will be 8,785 square feet of NRF, which means they are only expecting to pay \$47.81 per Net Rentable Foot for the new construction. This seems excessively low given most other projects come in about \$20 a foot higher. They also did not include any consideration for the added on-site costs of concrete or electrical and they reduced paving from 2015 to 2016 which should have increased due to the new building. I have included both the 2015 and 2016 Development cost schedules so you can see the differences. The soft costs seem excessively high as well, especially the over \$300,000 in architect fees for only 40 units.

**Handicap Accessibility-** a concern for the UFAS unit located in the Adaptive reuse building is that it is on the second floor. While there is an elevator to serve the unit, in the event of a fire or electrical/mechanical issue with the elevator, there is no alternative route for the tenant to access or leave their unit in an acceptable way.

**Undesirable Site and Neighborhood Characteristics-** the site located on Conrad Hilton is located within 300 feet of the Farm and Ranch Supply Business. As you can see from the photos provided and the google earth imagine, the business seems to house and sell used equipment and other assorted items. Since they are not cars and are used items, parts, and metal it would qualify as a junkyard under the Transportation Code §396.001 and being within 300 feet would terminate the application under the Multifamily Rules. Also there are several Undesirable Neighborhood Characteristics located within 1,000 feet of each site. Attached you will see several photos of blighted buildings, over grown areas, storage of what looks to be used overhead fuel tanks, and random abandoned items. Also, none of these items were mentioned in the Development Owner Certification. They specifically stated that the site was not located in any of the mentioned areas, when in fact it clearly is located within the defined areas of blighted items.

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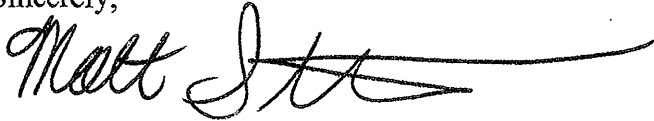
Phone: (817) 261-5088

Fax: (817) 261-5095

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These are the items that I have found within TDHCA# 16026 application, I have also attached a letter from Mark Temple pointing out specific items that need attention in the Market Study. Please feel free to contact me if you have any other questions regarding this letter.

Sincerely,

A handwritten signature in black ink that reads "Matt Stevenson". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Matt Stevenson  
Developer

**CASA TIERRA SA-1, INCORPORATED**  
**A 501 (C) (3) NON-PROFIT HOUSING CORPORATION**  
**P.O. BOX 700115**  
**SAN ANTONIO, TEXAS 78270-0115**  
**(210) 912-0070**

Texas Department of Housing and Community Affairs  
Multifamily Finance Staff  
221 East 11<sup>th</sup> Street  
P.O. Box 13941  
Austin, TX 78711-3941

Re: HTC Application #16026 Challenge Items

Dear Multifamily Finance Staff:

In preparing to challenge the subject application #16026, I made a review of the market study related to this submittal. In addition, it was found a market study was performed for the above project in 2015 by a completely different market study firm. Although the focus of my review will be on the 2016 submittal, pertinent items will be addressed from a comparison standpoint related to the 2015 market study from time to time.

**Primary Market Area-**A major difference in the two studies is the Primary Market Area (PMA). The analyst for the 2016 market study used all of Eastland County as the PMA while the analyst for the 2015 market study used the zip codes 76437, 76448 and 76345 to comprise the PMA. By using all of Eastland County, the analyst for the 2016 market study increased and inflated the market area population by a significant amount by 55 percent.

**Demand Analysis-**In reference to the demand analysis presented in the 2016 market study, it appears several instances of inflated numbers were used. As shown on pages 68-71 of the Household Distribution tables, the 2016 analyst uses all of the categories representing 1-7 person households. With the subject project consisting of one and two bedroom units only, the categories used in the calculations should only include 1-3 person households. By doing so, the 2016 analyst has inflated his numbers by 20 percent. Furthermore, the 2016 analyst has used a higher percentage of 28.2 percent for the renter households. However, the ESRI Market Profile used for the report and included as an addendum to the market study indicates this figure to be 20.4 percent. By using the increased demographic household statistics, the 2016 market analyst indicates the overall capture rate is in the 12 percent range depending on various inconsistent tables. On pages 71 and 84 of the market study, he indicates the capture rate is 12.8 percent while on the TDHCA Summary Form and page 85

the capture rate is 12.2 percent. However, the analyst did not include the 15 unstabilized comparable units in his calculation for the capture rate. With the inclusion of the 15 units, the overall capture rate increases to 17.6 percent based upon the statistics he used for the calculations. Based upon the following table using the correct demographic statistics, I have calculated the overall capture rate to be 26.8 percent which exceeds recommended TDHCA capture rate standards.

Household Size	Total Number of Households	Percentage Renter Households	Percent Income Qualified Households	Number of Income Qualified Renter Households
1 Person	2,297	20.4%	16.2%	77
2 Person	2,857	20.4%	16.2%	94
3 Person	1,060	20.4%	16.2%	35
				206

Subject's Number of Units	40
Unstabilized Comparable Units-PMA	15
Total Subject's and Unstabilized Units	55
Total Number of Qualified Renter Households	206
Gross Capture Rate	26.8%

It should be noted the 2015 market study indicated an overall capture rate of 23.3 percent. However, the analyst made a significant error by using population numbers instead of household numbers. In using the correct household numbers, the overall capture rate equates to 38.7 percent. In addition, the 2015 analyst showed an extremely high capture rate of 69.2 percent for all of the two bedroom units of the subject project.

**Other Vacancy Rate Factors-**A significant key statistic can be found but was not addressed within the market study by the 2016 analyst. The ESRI Market Profile located as an Addendum to the market study indicates the percentage of vacant housing units within the Primary Market Area (PMA) is 28.2 percent.

**Comparative Project Review-**In his review of comparative apartment projects, the analyst for the 2016 market study included two HTC apartment projects located 40+ miles away in Abilene. It is indicated both Abilene apartment projects have 100 percent occupancy levels. Being two completely different market areas as well as the distance aspect, the inclusion of the two Abilene apartment projects only increases and somewhat inflates the overall



occupancy level of the Primary Market Area (PMA) to 94.4 percent. In using the five actual apartment projects located within the Primary Market Area (PMA), the correct occupancy level is 92.2 percent. In addition, the analyst states on page 52 of the market study that all apartment projects are currently experiencing a high occurrence of waiting lists. However, three of the five apartment projects located within the Primary Market Area (PMA) currently have vacancies.

Based upon these items I have presented, the overall feasibility of the subject project comes into question. Upon your review, please feel free to contact me with any questions or comments you may have.

Sincerely,

  
Mark C. Temple  
President









**TOTAL HOUSING DEVELOPMENT COSTS<sup>5</sup>**

\$6,940,251	\$0	\$5,930,079
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The following calculations are for HTC Applications only.

**Deduct From Basis:**

Federal grants used to finance costs in Eligible Basis

Non-qualified non-recourse financing

Non-qualified portion of higher quality units §42(d)(5)

Historic Credits (residential portion only)

**Total Eligible Basis**

\$0 \$5,930,079

\*\*High Cost Area Adjustment (100% or 130%)

130%

**Total Adjusted Basis**

\$0 \$7,709,103

Applicable Fraction

100%

**Total Qualified Basis**

\$7,709,103 \$0 \$7,709,103

Applicable Percentage<sup>6</sup>

9.00%

**Credits Supported by Eligible Basis**

\$693,819 \$0 \$693,819

(May be greater than actual request)

Name of contact for Cost Estimate:

Dan Sailer

Phone Number for Contact:

(913) 231-8400

**Footnotes:**

<sup>1</sup> An itemized description of all "other" costs must be included at the end of this exhibit.

<sup>2</sup> All Off-Site costs must be justified by a Third Party engineer in accordance with the Department's format provided in the Offsite Cost Breakdown form.

<sup>3</sup> (HTC Only) Site Work expenses, indirect construction costs, developer fees, construction loan financing and other financing costs may or may not be included in Eligible Basis. Site Work costs must be justified by a Third Party engineer in accordance with the Department's format provided in the Site Work Cost Breakdown form.

<sup>4</sup> (HTC Only) Only fees paid to a consultant for duties which are not ordinarily the responsibility of the developer, can be included in Eligible Basis. Otherwise, consulting fees are included in the calculation of maximum developer fees.

<sup>5</sup> (HTC Only) Provide all costs & Eligible Basis associated with the Development.

<sup>6</sup> (HTC Only) Use the appropriate Applicable Percentages as defined in §10.3 of the Uniform Mutifamily Rules.







**Subtotal Soft Cost**

\$747,000	\$0	\$652,000
-----------	-----	-----------

**FINANCING:**

**CONSTRUCTION LOAN(S)<sup>3</sup>**

Interest	311,938		235,953
Loan origination fees	108,500		108,500
Title & recording fees	25,000		15,000
Closing costs & legal fees	35,000		25,000
Inspection fees	24,600		24,600
Credit Report	5,800		5,800
Discount Points			
Credit enhancement	60,000		30,000
Other (specify) - see footnote 1			

5.75% One year fully drawn  
2.00%

**PERMANENT LOAN(S)**

Loan origination fees			
Title & recording fees	15,000		
Closing costs & legal	15,000		
Bond premium			
Credit report			
Discount points			
Credit enhancement fees			
Prepaid MIP			
HOME Application Fee	1,000		
Other (specify) - see footnote 1			

NA HOME LOAN

**BRIDGE LOAN(S)**

Interest			
Loan origination fees			
Title & recording fees			
Closing costs & legal fees			
Other (specify) - see footnote 1			
Other (specify) - see footnote 1			

**OTHER FINANCING COSTS<sup>3</sup>**

Tax credit fees	25,870		
Tax and/or bond counsel			
Payment bonds			
Performance bonds	97,836		97,836
Credit enhancement fees			
Mortgage insurance premiums			
Cost of underwriting & issuance	35,000		
Syndication organizational cost	55,000		
Tax opinion	22,000		
Contractor Guarantee Fee			
Developer Guarantee Fee			
Other (specify) - see footnote 1			
Other (specify) - see footnote 1			
<b>Subtotal Financing Cost</b>	<b>\$837,544</b>	<b>\$0</b>	<b>\$542,689</b>

3% of construction

Historic Credits Underwriting  
Syndication Fee for LIHTC and Historic

**DEVELOPER FEES<sup>3</sup>**

Housing consultant fees <sup>4</sup>	64,000		
General & administrative			
Profit or fee	854,093		854,093
<b>Subtotal Developer Fees</b>	<b>\$918,093</b>	<b>\$0</b>	<b>\$854,093</b>

20.00%

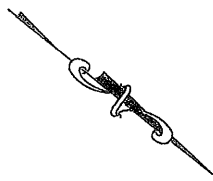
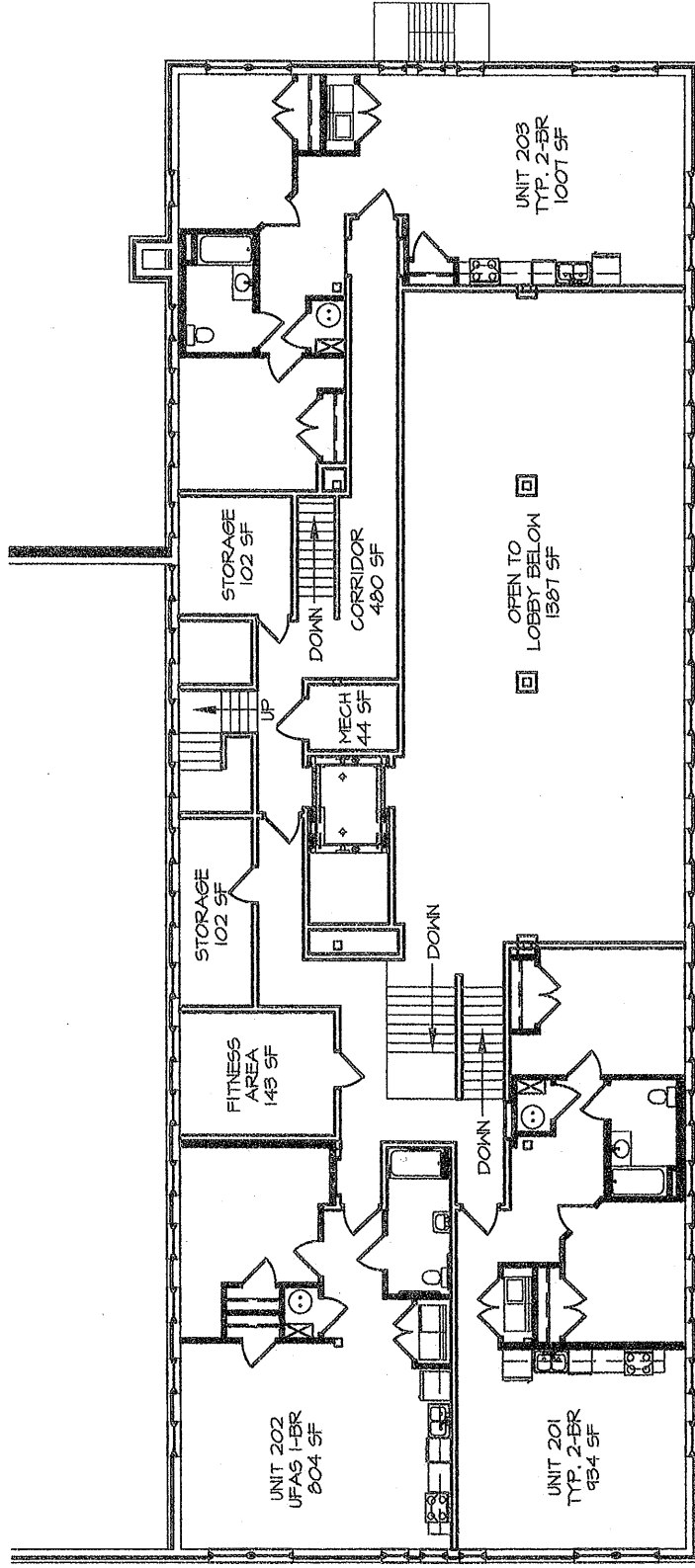
18.62%

**RESERVES**

Rent-up	43,468		
Operating	82,141		

HEI Reserves  
6 months operating and debt service





# PROPOSED SECOND FLOOR PLAN

SCALE: 1/16" = 1'-0"  
 FEBRUARY 2016



PLANNING AND DESIGN SERVICES FOR OFFICE RENOVATION



**Rocky Ridge Affordable Housing, LLC**  
2400 A Roosevelt Dr  
Arlington, TX 76016

Phone: (817) 261-5088  
Fax: (817) 261-5095

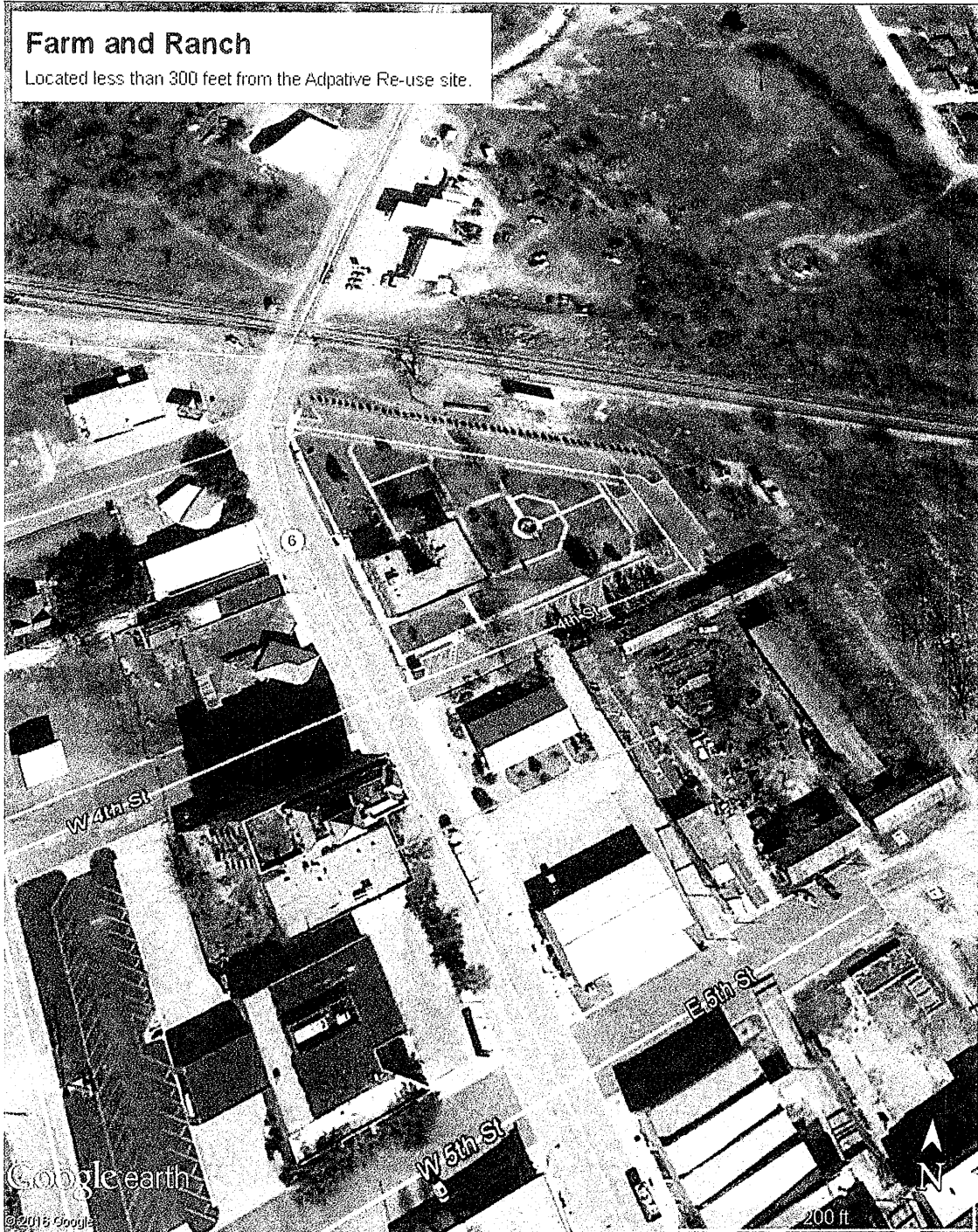
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## **Undesirable Site and Neighborhood Characteristics**

Farm and Ranch Supply Located within 300 Feet.

Rocky Ridge Affordable Housing, LLC  
2400 A Roosevelt Dr  
Arlington, TX 76016

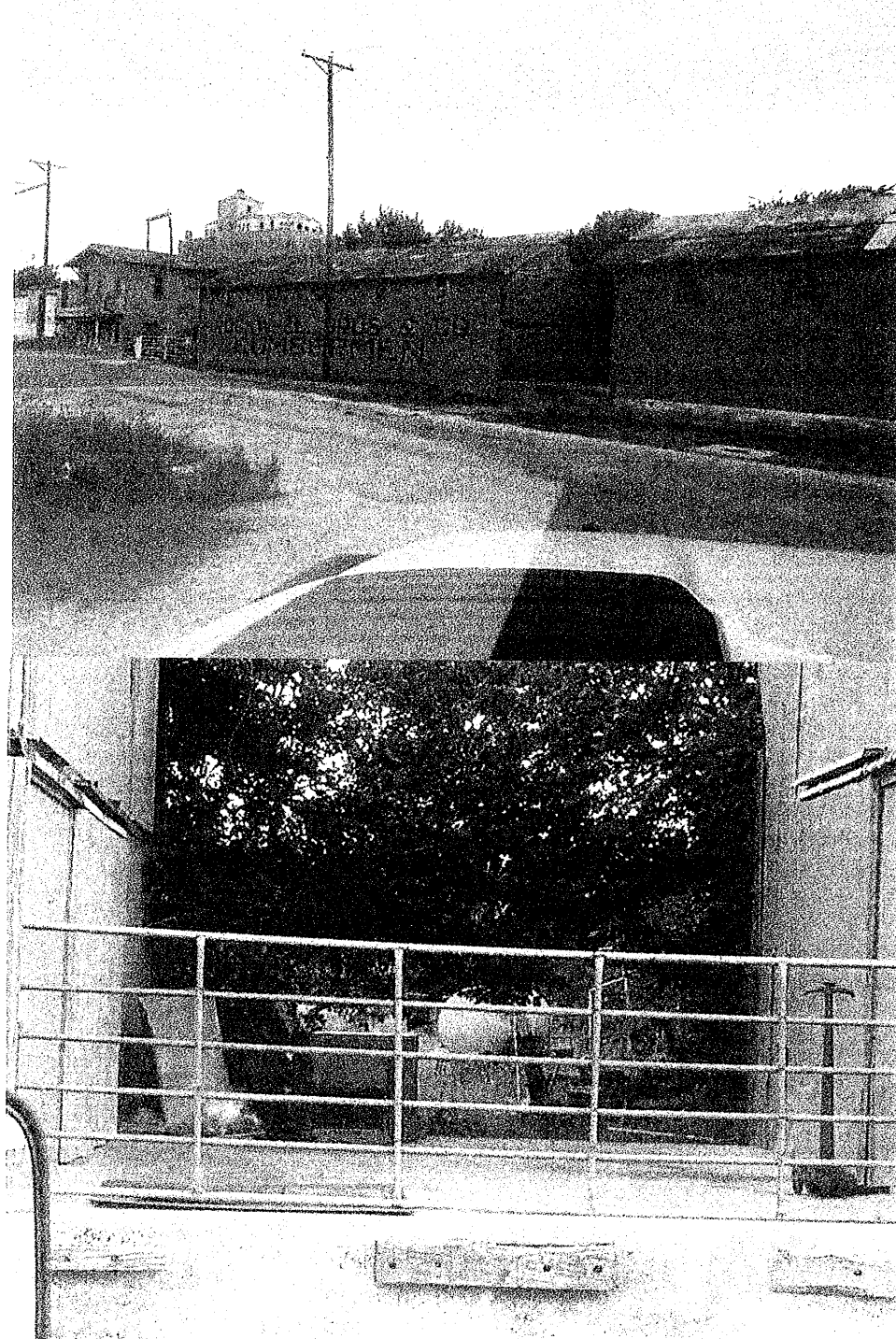
Phone: (817) 261-5088  
Fax: (817) 261-5095



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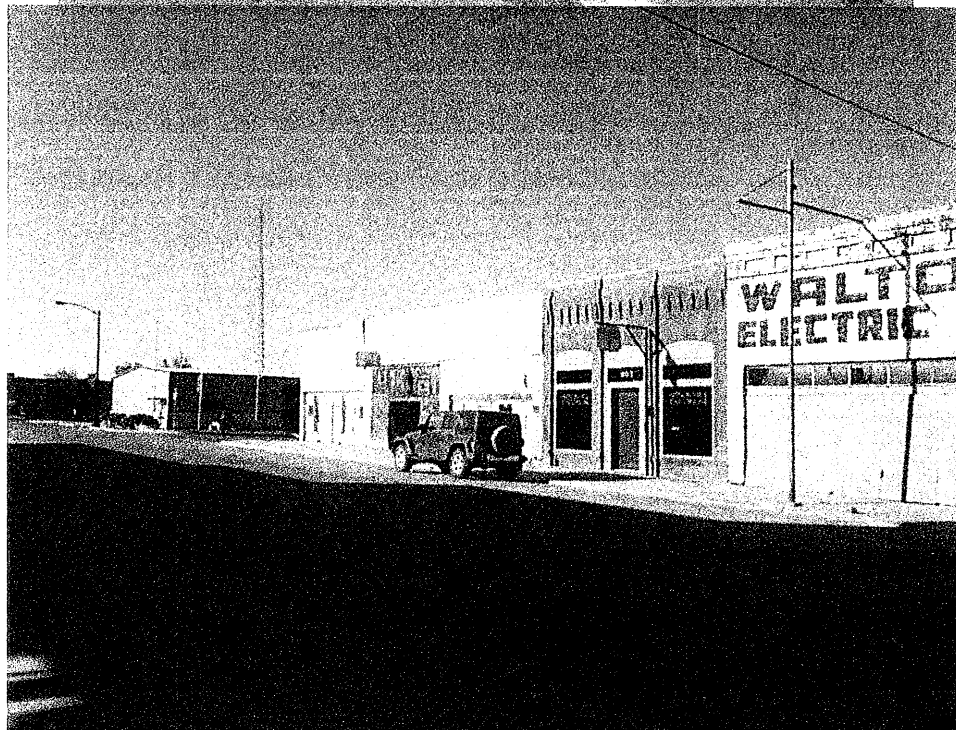


**Blighted Buildings and Other Items**



**Rocky Ridge Affordable Housing, LLC**  
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Fax: (817) 261-5095



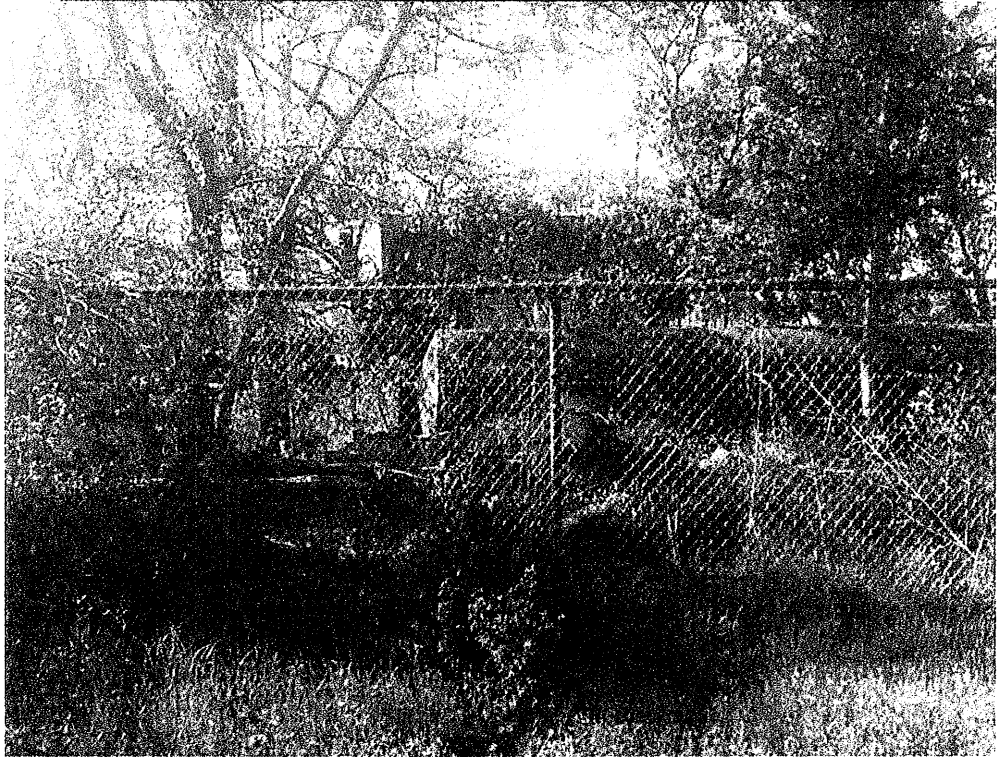
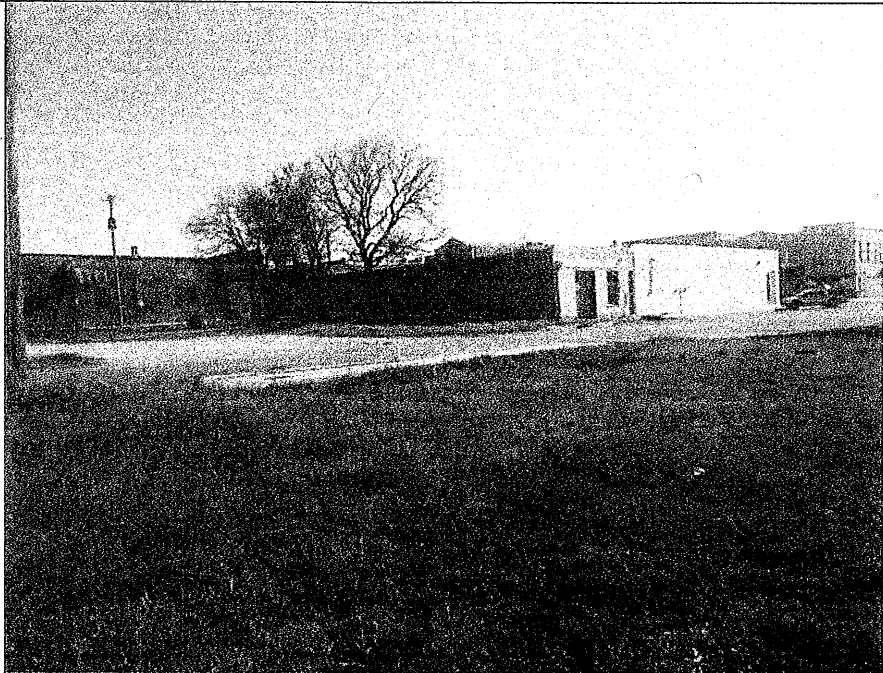
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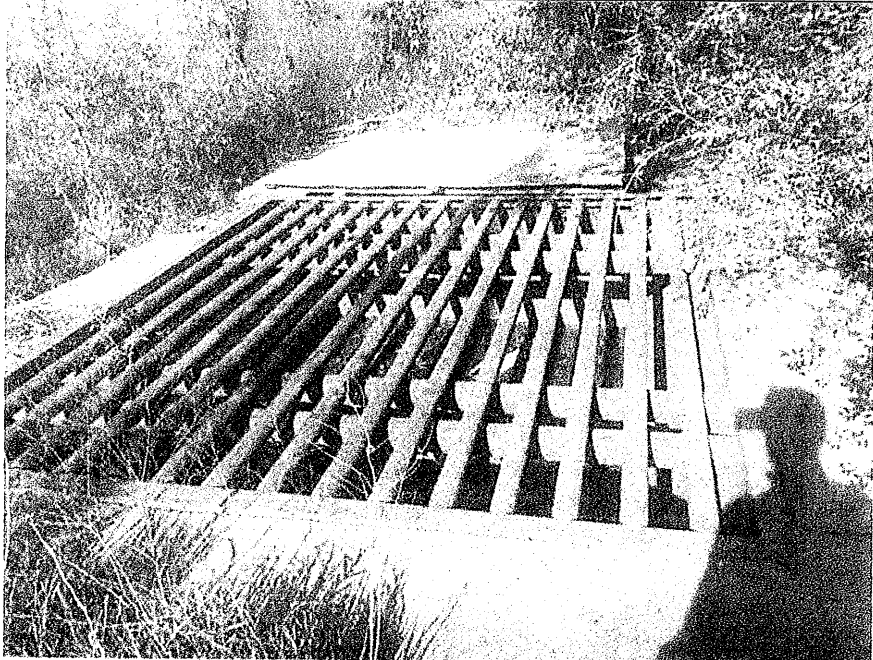
Phone: (817) 261-5088  
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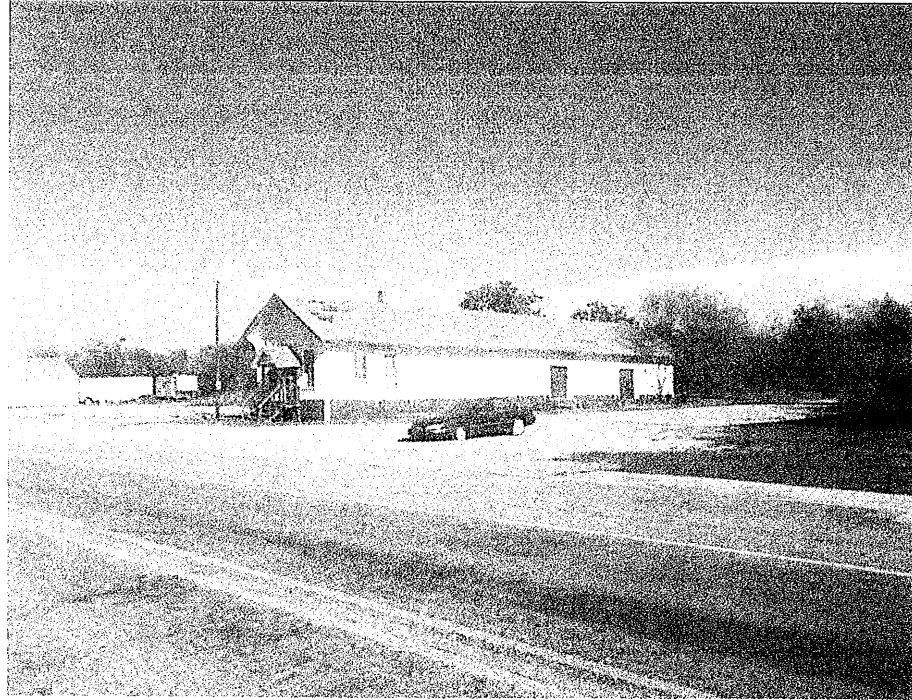
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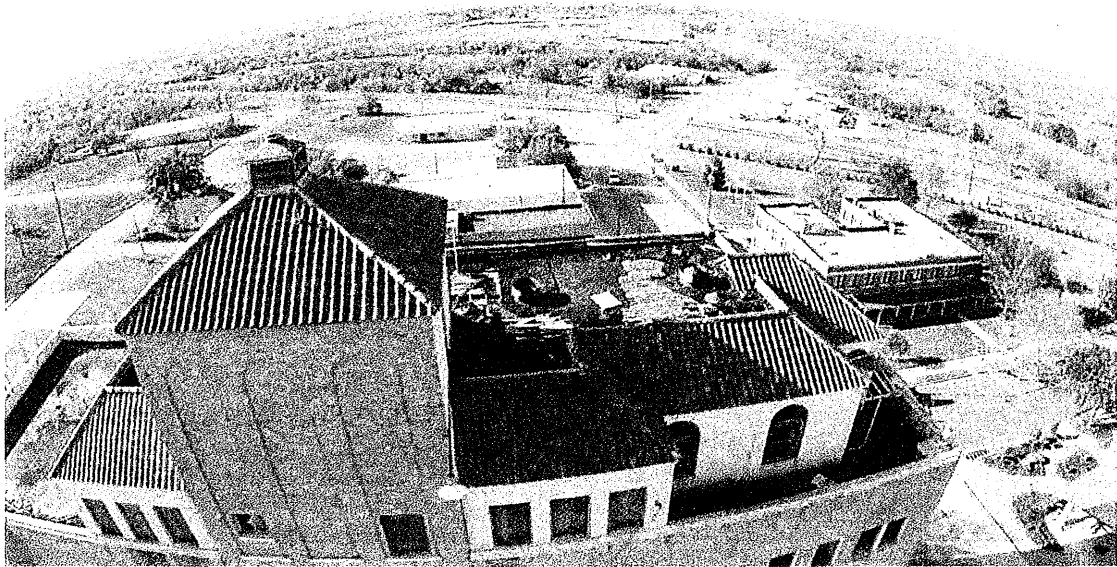
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Pictures of Laguna Hotel Exterior, fire escape looks unusable

Rocky Ridge Affordable Housing, LLC  
2400 A Roosevelt Dr  
Arlington, TX 76016

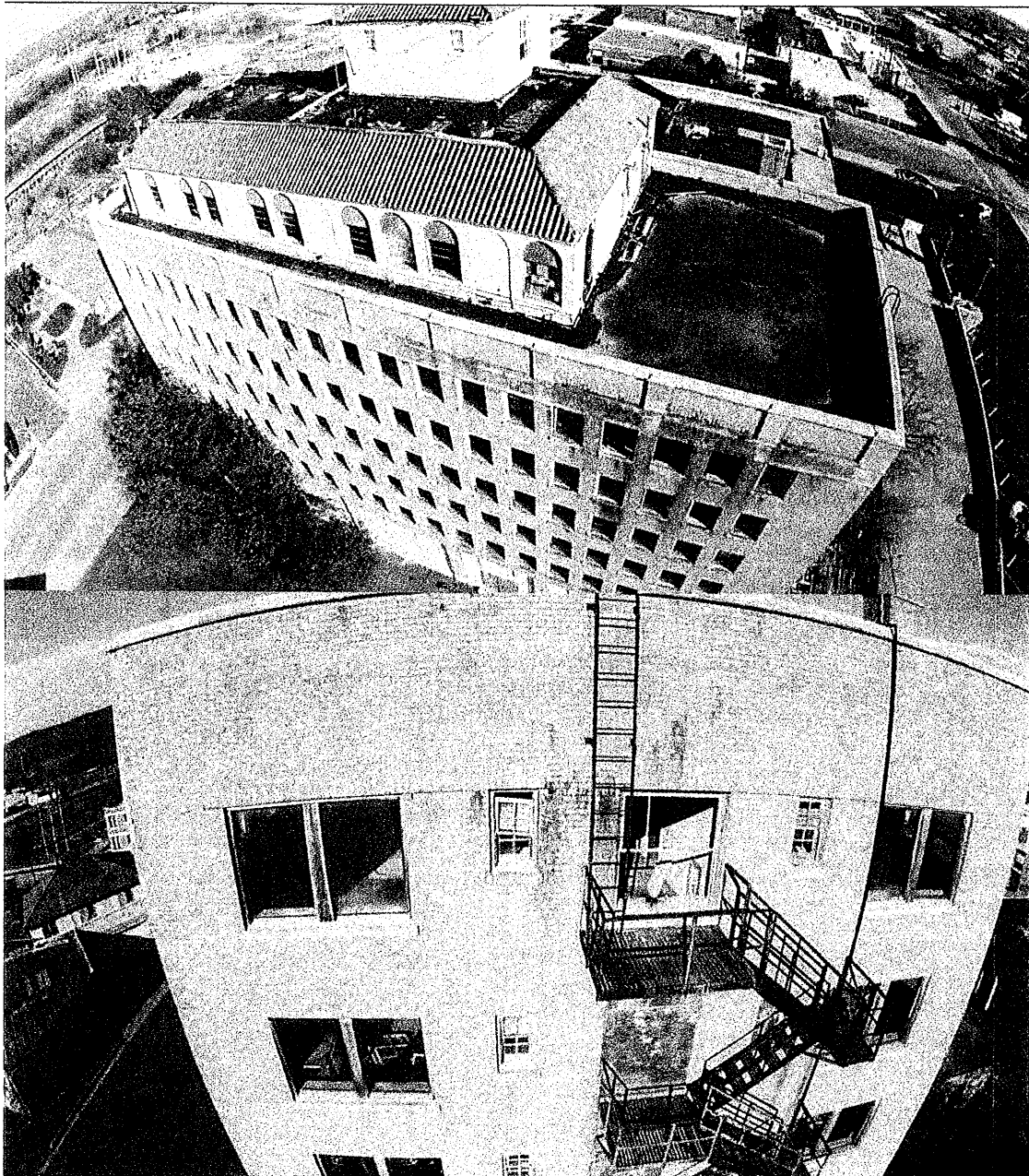
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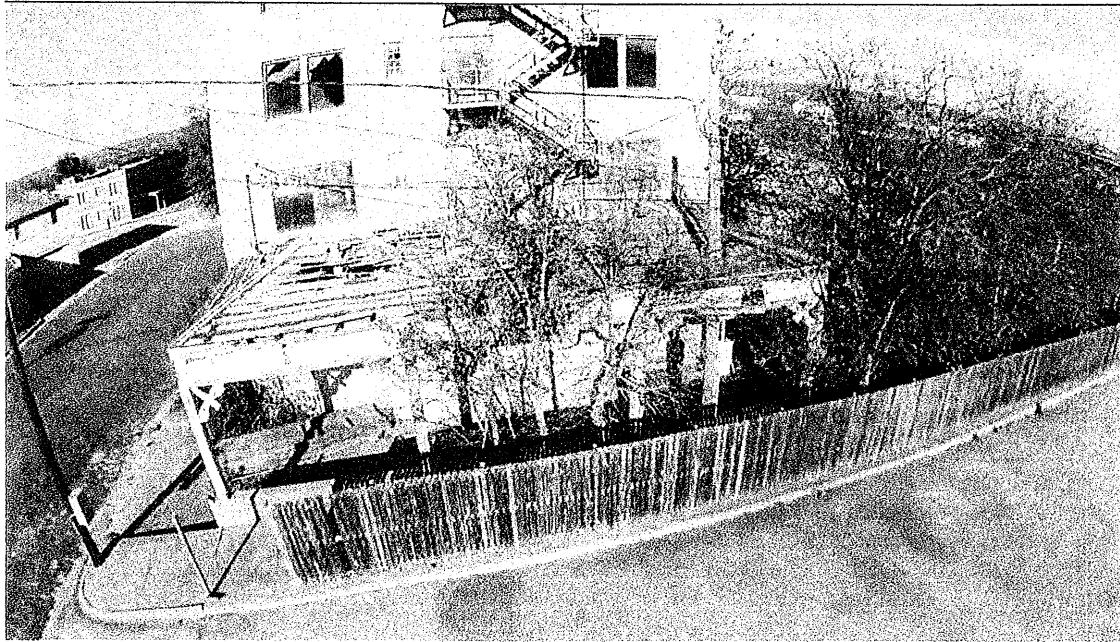
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T. Tolbert Chisum  
Tom H. Gann  
J.B. Goodwin

June 27, 2016

*Writer's direct phone # (512) 475-1676*  
*Email: [marni.holloway@tdhca.state.tx.us](mailto:marni.holloway@tdhca.state.tx.us)*

Mr. Matt Stevenson  
Rocky Ridge Affordable Housing, LLC  
2400 A Roosevelt Drive  
Arlington, Texas 76016

RE: THIRD PARTY REQUEST FOR ADMINISTRATIVE DEFICIENCY: 16026 LAGUNA HOTEL LOFTS

Dear Mr. Stevenson:

The Texas Department of Housing and Community Affairs ("the Department") is in receipt of the Request for Administrative Deficiency you submitted regarding the application referenced above. The request asked the Department to review several issues in the Application. Those items, along with staff's determination, are listed below:

- The request states that there is no local code regarding parking for the City of Cisco, and so the development must provide 1.5 parking spaces per tenant, free of charge.

A Notice of Administrative Deficiency was sent to the Applicant requesting that the Applicant submit a copy of the City of Cisco ordinance related to this issue. In the response, the Applicant provided a letter from the Mayor of the City of Cisco quoting the ordinance and a copy of the actual ordinance.

- The Development Cost Schedule lists the acquisition cost as \$200,000, which is inconsistent with the contract extension that established the price at \$250,000.

A Notice of Administrative Deficiency was sent to the Applicant regarding this issue. In the response, the Applicant submitted a Development Cost Schedule with the appropriate acquisition cost entered.

- The Application includes costs for demolition and asbestos abatement in Site Work Costs that should instead be included in Building Costs on the Development Cost Schedule.

A Notice of Administrative Deficiency was sent to the Applicant regarding this issue. In the response, the Applicant submitted a Development Cost Schedule with the appropriate demolition and asbestos abatement cost entered.

- The request expressed a concern that the UFAS unit is located in the second floor, potentially leaving the tenant stranded if the elevator is inoperable.

A Notice of Administrative Deficiency was sent to the Applicant regarding this issue. In the response, the Application submitted a plan to provide for an "area of refuge" pursuant to Section 1007.3 of the International Building Code. In reviewing the response, staff considered whether the whole of the issue as presented in the Application and included in the response is consistent with the requirements of 10



June 27, 2016

Page 2

TAC §1.206, Applicability of the Construction Standards for Compliance with §504 of the Rehabilitation Act of 1973, which states that the development must comply with the construction standards of §504 of the Rehabilitation Act of 1973, as further defined through UFAS. Staff determined that the matter was resolved to the satisfaction of the rule.

- The request pointed out suspected blight in the neighborhood and questioned whether Undesirable Site and Neighborhood Characteristics exist.

Staff visited the downtown area of Cisco to review the site. Staff was able to confirm that revitalization efforts are underway in the area, and that many of the buildings shown to be in disrepair in the pictures provided were in fact undergoing active renovation.

The request included pictures of items stored in a lot next to the Cisco Farm and Ranch Supply. Staff did verify that while some of these items appear to be what would be considered "junk", as defined in Texas Transportation Code §396.001(2), the majority of stored items are items that would be rented or sold by such a business. The junk items are not for sale, and the Cisco Farm and Ranch Supply is not "a place where a business that owns junk, and is operated to store, buy, or sell junk, keeps all or part of the junk outdoors until the business disposes of the junk," as the definition for "junkyard" in §396.001(3) requires.

Staff has determined that the level of revitalization that is evident in the area outweighs the presence of the items that are junk at Cisco Farm and Ranch Supply. As such, staff determined that an administrative deficiency regarding this issue would not be sent.

- The request pointed to several items in the Market Analysis report and compared them to information included in a 2015 report prepared for the same property but by a different preparer.

Per §11.10 of the QAP, the purpose of the Third Party Request for Administrative Deficiency process is to allow an unrelated person or entity to bring new, material information about an Application to staff's attention. The request does not bring new, material information to staff's attention; but poses a question about information included in the Market Analysis Report the application. Staff has determined that such a request is not consistent with the rule. Issues that arise from review of the submitted Market Analysis report will be addressed during the underwriting of the Application.

If you have questions or require further information, please contact me.

Sincerely,

  
Marki Libloway  
Multifamily Division Director

2d

**BOARD REPORT ITEM**  
**MULTIFAMILY FINANCE DIVISION**  
**OCTOBER 13, 2016**

Report Regarding Amended and Restated Determination Notices for (#14425) Dwight D. Eisenhower Memorial Apartments and (#14427) Kennedy Brothers Communities in El Paso.

**BACKGROUND**

The Governing Board approved Determination Notices for Dwight D. Eisenhower Memorial Apartments (#14425) and Kennedy Brothers Communities (#14427) on February 19, 2015. The Determination Notice includes a range of Building Identification Numbers (“BIN”) to account for the number of buildings associated with the development. The applicant generally subsequently identifies the number of buildings, assigns a corresponding BIN and provides this information to the Department. The range of numbers provided by the Department (00-99) on the Determination Notice has historically been sufficient for this purpose; however, for the above referenced developments, the applicant has structured the buildings in such a way that additional BINs were required. Staff issued an Amended and Restated Determination Notice for each development on September 9, 2016, and September 26, 2016, respectively. These Notices supersede the original Determination Notices issued on February 24, 2015, and no other terms associated with the Determination Notices were amended.

2e



BOARD REPORT ITEM

BOND FINANCE DIVISION

OCTOBER 13, 2016

Report Regarding a Request for Proposal (“RFP”) for Underwriters issued by the Texas Department of Housing and Community Affairs (the “Department”).

BACKGROUND

On July 13, 2016, the Department issued an RFP for Underwriters interested in serving as Senior Manager and/or Co-Manager for one or more proposed single family mortgage revenue bond issues beginning in fiscal year 2017. Seventeen responses to the RFP were received by the due date; two responses were disqualified for non-conformance with RFP requirements.

A review team of Department staff evaluated the eligible proposals in accordance with the specified selection criteria and selected the following firms to serve as the Department’s underwriting team:

<u>Firm</u>	<u>Eligible Role</u>
Fidelity Capital Markets	Co-Manager
Jefferies	Senior Manager or Co-Manager
J.P. Morgan	Senior Manager or Co-Manager
Piper Jaffray & Co.	Co-Manager
Ramirez & Co., Inc.	Senior Manager or Co-Manager
RBC Capital Markets	Senior Manager or Co-Manager

Staff will recommend to the Board firms within the underwriting team to serve as Senior Manager and Co-Managers for each bond issue, on a transaction-by-transaction basis.

The term of the award will be one year; the Department can renew and extend the award for up to three additional one year terms.

3a

**BOARD ACTION REQUEST**  
**INTERNAL AUDIT DIVISION**  
**October 13, 2016**

Presentation, Discussion and Possible Action on approval of the Fiscal Year 2017 Internal Audit Work Plan.

**RECOMMENDED ACTION**

**WHEREAS**, the Tex. Gov't Code §2306.073 (b), the Internal Auditing Act and audit standards require the Department's Governing Board to approve an annual audit work plan that outlines the internal audit projects planned for the fiscal year; and

**WHEREAS**, the Audit Committee of the Board recommends approval of the work plan;

**NOW**, therefore, it is hereby

**RESOLVED**, the internal audit work plan for Fiscal Year 2017 is approved as presented.

**BACKGROUND**

The annual internal audit work plan is required by the Tex. Gov't Code §2306.073 (b), the Texas Internal Auditing Act (Tex. Gov't Code Chapter 2102) and by the International Standards for the Professional Practice of Internal Auditing (Standards). The plan is prepared by the internal auditor based on an agency-wide risk assessment as well as input from the Department's Governing Board and executive management. The plan identifies the individual audits to be conducted during Fiscal Year 217. The plan also outlines other planned activities that will be performed by the Internal Audit Division.



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### Texas Department of Housing and Community Affairs Office of Internal Audit Audit Plan for Fiscal Year 2017

#### Statutory and Professional Standards Requirement

The Texas Internal Auditing Act (Texas Government Code, §2102.005) requires state agencies to conduct a program of internal auditing. The *International Standards for the Professional Practice of Internal Auditing (IA Standards)* define Internal Auditing as an “independent, objective assurance and consulting activity designed to add value and improve an organization's operations. It helps an organization accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes.”

The Texas Government Code and the *IA Standards* require internal auditors to develop an annual audit plan, using risk assessment techniques, that identifies individual audits to be conducted during the year. The Code requires that the plan be approved by the state agency's governing board or by its administrator, if the agency has no governing board.

The program of internal auditing is carried out by the Office of Internal Audit (OIA) which serves at the direction of the Governing Board. The OIA has prepared this audit plan for consideration and approval by the Governing Board.

#### Development of the Annual Audit Plan

The Fiscal Year 2017 plan is designed to cover areas of highest risk to the State and the agency; however, it does not cover all risks. TDHCA management should utilize internal controls and other appropriate methodologies to mitigate residual risks not covered by the audit plan.

The annual audit plan was developed using a risk based methodology which included:

- Obtaining management's and the Governing Board's perspectives through surveys and discussions.
- Consulting with the State Auditor's Office and other oversight bodies.



- Reviewing prior TDHCA meeting minutes, audit report findings and recommendations, and budgetary information.
- Evaluating information about key agency business areas, processes, and systems.
- Considering input from internal audit staff.
- Utilizing a matrix whereby identified auditable units were ranked according to standard risk factors.

The auditor hours available for projects in this plan were computed based on 2088 total hours per staff member in the 2017 fiscal work year. These hours were reduced by allowances for vacation, holiday, professional development, sick leave, a temporary vacancy, and an allocation for administrative activities required to manage the program of internal auditing.

### **Projects for Fiscal Year 2017 Annual Audit Plan**

We have identified the following projects for inclusion in the 2017 Annual Audit Plan. The project numbers are for identification purposes and may not correspond to the order in which the projects are performed. Also included below is a brief description of functions to be reviewed.

#### **New Audit Projects:**

##### **1. Information Services**

The Internal Auditing Act requires periodic audits of an agency's information systems. The audit will cover such areas as technical infrastructure, Applications, external connections, and the division of I.T. responsibilities between the agency and DIR. The audit will be organized according to the ISACA "domains".

This particular type of audit has not been done at TDHCA, although an external contracted firm has performed consulting work related to I.T.

##### **2. Bond Finance**

The Bond Finance Division is primarily responsible for administering the Department's Mortgage Revenue Bond (MRB) program. MRB programs provide below-market interest rate funds for single family homebuyers and multifamily mortgage loans made to qualifying recipients.

The Bond Finance unit rated high on the risk assessment due to its level of complexity of transactions and processes. Additionally, the Bond Finance unit has not been audited within the last three years.

##### **3. HOME Contract for Deed Conversion (CFDC)**

The HOME Investment Partnerships Program (HOME Program or HOME) is funded by the U.S. Department of Housing and Urban Development (HUD). Authorized under the Cranston – Gonzalez National Affordable Housing Act, the purpose of the program is to expand the supply of decent, safe, affordable housing and strengthen public-private housing partnerships between units of general local government, public housing authorities, nonprofits, and for profit entities.

The Contract for Deed (CFD) initiative funds units of general local government, public housing authorities, local mental health authorities, and nonprofits wishing to assist colonia residents earning not more than 60% of the Area Median Family Income (AMFI), with converting contracts for deed into traditional mortgages.

HOME Contract for Deed Conversion (CFDC) rated high on the risk assessment and was selected for audit due to its susceptibility to fraud and concerns expressed by TDHCA management.

### **Carry Over Projects:**

#### **Multifamily Finance Division and Housing Tax Credit**

The Multifamily Finance Division and Housing Tax Credit (HTC) audit will be performed in FY17. This audit was carried over from the 2016 audit plan. It will review the division as an organizational unit, and the HTC as an agency program / activity.

#### **Compliance Monitoring**

The Compliance Monitoring audit will be completed in November 2016. The fieldwork for this audit has been completed; and the report will be issued shortly.

### **Administrative and Statutory Projects:**

- Internal Audit Self-Assessment
- Review of TDHCA compliance with appropriation riders and other requirements of the Government Code
- Annual Audit Plan and reporting
- Annual tracking of the implementation status of prior audit recommendations
- Procurement of External Peer Review
- Completion of Peer Review

### **Consulting Projects and External Audit Coordination**

Pursuant to the TDHCA internal audit charter, the OIA performs consulting activities for the agency. For fiscal year 2017, OIA is providing consulting services related to the new Grant Guidance in 2 CFR 200, as well as subrecipient monitoring.

OIA also coordinates and advises on external audit activities.

---

Mark Scott, CPA, CIA, CISA, CFE, MBA  
Internal Audit Director, TDHCA

3b



**BOARD REPORT ITEM**  
**INTERNAL AUDIT DIVISION**  
**October 13, 2016**

Report on the Internal Audit “Review of Fair Housing Activities”



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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T. Tolbert Chisum  
Tom H. Gann  
J.B. Goodwin

October 13, 2016

*Writer's direct phone # 512.475.3813*  
*Email: mark.scott@tdhca.state.tx.us*

**RE:** An Internal Audit of the Fair Housing Division

**To:** Chairman J. Paul Ozer and the Board Members of the Texas Department of Housing and Community Affairs

Dear Chairman Ozer and Board Members,

This report presents the results of the Office of Internal Audit's (OIA) "Review of Fair Housing." The review was included in the Fiscal Year 2016 Annual Audit Plan. Based on OIA's evaluation of risks and controls, the following audit objectives were developed:

- to examine and verify that TDHCA only provides housing program assistance to organizations that certify their compliance with State and Federal Fair Housing (FH) Laws; and
- to determine if the Fair Housing, Data Management and Reporting Division collects and manages the information necessary to evaluate the requirement imposed by HUD regulation to Affirmatively Further Fair Housing through HUD Community Planning and Development ("CPD") programs.

The audit scope included the 2015, and beginning 2016, applications received, and the resulting contracts for HOME Single-Family and Multifamily, as well as the Housing Trust Fund Amy Young Barrier Removal Program.

The audit methodology included gaining an understanding of FH, its activities and processes by interviewing employees of the TDHCA Fair Housing, Data Management, and Reporting division (FHDMR) and other staff, and by reviewing TDHCA, State, and Federal documentation. OIA identified relevant criteria for evaluating the FH process. OIA tested a random sample of applications and the resulting contracts as contained in the TDHCA Housing Contract System.

TDHCA, in addition to funding affordable housing and homeownership opportunities has a Fair Housing, Data Management, and Reporting division, which focuses on data collection and analysis along with reporting, and tracking fair housing work. This is important because the Fair Housing Act, in conjunction with periodic legislative and judicial updates/determinations, seeks not only to prevent discrimination, but also to actively promote equal access to housing, aka, Affirmatively Furthering Fair Housing (AFFH) as required by HUD regulations.

The Fair Housing Act includes provisions to prevent discrimination in the allocation of housing, and provisions to affirmatively further fair housing. The Texas Workforce Commission Civil Rights Division ("TWC") is the entity responsible for the enforcement of the Fair Housing Act in Texas.



## AUDIT RESULTS

Our audit indicated that TDHCA ensured that its grantees and other organizations had appropriately included Fair Housing requirements in contracts. TDHCA performs AFFH activities, and as resources are available should continue with staff education and outreach efforts.

### FAIR HOUSING OVERVIEW

Criteria and guidance for FH include Title VIII of the Civil Rights Act of 1968<sup>1</sup> and the Texas Fair Housing Act.<sup>2</sup> These acts protect the right to rent an apartment, buy a home, obtain a mortgage, or purchase homeowners insurance free from discrimination based on: race; color; national origin; religion; sex; familial status; and disability. Cities, counties, and other municipalities may have additional housing anti-discrimination laws to protect additional groups. It is important to note that FH is a difficult audit because FH is constantly evolving, including HUD's ongoing rollout of FH tools. In August 2015 HUD released a new final rule on Affirmatively Further Fair Housing in HUD programs. Under HUD's new AFFH rule HUD CPD program participants are required to "take meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, Affirmatively Furthering Fair Housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all of a program participant's activities and programs relating to housing and urban development."<sup>3</sup>

Currently HUD's AFFH requirement is defined in Community Development Block Grant and Consolidated Plan (ConPlan) regulations as requiring an Analysis of Impediments to Fair Housing Choice (AI) and taking appropriate actions to overcome the effects of impediments.

AI is a document that is used when preparing TDHCA's five (5) year ConPlan, which is used to plan the activities for HUD CPD programs within the state as a whole. It is not limited to TDHCA activities only; TDHCA takes the lead to guide the preparation of the document. An impediment to FH can be an action or an inaction that restricts housing choice or that has the effect of restricting housing choice. The AI document may identify impediments; however, TDHCA's ability to address the impediment may be limited by other factors. An example is if an impediment relates to local zoning. Under HUD's new AFFH HUD has developed Assessment of Fair Housing ("AFH") tools for local jurisdictions, states, and public housing authorities. The AFH tool for states is currently out for comment and is not in effect at this time. The agency's current impediments are spelled out in the AI, Phase II. "Until a program participant (TDHCA) submits its first AFH, the program participant must continue to comply with applicable fair housing planning procedures, meaning that it should comply with the existing Analysis of Impediments (AI) to fair housing choice requirements by having an up-to-date AI, complying with the AI, and taking action to affirmatively further fair housing."<sup>4</sup>

Some TDHCA programs may have specific rules related to FH requirements, such as HUD programs. Other programs may just require that the subrecipient comply with the state and federal fair housing acts.

---

<sup>1</sup> [www.justice.gov](http://www.justice.gov)

<sup>2</sup> [www.statutes.legis.state.tx.us/Docs/PR/htm/PR.301.htm](http://www.statutes.legis.state.tx.us/Docs/PR/htm/PR.301.htm)

<sup>3</sup> <https://www.hudexchange.info/programs/affh/>

<sup>4</sup> <https://www.hudexchange.info/faqs/2994/what-should-i-do-before-my-assessment-of-fair-housing-afh-due-date/>

HUD Community Planning and Development has a checklist that indicates attributes to look for when evaluating Fair Housing.

Another HUD requirement related to fair housing is to provide access to Limited English Proficient (LEP) persons. Language access plans to meet the needs of LEP persons assist with housing barriers based on national origin, a protected class.

The Texas Fair Housing Act (TFHA) is to provide for fair housing practices in Texas; create a procedure for investigating and settling complaints of discriminatory housing practices; and provide rights and remedies substantially equivalent to those granted under federal law (prohibits discrimination; promotes desegregation; and ensures availability). The powers and duties formerly exercised by the Commission on Human Rights under this act transferred to the Texas Workforce Commission (TWC) in 2003. TWC has the state role in the enforcement of FH anti-discrimination provisions.

The TFHA does not prohibit discrimination against a person because the person has been convicted under federal law or the law of any state of the illegal manufacture or distribution of a controlled substance. Also, the act does not apply to the sale or rental of a single-family house sold or rented by the owner if certain provisions apply.<sup>5</sup> The act does not prohibit: a religious organization, association, or society or a nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society from limiting the sale, rental, or occupancy of dwellings that it owns or operates for other than a commercial purpose to persons of the same religion, or giving preference to persons of the same religion, unless membership in the religion is restricted because of race, color, or national origin; a private club that is not open to the public and that, as an incident to its primary purpose, provides lodging that it owns or operates for other than a commercial purpose from limiting the rental or occupancy of the lodging to its members or from giving preference to its members; and a person engaged in the business of furnishing appraisals of real property from considering in those appraisals factors other than race, color, religion, sex, disability, familial status, or national origin.

The provisions of TFHA relating to familial status do not apply to housing that TWC determines is specifically designed and operated to assist elderly individuals under a federal or state program; intended for, and solely occupied by, individuals 62 years of age or older; or intended and operated for occupancy by at least one individual 55 years of age or older for each unit as determined by TWC rules.

TWC receives, investigates, seeks to conciliate, and act on complaints alleging violations of the TFHA.

### EVALUATION OF THE TDHCA FAIR HOUSING PROCESS

The primary product or service that the TDHCA Fair Housing Project Manager (FHPM) provides is the FH focused lens directed to the program areas on FH matters. TDHCA leadership considers how policy and program decisions impact fair housing. This can be complex because what may appear to be a straight forward opportunity or option to provide assistance to individuals needing housing may have an unintended or unexpected consequence or result.

The Fair Housing, Data Management and Reporting Team actively works on a variety of FH related projects. One role of the fair housing team is to evaluate the policies and decisions that the agency may be considering. This includes considering how potential program or policy changes may impact the demographics of the individuals to be served. The FHPM performs research and compiles data. The work group will then discuss what they think will happen, if the policy or change is put into practice. They discuss how the change may or may not impact FH activities.

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<sup>5</sup> [www.statutes.legis.state.tx.us/Docs/PR/htm/PR.301.htm](http://www.statutes.legis.state.tx.us/Docs/PR/htm/PR.301.htm) section 301.041

Through participation in HUD CPD programs TDHCA, Texas Department of Agriculture, Texas General Land Office, and Texas Department of State Health Services (DSHS) each have responsibility for affirmatively furthering fair housing. This group of agencies, and the Texas Workforce Commission, continue to meet on a regular basis to discuss fair housing issues, rules and policy changes, and brainstorm new ideas to improve agency coordination and resource sharing. The agencies are also coordinating as they prepare to comply with the new AFFH rule using the state Analysis of Fair Housing (AFH) tool. The rule includes significant changes to the Citizen Participation Plan; FHDNR staff is preparing a timeline to comply with the new plan and is identifying how it will roll out changes. Pending release of the final state tool, the AFH tool will be effective for the 2020-2025 ConPlan. A separate analysis will be completed for TDHCA's Public Housing Authority Plan. Another role of the FHPM is to serve as a liaison with other entities on FH matters.

Staff members participate in monthly Qualified Allocation Plan (QAP) planning roundtable discussions and conduct significant research on potential scoring items. Research includes analyzing the statewide impact of items and considering their alignment with fair housing through mapping and analyzing census data related to income and poverty levels, and researching and mapping changes in Texas Education Agency education standards and ratings.

Information that the Department has may not be all inclusive. TDHCA does not require applicants to disclose certain household characteristics, such as disability status, unless those characteristics are related to eligibility requirements. For example, it is possible that an applicant qualifies for a program because they are elderly. Incidentally, the applicant may also have a disability however there would be no reason for TDHCA to collect that data characteristic. Therefore, the disability characteristic would not be included in the FH data analysis reported to the Governing Board.

TDHCA conducts a number of events and outreach strategies in April to celebrate fair housing month. The TDHCA Senior Marketing and Communication Advisor lead's some of these efforts. She sent out the FH factoids during the FH month of April and is responsible for FH press releases. Also, she was instrumental in organizing the internal Brown Bag training sessions for TDHCA staff covering FH updates, the new AFFH rule, affirmative marketing, and the language access plan.

TDHCA, through its Compliance Division and Housing Resource Center, receives complaints from households, and staff is developing training protocols to more clearly identify those complaints with possible fair housing elements so that FHDNR staff can be appropriately involved. Managing Fair Housing related complaints is a lengthy process and frequently involves working across divisions with compliance and legal staff. The majority of fair housing related complaints are related to reasonable accommodations; when these arise, staff works with tenants and properties to navigate the lawful application of the reasonable accommodation process. Where appropriate and according to a Memorandum of Understanding, TDHCA makes referrals to Texas Workforce Commission, the fair housing enforcement agency in Texas.

#### EVALUATION OF FAIR HOUSING COMPLIANCE

TDHCA actively pursues compliance with FH requirements for prohibition of discrimination, promoting desegregation and funding the development of affordable housing.

The FHDNR staff serves as a resource to program areas and has been assisting in helping areas quantitatively evaluate the impact of possible program design considerations, in terms of how such possible changes would align with fair housing goals.

TDHCA makes information available to LEP persons by ensuring that the website is accessible and documents are accessible to persons with disabilities and that documents are available in other languages. Interpreters are also utilized, as needed.

TDHCA completes the Analysis of Impediments, as required by the AFFH, component of FH and is taking appropriate actions to seek to overcome the effects of impediments. The TDHCA Fair Housing Activities Summary Report, as presented to the TDHCA Governing Board, provides a summary of efforts (“Action Steps”) that the Department is currently planning, implementing, or that have already been incorporated in the rules and processes of the housing and/or community affairs programs that the Department administers. Action Steps reduce the barriers to Fair Housing Choice. Action Steps may be associated with one or more of six (6) Impediments identified in the 2013 Analysis of Impediments to Fair Housing Choice for the State of Texas. The Action Steps pertaining to TDHCA included in the report are about 97% completed or implemented. Currently staff of the FHDNR division, provide an annual report and periodic updates to the board, approximately four times a year. Also, a compilation of TDHCA outreach activities as reported to the Governing Board is designed to increase the awareness of TDHCA programs and services, and to increase the visibility of the Department among key stakeholder groups and the general public.

The *2015 TDHCA Housing Sponsor Report – Revised April 28, 2016* was uploaded to the TDHCA website and is intended to provide property and occupant profiles for multifamily (and in some cases single family) properties with 20 or more units receiving assistance from TDHCA. The information represents the status of TDHCA assisted properties on a particular date, not a cumulative total of households served within the year. Included in the report is average rents by county, and breakdown of information for each complex by county including: address; county; unit breakdown; units constructed or adapted for special needs; average rents; ethnic breakdown total; racial breakdown total; government assistance; occupants by Area Median Family Income (AMFI) total; and three answered questions which are: (1) does the property meet occupancy requirements, (2) is there a Fair Housing plan, and (3) any Fair Housing findings.

OIA randomly selected a sample of 22 contracts, through an online random sample generator,<sup>6</sup> for inclusion of FH requirements and that the corresponding applications include a signed certification of FH compliance. (See Exhibit A for a sample certification document in a HOME application and Exhibit B for a sample of Section 9.4 within a Home program contract) A random sample<sup>7</sup> is a set of items that have been drawn from a population in such a way that each time an item was selected every item in the population had an equal opportunity to appear in the sample. The population was determined through the Housing Contract System for Fiscal Year 2015. All 22 of the contracts tested included FH requirements. Of the 22 applications tested, three (3) or 13.64% did not include certification of FH compliance. These three applications were for the Amy Young Barrier Removal Program funded through the state funded Housing Trust Fund, and so the lack of certification did not result in non-compliance with HUD regulations.

## FINDINGS AND/OR RECOMMENDATIONS

### 16.003.1 Recommendation:

The training offered to TDHCA staff on Fair Housing should be offered quarterly or at some appropriate interval. This could be accomplished in the same way that information technology training is required.

### 16.003.2 Recommendation:

It is recommended that policies and procedures for Fair Housing be written and made available to all staff of TDHCA. Requirements and checklists for applications of local public housing authorities, for-profit and not-for-profit entities, multi-family, and in some cases single-family should include certification that the entity complies with federal, state, and local Fair Housing rules and regulations. Even though there are

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<sup>6</sup> [www.randomizer.org](http://www.randomizer.org)

<sup>7</sup> <http://www.animatedsoftware.com/statglos/sgrandsa.htm>

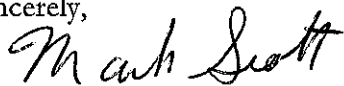
individual policies and procedures for certain processes, there is not currently a set of formal standard operating procedures for Fair Housing.

**MANAGEMENT COMMENTS – CORRECTIVE ACTION TABLE**

Item Number	Management Comments – Status Pertaining to the Recommendations and Action to be Taken, if any
16.003.1	<i>Management generally agrees with the recommendation to provide fair housing staff training, though, staff believes the appropriate interval is bi-annually. In addition to the bi-annual training staff may utilize online trainings available on the Department’s website. TDHCA has three fair housing webinars posted online, available for free 24/7. Staff may take advantage of these online trainings as needed. The Fair Housing Project Manager collaborates with program area staff on different projects as needed. These are opportunities to alert staff to possible areas of concerns and provide fair housing training and education. Therefore, bi-annual training is a more appropriate interval.</i>
16.003.2	<i>Management agrees generally with the importance of SOPs; however, specific policies and procedures to comply with HUD CPD (“Community Planning and Development”) programs and the duty to affirmatively further fair housing through these programs are best administered through program areas. Program areas are responsible for program funding applications, contracts, program rules and design, all of which may be tools to affirmatively further fair housing. FHDMR staff will work to review program area SOPs as they relate to fair housing requirements.</i>

OIA extends our sincere appreciation to management and staff of TDHCA for their cooperation and assistance during the course of this audit.

Sincerely,



Mark Scott, CPA, CIA, CISA, CFE, MBA  
 Director of Internal Audit

MES/bke

cc:

- Tim Irvine, Executive Director
- Beau Eccles, General Counsel
- Brooke Boston, Deputy Executive Director, Fair Housing and Data Management
- Megan Sylvester, Federal Compliance Counsel
- Suzanne Hemphill, Fair Housing Project Manager



TEXAS DEPARTMENT OF HOUSING COMMUNITY AFFAIRS  
HOME INVESTMENT PARTNERSHIPS PROGRAM ("HOME")  
TAB 16. CERTIFICATION OF APPLICANT

On behalf of the Applicant and all affiliates of the Applicant (hereinafter "Applicant"), I (we) hereby certify that the Applicant is familiar with the provisions of the federal HOME Final Rule, as published in 24 CFR Part 92, the state HOME Rules, as published in 10 TAC Chapter 23, the Single Family Programs Umbrella Rule, and other related administrative rules, and regulations and court rulings issued by the Federal government or State of Texas with respect to the HOME Investment Partnerships Program and will comply with such rules during the application process and in the event of award, for the duration of the executed agreement.

This certification must be signed and filed by a person(s) who is authorized to execute the HOME Contract or a Reservation System Participation Agreement. ...

As required by Section 2306.257 of the Texas Government Code, as amended, an Applicant may not receive funds or other assistance from the Department unless the Applicant certifies that it is in compliance with the housing laws described in subparagraph (a) through (d) of this paragraph. To satisfy that requirement, I hereby certify that the developments listed in the Previous Participation Form, in which I am currently participation, are in compliance with: state and federal fair housing laws, including Chapter 301, Property Code, the Texas Fair Housing Act; Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.); and the Fair Housing Amendments of 1988 (42 U.S.C. 3601 et seq.), the Civil Rights Act of 1964 (42 U.S.C. Section 2000a et seq.), the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), and the Rehabilitation Act of 1973 (29 U.S.C. Section 701 et seq.)

...

The undersigned hereby makes application to TDHCA for financial assistance, has read and understands the application instructions, and certifies that all information herein is true and correct to the best of their knowledge and belief.

\_\_\_\_\_  
Applicant's Signature

\_\_\_\_\_  
Applicant's Signature Authority Printed Name

\_\_\_\_\_  
Applicant's Signature Authority Title

\_\_\_\_\_  
Date

TEXAS DEPARTMENT OF HOUSING COMMUNITY AFFAIRS  
HOME INVESTMENT PARTNERSHIPS PROGRAM ("HOME")  
RESERVATION SYSTEM PARTICIPANT AGREEMENT

ADMINISTRATOR AGREEMENT # \_\_\_\_\_ - \_\_\_\_\_

WITH

APPLICANT NAME,  
ENTITY TYPE

CFDA 14.239 HOME INVESTMENT PARTNERSHIPS PROGRAM

Awarding Federal Agency: U.S. Department of Housing and Urban Development

Award Number: M- -SG-48-0100

Federal Award Year: 20

Pass Through Entity: Texas Department of Housing and Community Affairs

HUD Entity Type:

TDHCA Award Year: 20

This HOME ADMINISTRATOR AGREEMENT # \_\_\_\_\_ - \_\_\_\_\_ ("**Agreement**") in connection with approval to participate in the HOME Investment Partnerships Program Reservation System is made and entered into by and between the **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**, a public and official agency of the State of Texas, hereinafter referred to as ("**Department**,"), and Applicant Name, Entity Type, hereinafter referred to as Administrator, herein collectively referred to as ("**Parties**."). For and in consideration of the promises herein made, and the mutual benefits derived and to be derived, the Parties hereto agree and by execution hereof are bound to the mutual obligations and to the performance and accomplishment of the tasks which are the substance of this Agreement.

...

**ARTICLE IX**  
**GENERAL PROVISIONS**

**Section 9.4 Nondiscrimination, Fair Housing, Equal Access and Equal Opportunity**

A. Administrator shall ensure that no person shall, on the grounds of race, color, religion, sex, disability, familial status, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds provided under this Agreement. Administrator shall follow Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) and its implementing regulations at 24 CFR Part 146, Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§12131-12189; 47 U.S.C. 155, 201, 218 and 255) as implemented by U. S. Department of Justice at 28 CFR Parts 35 and 36, the Equal Opportunity in Housing (Executive Order 11063 as amended by Executive Order 12259) and its implementing regulations at 24 CFR Part 107 and The Fair Housing Act (42 U.S.C. 3601 et seq.), as implemented by HUD at 24 CFR Part 100-115.

B. Administrator shall include the substance of this section in all of its subcontracts.

...

IN WITNESS WHEREOF, each of the Parties has executed this Agreement as of the dates written below.

DEPARTMENT:

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

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

Its duly authorized officer or representative

Date: \_\_\_\_\_

ADMINISTRATOR:

Entity Name – all CAPS,  
Entity Type – lower case

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

Name, Title

Date: \_\_\_\_\_

3c

ORAL  
PRESENTATION

**BOARD REPORT ITEM**  
**INTERNAL AUDIT DIVISION**  
**October 13, 2016**

Report of the Meeting of the Audit Committee

**REPORT ITEM**

Verbal report.

**BACKGROUND**

4



**TO BE POSTED NOT LATER THAN THE  
THIRD DAY BEFORE THE DATE OF  
THE MEETING**

5a

**BOARD ACTION REQUEST**

**COMMUNITY AFFAIRS**

**OCTOBER 13, 2016**

Presentation, Discussion, and Possible Action to adopt an order to terminate the entity formerly known as Urban League of Greater Dallas and North Central Texas, now doing business as Urban Community Centers of North Texas, as a designated eligible entity under the Community Services Block Grant (“CSBG”) Act and to terminate contracts with that entity and further directing staff of the Department to initiate the necessary action to identify a replacement eligible entity and to take such other measures as may be lawfully available to provided for the delivery of Community Services Block Grant services to eligible Texans in Dallas County

**RECOMMENDED ACTION**

**WHEREAS**, a duly notice hearing was held at the State Office of Administrative Hearings on September 15, 2016 for the purposes of determining whether the eligible entity status of Urban Community Centers of North Texas (“UCC”), and its existing contracts under the Community Services Block Grant (“CSBG”) Program, should be terminated;

**WHEREAS**, UCC notified staff and the SOAH Administrative Law Judge (“ALJ”) that it would not appear at the hearing;

**WHEREAS**, the ALJ found that adequate notice of the hearing was given to UCC, that the notice of hearing contained the requisite language to support declaring a default on the part UCC, and that all allegations in the notice of hearing were thereby deemed admitted.

**WHEREAS**, the ALJ issued a Proposal for Decision (“PFD”) stating findings of fact and conclusions of law and recommending that the relief requested in the notice of hearing by the Department be granted on a default basis;

**WHEREAS**, the parties were given an opportunity to file exceptions and replies to the PFD and no parties filed exceptions; and

**WHEREAS**, the Department served notice of this meeting of the Board at which the Board could take possible action on a final order in this matter;

**NOW, therefore, it is hereby**

**RESOLVED**, that the final order, as presented at this meeting, is adopted by the Board, that UCC’s eligible entity status for CSBG funding, and UCC’s funding under any CSBG contract with the Department is hereby terminated, and that staff is directed to initiate the necessary actions to identify a replacement eligible entity and to take other measures as may be lawfully available to provide for delivery of CSBG services to eligible Texans in Dallas County; provided, however, that the effectiveness of these actions shall not occur until the Secretary of the US Department of Health

and Human Services has completed the review in accordance with 42 USC §9915(b) and has taken no action that would dictate a different outcome.

### **BACKGROUND**

Urban Community Center of North Texas F/K/A Urban League of Greater Dallas (Urban Community Center of North Texas) is an eligible entity that has received federal funding through the Community Services Block Grant for numerous years via the Texas Department of Housing and Community Affairs. New contracts are made yearly if the entity remains eligible. Funds are to be used in an appropriate manner for the purpose of reduction of poverty, the revitalization of low income communities, and the empowerment of low income families to become fully self-sufficient in the Dallas area.

On August 13, 14, 15, 2014, the Department conducted a monitoring overview of Urban Community Center of North Texas. On September 24, 2014, a monitoring report was issued to Urban Community Center of North Texas. During this monitoring overview the Department found 3 deficiencies that were required to be corrected. The following findings were made during the review:

- Noncompliance with the segregation of duties;
- Failure to submit its 2013 Fiscal Year Single Audit, which ultimately was six months delinquent in its submission; and
- A review of five (5) months of reported program expenditures revealed Urban Community Center of North Texas expended \$11,055.34 for various services, without performing a procurement process or executing a contract agreement with each vendor.

On November 16-19, 2015, the Department conducted a second monitoring overview of Urban Community Center of North Texas. On December 8, 2015, a monitoring report was issued to Urban Community Center of North Texas. During this monitoring overview the Department made numerous findings of violations of the law and contract requirements. The Department required a Quality Improvement Plan to be submitted within 60 days of the notice or February 8, 2016 along with all requested supporting documentation. The following findings were made during the review:

- Failure to document expenditure of program funds;
- Inaccurate monthly expenditure report reconciliation;
- Excessive cash on hand;
- Financial management system lacked proper access to records;
- Unable to provide selected bank reconciliations;
- Unable to provide documentation about indirect cost pool;
- Financial management system lacked support for report expenses;
- Lack of support documentation for selected expenditures;
- Unable to provide support documentation for salary expenses;
- Missing provision from Equal Employment Opportunity Clause;
- Expired Insurance;

- Lack of compliance with contractual requirements;
- Lack of Adherence to Contract and Federal Requirements – Single Audit Programs: CSBG and federally funded programs;
- Poor case management and internal controls over reporting;
- Unable to determine a compliant Board;
- Inaccurate monthly performance reporting; and
- Not meeting transition out of poverty goals.

The Quality Improvement Plan submitted by UCC did not correct the findings that were found during these reviews and a hearing was set by the Department to seek termination of UCC's eligible entity status.

After proper notice, an administrative hearing was held on September 15, 2016. The Respondent failed to appear at the hearing. The ALJ issued the attached PFD on a default basis. The PFD, dated September 16, 2016, deems admitted the facts in the notice of hearing and recommends that the Department be granted the relief sought in the notice of hearing based on Respondent's failure to appear at the SOAH hearing. Staff agrees with the findings of fact and conclusions of law in this PFD, and recommends the attached Final Order, reflecting the ALJ's recommendations, for approval.

As provided for in 42 USC §9915(b) an action to terminate is reviewable by the Secretary of the US Department of Health and Human Services.

Respondent's eligible entity status for CSBG funding and all contracts with the Department for CSBG funding should be terminated so that the funds intended for use by Texans in Dallas County can be put to use as soon as possible.

**SOAH DOCKET NO. 332-16-4230.HCA  
CSBG #61140001863**

<b>TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, Petitioner</b>	§ § § § § § § § § § §	<b>BEFORE THE STATE OFFICE</b>
v.		<b>OF</b>
<b>URBAN LEAGUE OF GREATER DALLAS AND NORTH CENTRAL TEXAS D/B/A URBAN COMMUNITY CENTERS OF NORTH TEXAS, Respondent</b>		<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

This matter was scheduled for hearing at the request of the Texas Department of Housing and Community Affairs (Department). Despite being sent proper notice, the Respondent did not appear and was not represented at the hearing. For the reasons set out in the Findings of Fact and Conclusions of Law, the Administrative Law Judge finds that the relief requested by the Department should be granted on a default basis.

**I. FINDINGS OF FACT**

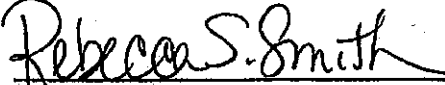
1. Notice of the hearing was mailed to the Respondent at its address of record at least 10 days before the scheduled hearing.
2. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short plain statement of the factual matters asserted.
3. The notice of hearing contained a statement in at least 12-point, boldface type that the factual allegations listed in the notice could be deemed admitted, and the relief sought in the notice of hearing might be granted by default against a party that failed to appear at the hearing.
4. The hearing was held and the record closed on September 15, 2016.
5. The Respondent did not appear at the scheduled hearing and was not represented at the hearing.

6. Before the hearing, Respondent's counsel filed a Notice of Inability to Appear.
7. The Department's staff moved for a default, which was granted.
8. The factual allegations set out in the notice of hearing are deemed admitted and are incorporated by reference into this Finding of Fact.

## II. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
2. The Department has jurisdiction over this matter.
3. Proper and timely notice was provided to the Respondent in accordance with Texas Government Code §§ 2001.051-.052.
4. The allegations in the notice of hearing were properly deemed admitted. 1 Tex. Admin. Code § 155.501.
5. Department's staff has established the basis for relief alleged in the notice of hearing, which is incorporated into this Conclusion of Law.
6. The referring agency is entitled to the relief requested in its notice of hearing.

**SIGNED September 16, 2016.**

  
REBECCA S. SMITH  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS



**DOCKET NO. 332-16-4230. HCA**

<b>TEXAS DEPARTMENT OF HOUSING</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>AND COMMUNITY AFFAIRS,</b>	§	
<i>Petitioner</i>	§	
	§	
<b>V.</b>	§	<b>OF</b>
	§	
<b>URBAN COMMUNITY CENTER OF</b>	§	
<b>NORTH TEXAS,</b>	§	
<i>Respondent</i>	§	<b>ADMINISTRATIVE HEARINGS</b>

**FINAL ORDER**

**General remarks and official action taken:**

On this date came on for consideration by the Texas Department of Housing and Community Affairs (Department), the matter of whether the eligible entity status for the Community Service Block Grant (CSBG) funding shall be terminated for Urban Community Center of North Texas (UCC). The Department alleges that violations were found of TEX. GOV'T CODE § 2105.007 and 10 TEX. ADMIN. CODE, Ch. 5, Subchapter B. The Department alleges that such conduct constitutes grounds for the termination of UCC's eligible entity status for CSBG funds pursuant to TEX. GOV'T CODE, Ch. 2105, Subchapter E.

The governing Board of the Texas Department of Housing and Community Affairs has jurisdiction over this matter pursuant to 42 U.S.C. §§9901-9915 of the CSBG Act; 10 TEX. ADMIN. CODE, CH.5, SUBCHAPTER B; TEX. GOVT. CODE ANN. §§ 2001.051-2001.902, 2105.001, 2105.008, 2105.201-2105.204, 2306.092, and 2306.097, Chapter 783, the Uniform Grant and Contract Management Act; 34 TEX. ADMIN. CODE § 20.431, and 1 TEX. ADMIN. CODE § 5.144 implementing the Uniform Grant Management Standards.

A contested case hearing was properly offered pursuant to TEX. GOV'T CODE. § 2105.204 on September 15, 2016. Urban Community Center of North Texas failed to appear and the relief requested was granted on a default basis. A proposal for decision was served on all parties, who were given the opportunity to file exceptions and replies as part of the administrative record. The Texas Department of Housing and Community Affairs after review and due consideration of the proposal for decision adopts all findings of fact and conclusions of law found by the Administrative Law Judge as follows:

**FINDINGS OF FACT**

1. Notice of the hearing was mailed to the Respondent at its address of record at least 10 days before the scheduled hearing.
2. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short plain statement of the factual matters asserted.

3. The notice of hearing contained a statement in at least 12-point, boldface type that the factual allegations listed in the notice could be deemed admitted, and the relief sought in the notice of hearing might be granted by default against a party that failed to appear at the hearing.
4. The hearing was held and the record closed on September 15, 2016.
5. The Respondent did not appear at the scheduled hearing and was not represented at the hearing.
6. Before the hearing, Respondent's counsel filed a Notice of Inability to Appear.
7. The Department's staff moved for a default which was granted.
8. The factual allegations set out in the notice of hearing are deemed admitted and are incorporated by reference into this Finding of Fact.

#### CONCLUSIONS OF LAW

The Administrative Law Judge made the following conclusions of law with which the Department agrees:

1. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to Tex. Gov't Code Ch. 2003.
2. The Department has jurisdiction over this matter.
3. Proper and timely notice was provided to the Respondent in accordance with Texas Government Code §§ 2001.051-.052.
4. The allegations in the notice of hearing were properly deemed admitted. 1 Tex. Admin. Code § 155.501.
5. Department's staff has established the basis for relief alleged in the notice of hearing, which is incorporated into this Conclusion of Law.
6. The referring agency is entitled to the relief requested in its notice of hearing.

#### FACTS DEEMED ADMITTED

The following facts were provided in the notice of hearing and have been deemed admitted based on the Respondent's failure to appear at the hearing.

1. Urban Community Center of North Texas F/K/A Urban League of Greater Dallas (Urban Community Center of North Texas) is an eligible entity that has received federal funding through the Community Services Block Grant for numerous years via the Texas Department of Housing and Community Affairs. New contracts are made yearly if the entity remains eligible. Funds are to be used in an appropriate manner for the purpose of reduction of poverty, the revitalization of low income communities, and the empowerment of low income families to become fully self-sufficient.
2. On or about January 1, 2013 Contract No. 61130001602 for a Community Service Block Grant was entered into between the Department and Urban Community Center of North Texas. The total amount of funds allotted was \$700,242. The amount was increased to \$1,383,734.00 through an amendment to the contract on March 1, 2013. This contract has since expired and no funding remains available.
3. On or about January 1, 2014 Contract No. 61140001863 for a Community Service Block Grant was entered into between the Department and Urban Community Center of North Texas. The total amount of funds allotted was \$792,618.00. The amount was increased to \$2,804,183.00 through an amendment to the contract on April 1, 2014. This contract has since expired and no funding remains available.
4. On or about January 4, 2015 Contract No. 61150002198 for a Community Service Block Grant was entered into between the Department and Urban Community Center of North Texas. The total amount of funds allotted was \$2,127,492.00. The amount was increased to \$2,836,657 through an amendment to the contract on July 1, 2015. Based on a 2<sup>nd</sup> amendment this contract expired on May 31, 2016.
5. On or about January 1, 2016 Contract No. 61160002426 for a Community Service Block Grant was entered into between the Department and Urban Community Center of North Texas. The total amount of funds allotted was \$708,869.00. The amount was increased to \$1,514,524.00 through an amendment to the contract on February 1, 2016. Based on a 2<sup>nd</sup> amendment the amount was increased to \$2,271,786.00 on April 1, 2016. This contract expires on December 31, 2016.
6. On August 13, 14, 15, 2014, the Department conducted a monitoring overview of Urban Community Center of North Texas. On September 24, 2014, a monitoring report for CSBG Contract 61140001863, and 61130001602 was issued to Urban Community Center of North Texas. During this Monitoring Overview the Department found 3 deficiencies that were required to be corrected on or before October 25, 2014. The following findings were made during the review:
  - Noncompliance with the segregation of duties;
  - Failure to submit its 2013 Fiscal Year Single Audit, and was six months delinquent in its submission of the Audit Certification Form; and
  - A review of five (5) months of reported program expenditures revealed ULGD expended \$11,055.34 for various services, without performing a procurement process or executing a contract agreement with each vendor.

7. On October 25, 2014, the Urban Community Center of North Texas provided a response to the CSBG Monitoring Report created by the Department. Urban Community Center of North Texas provided a response to all findings; however, none of the responses met the requirements of the Department.
8. The Single Audit Report for the year ended October 31, 2013, was completed on March 20, 2015. This audit was due by July 31, 2014, and was submitted approximately 8 months late. The audit discovered material weaknesses and significant deficiencies in the entities internal control over financial reporting.
9. On November 16-19, 2015, the Department conducted a second monitoring overview of Urban Community Center of North Texas. On December 8, 2015, a monitoring report for CSBG Contract 61140001863 was issued to Urban Community Center of North Texas. During this Monitoring Overview the Department made numerous findings of violations of the law and contract requirements. The Department required a Quality Improvement Plan to be submitted within 60 days of the notice or February 8, 2016 along with all requested supporting documentation. The following findings were made during the review:
  - Failure to document expenditure of program funds;
  - Inaccurate monthly expenditure report reconciliation;
  - Excessive cash on hand;
  - Financial management system lacked proper access to records;
  - Unable to provide selected bank reconciliations;
  - Unable to provide documentation about indirect cost pool;
  - Financial management system lacked support for report expenses;
  - Lack of support documentation for selected expenditures;
  - Unable to provide support documentation for salary expenses;
  - Missing provision from Equal Employment Opportunity Clause;
  - Expired Insurance;
  - Lack of compliance with contractual requirements;
  - Lack of Adherence to Contract and Federal Requirements – Single Audit Programs: CSBG and federally funded programs;
  - Poor case management and internal controls over reporting;
  - Unable to determine a compliant Board;
  - Inaccurate monthly performance reporting; and
  - Not meeting transition out of poverty goals.
10. On February 8, 2016, Urban Community Center of North Texas submitted a Quality Improvement Plan for the Department to review. Additional supporting documents were sent to the Department for review over the next month.
11. On March 10, 2016, the Department responded to the February 8, 2016 letter, stating that after a review of Urban Community Center of North Texas's Quality Improvement Plan and supporting documents only one item regarding the *Equal Employment Opportunity Clause* was resolved, and the finding regarding *not meeting transition out of poverty*

*goals* was closed. All remaining findings were found to be unresolved. The Department also stated that after a year of repeated training and assistance they did not believe additional training would resolve the issues at hand. It was determined that unless additional review of documentation revealed corrected findings the Department would be seeking a termination of Urban Community Center of North Texas's eligible entity status.

12. On April 4, 2016 the Department notified the Secretary of the U.S. Department of Health and Public Service of the reasons for the determination that additional training and technical assistance are not appropriate; and the reasons for proceeding with termination proceedings against Urban Community Center of North Texas's eligible entity status, pursuant to 10 TEX. ADMIN. CODE § 5.206(a)(3) and 42 USC § 9915(a)(3)(B).
13. On April 14, 2016, the Department notified Urban Community Center of North Texas of the Department's intention to terminate their eligible entity status and their right to request a hearing pursuant to 10 TEX. ADMIN. CODE § 5.206(a)(5) and 42 USC § 9915(a)(5).
14. On May 8, 2016, Urban Community Center of North Texas requested a hearing before the State Office of Administrative Hearings.

#### DEPARTMENT'S CONCLUSIONS OF LAW

The following legal allegations were presented in the notice of hearing and based on the facts that were deemed admitted the Department shall adopt the following as additional conclusions of law.

1. Pursuant to 42 U.S.C. § 9908(b)(8) the state may determine that cause exists for the termination of the funding received by an entity through a community service block grant. 42 U.S.C. § 9908(c)(2) defines "cause" for the purpose of termination, to include the failure of an eligible entity to comply with the terms of an agreement or a state plan or to meet a state requirement as described in Section 9915.
2. After meeting all requirements pursuant to 42 U.S.C. § 9915(a) the department has initiated proceedings to terminate the designation of funding to Urban Community Centers of North Texas based on their failure to correct deficiencies identified by the Department.
3. Pursuant to 10 TEX. ADMIN. CODE § 5.206 the Department found deficiencies that needed to be corrected that were in violation of the terms of the agreement, the CSBG Act, and appropriate standards and goals; the Department did not accept Urban Community Centers of North Texas's Quality Improvement Plan to resolve the deficiencies; and on that basis is seeking termination of their contracts and funding to be received.
4. Pursuant to 10 TEX. ADMIN. CODE § 5.3(b) Urban Community Centers of North Texas failed to maintain adequate separation of duties, by allowing more than two of the following functions described in items (1) - (5) to be performed by a single individual: (1) Requisition authorization; (2) Encumbrance into software; (3) Check creation and/or

- automated payment disbursement; (4) Authorized signature/electronic signature; and (5) Distribution of paper check.
5. Urban Community Centers of North Texas violated TEX. GOVT' CODE § 2105.007 by failing to provide the agency with evidence that an annual audit of the provider has been performed.
  6. Urban Community Centers of North Texas violated 10 TEX. ADMIN. CODE § 1.3(c) by failing to have a Single Audit or program-specific audit conducted and failing to submit the audit to the Department the earlier of thirty (30) days after receipt of the auditor's report or nine (9) months after the end of its respective fiscal year.
  7. Urban Community Centers of North Texas violated 10 TEX. ADMIN. CODE § 5.10 by failing to perform a procurement process when hiring management consulting; financial consulting; IT maintenance; security, gardening and nutrition, and maintenance and custodial services.
  8. Urban Community Centers of North Texas violated 10 TEX. ADMIN. CODE § 5.7 by failing to maintain adequate fidelity bond coverage or insurance covering general liability and director and officers insurance coverage.
  9. Urban Community Centers of North Texas violated 10 TEX. ADMIN. CODE § 5.10(g)(6)(E)(i) by failing to establish, maintain, and utilize internal control systems and procedures sufficient to prevent, detect, and correct incidents of waste, fraud, and abuse in all Department funded programs and to provide for the proper and effective management of all program and fiscal activities funded by the contract.
  10. Urban Community Centers of North Texas violated 10 TEX. ADMIN CODE § 5.213(d) by failing to have a board selected according to a tripartite structure.
  11. Urban Community Centers of North Texas violated 10 TEX. ADMIN. CODE § 5.216 (a) and (b) based on the fact that their board did not comply with the minimum board required responsibilities.
  12. Urban Community Centers of North Texas violated 10 TEX. ADMIN CODE § 5.212(a)(1) and § 5.213 (a) by failed to meet the General Board requirements by failing to be involved in the development, planning, implementation and evaluation of the programs serving the low income sector.
  13. Urban Community Centers of North Texas violated 10 TEX. ADMIN. CODE § 5.207(j)(3)(K) by failing to maintain a system to document income for persons that have maintained an income level above 125% of the poverty guideline.
  14. Pursuant to TEX. GOVT' CODE § 2105.008, Chapter 783 and 10 TEX. ADMIN. CODE § 5.3 Urban Community Centers of North Texas failed to comply with the uniform administrative requirements set forth in the Uniform Grant Management Standards. Pursuant to 34 TEX. ADMIN. CODE § 20.431 and 1 TEX. ADMIN. CODE § 5.144 the

Uniform Grant Management Standard are adopted rules. The following violations of the Uniform Grant Management Standards were discovered:

- a. Urban Community Centers of North Texas violated Part III, Subpart C, \_\_.20 of the Uniform Grant Management Standards by failing to meet the standards for financial management systems.
- b. Urban Community Centers of North Texas violated Part III, Subpart C, \_\_.22 of the Uniform Grant Management Standards by failing to demonstrate grant funds were spent on allowable costs.
- c. Urban Community Centers of North Texas violated Part III, Subpart C, \_\_.26 and Part IV, Subpart B and C of the Uniform Grant Management Standards by failing to submit the required annual audit in accordance with the Single audit Act and revised OMB Circular A-133 within the earlier of 30 days after receipt of the auditor's report or 13 months after the end of the audit period.
- d. Urban Community Centers of North Texas violated Part III, Subpart C, \_\_.42 of the Uniform Grant Management Standards by failing to meet the retention and access requirements for records.

IT IS THEREFORE ORDERED that the funding and eligible entity status for Urban Community Centers of North Texas, including Community Service Block Grant Contract No. 61130001602, Contract No. 61140001863, Contract No. 61150002198, and Contract No. 61160002426 is hereby terminated.

*Approved by the Governing Board of TDHCA on \_\_\_\_\_, 2016.*

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

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



**THE STATE OF TEXAS** §  
§  
**COUNTY OF \_\_\_\_\_** §

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

(Seal)

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

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

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

(Seal)

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

5b

BOARD ACTION REQUEST  
COMMUNITY AFFAIRS DIVISION  
OCTOBER 13, 2016

Presentation, Discussion, and Possible Action regarding termination of the Program Year ("PY") 2016 Low Income Home Energy Assistance Program ("LIHEAP") Comprehensive Energy Assistance Program ("CEAP") contract to Community Services Agency of South Texas ("CSA"); award of 24.99% of their PY 2016 CEAP contract for the specific service areas covered by CSA to an alternate provider; 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 provider, through release and subsequent award of a Request for Application ("RFA") or through a direct designation, to temporarily and permanently administer the CEAP in Dimmit, La Salle, and Maverick counties, the area served by CSA

RECOMMENDED ACTION

WHEREAS, the PY 2016 CEAP contract ("Contract") for CSA was effective January 2016 and totaled an award of \$730,449;

WHEREAS, staff has recently received complaints from clients in the area that CSA is not providing utility assistance and in some cases of households being at risk of disconnection of utilities due to lack of payment by CSA, and CSA to date has drawn only \$116,711 (16%) in funds under this contract;

WHEREAS, consistent with the terms of the contract CSA was notified on September 20, 2016, of a contract deficiency, which is that a single audit required by both state and federal regulations has not been provided to the Texas Department of Housing and Community Affairs (the "Department") by the deadline required and that CSA is subject to potential suspension and/or termination of its Contract;

WHEREAS, the prompt distribution of program funds is critical as these funds provide utility payment assistance to vulnerable households and Tex. Gov't Code §2105.201 authorizes the Department to redistribute up to 24.99% of the 2016 formula-designated CEAP amount for this area to an alternate provider;

WHEREAS, in order to terminate the contract and identify and award the remaining balance of unexpended funds in excess of the 24.99% of the 2016 formula-designated CEAP fund amount, and identify one or more permanent alternate providers to provide timely CEAP services in the counties covered by the area, Tex. Gov't Code §2105.203 requires that CSA be given 30 days notice relating to the reduction beyond 24.99% of the 2016 CEAP contract and §2105.301 requires that CSA be given 30 days notice relating to the termination of the contract; and

WHEREAS, the Department is authorized to issue Requests for Applications ("RFAs") to identify an alternate temporary and/or permanent provider to provide CEAP services, and may directly select a temporary alternate provider;

NOW, therefore, it is hereby

RESOLVED, that in order to maintain CEAP continuity of services to eligible low-income households in the service area, and to strive to fully expend funds, up to 24.99% of the PY 2016 CEAP contract for the specific service area covered by CSA in the approximate amount of \$182,539, will be awarded and immediately provided as an interim award for up to 10 months to Community Council of South Central Texas ("CCSCT") for Dimmit, La Salle, and Maverick counties;

FURTHER RESOLVED, that the Board instructs Department staff that CSA be given 30 days notice relating to the termination of the remainder of the Contract and their discontinuation as the CEAP network provider;

FURTHER RESOLVED, that the Department is authorized to release an RFA to identify potential temporary or permanent entities to administer the remainder of the PY 2016 CEAP contract, and which when identified will be presented to the Board, after the 30-day notice period has passed, and possibly to be designated as the CEAP network provider for the benefit of eligible low-income households in the service area; 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 take such actions and execute such documents that they or any of them may deem necessary to effectuate the use of funds in this manner.

### BACKGROUND

The PY 2016 CEAP contract for CSA was effective January 2016. Since that time, only \$116,711 – or 16% - has been drawn. Staff has received recent complaints that services are not being provided. Additionally, there have been ongoing instances of compliance findings that have not been resolved within the corrective action period. The most recent monitoring review identified repeat findings and deficiencies, and staff identified CEAP disallowed costs that require repayment to the Department, which have not been repaid. Significant and ongoing training has been provided, and no significant adjustments have been made responsive to that training. Staff has determined that no further training and technical assistance will help to remedy the continued procurement, case management, and inadequate financial management deficiencies identified that remain uncorrected and has notified the U.S. Department of Health and Human Services of the determination of such.

A significant concern with CSA is also that the single audit that is required by 10 TAC §1.3, 2 CFR Part 200, Subpart F, and the Uniform Grant Management Standards, has not been provided. The audit was required to be provided to the Department no later than August 31, 2016. This lack of an audit is a deficiency under Section 7A of the 2016 CEAP contract. On September 20, 2016, CSA was notified of this deficiency in the contract and of the possible resulting suspension and/or termination of the 2016 CEAP Contract if the deficiency was unresolved.

Staff is concerned that area households are being negatively impacted by any delay in contract services. In an effort to ameliorate that concern and promote timely delivery of services to the low income households in the service areas of CSA, staff believes that steps should be taken to allow for the temporary and permanent award of 2016 CEAP funds to one or more alternate providers. Up to 24.99% of the PY 2016 CEAP award can be provided to alternate providers.<sup>1</sup> Community Council

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<sup>1</sup> Nothing in this BAR is intended to impact any rights or remedies CSA or the Department may have in any current contract.

of South Central Texas ("CCSCT") has indicated its willingness to accept these funds to provide services temporarily in the specific area.

On October 5, 2016, the Department received correspondence from CSA (attached). All issues remain outstanding. CSA's letter addressed 4 issues: the Department's August 30, 2016, letter, the HOME loan on Villa De Reposo, late submittal of the 2015 Audit, and issues related to findings in the 2014 Audit.

The Department's August 30, 2016, letter identified 8 unresolved deficiencies. CSA's letter indicates that they are working, but have not yet resolved, one of those issues. The particular issue that they are working on relates to CSA drawing "advances" of CEAP funds without incurred or obligated expenses.

The HOME loan on Villa de Reposo was identified as part of the previous participation review. CSA owns a HOME multifamily rental development that has been the subject of an agreed final order because of noncompliance. In addition, the HOME loan has a past due balance of \$551,351.71. CSA is working on, but has not resolved, this issue.

CSA's fiscal year end November 30, 2015, Single Audit is delinquent. The Department appreciates notification of the late submittal allegedly due to employee theft. The Department does not have the authority to grant an extension or waive submission requirements for the federally required audit.

CSA's correspondence notes that they have received the Department's management decision letter sustaining the auditor's findings and closing the Department's required review of CSA's 2014 Single audit. The 2015 Single Audit will address previous year's findings.

In order to identify one or more providers to accept the remainder (the amount in excess of the 24.99%) of the PY 2016 CEAP funds and become the permanent provider of CEAP for this area, staff must do so consistent with the process required by Tex. Gov't Code §2105.301, which requires that the Department provide CSA a written notification of termination and nonrenewal of the LIHEAP CEAP contract. Staff is requesting the authorization to proceed with the release of an RFA prior to the expiration of the 30-day period to expedite staff's ability to identify and ultimately select a potential alternate provider for the CEAP program for Dimmit, La Salle, and Maverick counties. While staff would release the RFA during the 30-day period, no recommendation would be made to the Board for such a permanent alternate provider until such period had been completed.



Community Services Agency of South Texas, Inc.  
P.O. Box 488  
910 S. 5<sup>th</sup> Street  
Carrizo Springs, TX 78834-6488

Main Office (830) 876-5219 \* Fax (830) 876-5280 \* E-Mail: csadojeda@sbcglobal.net

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October 5, 2016

Michael De Young, Director  
Community Affairs Division  
TDHCA  
P.O. Box 13941  
Austin, Texas 78711-3941

Re: Community Services Agency of South Texas, Inc.

Dear Mr. De Young:

I am writing to give you an update on the steps we are taking to comply with the requests which have been made of our agency regarding some out of compliance issues.

1. **Response to August 30, 2016 Monitoring Letter** We are working with TDHCA staff to comply with Item Number 10 of the monitoring report which instructs us to close out the 2015 CEAP contracts. We have been working with TDHCA staff on the close out of all the contracts and we have almost completed all of the required MERs. In fact some of our staff members went to the TDHCA office in Austin to work on the close out of those programs. Once we have closed out the contracts we will have complied with the instructions which were given to us and we can submit the required response. This information was provided to TDHCA staff so they could know the status of our response.

2. **Villa de Reposo Encinal Home Loan Program** We are working with Raquel Morales and Matt Zimmerman on resolving the loan issues with the HOME Program in Encinal. Mr. Morales has requested that we make a recommendation to her and we have sent our proposed recommendations to her. Attached is our communication to Ms. Morales. We still have some more work to do on this issue but we are working with TDHCA staff to resolve the issue. We feel confident that we will eventually reach a solution which will be acceptable to Ms. Morales but it will take some further negotiations.

3. **Late submittal of the 2015 audit** We were the victims of theft by one of our staff members in late July when the 2015 audit was in process. We had to stop the audit process to work with the law enforcement authorities to help in the investigation of identifying the guilty party. The investigation took more time than we had expected but we were able to identify the guilty party. However we did not finish with the audit process by the required date of August 31, 2016. The

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Page 2 Michael De Young

audit had to be rescheduled for November 2016. We were instructed by the audit division to send a letter to our program monitor to inform them of this situation and the letter is attached.

4. **Issues related to findings in the 2014 Audit.** There were some issues brought up regarding the 2014 audit. I am attaching a copy of the 2014 Audit Close out letter which we received from TDHCA. The audit close out letter has been previously submitted to other TDHCA departments so I don't understand the issues been raised on the 2014 audit since the audit was considered closed by TDHCA.

I wanted to give you this update because although we have not had any communication with you regarding these issues we have been working with TDHCA staff to resolve the problems. We have not neglected our contractual obligations by refusing to work with TDHCA staff members to resolve these issues. We wanted you to be informed that we are making a strong effort to resolve all of the issues and with the help we are receiving from TDHCA staff they will be resolved.

If you need further information please feel free to call me.

Respectfully yours,

David Ojeda Jr.  
Executive Director

Copy: Brooke Boston  
Patricia Murphy.



5c

**BOARD ACTION REQUEST**

**COMPLIANCE DIVISION**

**OCTOBER 13, 2016**

Presentation, Discussion, and Possible Action regarding approval to proceed with termination of the Eligible Entity Status and the contract for Community Services Block Grant contract funds with Community Services Agency of South Texas

**RECOMMENDED ACTION**

**WHEREAS**, Community Services Agency of South Texas (“CSA”) is the designated Eligible Entity that administers the Community Services Block Grant Program (“CSBG”) for Dimmit and LaSalle counties;

**WHEREAS**, the Department monitored CSA for compliance with the requirements of the Comprehensive Energy Assistance Program (“CEAP”) and CSBG in February 2016 and found multiple, repeat findings that indicate CSA either cannot or will not comply with program requirements;

**WHEREAS**, CSA has been provided ample training and technical assistance, which should have been implemented in order to operate in an effective and compliant manner, and has been notified of deficiencies and instructed to correct them and has failed to do so; and,

**WHEREAS**, in order to terminate the Eligible Entity Status and CSBG contract with CSA the Department must comply with the procedural requirements of 42 U.S.C. §9915 and Tex. Gov’t Code §2105.302;

**NOW, therefore, it is hereby**

**RESOLVED**, that the Board instructs staff to proceed in accordance with applicable state and federal law with the termination of the Eligible Entity Status and contract for Community Services Block Grant Funds with Community Services Agency of South Texas.

**BACKGROUND**

The Department monitored CSA in February 2016. Ten deficiencies and two concerns were identified. The review resulted in \$86,606.75 in disallowed costs. CSA has indicated that they do not have the nonfederal resources to repay these disallowed amounts. CSA’s response acknowledges the noncompliance but also indicates a very basic lack of understanding and disregard for federal Office of Management and Budget (“OMB”) requirements.

The deficiencies included a lack of a legally sufficient cost allocation plan, lack of support for reported expenses, lack of support for salaries and wages, lack of procurement procedures, failure to obtain prior approval for expenditure of funds, insufficient case management process, noncompliance with Board of director requirements, unallowable expenses, noncompliance with denial procedures, unsupported claimed expenditures. The concerns were program implementation

deficiencies, inappropriate prioritization process, noncompliance with Limited English Proficiency requirements, limitations in fully implementing CEAP, incorrect income calculations, lack of documented weatherization referrals, and failure to document federal debarment verification.

Significant and ongoing training has been provided, and no significant adjustments have been made responsive to that training. Staff has determined that no further training and technical assistance will help to remedy the continued procurement, case management, and inadequate financial management deficiencies identified that remain uncorrected.

A significant concern with CSA is also that the single audit that is required by 10 TAC §1.3, 2 CFR Part 200, Subpart F, and the Uniform Grant Management Standards, has not been provided. The audit was required to be provided to the Department no later than August 31, 2016. In order to terminate their eligible entity status and identify a replacement provider to offer CSBG services in the community, the requirements of both the CSBG Act and Tex. Gov't Code §2105.302 must be followed. Staff has already sent notice to CSA and the U.S. Health and Human Services regarding staff's recommendation to proceed with termination proceedings; neither agency has responded.

5d

BOARD ACTION REQUEST  
COMMUNITY AFFAIRS DIVISION  
OCTOBER 13, 2016

Presentation, Discussion, and Possible Action regarding suspension of the Program Year ("PY") 2016 Low Income Home Energy Assistance Program ("LIHEAP") Community Energy Assistance Program ("CEAP") contract to Community Services, Inc. ("CSI"); award of 24.99% of their PY 2016 CEAP contract for the specific service areas covered by CSI to alternate providers; the commencement of the 30-day notification period required by Tex. Gov't Code §2105.203 and §2015.301; and the authorization of staff to identify a provider, through release and subsequent award of a Request for Application ("RFA") or through a direct designation, to temporarily and permanently administer the CEAP in Anderson, Collin, Denton, Ellis, Henderson, Hunt, Kaufman, Navarro, Rockwall, and Van Zandt counties, the area served by CSI

RECOMMENDED ACTION

WHEREAS, the PY 2016 CEAP contract ("Contract") for CSI was executed in June 2016, and totaled an award of \$3,810,732;

WHEREAS, staff has received over the last several months, and continues to receive, complaints from clients in the area that CSI is not providing utility assistance, and CSI to date has drawn only \$605,471 (16%) in funds under this Contract;

WHEREAS, consistent with the terms of the contract CSI was notified on September 16, 2016, of a contract deficiency, which is that a single audit as required by both state and federal requirements has not been provided to the Department and that CSI is subject to potential termination of its contract;

WHEREAS, staff has provided extensive technical assistance and training in an effort to promote delivery of services by CSI;

WHEREAS, the prompt distribution of program funds is critical as these funds provide utility payment assistance to vulnerable households and Tex. Gov't Code §2105.201 authorizes the Texas Department of Housing and Community Affairs (the "Department") to redistribute up to 24.99% of the 2016 formula-designated CEAP amount for this area to an alternate provider;

WHEREAS, in order to terminate the contract and identify and award the remaining balance of unexpended funds in excess of the 24.99% of the 2016 formula-designated CEAP fund amount and identify one or more permanent alternate providers to provide timely CEAP services in the counties covered by the area, Tex. Gov't Code §2105.203 requires that CSI be given 30 days notice relating to the reduction beyond 24.99% of the CEAP contract and §2105.301 requires that CSA be given 30 days notice relating to the termination of the contract; and

WHEREAS, the Department is authorized to issue Requests for Applications ("RFAs") to identify an alternate temporary and/or permanent provider to provide CEAP services, and may directly select a temporary alternate provider;

NOW, therefore, it is hereby

RESOLVED, that in order to maintain CEAP continuity of services to eligible low-income households in the service area, and to strive to fully expend funds, up to 24.99% of the formula based award for the specific service area covered by CSI in the approximate amount of \$952,301 will be awarded and immediately provided as an interim award for up to 10 months to: Greater East Texas Community Action Program ("GETCAP") in the amount of \$277,373 for Anderson, Henderson, Kaufman and Van Zandt counties; to Texoma Council of Governments ("Texoma") in the amount of \$543,053 for Collin, Denton, Hunt, and Rockwall counties; and to Economic Opportunity Advancement Corporation of Planning Region XI ("EOAC") in the amount of \$131,875 for Ellis and Navarro counties;

FURTHER RESOLVED, that the Board instructs Department staff that CSI be given 30 days notice relating to the termination and possible removal of the remainder of the Contract and their discontinuation as the CEAP network provider;

FURTHER RESOLVED, that the Department is authorized to release an RFA to identify potential temporary or permanent entities to administer the remainder of the Contract, and which when identified will be presented to the Board, after the 30-day notice period has passed, and possibly to be designated as the CEAP network provider for the benefit of eligible low-income households in the service areas; 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 take such actions and execute such documents that they or any of them may deem necessary to effectuate the use of funds in this manner.

#### BACKGROUND

The PY 2016 CEAP contract for CSI was executed in June 2016. Since that time, only 16% of the contract has been drawn. Staff has received recent complaints that services are not being provided. Additionally, there have been ongoing and repeated instances of compliance findings that have not been resolved within the corrective action period. The organization has had significant organizational challenges and the weatherization program for this area was recently voluntarily relinquished. The Department receives repeated calls, approximately five to seven calls per day, that CEAP clients are being turned away for assistance or are unable to garner access to CSI caseworkers. As of this time, CSI does not have a current Single Audit.

The most recent monitoring review indicates ongoing non-compliance with disallowed ineligible costs, unsupported administrative costs, cost allocation and overall fiscal capacity issues. At this time, CSI does not have a current audit, has multiple unresolved compliance issues, and TDHCA staff is receiving multiple calls daily about service terminations, inability to contact CSI staff and at least one utility vendor is no longer accepting pledges from CSI due to the ongoing issues.

Staff is concerned that area households are being negatively impacted by any delay in contract services. In an effort to ameliorate that concern and promote timely delivery of services to the low income households in the service area of CSI, staff believes that steps should be taken to allow for the temporary and permanent award of 2016 CEAP funds to one or more alternate providers. Up to 24.99% of the PY 2016 CEAP contract can be provided to alternate providers. GETCAP, Texoma

and EOAC have indicated their willingness to accept these funds to provide services temporarily in the specific area.

In order to identify one or more providers to accept the remainder (the amount in excess of the 24.99%) of the PY 2016 CEAP formula awarded funds and become the permanent provider of CEAP for this area, staff must do so consistent with the process required by Tex. Gov't Code §2105.301, which requires that the Department provide CSI a written notification of termination of the LIHEAP CEAP awards. Staff is requesting the authorization to proceed with the release of an RFA prior to the expiration of the 30-day period to expedite staff's ability to identify and ultimately select one or more potential alternate providers for the CEAP program for Anderson, Collin, Denton, Ellis, Henderson, Hunt, Kaufman, Navarro, Rockwall, and Van Zandt counties, the area served by CSI. While staff would release the RFA during the 30-day period, no recommendation would be made to the Board for such a permanent alternate provider until such period had been completed.



5e

**BOARD ACTION REQUEST**

**COMPLIANCE DIVISION**

**OCTOBER 13, 2016**

Presentation, Discussion, and Possible Action on waiver of 10 TAC §1.304(b) and appeal of Executive Award Review Advisory Committee recommendation not to make a 2017 Comprehensive Energy Assistance Program award to Community Services, Inc. and enter into a contract for same

**RECOMMENDED ACTION**

**WHEREAS**, the Department is a pass-through entity for the U.S. Department of Health and Human Services Low Income Home Energy Assistance Program (“LIHEAP”) funds which are awarded to a statewide network of governmental entities and non-profits to administer the Comprehensive Energy Assistance Program (“CEAP”), a program which helps low income Texans pay utility bills;

**WHEREAS**, Community Services Inc., (“CSI”) a non-profit located in Corsicana, is currently the network provider of CEAP for Anderson, Collin, Denton, Ellis, Henderson, Hunt, Kauffman, Navarro, Rockwall, and Van Zandt counties;

**WHEREAS**, CSI is also an eligible entity administering the Community Services Block Grant (“CSBG”) in those same counties and has several serious, longstanding, and uncorrected deficiencies with regard to both CSBG and CEAP, and, therefore, the Executive Award Review Advisory Committee (“EARAC”) has recommended that the Board not approve the 2017 CEAP award and contract to CSI;

**WHEREAS**, CSI has been provided the opportunity to propose terms and conditions for EARAC’s consideration but has not proposed any such conditions and the nature and scope of CSI’s problems are such that EARAC is not confident that it could propose conditions that would adequately mitigate the concerns posed by CSI; and,

**WHEREAS**, CSI filed an appeal after the deadline established in 10 TAC §1.304(b) but has not resolved the deficiencies or provided the Department with evidence that it understands its problems fully and has a workable plan to address them, a plan that would also provide a high level of confidence that if it were to continue to administer CEAP it could do so in an effective and compliant manner;

**NOW, therefore, it is hereby**

**RESOLVED**, that the waiver of 10 TAC §1.304(b) is granted, forming a necessary basis for taking this action, and the appeal of EARAC’s recommendation and the 2017 CEAP award and contract to CSI is denied.

## **BACKGROUND**

Community Services Inc. (“CSI”) is a non-profit corporation and a Community Action Agency headquartered in Corsicana. CSI serves Anderson, Collin, Denton, Ellis, Henderson, Hunt, Kauffman, Navarro, Rockwall, and Van Zandt counties with programs administered by the Department as a pass-through entity receiving federal program funds. CSI has historically been a network provider of the Community Services Block Grant (“CSBG”), CEAP and weatherization programs through both the Department of Energy (“DOE”) and the LIHEAP. Effective April 29, 2016, it voluntarily relinquished weatherization assistance programs funded under the DOE weatherization assistance program (“WAP”) and the LIHEAP funded WAP. High level summary information regarding the compliance history of CSI is provided below.

### **TDHCA monitoring**

In November 2014, the Department monitored CSI for compliance with the requirements of CEAP, CSBG, and WAP under both DOE and LIHEAP. That review resulted in five findings, five concerns, and two observations. The findings were lack of a legally sufficient cost allocation plan, insufficient documentation of expenditures, failure to reconcile the general ledger with the monthly expenditure reports, lack of a procurement procedure and a resulting failure to conduct lawful procurements (rendering costs for certain goods and services ineligible), and noncompliance with a number of board requirements. The concerns were insufficient support for salaries and wages, lack of written contracts, noncompliance with program requirements, inadequate weatherization work (work that did not meet required standards), and a failure to conduct procurement in a manner that utilized free and open competition. The Department also observed that CSI was not adequately assessing houses prior to commencing weatherization activities, and that some board materials and practices called into question whether it was adhering to Texas Open Meetings Act requirements. The review was closed in October 2015 after review of four responses from CSI, and repayment of \$4,175.20 in disallowed costs.

In December 2015, the Department again monitored CSI for the requirements of CEAP, CSBG and WAP under both DOE and LIHEAP. That review resulted in nine findings, five concerns and four observations. The findings were unsupportable overhead expenses, a board of directors that did not comply with the requirements of the CSBG Act, unallowable expenditures (under the CSBG program), expired lead safe certifications, restriction of free and open competition, lack of procurement, failure to verify if subawards were made to federally debarred entities, failure to obtain prior approval for expenditure of funds, and lack of support for salaries and wages. The concerns were procurement process deficiencies, lack of program expenditure awareness, high administrative expenditure ratio, program implementation deficiencies, failure to submit inventory forms, and inadequate procurement procedures. The Department observed that many of these issues were repeat findings, that the agency was not charging mileage correctly to the grants, there were variances between their general ledger and the agency’s monthly expenditure reports, and that the

accounting policies and procedures manual had not been updated since 2002. Some, but not all of the findings identified in this monitoring have been resolved.

In February, April, and May 2016, unit inspections for homes charged to LIHEAP and DOE WAP were inspected. The inspections revealed seriously deficient and potentially dangerous property conditions, resulting in disallowed costs of \$57,259.63, and thereafter CSI voluntarily relinquished the weatherization programs and contracts for both DOE WAP and LIHEAP WAP.

In June 2016, the Department again monitored for the requirements of CEAP and CSBG. During that review, the Department was able to close some previously identified findings, concerns, and observations but was not able to conclude that CSI was a fundamentally compliant and well run agency. The current status is that CSI owes \$246,218.27 in disallowed costs, and they have what staff views as unsupportable overhead expenses and no clear plan to timely resolve either of these issues.

The Department, throughout this time, has continued to receive an extremely high level of complaints and enquiries about CSI's non-responsiveness in matters of utility assistance and other direct assistance, despite the availability of CEAP and CSBG funds for CSI to administer. This has resulted in at least 1 utility provider refusing to accept pledges from CSI and at least 2 discontinuing their contract with CSI to provide their own utility assistance. CSI has made radical changes in its staffing levels and has had its Executive Director also serving as the agency's chief financial officer. It has depleted its unrestricted (nonfederal) funds.

### **Single Audit**

On August 5, 2015, the Department received CSI's Single Audit for Fiscal Year ending October 31, 2014. The auditor identified material weaknesses and significant deficiencies. The auditor identified 11 findings: departure from generally accepted accounting principles, lack of appropriate documentation, lack of adherence to written policies and procedures, fixed asset recognition and reconciliation, account reconciliation/review, transaction coding, lack of documentation, lack of payroll documentation, cash management, indirect cost allocation method and eligibility income documentation. The unresolved issues and disallowed amounts from the single audit were incorporated into the letter sent after the June 2016 monitoring visit.

The Single Audit for fiscal year ending October 31, 2015, was due no later than August 1, 2016. The completed audit report has not been received.

On July 10, 2016, CSI was notified that the Executive Award Review Advisory Committee ("EARAC") would be reviewing CSI's previous participation in conjunction with possible 2017 awards. CSI responded to EARAC on July 14, 2016, and stated that corrective action materials had been submitted to the Compliance Division. EARAC, after an in depth review of the situation at CSI, voted to recommend that the Board of TDHCA deny the award of 2017 CEAP funds to CSI. CSI was notified of that

recommendation on September 7, 2016, and, in accordance with rules, provided CSI notice of an opportunity to propose terms and conditions for consideration by EARAC. The deadline to respond was September 14, 2016. The Department received an email requesting the EARAC reconsider the decision but CSI did not propose any terms and conditions. CSI was notified that they could appeal but would need a waiver of 10 TAC §1.304(b) because the deadline to appeal had passed.

Although CSI did not provide any justification for its request to approve the waiver of 10 TAC §1.304(b), staff recommends approval of the waiver so that the issues can be heard. Staff recommends denial of the appeal of EARAC's recommendation based on the extent, nature, and severity of the noncompliance and the continuing questions about their ability to administer an effective CEAP.

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**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**OCTOBER 13, 2016**

Presentation, Discussion, and Possible Action on proposed 10 TAC Chapter 13, concerning Multifamily Direct Loan Rule, and directing its publication for public comment in the *Texas Register*

**RECOMMENDED ACTION**

**WHEREAS**, the Department will be administering at least three sources from which it plans to award Multifamily Direct Loan funds in 2017; and

**WHEREAS**, in an effort to make commitment and expenditure of these funds efficient and enhance their effectiveness in achieving policy objectives, the Department has proposed this Multifamily Direct Loan Rule;

**NOW, therefore, it is hereby**

**RESOLVED**, that the proposed 10 TAC Chapter 13, concerning the Multifamily Direct Loan Rule, presented to this meeting are 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 Multifamily Direct Loan Rule together with the preamble 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.

**BACKGROUND**

Beginning in 2017, the Department will administer at least the following sources of funding within the Multifamily Direct Loan (“MFDL”) Program: HOME funds from both the annual allocation and program income, National Housing Trust Fund (inaugural allocation), and TCAP Repayment Funds, which are funds received after the TCAP grant was closed out several years ago. Since all of these funds carry similar federal requirements, staff believes that it will be useful to align state requirements and elucidate them through this rule rather than through a Notice of Funding Availability. Staff also saw a need to dedicate an entire rule to MFDL funds, especially as it relates to loan structure, scoring criteria, and set-asides, rather than have sections of the MFDL rule scattered throughout 10 TAC Chapter 10. This rule will determine how MFDL applications are prioritized, how MFDL applications may score points, the post-award process including loan closing and disbursement requests, and the type of amendments that can be requested under the MFDL program. Much, but not all, of this rule was previously codified in 10 TAC §10.307, §10.403, §10.404, and §10.405; however, the entirety of this rule is being reflected as new without any



blackline edits. This rule will supplement 10 TAC Chapter 10, as well as 10 TAC Chapter 11 and 10 TAC Chapter 12, as applicable.

Upon Board approval, the draft Multifamily Direct Loan Rule will be posted to the Department's website and published in the *Texas Register*. Public comment will be accepted between October 28, 2016, and November 28, 2016, and there will also be a consolidated public hearing during this time to garner public comment. The Multifamily Direct Loan Rule will be brought before the Board in November for final approval and subsequently published in the *Texas Register* for adoption.

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC Chapter 13, concerning the Multifamily Direct Loan Rule. The purpose of the proposed new sections is to explain the purpose of the Multifamily Direct Loan Rule, determine how applications are prioritized, how applications may score points, the post-award process including loan closing and disbursement requests, and the type of amendments that can be requested under the Multifamily Direct Loan program.

**FISCAL NOTE.** Timothy K. Irvine, Executive Director, 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.

**PUBLIC BENEFIT/COST NOTE.** Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be to explain the purpose of the Multifamily Direct Loan Rule, define terms and provide guidance on program dates. The average cost of filing an application is between \$15,000 and \$30,000, 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.

**ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES.** The Department has determined that there will be no new or additional economic effect on small or micro-businesses. The average cost of filing an application is between \$15,000 and \$30,000, 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.

**REQUEST FOR PUBLIC COMMENT.** The public comment period will be held October \_\_, 2016 to November \_\_, 2016, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Andrew Sinnott, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, attn: Andrew Sinnott. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. NOVEMBER \_\_, 2016.**

**STATUTORY AUTHORITY.** The new sections are proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the new sections are proposed pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The new sections affect no other statutes, articles or codes.

*13.1 Purpose.*

*13.2 Definitions.*

*13.3 General Loan Requirements.*

*13.4 Set-asides, Regional Allocation, and Priorities*

*13.5 Award Process*

*13.6 Scoring Criteria*

*13.7 Maximum Funding Requests*

*13.8 Loan Structure and Underwriting Requirements*

*13.9 Construction Standards*

*13.10 Development and Unit Requirements*

*13.11 Post-Award Requirements*

*13.12 Amendments to Direct Loan Terms*

## Multifamily Direct Loan Rule

### 13.1 Purpose

(a) Authority. The rules in this Chapter apply to the funds provided to Multifamily Developments through the Multifamily Direct Loan Program ("MFDL" or "Direct Loan Program") by the Texas Department of Housing and Community Affairs ("Department"). Notwithstanding anything in this Chapter to the contrary, loans and grants issued to finance the Development of multifamily rental housing are subject to the requirements of the laws of the State of Texas, including but not limited to Tex Gov't Code, Chapter 2306, and federal law pursuant to the requirements of Title II of the Cranston-Gonzalez National Affordable Housing Act and the implementing regulations 24 CFR Part 91, Part 92, and Part 93 as they may be applicable to a specific fund source. The Department is authorized to administer HOME funds pursuant to Tex Gov't Code, §2306.111. Tex Gov't Code Chapter 2306, Subchapter I, Housing Finance Division: This Chapter is not applicable to the State Housing Trust Fund or Section 811.

(b) General. This Chapter applies to an award of MFDL funds by the Department and establishes the general requirements associated with the application and award process for such funds. Applicants pursuing MFDL assistance from the Department are required to certify, among other things, that they have familiarized themselves with all applicable rules that govern that specific program including, but not limited to this Chapter, Chapter 1 (relating to Administration), Chapter 2 (relating to Enforcement), and Chapter 10 of this Title (relating to Uniform Multifamily Rules). Chapter 11 of this Title (relating to Housing Tax Credit Program Qualified Allocation Plan ("QAP")) and Chapter 12 of this Title (relating to Multifamily Housing Revenue Bond Rules) will apply if MFDL funds are layered with those other Department programs. Any conflict with rule of other programs or with federal regulations will be resolved on a case by case basis, that allows for compliance with all requirements. Conflicts that cannot be resolved may result in Application ineligibility.

(c) Waivers. Requests for waivers of any program rules or requirements must be made in accordance with §10.207 of this title (relating to Waiver of Rules for Applications). In no instance will the Department consider waiver request that would violate federal program requirements or state or federal statute.

### 13.2 Definitions

The following words and terms, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise. Any capitalized terms not specifically mentioned in this section shall have the meaning as defined in Texas Government Code, Chapter 2306, §§141, 142, and 145 of the Internal Revenue Code, 24 CFR Part 91, Part 92, Part 93 and 2 CFR Part 200, and Chapter 10 of this Title (relating to Uniform Multifamily Rules).

(a) *Community Housing Development Organization (CHDO)*: a private nonprofit organization that has experience developing and/or owning affordable rental housing and that meets the requirements in 24 CFR Part 92 for purposes of receiving HOME funds under the CHDO set-aside. In addition, a member of a CHDO's board cannot be a Principal of the development beyond his/her role as a board member of the CHDO or be an employee

of the development team, and may not receive financial benefit other than reimbursement of expenses from the CHDO (*e.g.* a voting board member cannot also be the paid executive director of the CHDO).

(b) *Encumbered Funds or Revenue*: funding or revenue that has a state or federal program designation and must be allocated in accordance with such statute or regulation. (*e.g.* HOME Program income must be re-allocated as HOME funding and therefore would be encumbered as such.)

(c) *Choice limiting activity*: any transfer of title that occurs prior to a Development obtaining environmental clearance after an application for federal funds (HOME and NHTF) has been submitted. Choice limiting activities may also include closing on loans including loans for interim financing, signing of a contract, and commencing construction. All applicants for MFDL funds, regardless of whether or not the Development Site is in a Participating Jurisdiction, must include the following language in the purchase contract or site control agreement:

“Notwithstanding any other provision of this Contract, Purchaser shall have no obligation to purchase the Property, and no transfer of title to the Purchaser may occur, unless and until TDHCA has provided Purchaser and/or Seller with a written notification that: (1) it has completed a federally required environmental review and its request for release of federal funds has been approved and, subject to any other Contingencies in this Contract, (a) the purchase may proceed, or (b) the purchase may proceed only if certain conditions to address issues in the environmental review shall be satisfied before or after the purchase of the property; or (2) it has determined that the purchase is exempt from federal environmental review and a request for release of funds is not required. TDHCA shall use its best efforts to conclude the environmental review of the property expeditiously.”

(d) *Matching contribution (Match)*: a contribution to a proposed Development from nonfederal sources that may be in the form of one or more of the following:

(1) Cash contribution (grant), except for cash contributions made by investor limited partner in a tax credit transaction or owner equity (including deferred developer fee)

(2) Reduced fees or donated labor from certain eligible contractors, subcontractors, architects, attorneys, engineers, excluding any contributions from a party related to the Developer or Owner

(3) Net present value of yield foregone from a below market interest rate loan

(4) Waived or reduced fees from cities or counties not related to the Applicant in connection with the proposed development

(5) Donated land or land sold below market value, as evidenced by a third party appraisal, from an unrelated party

(e) *Section 234 Condominium Housing basic mortgage limits (“234 Condo Limits”)*: the per-unit subsidy limits for all MFDL funding. These limits take into account whether or not a Development is elevator served and any local conditions that may make development of multifamily housing more or less expensive in a given metropolitan statistical area. Currently, the high cost percentage adjustment applicable to the 234 Condo Limits for HUD’s Fort Worth Multifamily Hub is applicable for all Developments that TDHCA finances through the MFDL Program.

### 13.3 General Loan Requirements

(a) Direct Loan funds may be made available through a Notice of Funding Availability ("NOFA") or other similar governing document that includes the basic Application and funding requirements. MFDL funds may be used to directly assist distressed developments previously funded by the Department when approved by specific action of the Governing Board.

(b) Direct Loan funds are composed of annual HOME and National Housing Trust Fund allocations from HUD, repayment of TCAP loans, HOME Program Income and any other similarly encumbered funding that may become available except as otherwise noted in this Chapter. Similar funds include any funds that are required to be loaned or granted for the development of multifamily property and are not governed by another Chapter in this Title.

(c) Direct Loan funds may be used for the acquisition, new construction, reconstruction, or rehabilitation of affordable housing with suitable amenities, including real property acquisition, site improvements, conversion, demolition, or operating cost reserves, all subject to HUD guidance. Other expenses, such as financing costs, relocation expenses of any displaced persons, families, businesses, or organizations may be included.

(d) While all costs associated with the Development and known by the sponsor must be disclosed as part of the Application, costs ineligible for reimbursement with Direct Loan funds in accordance with 24 CFR Part 91, Part 92, Part 93, and 2 CFR Part 200, include but are not limited to:

- (1) Offsite costs
- (2) Stored Materials
- (3) Site Amenities
- (4) Detached Community Buildings
- (5) Carports and/or garages
- (6) Parking garages
- (7) Commercial Space costs
- (8) Reserve accounts not related to NHTF
- (9) TDHCA fees
- (10) Delinquent fees, taxes, or charges
- (11) Costs incurred more than 24 months prior to the effective date of the Direct Loan Contract
- (12) Other costs limited by Award or NOFA, or as established by the Board

### 13.4 Set-asides, Regional Allocation, and Priorities

(a) *Set-asides*: Specific types of applications or Developments for which a portion of MFDL funds may be reserved in a NOFA will be grouped in set-asides. The Soft Repayment set-aside, CHDO set-aside, and General set-aside, as described below, are fixed set-asides that will be included in the annual NOFA. The remaining set-asides described below are flexible set-asides and are applicable only when identified in the NOFA. The amount of a single award may be credited to multiple set-asides, in which case the depleted portion of funds may be repositioned into an oversubscribed set-aside prior to a defined collapse deadline.

Applications under any and all set-asides may or may not be layered with other Department Multifamily programs except as provided in this section or as determined by the Board to address unique circumstances not addressed by these rules.

(1) Fixed Set-Asides:

- (A) Supportive Housing/Soft Repayment Set-Aside. The Supportive Housing/Soft Repayment ("SH/SR") Set-aside will be limited by the unencumbered interest revenue generated by multifamily loan payments and any amount under the NHTF allocation received by the Department and not otherwise programmed. The SH/SR set-aside is reserved for developments that are not able to support amortizing debt due to higher costs for supportive services or extremely low income and rent restrictions. Soft repayment loans may be provided with deferred payable, deferred forgivable or cash flow terms. Applicants seeking to qualify under this set-aside must propose Developments that meet either:
- (i) the Supportive Housing requirements in 10 TAC §10.3(a) in the Uniform Multifamily Rules including the other underwriting consideration for Supportive Housing Developments Section 10.302(g)(3) of the Underwriting and Loan Policy; or
  - (ii) the requirements in subparagraphs (i) through (iii), funding exclusively units targeting 30% households;
    - (I) All units assisted with MFDL funds must be available for and have rents no higher than households earning 30% Area Median Income (AMI) or less.
    - (II) Any units assisted with MFDL funds may not also be receiving project-based rental assistance, other than MFDL funds.
    - (III) Any units assisted with MFDL funds may not also be receiving tenant-based voucher or rental assistance to the extent that there are other available units within the Development that the voucher-holder may occupy.
- (B) CHDO Set-aside. A portion of the Department's annual HOME allocation, equal to at least 15%, will be set aside for eligible Community Housing Development Organizations ("CHDO") meeting the requirements of the definition of Community Housing Development Organization found in 24 CFR §92.2 and above. Applicants under the CHDO Set-Aside must be proposing to develop housing in Development Sites located outside Participating Jurisdictions unless the award is made within the Persons with Disabilities ("PWD") set-aside. CHDO funds are typically available as fully-repayable amortizing debt consistent with §13.4 of this Chapter relating to debt structure policy. In instances where an application submitted under the CHDO Set-Aside also qualifies under the SH/SR Set-Aside, CHDO funds may be structured in accordance with the SH/SR Set-Aside requirements. A CHDO operating expenses grant



may be awarded in conjunction with an award of MFDL funds under the CHDO set-aside.

- (C) General. The General set-aside is for all other applications that do not meet the requirements of the SH/SR or CHDO set-asides or flexible set-asides, if any. A portion of the General set-aside may be repositioned into the CHDO set-aside in order to fully fund a CHDO award that meets or exceeds the set-aside amount.

(2) Flexible Set-Asides:

- (A) 4% and Bond Layered. The 4% and Bond Layered set-aside is reserved for applications meeting all MFDL requirements that are layered with 4% Housing Tax Credits and Private Bond funds that do not meet the definition of CHDO.
- (B) Persons with Disabilities ("PWD"). The PWD set-aside is reserved for developments restricting units for tenants who meet the requirements of §2306.111(c)(2). MFDL funds will be awarded in a NOFA for the PWD set-aside only to the extent sufficient funds are available to award to at least one Application within a participating jurisdiction under §2306.111(c)(1).
- (C) 9% Layered. The 9% Layered set-aside is reserved for applications meeting all MFDL requirements that are layered with 9% Housing Tax Credits and do not meet the definition of CHDO. Awards under this set-aside are dependent on the concurrent award of a 9% HTC allocation.
- (D) Additional set-asides may be developed, subject to Board approval, to meet the requirements of specific funds sources, or to address Department priorities.

(3)

(b) *Regional Allocation*. All funds in the annual NOFA will be initially allocated to regions and potentially subregions based on a Regional Allocation Formula ("RAF") within the set-asides. The RAF methodology may differ by fund source. HOME funds will be allocated in accordance with Tex. Gov't Code Chapter 2306. The end date for the RAF will be identified in the NOFA, but in no instance shall it be less than 30 days from the date the NOFA is published in the *Texas Register*.

(1) After expiration of the RAF, funds collapse but may still be available within set-asides as identified in the NOFA but for an additional period not less than 15 days. All Applications received prior to these first two collapse period deadlines will continue to hold their priority unless they are withdrawn, terminated, or funded.

(2) Funds remaining after expiration of set-asides, which have not been requested in the form of a complete application, will be available statewide on a first-come first-served basis to Applications submitted after the collapse dates.

(3) In instances where the RAF would result in regional or subregional allocations insufficient to fund an application, the Department may use an alternative method of distribution, including an early collapse, revised formula or other methods as approved by the Board.

(c) *Priorities for the Annual NOFA.* Complete Applications received during the period of the RAF will be prioritized for review and recommendation to the Board, to the extent that funds are available both in the region and in the set-aside under which the application is received. If insufficient funds are available in a region to fund all Applications then the oversubscribed Applications will be evaluated only after the RAF and/or set-aside collapse and in accordance with the additional priority levels below. If insufficient funds are available with a region or set-aside, the Applicant may request to be considered under another set-aside if they qualify, prior to the collapse. Applications will be reviewed and recommended to the Board to the extent funds are available in accordance with the order of prioritization described in (1) through (3) below.

(1) Priority 1: Applications not layered with 9% HTC that are received prior to the 9% HTC Application deadline as described in 10 TAC §11.2 Program Calendar for Competitive Housing Tax Credits. Priority 1 applications will be prioritized on a first come first served basis within their respective set-aside and region. If the RAF has collapsed, applications will be reviewed on a first-come first served basis within their set-aside.

(2) Priority 2: Applications layered with 9% HTC will be prioritized based on their recommendation status for an HTC allocation. All Priority 2 applications will be deemed received on the Market Analysis Delivery Date as described in 10 TAC §11.2 Program Calendar. In order for an MFDL application with layered with 9% HTC to be considered complete, Applications for both programs must be timely received. Priority 2 applications will be recommended for approval at the same meeting when the Board approves the 9% HTC allocations. Applications that will be recommended for 9% HTC and are tied for MFDL under the scoring criteria will be further prioritized for funding based upon the scoring, tiebreaker and award criteria in 10 TAC Chapter 11 (the "QAP").

(3) Priority 3: Applications that are received after the 9% HTC Application deadline on a first come first served basis for any remaining funds until the final deadline identified in the annual NOFA.

(d) Other Priorities. The Board may set additional priorities for the annual NOFA, and for one time or special purpose NOFAs.

### **13.5 Award Process**

(a) Notice of Funding Availability ("NOFA"). All MFDL funds from the annual allocation will be distributed through a NOFA that provides the specific collapse dates and deadlines as well as set-aside and RAF amounts applicable to the MFDL program, along with Application information. Other funds may be distributed by NOFA or through other method approved by the Board. Set-aside, RAF, and total funding amounts may increase or decrease in accordance with the provisions herein without further Board action as long as the NOFA itself did not require Board action.

(b) Date of Receipt. Applications will be considered received on the business day of receipt. If an application is received after 5pm Austin Local Time, it will be determined to have been received on the following business day. Applications received on a non-business day will be considered received on the next day the Department is open. Applications will be

considered complete at the time all required third party reports and application fee(s), in addition to the application, are received by the Department. Within certain set-asides, the date of receipt may be fixed, regardless of the earlier actual date a complete application is received. If multiple applications are received on the same date, in the same region, and within the same set-aside, then score, as described in §13.6 for MFDL or §11.9 for Applications layered with 9% HTC, will be used as the determining factor affecting the ranking of the application.

(c) Applications. MFDL Applicants must follow the applicable requirements in 10 TAC Chapter 10, Subchapter C, Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications. Failure to timely respond to any notice of Administrative Deficiency will result in a reestablishment of the date of receipt of the Application to the final date at which the cure to the notice was received by the Department. If the date of receipt of the Application is reestablished, an Application could be de-prioritized in favor of another application received prior to the new application submission date.

(d) Eligibility Criteria. The Department will evaluate the Application for eligibility and threshold at the time of full Application pursuant to the requirements of this Chapter and Chapter 10 of this title (relating to Uniform Multifamily Rules). If there are changes to the Application at any point prior to closing that have an adverse effect on the score and ranking order and that would have resulted in the application being ranked below another application in the ranking, the Department may terminate the Application.

(1) Applicants requesting MFDL as the only source of Department funds may meet the Experience Requirement under §10.204(6) of this Chapter by providing evidence of the successful development, and operation for at least 5 years, of at least twice as many affordability restricted units as requested in the Application.

(2) Applications for Developments previously awarded Department funds under any program, or where construction has already started, regardless of fund source and are not proposing acquisition and rehabilitation, except distressed Developments under §13.3(a), must be found eligible by the Board prior to the Department accepting the Application or providing the Applicant with an Application acceptance date. A finding of eligibility under this section does not guarantee an award.

(A) Requests for eligibility determinations under this paragraph must be received no later than 21 calendar days prior to the Board meeting in which the Applicant requests Board consideration, and will not be considered more than 30 calendar days prior to the first Application acceptance date published in the NOFA. Applications will be considered received on the date that the Board renders its decision or the first day of the Application acceptance period.

(B) Criteria for the Board to consider would include (i) or (ii) and (iii)

(i) evidence of circumstances beyond the Applicant's control which could not have been prevented by timely start of construction

(ii) Force Majeure events

(iii) evidence that no further exceptional conditions exist that will delay or cause further cost increases

### **13.6 Scoring Criteria.**

The criteria identified in subsections (a) - (e) of this section will be used in the evaluation and ranking of applications to the extent that other applications were received on the same date *and* within the same set-aside and prioritization. There is no rounding of numbers in this section, unless rounding is explicitly indicated for that particular calculation or criteria. The scoring items used to calculate the score for a 9% HTC layered application will be utilized for scoring for an MFDL Application, and evaluated in the same manner except as specified below. All scoring items derived from the QAP will have the same value for MFDL scoring:

(a) Applicants eligible for points under 10 TAC §11.9(c)(4) related to the Opportunity Index (7 points)

(b) Tenant Services. Applicants eligible for points under 10 TAC §11.9(c)(3)(A) related to Tenant Services (9 points) Applicants eligible for points under 10 TAC §11.9(c)(3)(B) related to Tenant Services (1 point)

(c) Underserved Area. Applicants eligible for points under 10 TAC §11.9(c)(6) related to Underserved Area (up to 5 points)

(d) Subsidy per Unit. An application that caps the per unit subsidy limit (inclusive of match) for all Direct Loan units regardless of unit size at:

(1) \$100,000 per MFDL unit (4 points).

(2) \$80,000 per MFDL unit (8 points).

(3) \$60,000 per MFDL unit (10 points).

(e) Rent Levels of Tenants. An Application may qualify to receive up to thirteen (13) points for placing the following rent and income restrictions on the proposed Development for the entire Affordability Period. These Units may not be restricted to 30 percent or less of AMGI by another fund source.

(1) At least 20 percent of all low-income Units at 30 percent or less of AMGI (13 points);

(2) At least 10 percent of all low-income Units at 30 percent or less of AMGI or, for a Development located in a Rural Area, 7.5 percent of all low-income Units at 30 percent or less of AMGI (12 points); or

(3) At least 5 percent of all low-income Units at 30 percent or less of AMGI (7 points).

(f) Tiebreaker. In the event that one or more applications receives the same number of points based on the scoring criteria above, staff will recommend for award the Application that proposes the greatest percentage of MFDL units available to households at 15% AMGI in the event of a tie in the Tiebreaker Certification.

### **13.7 Maximum Funding Requests**

(a) The maximum funding request for all applications will be identified in the NOFA, and may vary by development type and/or set-aside.

(b) Maximum Per-Unit Subsidy Limits. The 234 Condo limits with the applicable high cost percentage adjustment in effect at the time of application are the maximum per-unit subsidy limits (inclusive of Match) that an applicant may use to determine the amount of MFDL funds or other federal funds that may subsidize a unit. Stricter per-unit subsidy limits are allowable and incentivized as point scoring items in §13.6 Scoring Criteria. Per-unit subsidy limits as well as subsidy layering analysis – ensuring that the amount of MFDL units as a percentage of total units is greater than the percentage of MFDL funds requested as a percentage of total development costs – will determine the amount of MFDL units required.

### **13.8 Loan Structure and Underwriting Requirements**

(a) Except for awards made under the SR/SH set-aside, all Multifamily Direct Loans awarded will be structured as fully repayable (must pay) at not less than the primary credit Discount Rate published by the Federal Reserve plus 200 basis points and a 30 year amortization with a term that matches the term of any superior loans (within 6 months) at the time of application.

(b) Any material changes to the total development cost and/or other sources of funds from the publication of the initial Underwriting Report to the time of loan closing must be reevaluated by Real Estate Analysis staff and may cause changes to principal amount and/or repayment structure for the Multifamily Direct Loan such that the Department is able to mitigate any increased risk. Where such risk is not adequately mitigated, the award may be terminated or reconsidered as amended by the Board.

(c) Direct Loans through the Department must adhere to the following criteria as identified in paragraphs (1) - (7) of this subsection:

(1) The Applicant and/or controlling Principals must certify to their capacity to provide a letter of credit to support repayment of any direct loan that has an expectation of repayment. They must be able and willing to execute a repayment guarantee for the full amount of the direct loan, should they be required to do so as a condition of approval.

(2) The term for permanent loans shall be no less than fifteen (15) years and no greater than forty (40) years and the amortization schedule shall be thirty (30) years. The Department's loan must mature at the same time or within six (6) months of the shortest term of any senior debt so long as neither exceeds forty (40) years and six (6) months.

(3) Amortized loans shall be structured with a regular monthly payment beginning on the first day of the 25th full month following the actual date of loan closing and continuing for the loan term. If the first lien mortgage is a federally insured HUD or FHA mortgage or if a surplus cash flow structure is required for a loan from the SH/SR set-aside, the Department may approve a loan structure with annual payments payable from surplus cash flow provided that the debt coverage ratio, inclusive of the loan, continues to meet the requirements in this subchapter.

(4) Loans shall be secured with a deed of trust with a permanent lien position that is superior to any other sources for financing including hard repayment debt that is less than or equal to the Direct Loan amount and superior to any other sources that have soft repayment structures, non-amortizing balloon notes, have deferred



forgivable provisions or in which the lender has an identity of interest with any member of the Development Team; and,

(5) If the Direct Loan amounts to more than 50 percent of the Total Housing Development Cost, except for Developments also financed through the USDA §515 program, the Application must include the documents as identified in subparagraphs (A) - (B) of this paragraph:

(A) a letter from a Third Party CPA verifying the capacity of the Applicant, Developer, or Development Owner to provide at least 10 percent of the Total Housing Development Cost as a short term loan for the Development; or

(B) evidence of a line of credit or equivalent tool equal to at least 10 percent of the Total Housing Development Cost from a financial institution that is available for use during the proposed Development activities.

(6) If the Direct Loan is the only source of Department funding for the Development, the Development Owner must provide equity in an amount not less than 20 percent of Total Housing Development Costs and must provide an "as completed" appraisal pursuant to 10 TAC 10.304 which results in total repayable loan to value of not greater than 80%.

(7) All Direct Loan applicants where other third-party financing entities are part of the sources of funding must submit a *proforma* and lender approval letter evidencing review of the Development and the Principals in accordance with 10 TAC §11.9(e)(1). Where no third-party financing exists, the Department reserves the right to procure a third-party evaluation which will be required to be prepaid by the applicant.

### **13.9 Construction Standards**

All Developments financed with Direct Loans will be required to meet at a minimum all applicable state and local codes, ordinances, and standards; the 2012 International Existing Building Code ("IEBC") or International Building Code ("IBC") as applicable. Rehabilitation Developments must meet the requirements in clauses (a) – (e) of this subparagraph.

(a) recommendations made in the Environmental Assessment and any Physical Conditions Assessment with respect to health and safety issues, life expectancy of major systems (structural support; roofing; cladding and weatherproofing; plumbing; electrical; and heating, ventilation, and air conditioning) must be implemented;

(b) for properties originally constructed prior to 1978, the Physical Conditions Assessment and rehabilitation scope of work must be provided to the party conducting the lead-based paint or asbestos testing, and the rehabilitation must implement the mitigation recommendations of the testing report

(c) all accessibility requirements pursuant to 10 TAC Subchapter B must be met;

(d) properties located in the designated catastrophe areas specified in 28 TAC §5.4008 must comply with 28 TAC §5.4011 (relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After January 1, 2008); and

(e) should IEBC be more restrictive than local codes, or should local codes not exist, then the Development must meet the requirements imposed by IEBC.

### 13.10 Development and Unit Requirements

(a) The bedroom/bathroom/amenities and square footages for Direct Loan Units must be comparable to the bedroom/bathroom/amenities and square footages for the total number of Units in the Development based on the amount of Direct Loan funds requested, inclusive of Match, as a percentage of total Direct Loan eligible costs. As a result of this requirement, the Department will always use the Proration Method as the Cost Allocation Method in accordance with CPD Notice 16-15 except as described in (b) of this section . Additionally, the amount of Direct Loan funds requested inclusive of Match cannot exceed the per-unit subsidy limit. For example, in a 20 Unit Development composed of 6 1-bedroom, 10 2-bedroom, and 4 3-bedroom units, where the Direct Loan funds requested is \$1,000,000, the Match being provided is \$100,000, and the total Direct Loan-eligible project costs are \$4,400,000, 25 percent of each unit type must be a Direct Loan Unit (\$1,100,000 Direct divided by \$4,400,000). In the example below, the square footages are the same for each unit that has the same number of bedrooms and all fractional units are rounded up to require the next whole number of MFDL Units.

Bedrooms	Total Units	Direct Loan Percentage	Minimum # of Direct Loan Units	Number of Direct Loan Units After Rounding Up
1br	6	25%	1.5	2
2br	10	25%	2.5	3
3br	4	25%	1	1
TOTAL	20	100%		7

In this example, even though the amount of Direct Loan funds (inclusive of Match) as a percentage of total Direct Loan-eligible costs (25 percent) would result in a minimum 5 units if the percentage was applied on a total unit basis, the 25 percent must be applied to each unit type with partial Units rounded up to the next whole number, resulting in 2 additional units for a total of 7 Direct Loan Units. Please see CPD Notice 16-15 for further guidance.

(b) All Direct Loan Units must float throughout the Development unless the Development also contains public housing units that will receive Operating Fund or Capital Fund assistance under Section 9 of the 1937 Act as defined in 24 CFR 5.100. Floating Direct Loan units may only float among the Units as described in the Direct Loan Contract and Direct Loan LURA, or as specifically approved in writing by the Department.



(c) The minimum affordability period for all Direct Loan Units awarded under a NOFA will match the greater of the term of the loan or 30 years unless a lesser period is approved by the Board and when assisting distressed developments.

(d) If the Department is the only source of funding for the Development, all Units must be restricted.

### **13.11 Post-Award Requirements**

(a) Direct Loan awardees must execute an Award Letter and Loan Term Sheet provided by the Department within thirty (30) days after receipt of the letter. The Award Letter and Loan Term Sheet will be conditional in nature and provide a basic outline of the terms and conditions currently being contemplated for the Development.

(b) If a Direct Loan award is returned after Board approval, or if the Applicant or Affiliates fail to meet federal commitment or expenditure requirements, penalties may apply under 10 TAC § 11.9(f) or the Department may prohibit the Applicant and all Affiliates from applying for MFDL funds for a period of 2 years if they have returned their funds or have failed to take necessary action specified in one or more agreement with the Department where the failure resulted in the Department's failure to meet federal commitment and expenditure requirements.

(c) Direct Loan awardees must obtain environmental clearance (if applicable) and meet all requirements for commitment of funds within 180 days after award. Direct Loan awardees that commit any choice limiting activities prior to obtaining environmental clearance may lead to termination of the Direct Loan award.

(d) Direct Loan awardees must execute a Contract within nine (9) months of the Board approval date.

(e) Loan closing must occur and construction must begin no later than six (6) months from the effective date of a Contract.

(f) In addition to any other requirements as the result of any other Department funding sources, the Development Owner must submit a mid-construction development inspection request once the development has met or exceeded 25% construction completion as indicated on the G703 Continuation Sheet. Inspection staff will issue a mid-construction development inspection letter that confirms that work is being done in accordance with the applicable codes, the construction contract, and construction documents. Up to 50 percent of the Direct Loan award will be released prior to issuance of the mid-construction development inspection letter.

(g) Construction must be completed, as reflected by the development's certificate(s) of occupancy and Certificate of Substantial Completion (AIA Form G704), and a final development inspection request must be submitted to the Department within 18 months of the actual loan closing date, with the repayment period beginning on the first day of the 25th month following the actual date of loan closing. The final development inspection letter will verify committed amenities have been provided and confirm compliance with all applicable accessibility requirements

(h) Receipt of a Closed Final Development Inspection Letter, indicating that all deficiencies identified in the Final Inspection Letter have been corrected, must occur within 24 months of the actual date of loan closing. The Final Development Inspection may be conducted

concurrently with a Uniform Physical Condition Standards (“UPCS”) inspection. However, any letters associated with a UPCS inspection will not satisfy the Closed Final Development Inspection Letter requirement.

(i) Extensions to any of the above benchmarks may only be made for good cause and approved by the Department if construction is timely started;

(j) Initial occupancy of all MFDL assisted Units by eligible tenants shall occur within six (6) months of the final Direct Loan draw. Requests to extend the initial occupancy period must be accompanied by documentation of marketing efforts and a marketing plan. The marketing plan may be submitted to HUD for final approval, if required for the MFDL fund source;

(k) Repayment will be required on a per Unit basis for Units that have not been rented to eligible households within eighteen (18) months of the final Direct Loan draw; and

(l) Termination of the Direct Loan award and repayment of all disbursed funds will be required for any Development that is not completed within four (4) years of the effective date of a Direct Loan Contract.

(m) Closing Deadline

Awards will be made subject to hard closing deadlines established at the time of award by the Department’s Governing Board subject to the conditions in §13.8(a), which may only be extended by additional Board action on the basis of delays caused by circumstances outside the control of the applicant. An extension will not be available if an Applicant has:

(1) failed to timely begin or complete processes required to close; including

(A) finalizing all equity and debt financing or

(B) the environmental review process; or

(2) made changes to the Development that require additional underwriting by the Department without sufficient time to complete the review.

(n) Loan Closing

In preparation for closing any Direct Loan, the Development Owner must submit the items described in paragraphs (1) - (8) of this subsection:

(1) Documentation of the prior closing or concurrent closing with all sources of funds necessary for the long-term financial feasibility of the Development

(2) Due diligence determined by the Department to be prudent and necessary to meet the Department's rules and to secure the interests of the Department.

(3) Where the Department will have a first lien position and the Applicant provides personal guarantees from all principals and documentation that closing on other sources is reasonably expected to occur within three (3) months, the Executive Director or authorized designee may approve a closing to move forward without the closing on other sources. The Executive Director as the authorized designee of the Department must require a personal guarantee, in form and substance acceptable to the Department, from a Principal of the Development Owner for the interim period;

(4) When Department funds have a first lien position, assurance of completion of the Development in the form of payment and performance bonds in the full amount of the construction contract or equivalent guarantee in the sole determination of the Department is required. Such assurance of completion will run to the Department as obligee. Development Owners utilizing the USDA §515 program are exempt from this requirement but must meet the alternative requirements set forth by USDA;

(5) Documentation required for closing includes, but is not limited to:

(A) Draft Owner/General Contractor agreement and draft Owner/Architect agreement prior to closing with final executed copies required by the day of closing;

(B) survey of the Property that includes a certification to the Department, Development Owner, Title Company, and other lenders;

(C) plans and specifications for review by the Department's inspection staff. Inspection staff will issue a plan review letter that will assist in preparation for the development's final inspection.

(D) if layered with Housing Tax Credits, a fully executed limited partnership agreement between the General Partner and the tax credit investor entity (may be provided concurrent with closing);

(E) final Development information, including but not limited to a final development cost schedule, sources and uses, operating *proforma*, annual operating expenses, cost categories for the Direct Loan funds, updated written financial commitments or term sheets and any additional financing exhibits that have changed since the time of application.

(F) If the changes to the budget or sources of funds reflect material changes to the transaction approved by the Board, documentation to ensure that the Development continues to meet the requirements of this chapter must be provided and material changes to the application must be approved by the Board. Material changes include but are not limited to any increase in debt payment for superior liens and a greater than a 10 percent change in any of the following:

(i) Total Housing Development Costs

(ii) deferred developer fee amount

(iii) superior loan amount(s);

(6) if required by the fund source, prior to Contract Execution, the Development Owner must provide verification of:

(A) environmental clearance;

(B) Site and Neighborhood clearance;

(C) documentation necessary to show compliance with the Uniform Relocation Assistance and Property Act and any other relocation requirements that may apply; and

(D) any other documentation that is necessary or prudent to meet program requirements or state or federal law in the sole determination of the Department.

(7) The Direct Loan Contract as executed, which will be drafted by counsel for the Department. No changes proposed by the Developer or Developer's counsel will be accepted unless approved by the Department's Legal Division.

(o) Loan Documents. The Development Owner is required to execute all loan closing documents required by and in form and substance acceptable to the Department's Legal Division

(1) Loan closing documents include but are not limited to a promissory note, deed of trust, construction loan agreement (if the proceeds of the loan are to be used for construction), LURA, Architect and/or licensed engineer certification of

understanding to complete environmental mitigation if such mitigation is identified in HUD's environmental clearance and by the Real Estate Analysis Division (REA) and assignment and security instruments whereby the Developer, the Development Owner, and/or any Affiliates (if applicable) grants the Department their respective right, title, and interest in and to other collateral, including without limitation the Owner/Architect agreement and the Owner/General Contractor agreement, to secure the payment and performance of the Development Owner's obligations under the loan documents.

(2) Repayment provisions will require repayment on a per unit basis for units that have not been rented to eligible households within eighteen (18) months of the final Direct Loan draw; termination and repayment of the Direct Loan award in full will be required for any development that is not completed within four (4) years of the date of Direct Loan Contract execution.

(3) Loan terms and conditions may vary based on the type of Development, and the set-aside under which the award was made.

(p) Disbursement of Funds . The Borrower must comply with the requirements in paragraphs (1) - (9) of this subsection in order to receive a disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Borrower's compliance with these requirements may be required with a request for disbursement:

(1) All requests for disbursement must be submitted through the Department's Housing Contract System, using the MFDL draw workbook or such other format as the Department may require.

(2) Documentation of the total construction costs incurred and costs incurred since the last disbursement of funds must be submitted. Such documentation must be signed by the General Contractor and certified by the Development architect and is generally in the form of an AIA Form G702 or G703; (3) Disbursement requests must include a down-date endorsement to the Direct Loan (mortgagee) title policy or Nothing Further Certificate that includes a title search through the date of the Architect's signature on AIA form G702. For release of retainage the down-date endorsement to the Direct Loan title policy or Nothing Further Certificate must be dated at least thirty (30) calendar days after the date of the construction completion as certified on the Certificate of Substantial Completion (AIA Form G704) with \$0 as the work remaining to be completed. Disbursement requests for acquisition and closing costs, or requests for soft costs only, are exempt from this requirement;

(4) At least 50 percent of the funds will be withheld from the initial disbursement of loan funds to allow for periodic disbursements

(4) The initial draw request for the development must be entered into the Department's Housing Contract System no later than ten business days prior to the one year anniversary of the effective date of the Direct Loan Contract;

(4) Up to 75 percent of Direct Loan funds may be drawn before providing evidence of Match. Thereafter, the Borrower must provide evidence of Match being credited to the Development prior to release of the final 25 percent of funds.

(5) Developer fee disbursement shall be conditioned upon:

(A) for Developments in which the loan is secured by a first lien deed of trust against the Property, 75 percent shall be disbursed in accordance with percent of construction completed. 75 percent of the total allowable fee will

be multiplied by the percent completion, as documented by the construction contract and as may be verified by an inspection by the Department. The remaining 25 percent shall be disbursed at the time of release of retainage;  
or

(B) for Developments in which the loan is not secured by a first lien deed of trust or the Development is also utilizing Housing Tax Credits, developer fees will not be reimbursed by the Department except as follows. If all other lenders and syndicator in a Housing Tax Credit development (if applicable) provide written confirmation that they do not have an existing or planned agreement to govern the disbursement of developer fees and expect that Department funds shall be used to fund developer fees developer fees shall be reimbursed in the same manner as described in subparagraph (A) of this paragraph; and

(C) the Department may reasonably withhold any disbursement if it is determined that the Development is not progressing as necessary to meet the benchmarks for the timely completion of construction of the Development as set forth in the loan documents, or that cost overruns have put the Development Owner's ability to repay its Direct Loan or complete the construction at risk in accordance with the terms of the loan documents and within budget. If disbursement has been withheld under this subsection, the Development Owner must provide evidence to the satisfaction of the Department that the Development will be timely completed and occupied in order to continue receiving funds. If Disbursement is withheld for any reason, disbursement of any remaining developer fee will be made only after construction of the Development has been completed, and all requirements for expenditure and occupancy have been met;

(6) expenditures must be allowable and reasonable in accordance with federal and state rules and regulations. The Department shall determine the reasonableness of each expenditure requested. The Department may request the Development Owner make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of Department funds to Development Owner as may be necessary or advisable for compliance with all program requirements;

(7) table funding requests will not be considered unless the Direct Loan Contract has been executed and all necessary documentation has been completed and submitted to the Department at least ten (10) days prior to anticipated closing;

(8) Following fifty percent construction completion, any funds will be released in accordance with the percentage of construction completion, not to exceed ninety percent of award, at which point funds will be held as retainage until the final draw request. Retainage will be held until all of the items described in subparagraphs (A) - (G) of this paragraph are received:

(A) Certificate of Substantial Completion (AIA Form G704) with \$0 as the cost estimate of work that is incomplete;

(B) A down date endorsement to the Direct Loan title policy or Nothing Further Certificate dated at least 30 calendar days after the date of



- completion as certified on the Certificate of Substantial Completion (AIA Form G704);
- (C) For developments not layered with Housing Tax Credits, a Closed Final Development Inspection Letter from the Department;
  - (D) For developments subject to the Davis-Bacon Act, evidence from the Senior Labor Standards Specialist that the final wage compliance report was received and approved;
  - (E) Receipt of Certificates of Occupancy;
  - (F) Development completion reports which includes but is not limited to documentation of full compliance with the Uniform Relocation Act/104(d), Davis-Bacon Act, and Section 3 of the Housing and Urban Development Act of 1968, as applicable to the Development, and any other applicable requirement; and
  - (G) If applicable to the Development, certification from Architect or a licensed engineer that all HUD and REA environmental mitigation conditions have been met.

### **13.12 Amendments to Direct Loan Terms.**

The Executive Director or authorized designee may approve amendments to loan terms prior to closing as described in paragraphs (a) - (g) of this subsection. Board approval is necessary for any other changes prior to closing.

- (a) extensions of up to 6 months to the loan closing date specified in §13.8(a)(4) of this Chapter. An Applicant must document good cause, which may include constraints in arranging a multiple-source closing;
- (b) changes to the loan maturity date to accommodate the requirements of other lenders or to maintain parity of term;
- (c) extensions of up to 12 months for the construction completion or loan conversion date based on documentation that the extension is necessary to complete construction and that there is good cause for the extension. Such a request will generally not be approved prior to initial loan closing;
- (d) changes to the loan amortization or interest rate that cause the annual repayment amount to decrease less than 20 percent or any changes to the amortization or interest rate that increases the annual repayment amount;
- (e) decreases in the Direct Loan amount, provided the decrease does not jeopardize the financial viability of the Development. Increases will generally not be approved unless the Applicant competes for the additional funding under an open NOFA; and
- (f) changes to other loan terms or requirements as necessary to facilitate the loan closing without exposing the Department to undue financial risk.
- (g) An Applicant may request a change to the terms of a loan. Requests for changes to the loan post closing will be processed as loan modifications and may require additional approval by the Department's Asset Management Division. Post closing loan modifications requiring changes in the Department's loan terms, lien priority, or amounts (other than in the event of a payoff) will generally only be considered as part of a Department or Asset Management Division work out arrangement or other condition intended to mitigate financial risk and will not require additional Executive Director or Board approval except

where the post closing change could have been anticipated prior to closing as determined by staff.

DRAFT



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**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**OCTOBER 13, 2016**

Presentation, Discussion, and Possible Action on the proposed repeal of 10 TAC Chapter 10 Subchapter E, concerning Post Award and Asset Management Requirements, and a proposed new 10 TAC Chapter 10 Subchapter E, concerning Post Award and Asset Management Requirements, and directing its publication for public comment in the *Texas Register*.

**RECOMMENDED ACTION**

**WHEREAS**, pursuant to Chapter 2306 of the Tex Government Code, the Department is provided the authority to adopt rules governing the administration of the Department and its programs; and

**WHEREAS**, staff proposes clarifications and changes to the existing rules to improve the efficiency of post award and asset management activities of multifamily developments awarded funds under various Department programs;

**NOW, therefore, it is hereby**

**RESOLVED**, that the proposed repeal of 10 TAC Chapter 10 Subchapter E concerning Post Award and Asset Management Requirements and a proposed new 10 TAC Chapter 10, Subchapter E concerning Post Award and Asset Management Requirements, together with the preamble 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 Post Award and Asset Management Requirements, together with the preamble in the form presented to this meeting, to be published in the *Texas Register* for public comment and, in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

**BACKGROUND**

Attached behind this Board Action Request is the proposed 2017 Post Award and Asset Management Requirements, which reflects staff's recommendations for the Board's consideration. The proposed changes to the rule resulted from staff and public input. Staff posted on the Department's Rules Forum anticipated changes to the rule and hosted a roundtable discussion. Significant changes to specific sections are summarized below. Other changes that are clarifying in nature or simply expand on the descriptions of current methodologies are not specifically discussed.

Upon Board approval, the proposed rules will be posted to the Department's website and published in the *Texas Register*. Public comment will be accepted between October 28, 2016, and November 28,

2016. The proposed rules, after consideration of public comment, will be brought before the Board in December for final approval and subsequently published in the *Texas Register* for adoption.

Summary of Proposed Changes. This section outlines some of the more significant recommendations made by staff. Citation and page references are indicated for ease of reference.

1. 10.402(g) 10 Percent Test (page 4). Changes to this section provide clarification that where the Taxpayer's Reasonably Expected Basis ("TREB"), as certified by an independent accountant, is greater than the amount identified in the Carryover Allocation Agreement and known at the time the Auditor's report is being prepared, that the Department be notified of the updated TREB. Staff also proposes as additional items required at 10 Percent Test any condition(s) of the Commitment or REA underwriting report to be submitted at this time, and the requirement to provide the Department with a current survey of the Development Site.
2. 10.402(h) Construction Status Reports (page 5). The change to this section seeks to further clarify the initial report submission deadlines for multifamily developments funded under different Department programs by changing the initial submission dates for Tax-Exempt Bond Developments to 90 days after expiration of the Certificate of Reservation and for HOME Developments to 90 days after loan closing. Additionally, the change clarifies that where the lender and/or investor do not require third party construction inspection reports, the Development Owner must hire a third party inspector to perform these inspections as required in the rule. Finally, Minority Owned Business reports have been added as a submission item to the Construction Status Report for HTC developments in order to improve compliance with Tex. Gov't Code §2306.6734.
3. 10.403 Review of Annual HOME/NSP/National HTF Rents (page 9). This section is changed to delete the Multifamily Direct Loan program rules from this subchapter. Staff anticipates proposing a new subchapter where rules related to the Multifamily Direct Loan programs will be consolidated. Staff also proposes the addition of rules related to annual rent review and approval where Department HOME and NSP funds were committed to multifamily projects on or after August 23, 2013, and all National Housing Trust Fund developments. Pursuant to the 2013 HOME Rule at 24 CFR §92.252(f) the Department is required to review and approve HOME and NSP rents on an annual basis to determine whether rents are sufficient to maintain the financial viability of a project and are in compliance with maximum rents limits. Likewise, the Department is required to review and approval National Housing Trust Fund rents pursuant to 24 CFR 93.302(c)(2). Upon adoption of this rule Subchapter F will be updated to address compliance related to this section of the Asset Management Rules.
4. 10.405(a)(2) Amendments and Extensions- Notification Items (page 17). A new notifications section is proposed whereby changes to a development may be considered non-material but where the Department believes it is important to be notified of such changes, and an acknowledgement by the Department of such changes will be provided. This change was proposed last year during the public comment process for the 2016 Asset Management Rules; however, the Department felt the changes proposed were outside of the logical outgrowth of the then proposed rule and could not be addressed at that time. Staff agrees with the need to improve the amendments rule to provide a more efficient process for both

the ownership/development communities and TDHCA staff where possible. In addition, staff has proposed adding construction status reports to the list of items to which the current extension process and fees are applicable in order to help bring attention to the importance of the reports and their timely submission as required by the rules.

5. 10.405(a)(4) Amendments and Extension- Material Amendments (page 18). Staff proposes to delete subparagraph (H) from the list of material amendments which currently states “*significant increases in development costs or changes in financing that affect the Department’s direct loan financing structure or result in reductions of credit and where either of such changes are not agreed to by the Applicant or Development Owner.*” Absent a specific cost increase amount or percentage increase, the development and lending community expressed concerns that any cost increases are currently required to be reported to the Department and evaluated by staff and potentially delayed by further review and approval processes. Staff believes that significant increases in development costs are likely the result of the other material alterations identified in this section and, therefore, will be evaluated anyway as required by Texas Government Code Chapter 2306.6712(b), which states: “the director shall require the department staff assigned to underwrite applications to evaluate the amendment and provide an analysis and written recommendation to the board.” Additionally, staff believes additional mechanisms to evaluate the changes contemplated in this material amendment item are already in place in the Department’s REA underwriting report, where the following underwriting condition is included in each report: “should any terms of the proposed capital structure change, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.”
6. 10.405(b)(2) Amendments and Extension- Material LURA Amendments (page 20). The change to this section provides clarity and consistency with other sections of this subchapter where a timeframe is established related to amendments. The section clarifies when requests and any additional information needed for staff’s review of the request requiring Board approval must be submitted to the Department to allow staff a reasonable amount of time for review and re-evaluation, as applicable.

Changes to this section also include re-organization of the public hearing and notification requirements for material LURA amendments as required by statute. Staff proposes to change the requirement regarding public hearings so that owners schedule and hold hearings to discuss proposed material LURA amendments at least fifteen (15) business days prior to the scheduled Board meeting, allowing for the provision of minutes of the hearing, which will allow staff to accurately report the outcome of the public hearings in their written recommendations to the Board. Additionally, staff re-organized this section to more clearly identify the intended recipients of the notification of proposed changes and to differentiate the intended recipients of such notice pre and post issuance of IRS Forms 8609 by the Department. Finally, the changes to this section provide clarification regarding the contents of the notification to the intended recipients.

7. 10.406(c) – Ownership Transfers – General Requirements (page 23). Staff proposes to clarify the Department’s policy regarding simultaneous transfer or concurrent offering for sale of a General Partner’s and Limited Partner’s control and interest in a Development, and to establish by rule that such instances will be subject to the ownership transfer review process and will trigger a Right of First Refusal, if applicable in a Development’s LURA.

8. 10.407 – Right of First Refusal (pages 25-34). The Right of First Refusal (“ROFR”) section of the Asset Management rules contains the most substantial change of all sections, much of which is re-organization of the ROFR requirements in this section to hopefully provide further clarity on the ROFR process. Staff also seeks to clarify the lawful implementation of HB3576, relating to restrictions on the use, transfer and sale of housing developments that have received certain financial assistance administered by the Department, which was passed during the 84<sup>th</sup> legislative session. Staff amended the ROFR rules during the 2016 rulemaking cycle to assist with implementation of the statutory changes to the ROFR, and now seeks to further clarify the Department’s implementation of HB3576. Staff has further summarized the specific proposed changes below:
- a. Inclusion of the term Qualified Nonprofit Organizations to the rule. Last year, staff replaced the term “Qualified Nonprofit Organization” which was used throughout the ROFR rule with the newly defined term “Qualified Entity” which was defined in HB3576. However, HB3576 also included language that required the Department to adopt rules that provide for the material amendment of a LURA including amendments to incorporate the statutory ROFR changes made in HB3576. As a result, staff’s current recommendation is to add the term “Qualified Nonprofit Organization” back into the ROFR rule where appropriate so that the rule describes the requirements for both the LURAs that have been amended to incorporate the provisions of HB3576 and the LURAs that remain unchanged as originally recorded.
  - b. 10.407(a) – Right of First Refusal- General (page 26 of 39). Staff has added language to clarify that a Qualified Nonprofit Organization also include entities that are 100% owned by a Qualified Nonprofit Organization pursuant to §42(h)(5)(C) of the IRS Code.
  - c. 10.407(a)(1) – Right of First Refusal- General (page 26 of 39). Staff has re-organized the section related to when a Development Owner may market and sell a property directly to a Qualified Nonprofit Organization or Qualified Entity, as appropriate, and has specifically identified the circumstances where such a direct sale may be permitted.
  - d. 10.407(a)(6) – Right of First Refusal- General (page 26 of 39). The change to this section seeks to further clarify when a ROFR is triggered, including situations where a simultaneous transfer or concurrent offering for sale of a General Partner’s and Limited Partner’s control and interest in a Development is presented.
  - e. 10.407(a)(8) – Right of First Refusal- General (page 27 of 39). A new subparagraph was added to clearly state that that the ROFR rules apply only to ROFRs that are memorialized in the Department’s LURA and that the Department’s rules regarding ROFRs do not authorize a modification of any other agreement outside of the Department’s LURA between a Development Owner and a Qualified Nonprofit Organization or a Qualified Entity, as applicable. Finally, this added language further clarifies that the enforceability of a contractual agreement outside of the Department’s LURA may be impacted by the commitments made by the owner at the time of Application and/or recorded in the LURA.

- f. 10.407(b) – Right of First Refusal Offer Price (page 27 of 39). Staff added language here to state that documentation used to establish the ROFR offer price will be part of the ROFR property listing on the Department’s website, which is currently the Department’s practice.
- g. 10.407(d) – Right of First Refusal Posting and Offers (page 29 of 39). This section was re-organized to clearly identify when ROFR offers can be made based on the type of ROFR required by a Development’s LURA (90-day ROFR, 2-year ROFR and 180-day ROFR).
- h. 10.407(e) – Right of First Refusal Acceptance of Offers (page 32 of 39). Staff proposes language to clarify when an owner may accept offers received during the ROFR posting period and where a LURA requires priority to certain types of Qualified Nonprofit Organizations or Qualified Entities that offers can only be accepted and negotiated with those specific types of Qualified Nonprofit Organizations or Qualified Entities during the specific time frames provided in the LURA.
- i. 10.407(f) – Satisfaction of ROFR (page 32 of 39). This section is re-organized to clearly identify the when and how a ROFR requirement is and is not satisfied by a Development Owner.
- j. 10.407(g) – Activities upon satisfaction of ROFR (page 33 of 39). The change made to this section was reorganization of the activities that may occur upon a Development Owner’s satisfaction of the ROFR requirements in the LURA for better clarity.

Attachment A: Preamble and Proposed repeal of 10 TAC, Chapter 10, Subchapter E, §§10.400 – 10.408, General Provisions, Post Award and Asset Management Requirements for public comment and publication in the *Texas Register*.

The Texas Department of Housing and Community Affairs (the “Department”) proposes the repeal of 10 TAC, Chapter 10, Subchapter E, §§10.400 – 10.408. The purpose of the repeal is to allow for clarification and correction of information in certain sections of the rule and to allow for the adoption of new sections that will ensure accurate processing of post award activities and communicate more effectively with multifamily development owners regarding their responsibilities after funding or award by the Department.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be to allow for the adoption of new rules to enhance the State’s ability to provide decent, safe, sanitary and affordable housing. There will not be any economic cost to any individuals required to comply with the repeal.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held October 28, 2016 until November 28, 2016 to receive input on the repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, ATTN: Raquel Morales, or by email to [raquel.morales@tdhca.state.tx.us](mailto:raquel.morales@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 PM, Austin local time, on NOVEMBER 28, 2016.

STATUORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. The proposed repeal affects no other code, article or statute.

§10.400. Purpose.

§10.401. General Commitment or Determination Notice Requirements and Documentation.

§10.402. Housing Tax Credit and Tax Exempt Bond Developments

§10.403. Direct Loans.

§10.404. Reserve for Replacement Requirements.

§10.405. Amendments and Extensions.

§10.406. Ownership Transfers (§2306.6713).

§10.407. Right of First Refusal.

§10.408. Qualified Contract Requirements.



Attachment B: Preamble and Proposed new 10 TAC Chapter 10, Subchapter E, §§10.400 – 10.408, Post Award and Asset Management Requirements for public comment and publication in the *Texas Register*.

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 10, Subchapter E, §§10.400 – 10.408. The purpose of the new rule is to clarify and correct information in all sections of the adopted rule to ensure accurate processing of post award activities and communicate more effectively with multifamily development owners regarding their responsibilities after funding or award by the Department. Post award activities include requests for action to be considered on developments awarded funding from the Department through the end of the affordability period.

FISCAL NOTE. Mr. Timothy K. Irvine, Executive Director, 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.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will improve the State's ability to ensure that State resources used for affordable multifamily housing are efficient and result in viable developments. There will not be any new, increased economic cost to any individuation required to comply with the new sections in addition to the costs under current program rules.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no new economic effect on small businesses or micro-businesses in addition to the costs under current program rules.

REQUEST FOR PUBLIC COMMENT. The public comment period will be October 28, 2016 until November 28, 2016, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, ATTN: Raquel Morales, or by email to [raquel.morales@tdhca.state.tx.us](mailto:raquel.morales@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 PM on NOVEMBER 28, 2016.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. If adopted as proposed the new sections will affect 10 Texas Administrative Code §10.622 and 10.624.

## Uniform Multifamily Rules

### Subchapter E- Post Award and Asset Management Requirements

**§10.400 Purpose.** The purpose of this Subchapter is to establish the requirements governing the post award and asset management activities associated with awards of multifamily development assistance pursuant to Texas Government Code, Chapter 2306 and its regulation of multifamily funding provided through the Texas Department of Housing and Community Affairs (the "Department") as authorized by the legislature. This subchapter is designed to ensure that Developers and Development Owners of low-income Developments that are financed or otherwise funded through the Department maintain safe, decent and affordable housing for the term of the affordability period. Therefore, unless otherwise indicated in the specific section of this subchapter, any uncorrected issues of noncompliance outside of the ~~Corrective Action Period~~ corrective action period or outstanding fees (related to the Development subject to the request) owed to the Department, must be resolved satisfactorily to the Department, EARAC or excepted by the Board, before a request for any post award activity described in this subchapter will be completed.

#### §10.401 General Commitment or Determination Notice Requirements and Documentation

(a) A Commitment or Determination Notice shall not be issued with respect to any Development for an unnecessary amount or where the cost for the total development, acquisition, construction or rehabilitation exceeds the limitations established from time to time by the Department and the Board.

(b) All Commitments or Determination Notices, whether reflected in the Commitment or Determination Notice or not, are made subject to full compliance with all applicable provisions of law and rule, including but not limited to the Qualified Allocation Plan, the Uniform Multifamily Rules, the Multifamily Housing Revenue Bond Rules, all provisions of Commitment and Contract, satisfactory completion of underwriting, and satisfactory resolution of any conditions of underwriting, award, and administrative deficiencies.

(c) The Department shall notify, in writing, the mayor, chief county judge, or other appropriate official of the municipality or county, as applicable, in which the Development is located informing him/her of the Board's issuance of a Commitment or Determination Notice, as applicable.

(d) The Department may cancel a Commitment, Determination Notice or Carryover Allocation prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or completion of construction with respect to a Development and/or apply administrative penalties if:

- (1) the Applicant, Development Owner, or the Development, as applicable, fails after written notice and a reasonable opportunity to cure, to meet any of the conditions of such Commitment, Determination Notice or Carryover Allocation or any of the undertakings and commitments made by the Development Owner in the Application process for the Development;
- (2) any material statement or representation made by the Development Owner or made with respect to the Development Owner or the Development is untrue or misleading;
- (3) an event occurs with respect to the Applicant or the Development Owner which would have made the Application ineligible for funding pursuant to Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules if such event had occurred prior to issuance of the Commitment, Determination Notice or Carryover Allocation; or
- (4) the Applicant, Development Owner, or the Development, as applicable, fails after written notice and a reasonable opportunity to cure, to comply with this chapter or other applicable Department rules, procedures, or requirements of the Department.

(e) Direct Loan Commitment. The Department shall execute, with the Development Owner, a Commitment which shall confirm that the Board has approved the loan and provide the loan terms. The Commitment may be abbreviated and will generally not express all terms and conditions that will be included in the loan documents. Department staff may choose to issue an Award Letter and Loan Term Sheet in lieu of a Commitment in instances in which a Federal Commitment cannot be made until loan closing or until all financing is secured. An Award Letter is subject to all of the same terms and conditions as a Commitment except that it may not constitute a Federal Commitment. For HOME [and National Housing Trust Fund](#) Direct Loans, an actual Federal Commitment may not occur in the HUD IDIS system until all financing is secured or loan closing, whichever comes first, at which time all terms and conditions will be included in the loan documents. The Award Letter shall list an expiration date no earlier than thirty (30) days from the date issued by the Department unless signed and returned. To the extent the terms reflected in an Award Letter are amended by the Department, a new Award Letter would be issued by the Department to govern the award.

#### §10.402 Housing Tax Credit and Tax Exempt Bond Developments

(a) Commitment. For Competitive HTC Developments, the Department shall issue a Commitment to the Development Owner which shall confirm that the Board has approved the Application and state the Department's commitment to make a Housing Credit Allocation to the Development Owner in a specified amount, subject to the feasibility determination described in Subchapter D of this chapter (relating to Underwriting and Loan Policy) and the determination that the Development satisfies the requirements of this chapter and other applicable Department rules. The Commitment shall expire on the date specified therein, which shall be thirty (30) calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Commitment, pays the required fee specified in §10.901 of this [Chapter](#) (relating to Fee Schedule), and satisfies any conditions set forth therein by the Department. The Commitment expiration date may not be extended.

(b) Determination Notices. For Tax Exempt Bond Developments, the Department shall issue a Determination Notice which shall confirm the Board's determination that the Development satisfies the requirements of this chapter as applicable and other applicable Department rules in accordance with the §42(m)(1)(D) of the Internal Revenue Code (the "Code"). The Determination Notice shall also state the Department's [determination of a specific amount of housing tax credits that the Development may be eligible for](#)~~commitment to issue IRS Form(s) 8609 to the Development Owner in a specified amount~~, subject to the requirements set forth in the Department's rules, as applicable. The Determination Notice shall expire on the date specified therein, which shall be thirty (30) calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Determination Notice, pays the required fee specified in §10.901 of this chapter, and satisfies any conditions set forth therein by the Department. The Determination Notice expiration date may not be extended without prior Board approval for good cause. The Determination Notice will terminate if the Tax Exempt Bonds are not closed within the timeframe provided for by the Board on its approval of the Determination Notice, [by the expiration of the Certificate of Reservation associated with the Determination Notice](#), or if the financing or Development changes significantly as determined by the Department pursuant to its rules and any conditions of approval included in the Board approval or underwriting report.

(c) Tax Credit Amount. The amount of tax credits reflected in the IRS Form(s) 8609 may be greater or less than the amount set forth in the Determination Notice based upon the Department's and the bond issuer's determination as of each building's placement in service. Any increase of tax credits will only be permitted if it is determined necessary by the Department, as required by §42(m)(2)(D) of the Code through the submission of the Cost Certification package. Increases to the amount of tax credits that exceed 110 percent of the amount of credits reflected in the Determination Notice must be approved by the Board. Increases to the amount of tax credits that do not exceed 110 percent of the amount of credits reflected in the Determination Notice may be approved administratively by the Executive Director and are subject to the Credit Increase Fee as described in §10.901 of this chapter.

(d) Documentation Submission Requirements at Commitment of Funds. No later than the expiration date of the Commitment (or no later than December 31 for Competitive HTC Applications, whichever is earlier) or Determination Notice, the documentation described in paragraphs (1) - (6) of this subsection must be provided. Failure to provide these documents may cause the Commitment or Determination Notice to be rescinded:

- (1) for entities formed outside the state of Texas, evidence that the entity filed a Certificate of Application for foreign qualification in Texas, a Franchise Tax Account Status from the Texas Comptroller of Public Accounts and a Certificate of Fact from the Office of the Secretary of State. If the entity is newly registered in Texas and the Franchise Tax Account Status or Certificate of Fact are not available, a statement can be provided to that effect;
- (2) for Texas entities, a copy of the Certificate of Filing for the Certificate of Formation from the Office of the Secretary of State; a Certificate of Fact from the Secretary of State and a Franchise Tax Account Status from the Texas Comptroller of Public Accounts. If the entity is newly registered and the Certificate of Fact and the Franchise Tax Account Status are not available, a statement can be provided to that effect;
- (3) evidence that the signer(s) of the Commitment or Determination Notice have sufficient authority to sign on behalf of the Applicant in the form of a corporate resolution which indicates the sub-entity in Control consistent with the entity contemplated and described in the Application;
- (4) evidence of final zoning that was proposed or needed to be changed pursuant to the Development plan;
- (5) evidence of satisfaction of any conditions identified in the Credit Underwriting Analysis Report or any other conditions of the award required to be met at Commitment or Determination Notice; and
- (6) documentation of any changes to representations made in the Application subject to §10.405 of this chapter (relating to Amendments and Extensions).
- (7) for Applications underwritten with a property tax exemption, documentation must be submitted in the form of a letter from an attorney identifying the statutory basis for the exemption and indicating that the exemption is reasonably achievable, subject to appraisal district review. Additionally, any Development with a proposed Payment in Lieu of Taxes ("PILOT") agreement must provide evidence regarding the statutory basis for the PILOT and its terms.

(e) Post Bond Closing Documentation Requirements.

- (1) Regardless of the issuer of the bonds, no later than sixty (60) calendar days following closing on the bonds, the Development Owner must submit the documentation in subparagraphs (A)-(D) of this paragraph:-

~~(A) a Management Plan and an Affirmative Marketing Plan created in compliance with the Department's Affirmative Marketing Rule in §10.617 of Subchapter F;~~

~~(B) a training certificate from a Department approved "property owner and manager Fair Housing trainer" showing that the Development Owner and on-site or regional property manager has attended at least five (5) hours of Fair Housing training. The certificate must not be older than two years from the date of submission within the last year;~~

~~(C) a training certificate from a Department approved "architect and engineer Fair Housing trainer" showing that the lead architect or engineer responsible for certifying compliance with the Department's accessibility and construction standards has attended at least five (5) hours of Fair~~

Housing training. The certificate must not be older than two years from the date of submission within the last year;

(~~DC~~) evidence that the financing has closed, such as an executed settlement statement; and

(~~ED~~) a confirmation letter from the Compliance Division evidencing receipt of the Electronic Compliance Reporting Filing Agreement and the Owner's Designation of Administrator of Accounts forms pursuant to §10.607(a).

~~(2) Certifications required under paragraph (1)(B) and (C) of this subsection must not be older than one year from the date of the submission deadline.~~

(f) Carryover (Competitive HTC Only). All Developments which received a Commitment, and will not be placed in service and receive IRS Form(s) 8609 in the year the Commitment was issued, must submit the Carryover documentation, in the form prescribed by the Department in the Carryover Manual, no later than the Carryover Documentation Delivery Date as identified in §11.2 of this title (relating to Program Calendar for Competitive Housing Tax Credits) of the year in which the Commitment is issued pursuant to §42(h)(1)(C) of the Code.

- (1) Commitments for credits will be terminated if the Carryover documentation has not been received by this deadline, unless an extension has been approved. This termination is final and not appealable, and immediately upon issuance of notice of termination, staff is directed to award the credits to other qualified Applicants on the approved waiting list.
- (2) If the interim or permanent financing structure, syndication rate, amount of debt or syndication proceeds are finalized but different at the time of Carryover from what was proposed in the original Application, applicable documentation of such changes must be provided and the Development may be re-evaluated by the Department for a reduction of credit or change in conditions.
- (3) All Carryover Allocations will be contingent upon the Development Owner providing evidence that they have and will maintain Site Control through the 10 Percent Test or through the anticipated closing date, whichever is earlier. For purposes of this paragraph, any changes to the Development Site acreage between Application and Carryover must be addressed by written explanation or, as appropriate, in accordance with §10.405.
- (4) Confirmation of the right to transact business in Texas, as evidenced by the Franchise Tax Account Status (the equivalent of the prior Certificate of Account Status) from the Texas Comptroller of Public Accounts and a Certificate of Fact from the Office of the Secretary of State must be submitted with the Carryover Allocation.

(g) 10 Percent Test (Competitive HTC Only). No later than July 1 of the year following the submission of the Carryover Allocation Agreement or as otherwise specified in the applicable year's Qualified Allocation Plan, under §11.2, documentation must be submitted to the Department verifying that the Development Owner has expended more than 10 percent of the Development Owner's reasonably expected basis, pursuant to §42(h)(1)(E)(i) and (ii) of the Code (as amended by The Housing and Economic Recovery Act of 2008), and Treasury Regulations, §1.42-6. The Development Owner must submit, in the form prescribed by the Department, documentation evidencing paragraphs (1) - (~~68~~) of this subsection, along with all information outlined in the Post Award Activities Manual. Satisfaction of the 10 Percent Test will be contingent upon the submission of the items described in paragraphs (1) - (~~68~~) of this subsection as well as all other conditions placed upon the Application in the Commitment. Requests for an extension will be reviewed on a case by case basis as addressed in §10.405(d) of this Ssubchapter and a point deduction evaluation will be completed in accordance with Texas Government Code §2306.6710(b)(2) and §11.9(f) of this title. Documentation to be submitted for the 10 Percent Test includes:



(1) an Independent Accountant's Report and Taxpayer's Basis Schedule form. The report must be prepared on the accounting firm's letterhead and addressed to the Development Owner or an Affiliate of the Development Owner. The Independent Accountant's Report and Taxpayers Basis Schedule form must be signed by the Development Owner. If, at the time the accountant is reviewing and preparing their report, the accountant has concluded that the taxpayer's reasonably expected basis is different from that the amount reflected in the Carryover Allocation agreement, then the accountant's report should reflect the taxpayer's reasonably expected basis as of the time the report is being prepared;

(2) any conditions of the Commitment or Real Estate Analysis underwriting report due at the time of 10% Test submission;

(23) evidence that the Development Owner has purchased, transferred, leased, or otherwise has ownership of the Development Site. The Development Site must be identical to the Development Site that was submitted at the time of Application submission. For purposes of this paragraph, any changes to the Development Site acreage between Application and 10 Percent Test must be addressed by written explanation or, as appropriate, in accordance with §10.405;

(4) a current survey or plat of the Development Site, prepared and certified by a duly licensed Texas Registered Professional Land Surveyor. The survey or plat must clearly delineate the flood plain boundary lines and show all easements and encroachments;

(35) for New Construction, Reconstruction, and Adaptive Reuse Developments, a certification from a Third Party civil engineer or architect stating that all necessary utilities will be available at the Development Site and that there are no easements, licenses, royalties, or other conditions on or affecting the Development that would materially or adversely impact the ability to acquire, develop, and operate as set forth in the Application. Copies of supporting documents may be required by the Department;

(46) for the Development Owner and on-site or regional property manager, a training certificate from a Department approved "property owner and manager Fair Housing trainer" showing that the Development Owner and on-site or regional property manager attended at least five (5) hours of Fair Housing training. For architects and engineers, a training certificate from a Department approved "architect and engineer Fair Housing trainer" showing that the lead architect or engineers responsible for certifying compliance with the Department's accessibility and construction standards has attended at least five (5) hours of Fair Housing training within the last year. Certifications required under this paragraph must not be older than ~~one year~~ two years from the date of submission of the 10 Percent Test Documentation ~~submission deadline;~~ and

(57) a Certification from the lender and syndicator identifying all known Guarantors. If identified Guarantors have changed from the Guarantors or Principals identified at the time of Application, a non-material amendment must be requested by the Applicant in accordance with §10.405 of this subchapter, and the new Guarantors or Principals must be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation Reviews);

(68) a Development Owner's preliminary construction schedule or statement showing the prospective construction loan closing date, construction start and end dates, prospective placed in service date for each building, and planned first year of the credit period.

(h) Construction Status Report (All Multifamily Developments). ~~Within three (3) months of the 10 Percent Test submission and every quarter thereafter, all All~~ multifamily developments must submit a construction status report. The initial report must be submitted;

(1) For Competitive Housing Tax Credit Developments, 90 days after submission of the 10 Percent Test documentation (this includes Developments funded with HTC and TDHCA Multifamily Direct Loans);

(2) For Tax-Exempt Bond Developments, 90 days after expiration of the Certificate of Reservation; or

(3) For Developments awarded under the Department's Multifamily Direct Loan programs only (~~TCAP, HOME, HTF, etc.~~), 90 days after loan closing.

The initial report for all multifamily Developments shall consist of the items identified in paragraphs (1) - (45) of this subsection, unless stated otherwise. All subsequent reports shall contain items identified in paragraphs (3) ~~and~~ (45) of this subsection and must include any changes or amendments to items in paragraphs (1) - (2) if applicable. Construction status reports shall be due by the tenth day of the month following each reporting quarter's end (January, April, July, and October) and continue on a quarterly basis until the entire development is complete as evidenced by the final Application and Certificate for Payment (AIA Document G702 and G703) or equivalent form approved for submission by the construction lender and/or investor. The construction status report submission consists of:

- (1) the executed partnership agreement with the investor (identifying all Guarantors) or, for Developments receiving an award only from the Department's Direct Loan Programs, other documents setting forth the legal structure and ownership. If identified Guarantors or Principals of a Guarantor entity were not already identified as a Principal of the Owner, Developer, or Guarantor at the time of Application, a non-material amendment must be requested in accordance with §10.405 of this subchapter and the new Guarantors and all of its Principals, as applicable, must be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation Reviews);
- (2) the executed construction contract and construction loan agreement. If the loan has not closed, the anticipated closing date must be provided and, upon closing, the agreement must be provided to the Department;
- (3) the most recent Application and Certificate for Payment (AIA Document G702 and G703) certified by the Architect of Record (or equivalent form approved for submission by the construction lender and/or investor); and
- (4) all Third Party construction inspection reports not previously submitted. If the lender and/or investor does not require third party construction inspection reports, the Development Owner must hire a third party inspector to perform these inspections on a quarterly basis and submit the reports to the Department;

(5) Minority Owned Business Report (HTC only).

(i) LURA Origination (~~Competitive~~-HTC Only). The Development Owner must request a copy of the HTC LURA as directed in the Post Award Activities Manual. The Department will draft a LURA for the Development Owner that will impose the income and rent restrictions identified in the Development's final underwriting report and other representations made in the Application, including but not limited to specific commitments to provide tenant services, to lease to Persons with Disabilities, and/or to provide specific amenities. After origination, the Department executed LURA and all exhibits and addendums will be sent to the Development Owner to execute and record in the real property records for the county in which the Development is located. The original recorded LURA must be returned to the Department no later than the end of the first year of the Credit Period. In general, no Housing Tax Credits are allowed to be issued for a building unless there is a properly executed and recorded LURA in effect at the end of the first year of the Credit Period. Nothing in this section negates a Development Owner's responsibility for full compliance with §42(h)(6) of the Code. The Department will not issue IRS Form(s) 8609 until it receives the original, properly-recorded LURA, or has alternative arrangements which are acceptable to the Department and approved by the Executive Director. Electronically recorded LURAs provided to the Department will be acceptable in lieu of the original, recorded copy.

(j) Cost Certification (Competitive and Non-Competitive HTC, and related activities only). The Department



conducts a feasibility analysis in accordance with §42(m)(2)(C)(i)(III) of the Code and Subchapter D of this chapter (relating to Underwriting and Loan Policy) to make a final determination on the allocation of Housing Tax Credits. The requirements for cost certification include those identified in paragraphs (1) - (3) of this subsection.

- (1) Development Owners must file cost certification documentation no later than January 15 following the first year of the Credit Period, as defined in §42(f)(1) of the Code.
- (2) The Department will evaluate the cost certification documentation and notify the Development Owner of any additional required documentation needed to complete the review. The Department reserves the right to request additional documents or certifications as it deems necessary or useful in the determination of the Development's eligibility for a final Housing Tax Credit allocation amount. Any communication issued to the Development Owner pertaining to the cost certification documentation may also be sent to the syndicator.
- (3) IRS Form(s) 8609 will not be issued until the conditions as stated in subparagraphs (A) - (HG) of this paragraph have been met. The Development Owner has:

(A) provided evidence that all buildings in the Development have been placed in service by:

- (i) December 31 of the year the Commitment was issued;
- (ii) December 31 of the second year following the year the Carryover Allocation Agreement was executed; or
- (iii) the approved Placed in Service deadline;

(B) provided a complete final cost certification package in the format prescribed by the Department. As used herein, a complete final cost certification package means a package that meets all of the Department's criteria with all required information and exhibits listed in clauses (i) - (xxxvi) of this subparagraph, and pursuant to the Post Award Activities Manual. If any item on this list is determined to be unclear, deficient, or inconsistent with the cost certification review completed by the Department, a Request for Information (RFI) will be sent to the Development Owner. Failure to respond to the requested information within a thirty (30) day period from the date of request may result in the termination of the cost certification review and request for 8609s and require a new request be submitted with a Cost Certification Extension Fee as described in Subchapter G of this chapter (relating to Fee Schedule, Appeals and Other Provisions). ~~Furthermore, cost certification reviews that remain open for an extended period of time (more than 365 days) may be reported to the EARAC during any related party previous participation review conducted by the Department.~~

- (i) Owner's Statement of Certification
- (ii) Owner Summary & Organization Charts for the Owner, Developer, and Guarantors
- (iii) Evidence of Qualified Nonprofit or CHDO Participation
- (iv) Evidence of Historically Underutilized Business (HUB) Participation
- (v) Development Team List
- (vi) Development Summary with Architect's Certification
- (vii) Development Change Documentation

- (viii) As Built Survey
- (ix) Closing Statement
- (x) Title Policy
- (xi) Title Policy Update
- (xii) Placement in Service
- (xiii) Evidence of Placement in Service
- (xiv) Architect's Certification of Completion Date and Date Ready for Occupancy
- (xv) Auditor's Certification of Acquisition/Rehabilitation Placement in Service Election
- (xvi) Independent Auditor's Report
- (xvii) Independent Auditor's Report of Bond Financing
- (xviii) Development Cost Schedule
- (xix) Contractor's Application for Final Payment (G702/G703)
- (xx) Additional Documentation of Offsite Costs
- (xxi) Rent Schedule
- (xxii) Utility Allowances
- (xxiii) Annual Operating Expenses
- (xxiv) 30 Year Rental Housing Operating Pro Forma
- (xxv) Current Operating Statement
- (xxvi) Current Rent Roll
- (xxvii) Summary of Sources and Uses of Funds
- (xxviii) Financing Narrative
- (xxix) Final Limited Partnership Agreement [with all amendments and exhibits](#)
- (xxx) All Loan Agreements and Promissory Notes (except for Agreements and Notes issued directly by the Department)
- (xxxi) Architect's Certification of Fair Housing Requirements
- (xxxii) Development Owner Assignment of Individual to Compliance Training
- (xxxiii) TDHCA Compliance Training Certificate ([not older than two years -old- from the date of cost certification submission](#))

(xxxiv) TDHCA Final Inspection Clearance Letter

(xxxv) Completion Certificate (TDHCA Issued Bonds Only)

(xxxvi) Other Documentation as Required

- (C) informed the Department of and received written approval for all amendments, extensions, and changes in ownership relating to the Development in accordance with §10.405 of this chapter (relating to Amendments and Extensions) and §10.406 of this chapter (relating to Ownership Transfers (§2306.6713));
- (D) paid all applicable Department fees, including any past due fees;
- (E) met all conditions noted in the Department underwriting report, Determination Notice, and Commitment;
- (F) corrected all issues of noncompliance, including but not limited to noncompliance status with the LURA (or any other document containing an Extended Low-income Housing Commitment) or the program rules in effect for the subject Development, as described in this chapter. Developments in the ~~Corrective Action Period~~corrective action period and/or with any uncorrected issues of noncompliance; outside of the ~~Corrective Action Period~~corrective action period, or that have had a monitoring review where noncompliance was identified, will not be issued IRS Form(s) 8609s until all events of noncompliance are assessed, corrected, or otherwise approved by the Executive Award Review and Advisory Committee;
- (G) completed an updated underwriting evaluation in accordance with Subchapter D of this chapter based on the most current information at the time of the review.

#### **§10.403 ~~Direct Loans~~ Review of Annual HOME/NSP and National Housing Trust Fund Rents.**

(a) Applicability. For participants of the Department's Multifamily HOME Direct Loan program, where Commitment of Funds occurred on or after August 23, 2013, the Department is required by 24 CFR §92.252(f) to review and approve or disapprove HOME/NSP rents on an annual basis. The Department is required by 24 CFR 93.302(c)(2) to review and approve or disapprove NHTF rents on an annual basis. Development Owners must submit documentation for the review of HOME/NSP/NHTF rents by no later than January 30th of each year as further described in the Post Award Activities Manual.

(b) Documentation for Review. The Department will furnish an Annual ~~HOME~~-Rent Approval Request packet for this purpose that will include a request for Development information and an Owner's proposed ~~HOME~~-rent schedule and will require submission of a current rent roll and an approved utility allowance letter from the Department's Compliance Division. The Department may request additional documentation to perform a determination, as needed, including but not limited to annual operating statements, market surveys, or other information related to determining whether rents are sufficient to maintain the financial viability of a project or are in compliance with maximum rent limits.

(c) Review Process. ~~HOME~~-Rents will be approved or disapproved within 30 days of receipt of all items required to be submitted by the Development Owner, and will be issued in the form of a signed letter from the Asset Management Division. Development Owners must keep copies of all approval letters on file at the Development site to be reviewed at the time of Compliance Monitoring reviews.

(d) Compliance. Development Owners for whom this section is applicable are subject to compliance under §10.622 under Subchapter F and may be subject to penalties under §10.624. Approval of rents by the Asset Management Division will be limited to a review of the documentation submitted and will not guarantee compliance with the Department's rules in Subchapter F or otherwise absolve an Owner of any past, current,

or future non-compliance related to Department rules, guidance, Compliance Monitoring visits, or any other rules or guidance to which the Development or its Owner may be subject.

~~(a) Loan Closing. The loan closing must occur no more than six months from the date of the Conditional Commitment or similar document is executed, which may be extended in accordance with the provisions in this subchapter. In preparation for closing any Direct Loan, the Development Owner must submit the items described in paragraphs (1) – (7) of this subsection:~~

~~(1) documentation of the prior or reasonable assurance of a concurrent closing with any superior lien holders or any other sources of funds determined to be necessary for the long-term financial feasibility of the Development and all due diligence determined by the Department to be prudent and necessary to meet the Department's rules and to secure the interests of the Department. Where the Department will have a first lien position and the Applicant provides documentation that closing on other sources is reasonably expected to occur within three (3) months, the Executive Director or authorized designee may approve a closing to move forward without the closing on other sources. The Executive Director as the authorized designee of the Department must require a personal guarantee, in form and substance acceptable to the Department, from a Principal of the Development Owner for the interim period;~~

~~(2) when Department funds have a first lien position, assurance of completion of the Development in the form of payment and performance bonds in the full amount of the construction contract will be required or equivalent guarantee in the sole determination of the Department. Such assurance of completion will run to the Department as obligee. Development Owners also utilizing the USDA §515 program are exempt from this requirement but must meet the alternative requirements set forth by USDA;~~

~~(3) Owner/General Contractor agreement and Owner/Architect agreement;~~

~~(4) survey of the Property that includes a certification to the Department, Development Owner, Title Company, and other lenders;~~

~~(5) if layered with Housing Tax Credits, a fully executed limited partnership agreement between the General Partner and the tax credit investor entity (may be provided concurrent with closing);~~

~~(6) a revised development cost schedule, sources and uses, operating proforma, planned cost categories for the use of Direct Loan funds, updated written financial commitments/term sheets and any additional budget schedules that have changed since the time of application. If the budget or sources of funds reflect material changes from what was approved by the Board that may affect the financial feasibility of the Development, the Department may request additional documentation to ensure that the Development continues to meet the requirements of Subchapter D of this chapter (relating to Underwriting and Loan Policy) and will be required to be approved by the Executive Director or the Board;~~

~~(7) if required for the Direct Loan, prior to closing, the Development Owner must have received verification of:~~

~~(A) environmental clearance;~~

~~(B) verification of HUD Site and Neighborhood clearance;~~

~~(C) documentation necessary to show compliance with the Uniform Relocation Assistance and Property Act and any other relocation requirements that may apply; and~~

~~(D) any other documentation that is necessary or prudent to meet program requirements or state or federal law in the sole determination of the Department.~~

~~(b) Loan Documents. The Development Owner is required to execute all loan closing documents required by and in form and substance acceptable to the Legal Division including but not limited to a promissory note, deed of trust, construction loan agreement (if the proceeds of the loan are to be used for construction), LURA, HOME contract, Architect and/or licensed engineer certification of understanding to complete environmental mitigation if such mitigation is identified in HUD's environmental clearance and by the Real Estate Analysis Division (REA) and assignment and security instruments whereby the Developer, the Development Owner, and/or any Affiliates (if applicable) grants the Department their respective right, title, and interest in and to other collateral, including without limitation the Owner/Architect agreement and the Owner/General Contractor agreement, to secure the payment and performance of the Development Owner's obligations under the loan documents. Repayment provisions will require repayment on a per unit basis for units that have not been rented to eligible households within eighteen (18) months of project completion; termination and repayment of the HOME award in full will be required for any development that is not completed within four (4) years of the date of funding commitment.~~

~~(c) Disbursement of Funds (including developer fees). The Development Owner must comply with the requirements in paragraphs (1)–(9) of this subsection for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Development Owner's compliance with these requirements may be required with a request for disbursement:~~

~~(1) except for disbursement requests made for acquisition and closing costs or requests made for soft costs only, a down-date endorsement to the title policy not older than the Architect's certification date on AIA form G702 or sixty (60) calendar days, whichever is later. For release of retainage the down-date endorsement must be dated at least thirty (30) calendar days after the date of the construction completion as certified on the Certificate of Substantial Completion (AIA Form G704);~~

~~(2) for hard construction costs, documentation of the total construction costs incurred and costs incurred since the last disbursement of funds must be submitted. Such documentation must be signed by the General Contractor and certified by the Development architect and is generally in the form of an AIA Form G702 or G703;~~

~~(3) the Department will require that at least 50 percent of the funds be withheld from the initial disbursement to allow for periodic disbursements, or such lesser amount provided it meets all federal requirements. For HOME Direct Loans: The initial draw request for the development must be entered no later than ten business days prior to the one year anniversary of the commitment date (as defined in 24 CFR Part 92) or funds may be cancelled in HUD's IDIS system;~~

~~(4) if applicable, up to 75 percent of Direct Loan funds may be drawn before providing evidence of Match. Thereafter, each Development Owner must provide evidence of Match in the form of a formal contract or commitment with the vendor clearly delineating the donated portion of the contract price, invoices showing the forgiven amount, or other equally verifiable third party documentation prior to release of the final 25 percent of funds. If funds are requested on the day of closing, an executed formal contract specifying the terms of the Match must be provided;~~

~~(5) Developer fee disbursement shall be conditioned upon:~~

~~(A) for Developments in which the loan is secured by a first lien deed of trust against the Property, 75 percent shall be disbursed in accordance with percent of construction completed (i.e. 75 percent of the total allowable fee will be multiplied by the percent completion) as documented by the construction contract and as may be verified by an inspection by the Department. The remaining 25 percent shall be disbursed at the time of release of retainage; or~~

~~(B) for Developments in which the loan is not secured by a first lien deed of trust or the Development is also utilizing Housing Tax Credits, developer fees will not be reimbursed by the Department unless the other lenders and syndicator confirm in writing that they do not have an existing or planned agreement to govern~~

~~the disbursement of developer fees and expect that Department funds shall be used to fund developer fees. Provided this requirement is met, developer fees shall be reimbursed in the same manner as described in subparagraph (A) of this paragraph; and~~

~~(C) the Department may reasonably withhold any disbursement of developer fees if it determines that the Development is not progressing as necessary to meet the benchmarks for the timely completion of construction of the Development that is set forth in the loan documents, or that cost overruns have put the Development Owner's ability to repay its Direct Loan or complete the construction of the Development in accordance with the terms of the loan documents and within budget at risk. Once a reasonable alternative that is deemed acceptable by the Department has been provided, disbursement of the remaining fee may occur;~~

~~(6) expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure requested. The Department may request the Development Owner make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of Department funds to Development Owner as may be necessary or advisable for compliance with all program requirements. For HOME Direct Loans: Pre-award costs for predevelopment activities, as specified in the loan documents, are allowable only if they were incurred less than 24 months prior to the commitment date (as defined in 24 CFR Part 92) and were associated with the Application Round in which the project was awarded;~~

~~(7) table funding requests will not be considered unless:~~

~~(A) a "Commitment to a specific local project" as defined in 24 CFR Part 92 has been made, if applicable; and~~

~~(B) ten (10) days prior to anticipated closing, all table funding draw documentation has been completed and submitted to the Department;~~

~~(8) each Development Owner must request a progress inspection from Department staff once the property passes 25 percent construction completion based on the AIA G702-703. Up to 50 percent of the HOME award will be released prior to receipt of documentation that the progress inspection has occurred;~~

~~(9) Following fifty percent construction completion, the remaining HOME funds will be released in accordance with the percentage of construction completion, not to exceed ninety percent of award, at which point funds will be held as retainage until the final draw request. Retainage will be held until all of the items described in subparagraphs (A) – (G) of this paragraph are received:~~

~~(A) Certificate of Substantial Completion (AIA Form G704);~~

~~(B) A down date endorsement dated at least 30 calendar days after the date of completion as certified on the Certificate of Substantial Completion (AIA Form G704);~~

~~(C) For developments not layered with Housing Tax Credits, a Closed Final Development Inspection Letter from the Department;~~

~~(D) For developments subject to the Davis-Bacon Act, evidence from the Senior Labor Standards Specialist that the final wage compliance report was received and approved;~~

~~(E) Receipt of Certificates of Occupancy for New Construction or a Certificate of Substantial Completion (AIA Form G704); from the Development Architect for Rehabilitation;~~

~~(F) Development completion reports which may include documentation of full compliance with the Uniform Relocation Act, Davis-Bacon Act, and Section 3 of the Housing and Urban Development Act of 1968, as~~



~~applicable to the Development, and any other applicable requirement; and~~

~~(G) If applicable to the Development, certification from Architect or a licensed engineer that all HUD and REA environmental mitigation conditions have been met.~~

#### §10.404 Reserve Accounts

(a) Replacement Reserve Account (§2306.186). The Department will require Development Owners to provide regular maintenance to keep housing sanitary, safe and decent by establishing and maintaining a reserve for replacement account for the Development in accordance with Texas Government Code, §2306.186. The reserve account must be established, in accordance with paragraphs (3), (4), (5), and (6) of this subsection, and maintained through annual or more frequent regularly scheduled deposits, for each Unit in a Development of 25 or more rental units regardless of the amount of rent charged for the Unit. If the Department is processing a request for loan modification or other request under this subchapter, and the Development does not have an existing replacement reserve account, or sufficient funds in the reserve to meet future capital expenditure needs of the Development as determined by a history of uncorrected UPCS violations, ongoing issues related to keeping housing sanitary, safe, and decent, an account balance below the annual reserve deposit amount as specified in this section, or as indicated by the number or cost of repairs included in a PCA, the Development Owner will be required to establish and maintain a replacement reserve account or review whether the amount of regular deposits to the replacement reserve account can be increased, regardless of the number of units at the Development. The Department shall, through cooperation of its divisions responsible for asset management and compliance, ensure compliance with this section. The duties of the Development Owner under this section cease on the date of a change in ownership of the Development; however, the subsequent Development Owner of the Development is subject to the requirements of this section and any additional or revised requirements the Department may impose after reviewing a Development's compliance history, a PCA submitted by the Owner, or the amount of reserves that will be transferred at the time of any property sale.

- (1) The LURA requires the Development Owner to begin making annual deposits to the replacement reserve account on the later of the:
  - (A) date that occupancy of the Development stabilizes as defined by the First Lien Lender or, in the absence of a First Lien Lender other than the Department, the date the Property is at least 90 percent occupied; or
  - (B) the date when the permanent loan is executed and funded.
- (2) The Development Owner shall continue making deposits into the replacement reserve account until the earliest of the:
  - (A) date on which the owner suffers a total casualty loss with respect to the Development or the date on which the Development becomes functionally obsolete, if the Development cannot be or is not restored;
  - (B) date on which the Development is demolished;
  - (C) date on which the Development ceases to be used as a multifamily rental property; or
  - (D) end of the Affordability Period specified by the LURA, or if an Affordability Period is not specified and the Department is the First Lien Lender, then when the Department's loan has been fully repaid or as otherwise agreed by the Owner and Department.
- (3) If the Department is the First Lien Lender with respect to the Development or if the establishment of a Reserve Account for repairs has not been required by the First Lien Lender or Bank Trustee, each



Development Owner receiving Department assistance for multifamily rental housing shall deposit annually into a separate, Department-specific Reserve Account through the date described in paragraph (2) of this subsection:

- (A) For New Construction Developments, not less than \$250 per Unit. Withdrawals from such account will be restricted for up to five years following the date of award except in cases in which written approval from the Department is obtained relating to casualty loss, natural disaster, reasonable accommodations (but not for the construction standards required by the NOFA or program regulations), or demonstrated financial hardship; or
  - (B) For Adaptive Reuse, Rehabilitation and Reconstruction Developments, the greater of the amount per Unit per year either established by the information presented in a Property Condition Assessment in conformance with Subchapter D of this chapter (relating to Underwriting and Loan Policy) or \$300 per Unit per year.
- (4) For all Developments, a Property Condition Assessment ("PCA") must be conducted at intervals that are consistent with requirements of the First Lien Lender, other than the Department. If the Department is the First Lien Lender, or the First Lien Lender does not require a Third Party PCA, a PCA must be conducted at least once during each five (5) year period beginning with the eleventh (11th) year after the awarding of any financial assistance from the Department. PCAs conducted by the Owner at any time or for any reason other than as required by the Department in the year beginning with the eleventh (11th) year of award must be submitted to the Department for review within 30 days of receipt by the Owner.
- (5) Where there is a First Lien Lender other than the Department or a Bank Trustee as a result of a bond trust indenture or tax credit syndication, the Development Owner shall comply with the lesser of the replacement reserve requirements of the First Lien Lender or the requirements in paragraph (3) of this subsection. In addition, the Department should be listed as a party to receive notice under any replacement reserve agreement entered into by the Development Owner. The Development Owner shall submit on an annual basis, within the Department's required Development Owner's Financial Certification packet, requested information regarding:
- (A) the reserve for replacement requirements under the first lien loan agreement (if applicable) referencing where those requirements are contained within the loan documents;
  - (B) compliance with the first lien lender requirements outlined in subparagraph (A) of this paragraph;
  - (C) if the Owner is not in compliance with the lender requirements, the Development Owner's plan of action to bring the Development in compliance with all established reserve for replacement requirements; and
  - (D) whether a PCA has been ordered and the Owner's plans for any subsequent capital expenditures, renovations, repairs, or improvements.
- (6) Where there is no First Lien Lender but the allocation of funds by the Department and Texas Government Code, §2306.186 requires that the Department oversee a Reserve Account, the Development Owner shall provide at their sole expense an escrow agent acceptable to the Department to act as Bank Trustee as necessary under this section. The Department shall retain the right to replace the escrow agent with another Bank Trustee or act as escrow agent at a cost plus fee payable by the Development Owner due to breach of the escrow agent's responsibilities or otherwise with thirty (30) days prior notice of all parties to the escrow agreement.
- (7) Penalties and Non-Compliance. If the Development Owner fails to comply with the replacement reserve account requirements stated herein, and request for extension or waiver of these requirements is

not approved by the Department, then a penalty of up to \$200 per dwelling Unit in the Development and/or characterization of the Development as being in default with this requirement, may be imposed:

- (A) a Reserve Account, as described in this section, has not been established for the Development;
  - (B) the Department is not a party to the escrow agreement for the Reserve Account, if required;
  - (C) money in the Reserve Account:
    - (i) is used for expenses other than necessary repairs, including property taxes or insurance; or
    - (ii) falls below mandatory annual, monthly, or Department approved deposit levels;
  - (D) Development Owner fails to make any required deposits;
  - (E) Development Owner fails to obtain a Third-Party Property Condition Assessment as required under this section or submit a copy of a PCA to the Department within 30 days of receipt; or
  - (F) Development Owner fails to make necessary repairs in accordance with the Third Party Property Condition Assessment or §10.621 of this chapter (relating to Property Condition Standards).
- (8) Department-Initiated Repairs. The Department or its agent may make repairs to the Development within 30 days of written notice from the Department if the Development Owner fails to complete necessary repairs indicated in the submitted Property Condition Assessment or identified by Department physical inspection. Repairs may be deemed necessary if the Development Owner fails to comply with federal, state, and/or local health, safety, or building code requirements. Payment for necessary repairs must be made directly by the Development Owner or through a replacement Reserve Account established for the Development under this section. The Department or its agent will be allowed to produce a Request for Bids to hire a contractor to complete and oversee necessary repairs. On a case-by-case basis, the Department may determine that the money in the Reserve Account may be used for expenses other than necessary repairs, including property taxes or insurance, if:
- (A) Development income before payment of return to Development Owner or deferred developer fee is insufficient to meet operating expense and debt service requirements; or
  - (B) Development income after payment of operating expenses, but before payment of return to Development Owner or deferred developer fee is insufficient to fund the mandatory deposit levels;
  - (C) In the event of (A) or (B) above, funds withdrawn must be replaced from Cash Flow after payment of Operating Expenses but before return to Development Owner or deferred developer fee until the mandatory deposit level is replenished. The Department reserves the right to re-evaluate payments to the reserve, increase such payments or require a lump sum deposit to the reserve, or require the Owner to enter into a separate Reserve Agreement if necessary to protect the long term feasibility of the Development.
- (9) Exceptions to Replacement Reserve Account. This section does not apply to a Development for which the Development Owner is required to maintain a Reserve Account under any other provision of federal or state law.
- (10) In the event of paragraph (7) or (8) of this subsection, the Department reserves the right to require by separate Reserve Agreement a revised annual deposit amount and/or require Department concurrence for withdrawals from the Reserve Account to bring the Development back into compliance. Establishment of a new Bank Trustee or transfer of reserve funds to a new, separate and distinct account may be required if necessary to meet the requirements of such Agreement. The Agreement will

be executed by the Department, Development Owner, and financial institution representative.

(b) Lease-up Reserve Account. A lease-up reserve funds start-up expenses in excess of the revenue produced by the Development prior to stabilization. The Department will consider a reasonable lease-up reserve account based on the documented requirements from a third-party lender, third-party syndicator, or the Department. During the underwriting at the point of the Cost Certification review, the lease-up reserve may be counted as a use of funds only to the extent that it represents operating shortfalls net of escrows for property taxes and property insurance. Funds from the lease-up reserve used to satisfy the funding requirements for other reserve accounts may not be included as a use of funds for the lease-up reserve. Funds from the lease-up reserve distributed or distributable as cash flow to the Development Owner will be considered and restricted as developer fee.

(c) Operating Reserve Account. At various stages during the application, award process, and during the operating life of a Development, the Department will conduct a financial analysis of the Development's total development costs and operating budgets, including the estimated operating reserve account deposit required. For example, this analysis typically occurs at application and cost certification review. The Department will consider a reasonable operating reserve account deposit in this analysis based on the needs of the Development and requirements of third-party lenders or investors. The amount used in the analysis will be the amount described in the project cost schedule or balance sheet, if it is within the range of two (2) to six (6) months of stabilized operating expenses plus debt service. The Department may consider a greater amount proposed or required by the Department, any superior lien lender, or syndicator, if the detail for such greater amount is reasonable and well documented. Reasonable operating reserves in this chapter do not include capitalized asset management fees, guaranty reserves, or other similar costs. In no instance will operating reserves exceed twelve (12) months of stabilized operating expenses plus debt service (exclusive of transferred replacement reserves for USDA or HUD financed rehabilitation transactions). Operating reserves are generally for the term of the permanent loan. In no instance will operating reserves released within five (5) years be included as a cost.

(d) Special Reserve Account. If the funding program requires or allows for the establishment and maintenance of a Special Reserve Account for the purpose of assisting residents at the Development with expenses associated with their tenancy, this will be established in accordance with a written agreement with the Development Owner.

(1) The Special Reserve Account is funded through a one-time payment or annually through an agreed upon percentage of net cash flow generated by the Development, excess development funds at completion as determined by the Department, or as otherwise set forth in the written agreement. For the purpose of this account, net cash flow is defined as funds available from operations after all expenses and debt service required to be paid have been considered. This does not include a deduction for depreciation and amortization expense, deferred developer fee payment, or other payments made to related parties, except as allowed by the Department for property management. Proceeds from any refinancing or other fund raising from the Development will be considered net cash flow for purposes of funding the Special Reserve Account. The account will be structured to require Department concurrence for withdrawals.

(2) All disbursements from the account must be approved by the Department.

(3) The Development Owner will be responsible for setting up a separate and distinct account with a financial institution acceptable to the Department. A Special Reserve Account Agreement will be drafted by the Department and executed by the Department, Development Owner, and financial institution representative.

(4) Use of the funds in the Special Reserve Account is determined by a plan that is pre-approved by the Department. The Owner must create, update and maintain a plan for the disbursement of funds from the Special Reserve Account. The plan should be established at the time the account is created and

updated and submitted for approval by the Department as needed. The plan should consider the needs of the tenants of the property and the existing and anticipated fund account balances such that all of the fund uses provide benefit to tenants. Disbursements from the fund will only be approved by the Department if they are in accordance with the current approved plan.

(e) Other Reserve Accounts. Additional reserve accounts may be recognized by the Department as necessary and required by the Department, superior lien lender, or syndicator.

#### §10.405 Amendments and Extensions

(a) Amendments to Housing Tax Credit (HTC) Application or Award Prior to Land Use Restriction Agreement (LURA) recording or amendments that do not result in a change to the LURA. (§2306.6712) Once a Development receives a Commitment or Determination Notice, the Department expects the Development Owner to construct or rehabilitate, operate, and own the Development consistent with the representations in the Application. The Department must receive notification of any amendments to the Application. Regardless of development stage, the Board shall re-evaluate a Development that undergoes a material change, as identified in paragraph (3) of this subsection at any time after the initial Board approval of the Development. (§2306.6731(b)) The Board may deny an amendment request and subsequently may ~~revoke~~ rescind any Commitment or Determination Notice issued for an ~~an Development or Competitive HTC~~ Application, and may reallocate the credits to other Applicants on the waiting list.

(1) Requesting an amendment. The Department shall require the Applicant to file a formal, written request for an amendment to the Application. Such request must include a detailed explanation of the amendment request and other information as determined to be necessary by the Department, and the applicable fee as identified in §10.901(13) of this chapter (relating to Fee Schedule) in order to be received and processed by the Department. Department staff will evaluate the amendment request to determine if the change would affect an allocation of Housing Tax Credits by changing any item that received points, by significantly affecting the most recent underwriting analysis, or by materially altering the Development as further described in this subsection.

(2) Notification Items. The Department must be notified of the changes described in subparagraphs (A) – (E) of this paragraph. The changes identified are subject to staff agreement based on a review of the amendment request, and any additional information or documentation requested. Notifications items will be considered satisfied when an acknowledgment of the specific change(s) is received from the Department.

(A) changes to Development Site acreage required by the City or other local governmental authority, or changes resulting from survey discrepancies, as long as such change does not also result in a modification to the residential density of at least 5 percent;

(B) minor modifications to the site plan that will not significantly impact development costs, including, but not limited to, relocation or rearrangement of buildings on the site (as long as the same number of residential and non-residential buildings remain the same), and movement, addition, or deletion of ingress/egress to the site;

(C) increases in net rentable square footage or common areas that will not significantly impact development costs;

(D) changes in amenities that do not require a change to the recorded LURA and do not negatively impact scoring, including changes to outdated amenities that could be replaced by an amenity with equal benefit to the resident community;

(E) any other amendment not identified or determined to be non-material or material in paragraphs (3) and (4) of this subsection.

(3) Nonmaterial amendments. The Executive Director may administratively approve all non-material amendments, including, but not limited to:

(A) any amendment that is determined by staff to exceed either the scope of notification acknowledgement, as identified in paragraph (2) above or a material alteration, as identified in paragraph (4) below;

(B) changes into the natural person(s) used to meet the experience requirement in §10.204(6) of this chapter (relating to Required Documentation for Application Submission);

(C) Changes in Developers or Guarantors (to the extent Guarantors were identified in the Application). Changes in Developers or Guarantors will be subject to Previous Participation requirements as further described in §10.204(13).

(34) Material amendments. Amendments considered material pursuant to paragraph (34) of this subsection must be approved by the Board. Amendment requests which require Board approval must submit the request and all required documentation necessary for staff's review of the request must be received by to the Department at least forty-five (45) calendar days prior to the Board meeting in which the amendment is anticipated to be considered. Before the fifteenth (15th) day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and Department staff regarding the amendment will be posted to the Department's website and the Applicant will be notified of the posting. (§2306.6717(a)(4)). Material Amendment requests may be denied if the Board determines that the modification proposed in the amendment would materially alter the Development in a negative manner or would have adversely affected the selection of the Application in the Application Round. Material alteration of a Development includes, but is not limited to:

(A) a significant modification of the site plan;

(B) a modification of the number of units or bedroom mix of units;

(C) a substantive modification of the scope of tenant services;

(D) a reduction of 3 percent or more in the square footage of the units or common areas;

(E) a significant modification of the architectural design of the Development;

(F) a modification of the residential density of at least 5 percent;

(G) exclusion of any requirements as identified in Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions) and Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules or Pre-Clearance for Applications); or

~~(H) Significant increases in development costs or changes in financing that affect the Department's direct loan financing structure or result in reductions of credit and where either of such changes are not agreed to by the Applicant or Development Owner; or~~

~~(H)~~ any other modification considered significant by the Board.

(45) Amendment requests will be denied if the Department finds that the request would have changed the scoring of an Application in the competitive process such that the Application would not have received a funding award or if the need for the proposed modification was reasonably foreseeable or preventable by the Applicant at the time the Application was submitted, unless good cause is found for the approval



of the amendment.

~~(56)~~ This section shall be administered in a manner that is consistent with §42 of the Code. If a Development has any uncorrected issues of noncompliance outside of the ~~Corrective Action Period~~corrective action period (other than the provision being amended) or otherwise owes fees to the Department, such non-compliance or outstanding payment must be resolved to the satisfaction of the Department prior to approving an amendment request unless otherwise approved by the Executive Award Review and Advisory Committee.

(67) In the event that an Applicant or Developer seeks to be released from the commitment to serve the income level of tenants identified in the Application and Credit Underwriting Analysis Report at the time of award and as approved by the Board, the procedure described in subparagraphs (A) and (B) of this paragraph will apply to the extent such request is not prohibited based on statutory and/or regulatory provisions:

(A) for amendments that involve a reduction in the total number of Low-Income Units, or a reduction in the number of Low-Income Units at any rent or income level, as approved by the Board, evidence must be presented to the Department to support the amendment. In addition, for such changes prior to issuance of IRS Forms 8609 by the Department, the lender and syndicator must submit written confirmation that the Development is infeasible without the adjustment in Units. The Board may or may not approve the amendment request; however, any affirmative recommendation to the Board is contingent upon concurrence from Department staff that the Unit adjustment is necessary for the continued financial feasibility of the Development; and

(B) if it is determined by the Department that the loss of low-income targeting points would have resulted in the Application not receiving an award in the year of allocation, and the amendment is approved by the Board, the approved amendment will carry a penalty that prohibits the Applicant and all Persons or entities with any ownership interest in the Application (excluding any tax credit purchaser/syndicator), from participation in the Housing Tax Credit Program (for both the Competitive Housing Tax Credit Developments and Tax-Exempt Bond Developments) for twenty-four (24) months from the time that the amendment is approved.

(b) Amendments to the LURA. Department approval shall be required for any amendment to a LURA in accordance with this section. An amendment request shall be submitted in writing, containing a detailed explanation of the request, the reason the change is necessary, the good cause for the change, financial information if the change will result in any financial impact on the development, information related to whether the necessity of the amendment was reasonably foreseeable at the time of application, and other information as determined to be necessary by the Department, along with any applicable fee as identified in §10.901 of this chapter (relating to Fee Schedule). The Department may order a Market Study or appraisal to evaluate the request which shall be at the expense of the Development Owner and the Development Owner will remit funds necessary for such report prior to the Department commissioning such report. LURAs will only be amended if non-compliance or outstanding payment is resolved to the satisfaction of the Department as provided in subsection (5) of this section. The Department will not approve changes that would violate state or federal laws including the requirements of §42 of the Code, 24 CFR Part 92 (HOME Final Rule), 24 CFR Part 93 (NHTF Interim Rule), Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), Texas Government Code, Chapter 2306, the Fair Housing Act, and, for Tax - Exempt Bond Developments, compliance with their ~~trust indenture~~Regulatory Agreement and corresponding bond ~~issuance financing~~ documents. ~~An amendment to the LURA is not considered material if the change is the result of a Department work out arrangement as recommended by the Department's Asset Management Division.~~ Prior to staff taking a recommendation to the Board for consideration, the procedures described in paragraph (3) of this subsection must be followed.

(1) Non-Material Amendments. The Executive Director or designee may administratively approve all amendments not defined as Material Amendments pursuant to paragraph (2) below. An amendment to

the LURA is not considered material if the change is the result of a Department work out arrangement as recommended by the Department's Asset Management Division.

(2) Material Amendments. Development Owners seeking amendment requests that require Board approval must submit the request and all required documentation necessary for staff's review of the request to the Department at least forty-five (45) calendar days prior to the Board meeting in which the amendment is anticipated to be considered. Before the fifteenth (15th) day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and Department staff regarding the amendment will be posted to the Department's website and the Applicant will be notified of the posting. (§2306.6717(a)(4)). The Board must consider and approve the following material amendments:

(A) reductions to the number of Low-Income Units;

(B) changes to the income or rent restrictions;

(C) changes to the Target Population;

~~(D) substantive modifications in the scope of tenant services~~

~~(E)~~ the removal of material participation by a HUB or Nonprofit Organization as further described in §10.406 of this subchapter;

~~(F)~~ a change in the Right of First Refusal period as described in amended §2306.6725 of the Texas Government Code;

~~(G)~~ any amendment deemed material by the Executive Director.

(3) ~~Other Material Amendment Requirements.~~ Prior to staff taking a recommendation to the Board for consideration, ~~the following must take place: the Development Owner must provide notice and hold a public hearing regarding the requested amendment(s) at least fifteen (15) business days prior to the scheduled Board meeting where the request will be considered. Development Owners will be required to submit a copy of the notification with the amendment request. If an amendment is requested prior to issuance of IRS Forms 8609 by the Department, notification must be provided to the recipients described in subparagraphs (A) – (E) of this paragraph. If an amendment is requested after issuance of IRS Forms 8609 by the Department, notification must be provided to the recipients described in subparagraph (A) – (B) of this paragraph.~~

~~(A) each tenant of the Development;~~

~~(B) the current lender and investor;~~

~~(C) the State Senator and State Representative of the districts whose boundaries include the Development Site;~~

~~(D) the chief elected official for the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction); and~~

~~(E) the county commissioners of the county in which the Development Site is located (if the Development Site is located outside of a municipality); and~~

(4) Contents of Notification. The notification must include, at a minimum, all of the information described in subparagraphs (A) – (D) of this paragraph.



(A) the Development Owner's name, address and an individual contact name and phone number;

(B) the Development name, address, city and county;

(C) the change(s) requested; and

(D) the date, time and location of the public hearing where the change(s) will be discussed.

(5) Verification of public hearing. Minutes of the public hearing and attendance sheet must be submitted to the Department within three (3) business days after the date of the public hearing.

~~(A) the Development Owner must hold a public hearing at least seven (7) business days prior to the Board meeting where the Board will consider their request. The Notice of the hearing and requested change must be provided to each tenant of the Development, and, if prior to issuance of IRS form 8609 by the Department, the current lender and/or investors, the State Senator and Representative for the district containing the Development, and the chief elected official for the municipality, if located in a municipality, or the county commissioners, if located outside of a municipality; and~~

~~(B) ten (10) business days before the public hearing the Development Owner must submit a draft notice of the hearing for approval by the Department. The Department will create and provide upon request a sample notice and approve or amend the notice within three (3) business days of receipt.~~

(4) Approval. Once the LURA Amendment has been approved administratively or by the Board, as applicable, Department staff will provide the Development Owner with a LURA amendment for execution and recordation in the county where the Development is located."

~~(c) Amendments to Direct Loan Terms. The Executive Director or authorized designee may approve amendments to loan terms prior to closing as described in paragraphs (1) - (6) of this subsection. Board approval is necessary for any other changes prior to closing.~~

~~(1) extensions of up to 15 months to the loan closing date specified in §10.403(a) of this chapter (relating to Direct Loans). An Applicant must document good cause, which may include constraints in arranging a multiple source closing;~~

~~(2) changes to the loan maturity date to accommodate the requirements of other lenders or to maintain parity of term;~~

~~(3) extensions of up to 12 months for the construction completion or loan conversion date based on documentation that the extension is necessary to complete construction and that there is good cause for the extension. Such a request will generally not be approved prior to initial loan closing;~~

~~(4) changes to the loan amortization or interest rate that cause the annual repayment amount to decrease less than 20 percent or any changes to the amortization or interest rate that increases the annual repayment amount;~~

~~(5) decreases in the Direct Loan amount, provided the decrease does not jeopardize the financial viability of the Development. Increases will generally not be approved unless the Applicant competes for the additional funding under an open NOFA; and~~

~~(6) changes to other loan terms or requirements as necessary to facilitate the loan closing without exposing the Department to undue financial risk.~~

~~(7) An Applicant may request a change to the terms of a loan. Requests for changes to the loan post closing~~

~~will be processed as loan modifications and may require additional approval by the Department's Asset Management Division. Post closing loan modifications requiring changes in the Department's loan terms, lien priority, or amounts (other than in the event of a payoff) will generally only be considered as part of a Department or Asset Management Division work out arrangement or other condition intended to mitigate financial risk and will not require additional Executive Director or Board approval except where the post closing change could have been anticipated prior to closing as determined by staff.~~

(~~dc~~) HTC Extensions. Extensions must be requested if the original deadline associated with Carryover, the 10 Percent Test (including submission and expenditure deadlines), construction status reports, or cost certification requirements will not be met. Extension requests submitted at least thirty (30) calendar days in advance of the applicable deadline will not be required to submit an extension fee as described in §10.901 of this chapter. Any extension request submitted fewer than thirty (30) days in advance of the applicable deadline or after the applicable deadline will not be processed unless accompanied by the applicable fee. Extension requests will be approved by the Executive Director or Designee, unless, at staff's discretion it warrants Board approval due to extenuating circumstances stated in the request. The extension request must specify a requested extension date and the reason why such an extension is required. If the Development Owner is requesting an extension to the Carryover submission or 10 percent Test deadline(s), a point deduction evaluation will be completed in accordance with Texas Government Code, §2306.6710(b)(2), and §11.9(f) of this title (relating to Competitive HTC Selection Criteria). Therefore, the Development Owner must clearly describe in their request for an extension how the need for the extension was beyond the reasonable control of the Applicant/Development Owner and could not have been reasonably anticipated. Carryover extension requests will not be granted an extended deadline later than December 1st of the year the Commitment was issued.

#### **§10.406 Ownership Transfers (§2306.6713)**

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

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

- (1) A Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new Principals or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.
- (2) Transfers that are the result of an involuntary removal of the general partner by the investment limited partner do not require advance approval but must be reported to the Department as soon as possible by submission of an Ownership Transfer packet, due to the sensitive timing and nature of this decision.
- (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 wherein the lender or financial institution involved in the transaction is the same resulting owner do not require advance approval but must be reported to the Department as soon as possible, due to the sensitive timing and nature of the decision.

(c) General Requirements.

- (1) Any new Principal in the ownership of a Development must be eligible under §10.202 of Subchapter C (relating to Eligible Applicants). In addition, Principals will be reviewed in accordance with Chapter 1, Subchapter C of this ~~part-title~~ (relating to Previous Participation Reviews).
- (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 item (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 Reviews), 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 such control, unless approved otherwise by the Board. 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 Non-Profit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Non-Profit Organization that meets the requirements of §42(h)(5) of the Code and Texas Government Code §2306.6706 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 qualified non-profit organization or CHDO, ~~but the Development did not receive Tax Credits pursuant to §42(h)(5) of the Code~~, the Development Owner must show that the transferee is a 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 Non-Profit 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 of a Development Owner and it (i) is being removed as the result of a default under the organizational documents of the Development Owner, (ii) determines to sell its ownership interest or (iii) determines to maintain its ownership interest but is unable to maintain its HUB status, in either case, after the issuance of 8609's, the purchaser of that general partnership interest or the general partner is not required to be a HUB as long as the LURA does not require such continual ownership, or the procedures outlined in §10.405(b)(1) - (5) of this chapter (relating to LURA Amendments that require Board Approval) have been followed and approved. ~~Such approval can be obtained concurrent with Board approval described herein.~~ All such transfers must be approved by the ~~Board Executive Director~~ and require that the ~~Board Executive Director~~ find that:

- (1) the selling HUB is acting of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;
- (2) the participation by the HUB has been substantive and meaningful, or would have been substantial and meaningful had the HUB not defaulted under the organizational documents of the Development Owner, enabling it to realize not only financial benefit but to acquire skills relating to the ownership and operation of affordable housing; and
- (3) the proposed purchaser meets the Department's standards for ownership transfers

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

- (1) a written explanation outlining the reason for the request;
- (2) ownership transfer information, including but not limited to the type of sale, amount of Development reserves to transfer in the event of a property sale, and the prospective closing date;
- (3) pre and post transfer organizational charts with TINs of each organization down to the level of natural persons in the ownership structure as described in §10.204(13)(A) of Subchapter C;
- (4) a list of the names and contact information for transferees and Related Parties;
- (5) Previous Participation information for any new Principal as described in §10.204(13)(B) of Subchapter C;
- (6) agreements among parties associated with the transfer;

~~(7) a fully executed Owner's Certification of Agreement to Comply with the LURA, which may be subject~~

~~to recording as required by the Department;~~

- (87) Owners Certifications with regard to materials submitted further described in the Post Award Activities Manual;
- (98) detailed information describing the organizational structure, experience, and financial capacity of transferees and related parties holding ~~an controlling ownership~~ interest ~~of 10 percent or greater~~ in any Principal or Controlling entity;
- (499) 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;
- (4410) 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, to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter and §10.202 of Subchapter C (relating to ineligible applicants and applications).

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

- (1) in cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or
- (2) in cases where the general partner is being replaced if the award of credits was made at least five (5) years prior to the transfer request date.

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

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

#### **§10.407 Right of First Refusal**

(a) General. This section applies to Development Owners that agreed to offer a Right of First Refusal ("ROFR") to a Qualified Entity ~~or as applicable a Qualified Nonprofit Organization~~, as memorialized in the applicable LURA. ~~For the purposes of this section a Qualified Nonprofit Organization also includes an entity~~



100% owned by a Qualified Nonprofit Organization pursuant to §42(h)(5)(C) of the Code and operated in a similar manner. The purpose of this section is to provide administrative procedures and guidance on the process and valuation of properties under the LURA. All requests for ROFR submitted to the Department, regardless of existing regulations, must adhere to this process.

- (1) The Development Owner may market the Property for sale and sell the Property to a Qualified Entity, or as applicable a Qualified Nonprofit Organization without going through the ROFR process outlined in this section unless otherwise restricted or prohibited and only in the following circumstances-:

(A) the LURA includes a 90-day ROFR and the Development Owner is selling to a Qualified Nonprofit Organization;

(B) the LURA includes a two (2)-year ROFR and the Development Owner is selling to a Qualified Nonprofit Organization that meets the definition of a Community Housing Development Organization (“CHDO”) under 24 CFR Part 92, ~~or an entity that is controlled by a CHDO, as approved by the Department; or~~

(C) the LURA includes a 180-day ROFR, and the Development Owner is selling to a Qualified Entity that meets the definition of a CHDO under 24 CFR Part 92, or an entity that is controlled by a CHDO, as approved by the Department.

Where the Development Owner is not required to go through the ROFR process, it must go through the ownership transfer process in accordance with §10.406.

- (2) A ROFR request must be made in accordance with the LURA for the Development. If there is a conflict between the Development's LURA and this subchapter, every effort will be made to harmonize the provisions. If the conflict cannot be resolved, requirements in the LURA will supersede ~~the this~~ subchapter. If there is a conflict between the Development's LURA and ~~statute exists the Texas Government Code Chapter 2306,~~ every effort will be made to harmonize the provisions. A Development Owner may request a LURA amendment to ~~be make the ROFR provisions in the LURA~~ consistent with any changes to Texas Government Code Chapter 2306 at any time.

- (3) If a LURA includes the ROFR provision, the Development Owner may not request a Preliminary Qualified Contract (if such opportunity is available under the applicable LURA and §10.408) until the requirements outlined in this section have been satisfied.

- (4) The Department reviews and approves all ownership transfers pursuant to §10.406. Thus, if a proposed purchaser is identified in the ROFR process, the Development Owner and proposed purchaser must complete the ownership transfer process. A Development Owner may not transfer a Development to a Qualified Nonprofit Organization or Qualified Entity that is considered an ineligible entity under the Department's rules. In addition, ownership transfers to a Qualified Entity or as applicable a Qualified Nonprofit Organization pursuant to the ROFR process are subject to Chapter 1, Subchapter C of this title (relating to Previous Participation Reviews).

- (5) Satisfying the ROFR requirement does not terminate the LURA or the ongoing application of the ROFR requirement to any subsequent Development Owner.

(6) The ROFR process is triggered upon:

(A) the Development Owner's determination to sell the Development to an entity other than as permitted in paragraph (1) of this subsection; or

(B) the simultaneous transfer or concurrent offering for sale of a General Partner's and limited partner's interest in the Development Owner's ownership structure.

(67) The ROFR process is not triggered if a Development Owner seeks to transfer the Development to a newly formed entity:

(A) that is under common control with the Development Owner; ~~and~~

(B) the primary purpose of the formation of which is to facilitate the financing of the rehabilitation of the development using assistance administered through a state financing program; ~~and~~

(C) the original ROFR language in the property's LURA has been amended to reflect updated provisions of Tex. Gov't Code from the 84<sup>th</sup> legislature if the Development Owner signed and recorded a LURA prior to September 1, 2015 or the Development Owner signed a new LURA after September 1, 2016.

(8) This section applies only to a Right of First Refusal memorialized in the Department's LURA. This section does not authorize a modification of any other agreement between the Development Owner and a Qualified Nonprofit Organization or Qualified Entity. The enforceability of a contractual agreement between the Development Owner and a Qualified Nonprofit Organization or Qualified Entity may be impacted by the Development Owner's commitments at Application and recorded LURA.

(b) Right of First Refusal Offer Price. There are two general expectations of the ROFR offer or sale price identified in the outstanding LURAs. The descriptions in paragraphs (1) and (2) of this subsection do not alter the requirements or definitions included in the LURA but provide further clarification as applicable:

(1) Fair Market Value is established using either a current appraisal (completed within three months prior to the ROFR request and in accordance with §10.304 of this chapter (relating to Appraisal Rules and Guidelines)) of the Property or an executed purchase offer that the Development Owner would like to accept. In either case the documentation used to establish Fair Market Value will be part of the ROFR property listing on the Department's website. The purchase offer must contain specific language that the offer is conditioned upon satisfaction of the ROFR requirement. If a subsequent ROFR request is made within six months of the previously approved ROFR posting, the lesser of the prior ROFR posted value or new appraisal/purchase contract amount must be used in establishing Fair Market Value;

(2) Minimum Purchase Price, pursuant to §42(i)(7)(B) of the Code, is the sum of:

(A) the principal amount of outstanding indebtedness secured by the project (other than indebtedness incurred within the five (5)-year period immediately preceding the date of said notice); and

(B) all federal, state, and local taxes incurred or payable by the Development Owner as a consequence of such sale. If the Property has a minimum Applicable Fraction of less than 1, the offer must take this into account by multiplying the purchase price by the applicable fraction and the fair market value of the non-Low-Income Units.

Documentation submitted to verify the Minimum Purchase Price calculation will be part of the ROFR property listing on the Department's website.

(c) Required Documentation. Upon establishing the value of the Property, the ROFR process is the same for all types of LURAs. To proceed with the ROFR request, documentation must be submitted as directed in the Post Award Activities Manual, which includes ~~but is not limited to~~ submit all documents listed in paragraphs (1)–(12) of this subsection:

(1) ROFR fee as identified in §10.901 of this chapter (relating to Fee Schedule);



(2) a notice of intent to the Department and to such other parties as the Department may direct at that time;

(3) evidence and certification that a notice of intent has been sent the residents of the Development have been provided with a notice of intent;

~~upon the Development Owner's determination to sell the Development to an entity other than a Qualified Entity or pursuant to subpart (a)(6) above, the Development Owner shall provide a notice of intent to the Department, to the residents, and to such other parties as the Department may direct at that time. If the LURA identifies a Qualified Entity that has a contractual ROFR to purchase the Development, the Development Owner must identify that entity to the Department and first offer the Property to this entity. If the Qualified Entity does not purchase the Property, this denial of offer must be in writing and submitted to the Department along with the ROFR Fee. The Department will determine from this documentation whether the ROFR requirement has been met and will notify the Development Owner of its determination in writing. In the event that the Qualified Entity with the contractual ROFR is not operating or in existence at the time the Development Owner intends to sell the provisions of this Section shall apply to any proposed sale by the Development Owner;~~

(24) documentation evidencing any contractual ROFR between the Development Owner and a Qualified Nonprofit Organization or Qualified Entity, along with evidence that such Qualified Nonprofit Organization or Qualified Entity is in good standing in the state of its organization;

(5) documentation verifying the ROFR offer price of the Property:

(A) if the Development Owner receives an offer to purchase the Property from any buyer other than a Qualified Entity or Qualified Nonprofit Organization that the Development Owner would like to accept, the Development Owner may execute a sales contract, conditioned upon satisfaction of the ROFR requirement, and submit the executed sales contract to establish fair market value; or

(B) if the Development Owner of the Property chooses to establish fair market value using an appraisal, the Development Owner must submit an appraisal of the Property completed during the last three (3) months prior to the date of submission of the ROFR request, establishing a value for the Property in compliance with Subchapter D of this chapter (relating to Underwriting and Loan Policy) in effect at the time of the request. The appraisal should take into account the existing and continuing requirements to operate the Property under the LURA and any other restrictions that may exist. Department staff will review all materials within thirty (30) calendar days of receipt. If, after the review, the Department does not agree with the fair market value proposed in the Development Owner's appraisal, the Department may order another appraisal at the Development Owner's expense; or

(C) if the LURA requires valuation through the Minimum Purchase Price calculation, submit documentation verifying the calculation of the Minimum Purchase Price as described in subsection (b)(2) of this section regardless of any existing offer or appraised value;

(35) description of the Property, including all amenities and current zoning requirements;

(46) copies of all documents imposing income, rental and other restrictions (non-TDHCA), if any, applicable to the operation of the Property;

(57) ~~copy of the most~~ current title ~~report, commitment or~~ policy dated not more than six months prior to the date of submission of the ROFR request ~~in the Development Owner's possession;~~

(68) the most recent Physical Needs Assessment, pursuant to Texas Government Code §2306.186(e) conducted by a Third-Party;

(79) copy of the monthly operating statements, including income statements and balance sheets for the Property for the most recent twelve (12) consecutive months (financial statements should identify amounts held in reserves);

(810) the three (3) most recent consecutive audited annual operating statements, if available;

(911) detailed set of photographs of the Property, including interior and exterior of representative units and buildings, and the Property's grounds (including digital photographs that may be easily displayed on the Department's website);

(4012) current and complete rent roll for the entire Property;

(4413) if any portion of the land or improvements is leased for other than residential purposes, copies of the commercial leases; ~~and~~

~~(12) ROFR fee as identified in §10.901 of this chapter (relating to Fee Schedule).~~

(d) ~~Process~~ Posting and offers. Within 30 business days of receipt of all required documentation, the Department will review the submitted documents and notify the Development Owner of any deficiencies. During that time, the Department will notify any Qualified Entity or as applicable any Qualified Nonprofit Organization identified by the Development Owner as having a contractual ROFR of the Development Owner's intent to sell. Once the deficiencies are resolved and the Development Owner and Department come to an agreement on the ROFR offer price of the Property, the Department will list the Property for sale on the Department's website and contact entities on the buyer list maintained by the Department to inform them of the availability of the Property at the agreed upon ROFR offer price as determined under this section. The Department will notify the Development Owner when the Property has been listed ~~and of any inquiries or offers generated by such listing. If the Department or Development Owner receives offers to purchase the Property from more than one Qualified Entity, the Development Owner may accept back up offers. To satisfy the ROFR requirement, the Development Owner may sell the Property to the Qualified Entity selected by the Development Owner on such basis as it shall determine appropriate and approved by the Department. The period of time required for offering the property at the ROFR offer price is based upon the period identified in the LURA and clarified in paragraphs (1) — (3) of this subsection. The ROFR posting period commences on the date the Property is posted for sale on the Department's website. During the ROFR posting period, a Qualified Nonprofit Organization or Qualified Entity can submit an offer to purchase as follows:~~

(1) if the LURA requires a 90 day ROFR posting period with no priority, within 90 days from the date listed on the website, the process as identified in subparagraphs (A) — (D) of this paragraph shall be followed for any particular kind of Qualified Nonprofit Organization, any Qualified Nonprofit Organization may submit an offer to purchase the property:-

~~(A) if a bona fide offer from a Qualified Entity is received at or above the posted ROFR offer price, and the Development Owner does not accept the offer, the ROFR requirement will not be satisfied;~~

~~(B) if a bona fide offer from a Qualified Entity is received at or above the posted ROFR offer price and the Development Owner accepts the offer, and the Qualified Entity fails to close the purchase, if the failure is determined to not be the fault of the Development Owner, the ROFR requirement will be deemed met so long as no other acceptable offers have been timely received. If the proposed Development Owner is subsequently not approved by the Department during the ownership transfer review due to issues identified during the Previous Participation Review process pursuant to Chapter 1, Subchapter C of this title, the ROFR requirement will be deemed met so long as no other acceptable offers have been timely received;~~

~~(C) if an offer from a Qualified Entity is received at a price below the posted ROFR offer price, the~~

~~Development Owner is not required to accept the offer, and the ROFR requirement will be deemed met if no other offers at or above the price are received during the 90 day period;~~

~~(D) request a Preliminary Qualified Contract (if such opportunity is available under §10.408) or proceed with the sale to an entity that is not a Qualified Entity at or above the posted price;~~

~~(2) if the LURA requires a two year ROFR posting period, and the Development Owner intends to sell the Property upon expiration of the Compliance Period, the notice of intent described in this section may be submitted no more than 2 years before the expiration of the Compliance Period, as required by Texas Government Code, §2306.6726. If the Development Owner determines that it will sell the Development at some point later than the end of the Compliance Period, the notice of intent shall be given within two (2) years before the date upon which the Development Owner intends to sell the Development in order for the two year ROFR posting period to be completed prior to intended sale. The two (2) year period referenced in this paragraph begins when the Department has received and approved all documentation required under subsection (c)(1) – (12) of this section. During the two (2) years following the notice of intent and in order to satisfy the ROFR requirement of the LURA, the Development Owner may negotiate or enter into an agreement to sell the Development only with the parties listed, and in order of priority;~~

(2) If the LURA requires a two (2)-year ROFR posting period, a Qualified Nonprofit Organization may submit an offer to purchase the Property as follows:

(A) during the first six (6) months of the ROFR posting period after notice of intent, only with a Qualified Nonprofit Organization Qualified Entity that is also a Community Housing Development Organization, as defined in the HOME Final Rule and is approved by the Department; (“CHDO”) under 24 CFR Part 92, or an entity that is 100% owned by a CHDO, as approved by the Department, may submit an offer;

~~(B) during the second six (6) month period after notice of intent, only with a Qualified Entity or a tenant organization;~~

~~(C) during the second year after notice of intent, only with the Department or with a Qualified Entity approved by the Department;~~

~~(D) if, during the two (2) year period, the Development Owner shall receive an offer to purchase the Development at or above the Minimum Purchase Price from one of the organizations designated in subparagraphs (A) – (C) of this paragraph (within the period(s) appropriate to such organization), the Development Owner may sell the Development to such organization. If, during such period, the Development Owner shall receive more than one offer to purchase the Development at or above the Minimum Purchase Price from one or more of the organizations designated in subparagraphs (A) – (C) of this paragraph (within the period(s) appropriate to such organizations), the Development Owner may sell the Development at or above the Minimum Purchase Price to the organization selected by the Development Owner on such basis as it shall determine appropriate and approved by the Department; and~~

~~(E) upon expiration of the two (2) year period, if no Minimum Purchase Price offers were received from a Qualified Entity or by the Department, the Department will notify the Development Owner in writing that the ROFR requirement has been met. Upon receipt of written notice, the Development Owner may request a Preliminary Qualified Contract (if such opportunity is available under §10.408) or proceed with the sale to a buyer that is not a Qualified Entity at or above the Minimum Purchase Price.~~

~~(3) if the Development Owner has a LURA or has amended the LURA to require a 180 day ROFR posting period pursuant to Texas Government Code §2306.6725, as amended, and the Development Owner intends to sell the Property at any time after the expiration of the Compliance Period, the notice of intent shall be given to the Department as described in this section. The 180 day ROFR period referenced in this paragraph~~

~~begins when the Department has received and approval all documentation required under subsection (c)(1)–(12) of this section. During the 180 days following the notice of intent and in order to satisfy the ROFR requirement of the LURA, the Development Owner may negotiate or enter into an agreement to sell the Development only with the parties listed, and in order of priority:~~

~~(A) during the first 60 day period after notice of intent, only with a Community Housing Development Organization, as defined in the HOME Final Rule, or with a Qualified Entity that is controlled by a Community Housing Development Organization, and is approved by the Department;~~

~~(B) during the second 60 day period after notice of intent, only with a Qualified Nonprofit Organization as described by Texas Government Code §2306.6706, a Qualified Entity that is controlled by a Qualified Nonprofit Organization as described by Texas Government Code §2306.6706, or a tenant organization, and is approved by the Department;~~

~~(C) during the last sixty (60) day period after notice of intent, with any other Qualified Entity that is approved by the Department;~~

~~(D) if, during the one hundred and eighty (180) day period, the Development Owner shall receive an offer to purchase the Development at a price that the Department determines to be reasonable from one of the organizations designated in subparagraphs (A)–(C) of this paragraph (within the period(s) appropriate to such organization), the Development Owner may sell the Development to such organization. If, during such period, the Development Owner shall receive more than one offer to purchase the Development at or above the price that the Department determines to be reasonable from one or more of the organizations designated in subparagraphs (A)–(C) of this paragraph (within the period(s) appropriate to such organizations), the Development Owner may sell the Development at or above the price that the Department determines to be reasonable in accordance with subsection (b)(2) of this section to the organization selected by the Development Owner on such basis as it shall determine appropriate and approved by the Department; and~~

~~(E) beginning on the 181st day after the date the Department posts notice of the Development Owner's intent to sell, if no offers at the Minimum Purchase Price were received from a Qualified Entity, the Department will notify the Development Owner in writing that the ROFR requirement has been met. Upon receipt of written notice, the Development Owner may request a Preliminary Qualified Contract (if such opportunity is available under §10.408) or proceed with the sale to a buyer that is not a Qualified Entity at or above the Minimum Purchase Price;~~

~~(F) this section applies only to a right of first refusal memorialized in the Department's LURA. This section does not authorize a modification of any other agreement between the Development Owner and a Qualified Entity.~~

(B) during the next six (6) months of the ROFR posting period, only a Qualified Nonprofit Organization as described by Texas Government Code Section 2306.6706, or an entity that is 100% owned by Qualified Nonprofit Organization as described by Texas Government Code Section 2306.6706, or a tenant organization may submit an offer; and

(C) during the final twelve (12) months of the ROFR posting period, any Qualified Nonprofit Organization may submit an offer.

(43) If the LURA requires a 180-day ROFR posting period a Qualified Entity may submit an offer to purchase the Property as follows:

(A) during the first sixty (60) days of the ROFR posting period, only a Qualified Entity that is a CHDO under 24 CFR Part 92, or an entity that is controlled by CHDO, as approved by the Department, may submit an offer;

(B) during the second sixty (60) days of the ROFR posting period, only a Qualified Entity as described by Texas Government Code Section 2306.6706 or an entity that is controlled by Qualified Entity as described by Texas Government Code Section 2306.6706, or a tenant organization such may submit an offer;

(C) during the final sixty (60) days of the ROFR posting period, any Qualified Entity may submit an offer.

(4) If the LURA does not specify a required ROFR posting timeframe, or, is unclear on the required ROFR posting timeframe, and the required ROFR value is determined by the Minimum Purchase Price method, any Development that received a tax credit allocation prior to September 1, 1997, is required to post for a 90-day ROFR period and any Development that received a tax credit allocation on or after September 1, 1997, and until September 1, 2015, is required to post for a 2-year ROFR, unless the LURA is amended under §10.405(b), or after September 1, 2015 is required to post for a 180-day ROFR period as described in Texas Government Code, §2306.6726.

(e) ~~Closing the Transaction~~Acceptance of offers. A Development Owner may accept or reject any offer received during the ~~The Department shall have~~ ROFR posting period; provided however, that to the right to enforce extent the ~~Development Owner's obligation~~ LURA gives priority to sell the Development as herein contemplated by obtaining a power-of-attorney from certain classifications of Qualified Nonprofit Organizations or Qualified Entities to make offers during certain portions of the ROFR posting period, the Development Owner ~~to execute~~ can only negotiate a purchase contract with such a sale or by obtaining classifications of entities during their respective periods. For example, during the CHDO priority period, the Development Owner may only accept an ~~order for~~ offer from and enter into negotiations with a Qualified Nonprofit Organization or Qualified Entity in that classification ~~specific performance of such obligation or by such other means or remedy as shall be, in the Department's discretion, appropriate.~~

(f) Satisfaction of ROFR.

(1) A Development Owner that has posted a Property under the ROFR process is deemed to have satisfied the ROFR requirements in the following circumstances:

(A) the Development Owner does not receive any bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the required ROFR posting period;

(B) the LURA identifies a specific Qualified Nonprofit Organization or Qualified Entity to be the beneficiary of the ROFR, the LURA does not include a priority, such entity does not elect to purchase the Property, and a written denial is submitted to and approved by the Department;

(C) a bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price, the Development Owner accepts the offer, the Qualified Nonprofit Organization or Qualified Entity fails to close the purchase, the failure is determined to not be the fault of the Development Owner, and the Development Owner received no other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the required ROFR posting period;

(D) a bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price, the Qualified Nonprofit Organization or Qualified Entity is not approved by the Department during the ownership transfer review due to issues identified during the Previous Participation Review process pursuant to Chapter 1, Subchapter C of this title, and the Development Owner received no other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the required ROFR posting period; or

(E) an offer from a Qualified Nonprofit Organization or Qualified Entity is received at a price below

the posted ROFR offer price, and the Development Owner received no other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the required ROFR posting period at or above the posted ROFR offer price.

(2) A Development Owner that has posted a Property under the ROFR process does not satisfy the ROFR requirements in the following circumstances:

(A) a bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price, and the Development Owner does not accept the offer;

(B) the LURA identifies a specific Qualified Nonprofit Organization or Qualified Entity to be the beneficiary of the ROFR, and such entity no longer exists or is no longer conducting business;

(C) a bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price, the Development Owner accepts the offer, the Qualified Nonprofit Organization or Qualified Entity fails to close the purchase, the failure is determined to not be the fault of the Development Owner, the Development Owner received other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the ROFR posting period and then fails to accept any of such other offers;

(D) a bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price, the Development Owner accepts the offer, the Qualified Nonprofit Organization or Qualified Entity fails to close the purchase, and such failure is determined to be the fault of the Development Owner;

(E) a bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price, the Qualified Nonprofit Organization or Qualified Entity is not approved by the Department during the ownership transfer review due to issues identified during the Previous Participation Review process pursuant to Chapter 1, Subchapter C of this title, the Development Owner received other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the ROFR posting period and fails to accept any of such other offers; or

(F) an offer from a Qualified Nonprofit Organization or Qualified Entity is received at a price below the posted ROFR offer price, the Development Owner received other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the ROFR posting period at or above the posted ROFR offer price, and the Development Owner fails to accept any of such offers.

(3) Upon expiration of the ROFR posting period, if no bona fide offers from a Qualified Nonprofit Organization or Qualified Entity have been received, the Department will notify the Development Owner in writing that the ROFR requirement has been met.

(g) Activities Upon Satisfaction of ROFR.

(1) If a Development Owner satisfies the ROFR requirement pursuant to subsection (f)(1) – (3) above, it may request a Preliminary Qualified Contract (if such opportunity is available under §10.408) or proceed with the sale to an entity that is not a Qualified Nonprofit Organization or Qualified Entity at or above the ROFR offer price.

(2) Following notice that the ROFR requirement has been met, if the Development Owner does not post the Property for Qualified Contract in accordance with §10.408 or sell the Property to an entity that is not a Qualified Nonprofit Organization or Qualified Entity within twenty-four (24) months of the Department's written indication that the ROFR has been satisfied, the Development Owner must follow the ROFR process for any subsequent transfer.



(3) If the Department determines that the ROFR requirement has not been met during the ROFR posting period, the Owner may not re-post under this provision at a ROFR offer price that is higher than the originally posted ROFR offer price until twenty-four (24) months has expired from the Department's written indication that the ROFR has not been satisfied. The Development Owner may market the Property for sale and sell the Property to a Qualified Nonprofit Organization or Qualified Entity during this twenty-four (24) month period.

(h) Sale and closing.

(1) Prior to closing a sale of the Property, the Development Owner must obtain Department approval of the transfer through the ownership transfer process in accordance with §10.406 of this chapter (relating to Ownership Transfers (§2306.6713)). The request should include, among other required transfer documents outlined in the Post Award Activities Manual, the final settlement statement and final sales contract with all amendments. ~~If there is no material change in the sales price or terms and conditions of the sale, as approved at the conclusion of the ROFR process, and there are no issues identified during the Ownership Transfer review process, the Department will notify the Development Owner in writing that the transfer is approved.~~

(2) If the closing price is materially less than the ~~amount identified in the sales contract or appraisal that was submitted in accordance with subsection (c)(2)(A) - (C) of this section~~ ROFR offering price or the terms and conditions of the sale change materially from what was submitted in the ROFR posting, in the Department's sole determination, the Development Owner must go through the ROFR process again with a revised ROFR offering price equal to the reduced closing price or adjusted terms and conditions based upon the revised terms, before disposing of the Property.

~~(3) Following notice that the ROFR requirement has been met, if the Development Owner fails to proceed with a request for a Qualified Contract or sell the Property to a for-profit entity within twenty-four (24) months of the Department's written approval, the Development Owner must again offer the Property to nonprofits in accordance with the applicable section prior to any transfer. If the Department determines that the ROFR requirement has not been met during the ROFR posting period, the Owner may not re-post under this provision at a ROFR price that is higher than the originally posted ROFR price until twenty-four (24) months has expired from the Department's written denial. The Development Owner may market the Property for sale and sell the Property to a Qualified ROFR Organization during this twenty-four month period.~~

(f) Appeals. A Development Owner may appeal a staff decision in accordance with §10.902 of this chapter (relating to the Appeals Process (§2306.0321; §2306.6715)). ~~The appeal may include:~~

~~(1) the best interests of the residents of the Development;~~

~~(2) the impact the decision would have on other Developments in the Department's portfolio;~~

~~(3) the source of the data used as the basis for the Development Owner's appeal;~~

~~(4) the rights of nonprofits under the ROFR;~~

~~(5) any offers from an eligible nonprofit to purchase the Development; and~~

~~(6) other factors as deemed relevant by the Executive Director.~~

### **§10.408 Qualified Contract Requirements**

(a) General. Pursuant to §42(h)(6) of the Code, after the end of the 14th year of the Compliance Period, the Development Owner of a Development utilizing Housing Tax Credits can request that the allocating agency



find a buyer at the Qualified Contract Price. If a buyer cannot be located within one (1) year, the Extended Use Period will expire. This section provides the procedures for the submittal and review of [a Qualified Contract Request](#).

(b) Eligibility. Development Owners who received an award of credits on or after January 1, 2002 are not eligible to request a Qualified Contract prior to the thirty (30) year anniversary of the date the property was placed in service. (§2306.185) Unless otherwise ~~stated~~ permitted in the LURA, Development Owners awarded credits prior to 2002 may submit a Qualified Contract Request at any time after the end of the year proceeding the last year of the Initial Affordability Period, following the Department's determination that the Development Owner is eligible. The Initial Affordability Period starts concurrently with the credit period, which begins at placement-in-service or is deferred until the beginning of the next tax year, if there is an election. Unless the Development Owner has elected an Initial Affordability Period longer than the Compliance Period, as described in the LURA, this can commence at any time after the end of the 14th year of the Compliance Period. References in this section to actions which can occur after the 14th year of the Compliance Period shall refer, as applicable, to the year preceding the last year of the Initial Affordability Period, if the Development Owner elected an Initial Affordability Period longer than the Compliance Period.

- (1) If there are multiple buildings placed in service in different years, the end of the Initial Affordability Period will be based upon the date the last building placed in service. For example, if five buildings in the Development began their credit periods in 1990 and one began in 1991, the 15th year would be 2005.
- (2) If a Development received an allocation in multiple years, the end of the Initial Affordability Period will be based upon the last year of a multiple allocation. For example, if a Development received its first allocation in 1990 and a subsequent allocation and began the credit period in 1992, the 15th year would be 2006.

(c) Preliminary Qualified Contract Request. All eligible Development Owners must file a Preliminary Qualified Contract Request.

- (1) In addition to determining the basic eligibility described in subsection (b) of this section, the pre-request will be used to determine that:
  - (A) the Development does not have any uncorrected issues of noncompliance outside the ~~Corrective Action Period~~ Corrective action period;
  - (B) there is a Right of First Refusal (ROFR) connected to the Development that has been satisfied;
  - (C) the Compliance Period has not been extended in the LURA and, if it has, the Development Owner is eligible to file a pre-request as described in paragraph (2) of this subsection; and
- (2) In order to assess the validity of the pre-request, the Development Owner must submit:
  - (A) Preliminary Request Form;
  - (B) Qualified Contract Pre-Request fee as outlined in §10.901 of this chapter (relating to Fee Schedule);
  - (C) copy of all regulatory agreements or LURAs associated with the Property (non-TDHCA);
  - (D) copy of the most recent Physical Needs Assessment, pursuant to Texas Government Code §2306.186(e), conducted by a Third Party.
- (3) The pre-request will not bind the Development Owner to submit a Request and does not start the One (1) Year Period (1YP). A review of the pre-request will be conducted by the Department within ninety

(90) days of receipt of all documents and fees described in paragraph (2) of this subsection. If the Department determines that this stage is satisfied, a letter will be sent to the Development Owner stating that they are eligible to submit a Qualified Contract (QC) Request.

(d) Qualified Contract Request. A Development Owner may file a QC Request anytime after written approval is received from the Department verifying that the Development Owner is eligible to submit the Request.

(1) Documentation that must be submitted with a Request is outlined in subparagraphs (A) - (P) of this paragraph:

(A) a completed application and certification;

(B) the Qualified Contract price calculation worksheets completed by a Third-Party certified public accountant (CPA). The CPA shall certify that they have reviewed annual partnership tax returns for all years of operation, loan documents for all secured debt, and partnership agreements. They shall also certify that they are not being compensated for the assignment based upon a predetermined outcome;

(C) a thorough description of the Development, including all amenities;

(D) a description of all income, rental and other restrictions (non-TDHCA), if any, applicable to the operation of the Development;

(E) a current title report;

(F) a current appraisal with the effective date within six months of the date of the QC Request and consistent with Subchapter D of this chapter (relating to Underwriting and Loan Policy);

(G) a current Phase I Environmental Site Assessment (Phase II if necessary) with the effective date within six months of the date of the QC Request and consistent with Subchapter D of this chapter;

(H) a copy of the most recent Physical Needs Assessment of the property conducted by a Third Party, if different from the assessment submitted during the preliminary qualified contract request, consistent with Subchapter D of this chapter and in accordance with the requirement described in Texas Government Code, §2306.186(e);

(I) a copy of the monthly operating statements for the Development for the most recent twelve (12) consecutive months;

(J) the three most recent consecutive annual operating statements;

(K) a detailed set of photographs of the development, including interior and exterior of representative units and buildings, and the property's grounds (including digital photographs that may be easily displayed on the Department's website);

(L) a current and complete rent roll for the entire Development;

(M) a certification that all tenants in the Development have been notified in writing of the request for a Qualified Contract. A copy of the letter used for the notification must also be included;

(N) if any portion of the land or improvements is leased, copies of the leases;

(O) the Qualified Contract Fee as identified in §10.901 of this chapter; and

(P) additional information deemed necessary by the Department.

(2) Unless otherwise directed by the Department pursuant to subsection (g) of this section, the Development Owner shall contract with a broker to market and sell the Property. The Department may, at its sole discretion, notify the Owner that the selected Broker is not approved by the Department. The fee for this service will be paid by the seller, not to exceed six percent of the QC Price.

(3) Within 90 days of the submission of a complete Request, the Department will notify the Development Owner in writing of the acceptance or rejection of the Development Owner's QC Price calculation. The Department will have one (1) year from the date of the acceptance letter to find a Qualified Purchaser and present a QC. The Department's rejection of the Development Owner's QC Price calculation will be processed in accordance with subsection (e) of this section and the 1YP will commence as provided therein.

(e) Determination of Qualified Contract Price. The QC Price calculation is not the same as the Minimum Purchase Price calculation for the ROFR. The CPA contracted by the Development Owner will determine the QC Price in accordance with §42(h)(6)(F) of the Code taking the following into account:

(1) distributions to the Development Owner of any and all cash flow, including incentive management fees and reserve balance distributions or future anticipated distributions, but excluding payments of any eligible deferred developer fee. These distributions can only be confirmed by a review of all prior year tax returns for the Development;

(2) all equity contributions will be adjusted based upon the lesser of the consumer price index or 5 percent for each year, from the end of the year of the contribution to the end of year fourteen or the end of the year of the request for a QC Price if requested at the end of the year or the year prior if the request is made earlier than the last year of the month; and

(3) these guidelines are subject to change based upon future IRS Rulings and/or guidance on the determination of Development Owner distributions, equity contributions and/or any other element of the QC Price.

(f) Appeal of Qualified Contract Price. The Department reserves the right, at any time, to request additional information to document the QC Price calculation or other information submitted. If the documentation does not support the price indicated by the CPA hired by the Development Owner, the Department may engage its own CPA to perform a QC Price calculation and the cost of such service will be paid for by the Development Owner. If a Development Owner disagrees with the QC Price calculated by the Department, a Development Owner may appeal in writing. A meeting will be arranged with representatives of the Development Owner, the Department and the CPA contracted by the Department to attempt to resolve the discrepancy. The 1YP will not begin until the Department and Development Owner have agreed to the QC Price in writing. Further appeals can be submitted in accordance with §10.902 of this title (relating to Appeals Process (§2306.0321; §2306.6715)).

(g) Marketing of Property. By submitting a Request, the Development Owner grants the Department the authority to market the Development and provide Development information to interested parties. Development information will consist of pictures of the Development, location, amenities, number of Units, age of building, etc. Development Owner contact information will also be provided to interested parties. The Development Owner is responsible for providing staff any requested information to assist with site visits and inspections. Marketing of the Development will continue until such time that a Qualified Contract is presented or the 1YP has expired. Notwithstanding subsection (d)(2) of this section, the Department reserves the right to contract directly with a Third Party in marketing the Development. Cost of such service, including a broker's fee not to exceed 6 percent, will be paid for by the existing Development Owner. The Department must have continuous cooperation from the Development Owner. Lack of cooperation will

cause the process to cease and the Development Owner will be required to comply with requirements of the LURA for the remainder of the Extended Use Period. A prospective purchaser must complete all requirements of an ownership transfer request and be approved by the Department prior to closing on the purchase. Responsibilities of the Development Owner include but are not limited to the items described in paragraphs (1) - (3) of this subsection. The Development Owner must:

- (1) allow access to the Property and tenant files;
- (2) keep the Department informed of potential purchasers; and
- (3) notify the Department of any offers to purchase.

(h) Presentation of a Qualified Contract. If the Department finds a Qualified Purchaser willing to present an offer to purchase the property for an amount at or above the QC Price, the Development Owner may accept the offer and enter into a commercially reasonable form of earnest money agreement or other contract of sale for the property and provide a reasonable time for necessary due diligence and closing of the purchase. If the Development Owner chooses not to accept the QC offer that the Department presents, the QC request will be closed and the possibility of terminating the Extended Use Period through the Qualified Contract process is eliminated; the Property remains bound by the provisions of the LURA. If the Development Owner decides to sell the development for the QC Price pursuant to a QC, the consummation of such a sale is not required for the LURA to continue to bind the Development for the remainder of the Extended Use Period.

- (1) The Department will attempt to procure a QC only once during the Extended Use Period. If the transaction closes under the contract, the new Development Owner will be required to fulfill the requirements of the LURA for the remainder of the Extended Use Period.
- (2) If the Department fails to present a QC before the end of the 1YP, the Department will file a release of the LURA and the Development will no longer be restricted to low-income requirements and compliance. However, in accordance with §42(h)(6)(E)(ii) of the Code, for a three (3) year period commencing on the termination of the Extended Use Period, the Development Owner may not evict or displace tenants of Low-Income Units for reasons other than good cause and will not be permitted to increase rents beyond the maximum tax credit rents. Additionally, the Development Owner should submit to the Department a request to terminate the LURA and evidence, in the form of a signed certification and a copy of the letter, to be approved by the Department, that the tenants in the Development have been notified in writing that the LURA will be terminated and have been informed of their protections during the three (3) year time frame.
- (3) Prior to the Department filing a release of the LURA, the Development Owner must correct all instances of noncompliance at the Development.

(i) Compliance Monitoring during Extended Use Period. For Developments that continue to be bound by the LURA and remain affordable after the end of the Compliance Period, the Department will monitor in accordance with the Extended Use Period Compliance Policy in Subchapter F of this [Chapter](#) (relating to Compliance Monitoring).

7

**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**OCTOBER 13, 2016**

Presentation, Discussion, and Possible Action regarding a material amendment to the Housing Tax Credit (“HTC”) Application for Liberty Square and Liberty Village (HTC #15119)

**RECOMMENDED ACTION**

**WHEREAS**, Liberty Square and Liberty Village (the “Development”) received an award of 9% Housing Tax Credits in 2015 under the At-Risk Set-Aside for the acquisition and rehabilitation of 80 multifamily units located on scattered sites in Groesbeck;

**WHEREAS**, qualification under the At-Risk set aside in the 2015 Qualified Allocation Plan (“QAP”) required Developments qualifying under §2306.6702(a)(5)(B) to retain no less than 25% public housing units supported by public housing operating subsidy;

**WHEREAS**, the Development Owner is now requesting approval to amend the Application so that the Development would become fully financed by the HUD Rental Assistance Demonstration (“RAD”) program and would no longer be able to maintain 25% of units as public housing units as required by §11.5(3)(D) of the 2015 QAP;

**WHEREAS**, the legislature passed HB 2926 which would allow this application as amended to qualify as At-Risk with 100% RAD units and the Board has previously approved a similar transaction maintaining its At-Risk set aside designation when converting to 100% RAD;

**WHEREAS**, the Development Owner is also requesting approval to change the income and rent restrictions for which points were awarded under §11.9(c)(1) for Income Levels of Tenant and §11.9(c)(2) for Rent Levels of Tenants of the 2015 QAP; and

**WHEREAS**, Board approval is required for any change that would materially alter a Development, including amendments that involve a reduction in the total number of low income units at any rent or income level under 10 TAC §10.405(a)(6), and the Owner has complied with the amendment requirements in 10 TAC §10.405(a);

**NOW, therefore, it is hereby**

**RESOLVED**, that the request to amend the Application to allow Liberty Square and Liberty Village to be fully financed by the HUD RAD program and no longer maintain 25% of the units as public housing units is granted, and the request to reduce the income and rent restrictions is tabled and the Executive Director and his designees are each authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

### **BACKGROUND**

Liberty Square and Liberty Village was approved during the 2015 9% Housing Tax Credit cycle under the At-Risk set-aside to acquire and rehabilitate 80 units located on scattered sites. The Development was originally built in 1964 and 1973 as public housing on two main sites. The owner received its award of HTC under the At-Risk set aside based on its status as a Development proposing to rehabilitate or reconstruct housing units that are owned by a public housing authority and receive assistance under Section 9, United States Housing Act of 1937, as allowed under §2306.6702 of Tex. Gov't Code. The 2015 HTC application, submitted on behalf of the Groesbeck Housing Authority ("GHA"), proposed the rehabilitation of the units on a one-for-one basis with the same unit mix. The Application also proposed, as required under the 2015 QAP §11.5(3)(D), that 75% of units would be financed with HTC and HUD RAD program funds and that 25% of the units would remain supported by a public housing operating subsidy. All 80 units would become tax credit units with 22 of those continuing with public housing assistance and the remaining 58 operating under HUD's RAD program, allowing the conversion from public housing to long-term project-based Section 8 contracts.

In a letter dated August 26, 2016, from Barry Palmer with Coats Rose, on behalf of the Development Owner, a request to convert 100% of the property to RAD was presented. The letter states that HUD is encouraging the conversion to reduce the number of housing projects receiving a direct subsidy under §9 of the Act. Mr. Palmer further states that RAD units are preferable because, unlike public housing units ("PHU's"), they are able to provide revenue to pay debt service. However, Mr. Palmer's letter explains that when public housing is converted to RAD, HUD requires that the tenant have the right to return to the converted development. The Applicant has determined that eight of the existing tenants have an income greater than the income limit for the Housing Tax Credit program. If these households choose to return the project may not be able to claim these units as tax credit eligible and may suffer a loss of qualified basis and thus tax credit. Such a loss will need to be re-evaluated at placed in service by which point it is anticipated that HUD will have provided more guidance as to the options that could be made available to these ineligible households. Additionally, Mr. Palmer notes that the income and rent limits for Limestone County substantially declined in 2016, resulting in a reduction in income limits by approximately 10% for this Development. He states that currently the AMI is \$50,400 instead of \$55,500 that existed when the application was filed. The GHA has income-qualified the existing tenants at Liberty Square and Liberty Village who would return to the development after rehabilitation and conversion and has determined that the tenants would be qualified as HTC residents with incomes



up to 60% AMI. Therefore, in order to facilitate these public housing tenants to return to the Development and qualify under the HTC program, the owner is also requesting an amendment to the income restrictions for which point elections were made under §11.9(c)(1) and §11.9(c)(2) of the 2015 QAP.

**Liberty Square and Liberty Village – Set-Asides**

	Minimum # of Units needed for points under §11.9(c)(1) and §11.9(c)(2)	# Units Committed at Application	# Units Requested at Amendment	Change
30% of AMI	6	20	6	-14
50% of AMI	16	60	16	-44
60% of AMI		0	58	+58
<b>Total Units</b>		80	80	

The application was awarded 16 points for committing 20% of the total units to be set-aside at 50% or less AMI. The application was also awarded 11 points for committing 7.5% of the total units to be set aside at 30% or less AMI. To continue to qualify for the 16 points under §11.9(c)(1) and the 11 points under §11.9(c)(2), the Development must provide a minimum of six and 16 units, respectively. The owner requests to allow the remaining 58 units to be set-aside at 60% or less AMI. Mr. Palmer acknowledges that the changes that would occur to the rent limitations is less of a concern for the Development since all units would receive a subsidy.

While Mr. Palmer’s letter stated that the GHA performed an income-qualification analysis to determine that the current tenants who would potentially return to the development after rehabilitation and conversion would qualify at 60% AMI, evidence to support this claim was not initially provided. Staff requested that the GHA provide a current rent roll and their analysis of the income qualification of the current residents. The information provided indicates that the development currently has 64 existing households, with the current income levels of the households based upon the new and lower 2016 income limits reflected below:

Income Level	# Households (HHs)	# Units Committed at Application	Difference
30% AMGI	32 households	20	+12
50% AMGI	19 households	60	-41
60% AMGI	5 households	0	-5
Over 60%	8 households	0	-8
<b>Total</b>	<b>64 households</b>	<b>80</b>	

Based on the information provided it would appear that the current households income qualified at the 30% AMI level would benefit from GHA keeping the originally committed number of units at the 30% (20 units). The Department’s rule at 10 TAC §10.405(a)(6)(A) requires that evidence supporting the need to reduce the number of low-income units at any rent or income level be presented to the Department, including a written confirmation from the lender and syndicator that the Development is infeasible without the adjustment in units. A letter from R4 Capital, the investor for the subject development, states support for the requested amendment, stating that the greater

number of units committed at the 30% and 50% AMI levels than was required by the QAP coupled with the RAD conversion requirement of offering housing in the rehabilitated development regardless of AMI to those residents displaced by the rehabilitation creates a greater degree of uncertainty for the equity investor as to the timing and volume of delivery of tax credits. The investor's letter further states that the number of potential returning occupants being over income qualified at the current AMI structure makes investment in this transaction infeasible from their underwriting perspective. Finally, the investor states that they would be agreeable to accepting the risk if the requested amendment were approved by the Department, citing that the significant shift in the number of units that can accept higher income residents also significantly reduces the risk that returning residents will impact credit delivery. A letter from the lender, Home Federal Bank, also supported the requested amendment stating that if the equity investor is expressing concern that the development would be infeasible in their underwriting opinion then the lender would have a hard time concluding differently.

10 TAC §10.405(a)(6)(A) also states that the Board may or may not approve an amendment request to reduce the number of units at any rent or income level; however, any affirmative recommendation to the Board is contingent upon concurrence from Department staff that the unit adjustment is necessary for the continued financial feasibility of the Development. Real Estate Analysis has performed a re-evaluation of feasibility in conjunction with this amendment request and has concluded that the new information presented meets the Department's feasibility requirements. However, REA staff cannot conclude that the unit adjustment is necessary for the continued financial feasibility of the Development because the underwriting analysis performed at Application (REA Underwriting Report dated October 19, 2015), with the original restrictions proposed, concluded financial feasibility and made a recommendation for HTC on that basis. While Staff prefers to fully address all known amendment requests when presenting to the Board at the same time, the Applicant has indicated that there is urgency in the need for approval of the RAD substitution but that the approval of the change to income and unit mix can be delayed. Staff believes additional analysis is needed to reconcile the differing conclusions on the impact of the change in income and unit mix and to provide additional time for the Applicant to provide support that the amendment was not reasonably foreseeable at the time the application was submitted or preventable by the Applicant. Therefore staff recommends that this issue be tabled and brought back under a separate agenda item at a future meeting.

Mr. Palmer's request letter also identifies a change to the ownership structure for the Development. The Application proposed a structure wherein the General Partner ("GP") is co-owned by Liberty Housing Alliance, Inc. as the 51% non-managing member of the GP (and GHA affiliate). Housing Solutions Alliance, LLC is the 49% managing member of the GP. Mr. Palmer's letter states that the Application relies upon a 100% tax exemption which is available to governmental entities that enter into public-private partnerships for the purpose of carrying out public purposes, such as developing affordable housing. However, in order for this Application to take advantage of that exemption the organizational structure must be changed so that the GHA affiliate, Liberty Housing Alliance, Inc. becomes the managing member and same ownership of 51%, and Housing Solutions Alliance, LLC changes to a non-managing member with the same ownership 49%. The change does not introduce any new entity or member into the ownership structure and is not considered a material change, but is included in this action item to document and to recognize Department approval of the change.

Finally, the amendment asks to clarify the site acreage for the Development. The 2015 rules require a survey as part of the Site Design and Development Feasibility Report. 10 TAC §10.205(5) does

not require applications proposing rehabilitation to submit the Site Design and Development Feasibility Report. As a result, the information available to the Applicant indicated the total combined acreage for the scattered sites was approximately 9.41 acres. A survey dated April 26, 2016, was provided with the submission of the 10 Percent Test and indicated that the total combined acreage for the scattered sites was 8.998 acres. The owner was then advised by the Department that an amendment explaining the decrease in acreage would be required. However, on August 25, 2016, the survey for one of the Liberty Square sites was revised to reflect the abandonment of right-of-ways by the City of Groesbeck that included a section of an adjacent street (Fannin Street) and an alleyway, resulting in an approximate increase of .671 acre. After the revision to the survey, the total combined acreage of the scattered sites increased to 9.669 acres, a 2.75% increase from the 9.41 acres originally identified at application and a 2.68% decrease in residential density. The change in the residential density does not exceed the threshold in 10 TAC §10.405(a)(3)(F) to consider it a material alteration, but is included in this action item nonetheless to document the change and to recognize Department approval of the change.

Staff recommends approval of the request to amend the application to allow the development to be fully financed by the HUD RAD program and no longer maintain 25% of the units as public housing units.

Staff also recommends postponing a decision on the request to amend the income and rent restrictions for which points were awarded under §11.9(c)(1) for Income Levels of Tenant and §11.9(c)(2) for Rent Levels of Tenants of the 2015 QAP as reflected previously.

**Addendum to Underwriting Report**

TDHCA Application #: **15119** Program(s): **9% HTC**

**Liberty Square & Liberty Village**

Address/Location: 401 N. Leon, 606 W. Jacinto, 707 W. Sabine, 505 N. Fannin, 405 N. Preston, 612 Ellis, and 215 Elwood Enge Drive

City: Groesbeck County: Limestone Zip: 76642

APPLICATION HISTORY	
Report Date	PURPOSE
09/27/16	Amendment
10/19/15	New Application - Initial Underwriting

**ALLOCATION**

TDHCA Program	Previous Allocation				RECOMMENDATION				
	Amount	Rate	Amort	Term	Amount	Rate	Amort	Term	Lien
LIHTC (Annual)	\$647,667				\$647,667				

**AMENDMENT**

- 1 Receipt and acceptance by Cost Certification:
  - a: Documentation from a CPA to support inclusion of relocation expense in the cost schedule and in eligible basis.
  - b: Documentation clearing environmental issues contained in the ESA report, specifically:
    - \* Any recommendations from the ESA provider have been implemented.
    - i: Comprehensive survey identifying the presence of asbestos-containing-materials, lead-based paint, or lead in drinking water; and documentation that appropriate abatement procedures were followed for the demolition, removal, and maintenance of any such materials.
    - ii: Any recommendations by the ESA provider with regards to Noise mitigation was completed and certified by the ESA provider.
- 2 Should any terms of the proposed capital structure change, the analysis must be re-evaluated and

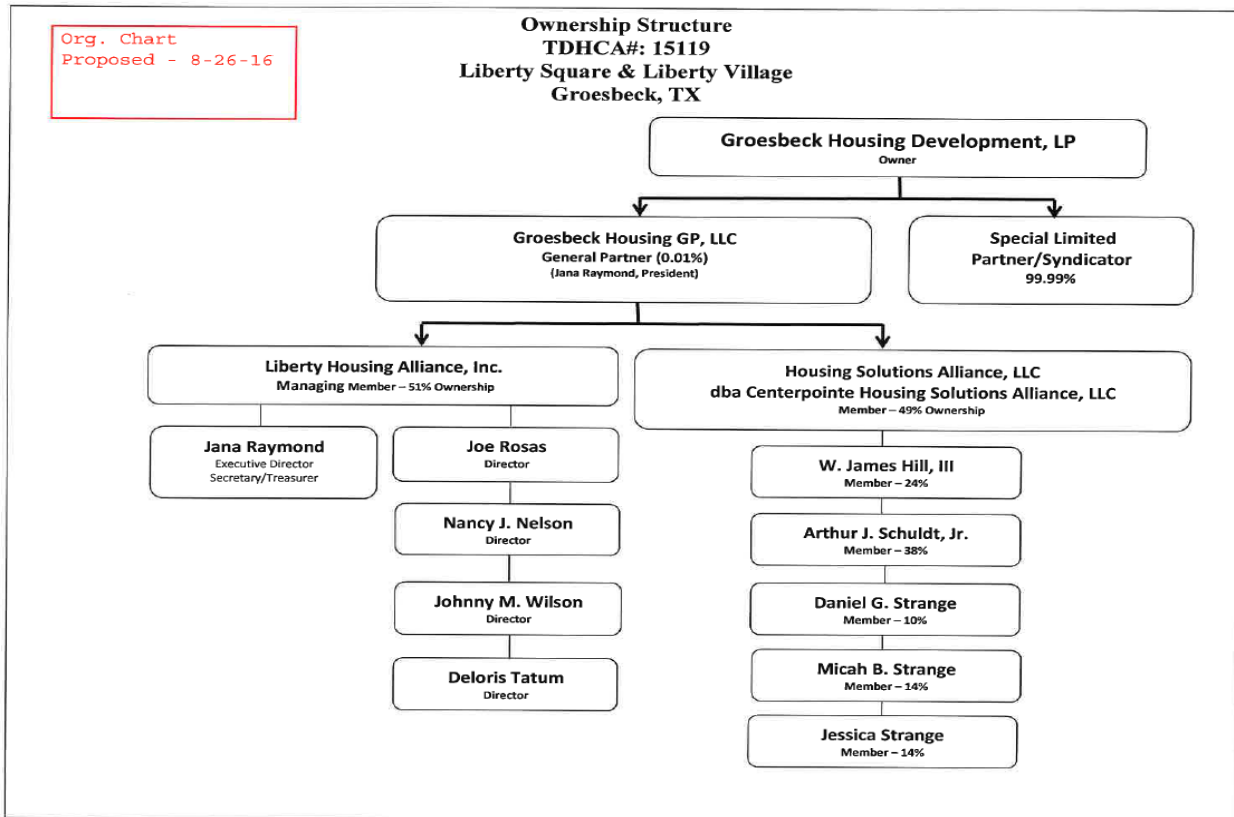
## ANALYSIS

Applicant received a \$647K annual tax credit award in the 2015 tax credit cycle as recommended in the prior report dated October 19, 2015. On August 26th, 2016, Applicant submitted a request to make the following amendments to the Application.

- 1 Revise the RAD component from 75% to 100% of the units.
- 2 Revise the organizational structure to make the Groesbeck Housing Authority's affiliate the managing member of the General Partner, so that the Development will qualify for a governmental ad valorem tax exemption.
- 3 Revise the approximate references to acreage in the Application to reflect 9.669 acres, which is the acreage as surveyed.
- 4 Revise the income restrictions to qualify for the points elected for Income Levels of Tenant and Rent Levels of Tenants.

The Applicant also submitted a revised financing structure showing new sources of debt and an increase in equity resulting from an increase in credit pricing.

### Revised Organizational Structure



**Revised Site Acreage**

Site Acreage at Application stated the development site as 9.41 acres +/- . The final survey aggregated the site to be 9.669 acres.

**Revision to Income Restriction**

Applicant is requesting to change income restrictions of units from 20 units at 30% AMGI and the remainder at 50% AMGI to minimum requirements of 6 units at 30% AMGI, 16 units at 50% AMGI, and the rest at 60% AMGI. The income limit designations have no effect on the feasibility of the development in terms of operating income as the rents are determined by HUD through the RAD program. The RAD rents only vary by bedroom size, without regard to the income limit.

However, there is risk to the feasibility of the project related to eligibility for tax credits. Public Housing tenants have a right to return to the development after the conversion regardless of their income. But if a returning tenant is over the maximum income under the LIHTC designation, the development cannot receive tax credits for that unit.

The Applicant indicates the current rent roll includes 32 tenants who would qualify below 30% AMI, 19 below 50% AMI, 5 below 60% AMI, and 8 households that are above 60%.

The Department recommends the development retain the 20 units currently designated as 30% AMI; the number of 50% units be reduced from 58 to 47; and the remaining 13 units be designated 60% AMI. This will accommodate the 5 households that currently would qualify below 60%.

But the 8 households above 60% pose a small risk. If they return to the development after the conversion, those 8 units will not qualify for tax credits. Eligible basis would then be calculated based on a 90% applicable fraction. This would reduce the credit allocation from \$648K to \$583K, and increase the deferred developer fee to \$665K. This does not affect the feasibility of the development though as the deferred fee can still be paid within the 15 years, but it would an impact on the credit allocation.

If a returning over-income tenant subsequently moves out and the unit is leased to a qualifying tenant, it might be possible under IRS rules to recover some of the lost credits. This could mitigate the risk.

**Operating Pro Forma**

Applicant's Pro Forma and TDHCA's reflect the HUD-approved RAD rents. No changes to Annual Operating Expenses expected.

**Development Cost**

Development Costs have not changed since Application.

**Sources of Funds**

Applicant has changed permanent lender from Amegy Bank to Home Federal Bank of Shreveport. The loan amount and terms have also changed from \$1.36M at 7% and 30 year amortization to \$1.45M at 6% and 30 year amortization. First year DCR of 1.34 times.

Sources also include a related-party Seller Note from Groesbeck Housing Authority for \$400K payable from cash flow. This note is reduced from \$1.55M due to increased equity.

Credit pricing through R4 Capital has also increased from \$0.89 to \$1.00 resulting in a \$712K increase in equity.

**Conclusion**

Based upon amended financials, Underwriter recommends no change to the original tax credit allocation of \$647,667.

Underwriter:	<u>Duc Nguyen</u>
Manager of Real Estate Analysis:	<u>Thomas Cavanagh</u>
Director of Real Estate Analysis:	<u>Brent Stewart</u>

## UNIT MIX/RENT SCHEDULE

*Liberty Square & Liberty Village, Groesbeck, 9% HTC #15119*

LOCATION DATA	
CITY:	Groesbeck
COUNTY:	Limestone
PROGRAM REGION:	8
PIS Date:	On or After 2/1/2014
IREM REGION:	NA

UNIT DISTRIBUTION					
# Beds	# Units	% Total	Income	# Units	% Total
Eff	22	27.5%	30%	6	7.5%
1	34	42.5%	40%	-	0.0%
2	14	17.5%	50%	16	20.0%
3	10	12.5%	60%	58	72.5%
4	-	0.0%	MR	-	0.0%
<b>TOTAL</b>	<b>80</b>	<b>100.0%</b>	<b>TOTAL</b>	<b>80</b>	<b>100.0%</b>

Applicable Programs
9% Housing Tax Credits
PHU

Pro Forma ASSUMPTIONS	
Revenue Growth	2.00%
Expense Growth	3.00%
Basis Adjust	130%
Applicable Fraction	100%
APP % Acquisition	3.35%
APP % Construction	7.87%
Average Unit Size	701 sf

## UNIT MIX / MONTHLY RENT SCHEDULE

HTC		Other	UNIT MIX				APPLICABLE PROGRAM RENT			APPLICANT'S PRO FORMA RENTS				TDHCA PRO FORMA RENTS			MARKET RENTS			
Type	Gross Rent	Type	# Units	# Beds	# Baths	NRA	Gross Rent	Utility Allow	Max Net Program Rent	Delta to Max	Rent psf	Net Rent per Unit	Total Monthly Rent	Total Monthly Rent	Rent per Unit	Rent psf	Delta to Max	Underwritten	Mrkt Analyst	
TC 50%	\$486	RAD	6	0	1	626	\$527	\$157	\$370	\$0	\$0.59	\$370	\$2,220	\$2,220	\$370	\$0.59	\$0	\$550	\$0.88	550
TC 30%	\$291	RAD	1	0	1	632	\$527	\$157	\$370	\$0	\$0.59	\$370	\$370	\$370	\$370	\$0.59	\$0	\$550	\$0.87	550
TC 60%	\$583	RAD	15	0	1	632	\$527	\$157	\$370	\$0	\$0.59	\$370	\$5,550	\$5,550	\$370	\$0.59	\$0	\$550	\$0.87	550
TC 30%	\$312	RAD	1	1	1	803	\$552	\$158	\$394	\$0	\$0.49	\$394	\$394	\$394	\$394	\$0.49	\$0	\$775	\$0.97	775
TC 50%	\$520	RAD	2	1	1	810	\$552	\$158	\$394	\$0	\$0.49	\$394	\$788	\$788	\$394	\$0.49	\$0	\$775	\$0.96	775
TC 60%	\$624	RAD	7	1	1	810	\$552	\$158	\$394	\$0	\$0.49	\$394	\$2,758	\$2,758	\$394	\$0.49	\$0	\$775	\$0.96	775
TC 60%	\$624	RAD	2	1	1	997	\$552	\$158	\$394	\$0	\$0.40	\$394	\$788	\$788	\$394	\$0.40	\$0	\$850	\$0.85	850
TC 50%	\$520	RAD	4	1	1	431	\$552	\$158	\$394	\$0	\$0.91	\$394	\$1,576	\$1,576	\$394	\$0.91	\$0	\$400	\$0.93	400
TC 30%	\$312	RAD	1	1	1	478	\$552	\$158	\$394	\$0	\$0.82	\$394	\$394	\$394	\$394	\$0.82	\$0	\$400	\$0.84	400
TC 50%	\$520	RAD	1	1	1	478	\$552	\$158	\$394	\$0	\$0.82	\$394	\$394	\$394	\$394	\$0.82	\$0	\$400	\$0.84	400
TC 60%	\$624	RAD	16	1	1	605	\$552	\$158	\$394	\$0	\$0.65	\$394	\$6,304	\$6,304	\$394	\$0.65	\$0	\$400	\$0.66	400
TC 30%	\$375	RAD	1	2	1	605	\$706	\$183	\$523	\$0	\$0.86	\$523	\$523	\$523	\$523	\$0.86	\$0	\$550	\$0.91	550
TC 50%	\$625	RAD	1	2	1	605	\$706	\$183	\$523	\$0	\$0.86	\$523	\$523	\$523	\$523	\$0.86	\$0	\$550	\$0.91	550
TC 60%	\$750	RAD	4	2	1	626	\$706	\$183	\$523	\$0	\$0.84	\$523	\$2,092	\$2,092	\$523	\$0.84	\$0	\$550	\$0.88	550
TC 30%	\$375	RAD	1	2	1	632	\$706	\$183	\$523	\$0	\$0.83	\$523	\$523	\$523	\$523	\$0.83	\$0	\$550	\$0.87	550
TC 50%	\$625	RAD	1	2	1	803	\$706	\$183	\$523	\$0	\$0.65	\$523	\$523	\$523	\$523	\$0.65	\$0	\$775	\$0.97	775
TC 60%	\$750	RAD	6	2	1	803	\$706	\$183	\$523	\$0	\$0.65	\$523	\$3,138	\$3,138	\$523	\$0.65	\$0	\$775	\$0.97	775
TC 30%	\$433	RAD	1	3	1	810	\$945	\$209	\$736	\$0	\$0.91	\$736	\$736	\$736	\$736	\$0.91	\$0	\$775	\$0.96	775
TC 60%	\$866	RAD	1	3	1	997	\$945	\$209	\$736	\$0	\$0.74	\$736	\$736	\$736	\$736	\$0.74	\$0	\$850	\$0.85	850
TC 50%	\$721	RAD	1	3	1	998	\$945	\$209	\$736	\$0	\$0.74	\$736	\$736	\$736	\$736	\$0.74	\$0	\$850	\$0.85	850
TC 60%	\$866	RAD	7	3	1	998	\$945	\$209	\$736	\$0	\$0.74	\$736	\$5,152	\$5,152	\$736	\$0.74	\$0	\$850	\$0.85	850
<b>TOTALS/AVERAGES:</b>			<b>80</b>			<b>56,073</b>				<b>\$0</b>	<b>\$0.65</b>	<b>\$453</b>	<b>\$36,218</b>	<b>\$36,218</b>	<b>\$453</b>	<b>\$0.65</b>	<b>\$0</b>	<b>\$601</b>	<b>\$0.86</b>	<b>\$601</b>

<b>ANNUAL POTENTIAL GROSS RENT:</b>	<b>\$434,616</b>	<b>\$434,616</b>	
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**STABILIZED PRO FORMA**

*Liberty Square & Liberty Village, Groesbeck, 9% HTC #15119*

	STABILIZED FIRST YEAR PRO FORMA													
	COMPARABLES		APPLICANT				PRIOR REPORT		TDHCA				VARIANCE	
	Database	Previous Year Actual	% EGI	Per SF	Per Unit	Amount	Applicant	TDHCA	Amount	Per Unit	Per SF	% EGI	%	\$
<b>POTENTIAL GROSS RENT</b>				\$0.65	\$453	\$434,616	\$362,184	\$362,184	\$434,616	\$453	\$0.65		0.0%	\$0
App fee, lost key fee, lock out fee pet fee					\$1.00	\$960	960	960	\$960	\$1.00				
0					\$0.00	\$0	26,520	41,108	\$0	\$0.00				
Total Secondary Income					\$1.00			42,068	\$960	\$1.00			0.0%	\$0
<b>POTENTIAL GROSS INCOME</b>						\$435,576	\$389,664	\$404,252	\$435,576				0.0%	\$0
Vacancy & Collection Loss				5.0% PGI		(21,779)	(19,483)	(20,213)	(21,779)	5.0% PGI			0.0%	-
Rental Concessions						-							0.0%	-
<b>EFFECTIVE GROSS INCOME</b>						\$413,797	\$370,181	\$384,039	\$413,797				0.0%	\$0

General & Administrative	\$27,619	\$345/Unit	\$51,309	\$641	3.04%	\$0.22	\$158	\$12,600	\$12,600	\$12,600	\$12,600	\$158	\$0.22	3.04%	0.0%	-
Management	\$26,532	5.6% EGI	\$0	\$0	5.00%	\$0.37	\$259	\$20,690	\$18,509	\$18,509	\$20,690	\$259	\$0.37	5.00%	0.0%	0
Payroll & Payroll Tax	\$74,213	\$928/Unit	\$116,041	\$1,451	24.90%	\$1.84	\$1,288	\$103,030	\$103,030	\$103,030	\$103,030	\$1,288	\$1.84	24.90%	0.0%	-
Repairs & Maintenance	\$49,535	\$619/Unit	\$58,959	\$737	7.13%	\$0.53	\$369	\$29,500	\$29,500	\$29,500	\$29,500	\$369	\$0.53	7.13%	0.0%	-
Electric/Gas	\$14,929	\$187/Unit	\$38,370	\$480	0.58%	\$0.04	\$30	\$2,400	\$2,400	\$2,400	\$2,400	\$30	\$0.04	0.58%	0.0%	-
Water, Sewer, & Trash	\$38,133	\$477/Unit	\$40,539	\$507	2.54%	\$0.19	\$131	\$10,500	\$10,500	\$10,176	\$10,176	\$127	\$0.18	2.46%	3.2%	324
Property Insurance	\$18,452	\$0.33 /sf	\$7,350	\$92	4.37%	\$0.32	\$226	\$18,080	\$18,080	\$18,080	\$18,080	\$226	\$0.32	4.37%	0.0%	-
Property Tax	\$35,474	\$443/Unit	\$14,761	\$185	0.44%	\$0.03	\$23	\$1,811	\$1,811	\$1,811	\$1,811	\$23	\$0.03	0.44%	0.0%	-
Reserve for Replacements	\$20,011	\$250/Unit	\$0	\$0	5.80%	\$0.43	\$300	\$24,000	\$24,000	\$24,000	\$24,000	\$300	\$0.43	5.80%	0.0%	-
Cable TV			\$0	\$0	0.00%	\$0.00	\$0	\$0	\$0	\$0	\$0	\$0	\$0.00	0.00%	0.0%	-
Supportive Services			\$1,221	\$15	1.03%	\$0.08	\$54	\$4,280	\$4,280	\$4,280	\$4,280	\$54	\$0.08	1.03%	0.0%	-
TDHCA Compliance fees			-	\$0	0.77%	\$0.06	\$40	\$3,200	\$3,200	\$3,200	\$3,200	\$40	\$0.06	0.77%	0.0%	-
TDHCA Bond Admin Fees			-	\$0	0.00%	\$0.00	\$0	\$0	\$0	\$0	\$0	\$0	\$0.00	0.00%	0.0%	-
Internet Service			-	\$0	2.92%	\$0.22	\$151	\$12,090	\$12,090	\$12,090	\$12,090	\$151	\$0.22	2.92%	0.0%	-
<b>TOTAL EXPENSES</b>			<b>\$328,550</b>		<b>58.53%</b>	<b>\$4.32</b>	<b>\$3,027</b>	<b>\$ 242,181</b>	<b>\$240,000</b>	<b>\$239,676</b>	<b>\$241,857</b>	<b>\$3,023</b>	<b>\$4.31</b>	<b>58.45%</b>	<b>0.1%</b>	<b>\$ 324</b>
<b>NET OPERATING INCOME ("NOI")</b>					<b>41.47%</b>	<b>\$3.06</b>	<b>\$2,145</b>	<b>\$171,616</b>	<b>\$130,181</b>	<b>\$144,363</b>	<b>\$171,941</b>	<b>\$2,149</b>	<b>\$3.07</b>	<b>41.55%</b>	<b>-0.2%</b>	<b>\$ (324)</b>

CONTROLLABLE EXPENSES							\$1,975/Unit					\$1,971/Unit				
-----------------------	--	--	--	--	--	--	--------------	--	--	--	--	--------------	--	--	--	--

**CAPITALIZATION / TOTAL DEVELOPMENT BUDGET / ITEMIZED BASIS**

*Liberty Square & Liberty Village, Groesbeck, 9% HTC #15119*

DEBT / GRANT SOURCES																	
APPLICANT'S PROPOSED DEBT/GRANT STRUCTURE									Prior Underwriting		AS UNDERWRITTEN DEBT/GRANT STRUCTURE						
DEBT (Must Pay)	MIP	Cumulative DCR		Pmt	Rate	Amort	Term	Principal	Prior Underwriting		Principal	Term	Amort	Rate	Pmt	Cumulative	
		UW	App						Applicant	TDHCA						DCR	LTC
Home Federal Bank of Shreveport		1.58	1.58	\$108,498	6.00%	30	17	\$1,775,000	\$1,359,000	\$1,359,000	\$1,775,000	17	30	6.00%	\$127,704	1.34	20.3%
Groesbeck Housing Authority		1.58	1.58	\$0	2.00%	0	30	\$400,000	\$1,550,000	\$1,550,000	\$400,000	30	0	2.00%		1.34	4.6%
<b>CASH FLOW DEBT / GRANTS</b>																	
City of Groesbeck		1.58	1.58		0.00%	0	0	\$52,000	\$0	\$0	\$52,000	0	0	0.00%		1.34	0.6%
				<b>\$108,498</b>	<b>TOTAL DEBT / GRANT SOURCES</b>			<b>\$2,227,000</b>			<b>\$2,227,000</b>	<b>TOTAL DEBT SERVICE</b>			<b>\$127,704</b>	<b>1.34</b>	<b>25.5%</b>
<b>NET CASH FLOW</b>		\$63,443	\$63,118											<b>NET OPERATING INCOME</b>	\$171,616	\$43,912	<b>NET CASH FLOW</b>

EQUITY SOURCES														
APPLICANT'S PROPOSED EQUITY STRUCTURE						Prior Underwriting		AS UNDERWRITTEN EQUITY STRUCTURE						
EQUITY / DEFERRED FEES	DESCRIPTION	% Cost	Annual Credit	Credit Price	Amount	Prior Underwriting		Amount	Credit Price	Annual Credit	% Cost	Annual Credits per Unit		
						Applicant	TDHCA							Total Developer Fee:
R4 Capital	LIHTC Equity	74.2%	\$647,667	1.00	\$6,476,022	\$5,876,972	\$5,763,659	\$6,476,022	\$1.00	\$647,667	74.2%	\$8,096		
Housing Solutions Alliance, LLC	Deferred Developer Fees	0.3%	(2% Deferred)		\$22,076	\$7,636		\$21,637		(3% Deferred)	0.2%		<b>\$792,248</b>	
Add'l Funds Needed / (Excess) Funds		0.0%			\$510	-\$120,000		\$0			0.0%			
<b>TOTAL EQUITY SOURCES</b>		<b>74.5%</b>			<b>\$6,498,608</b>			<b>\$6,497,659</b>			<b>74.5%</b>		<b>15-Year Cash Flow: \$763,115</b>	
<b>TOTAL CAPITALIZATION</b>						<b>\$8,725,608</b>		<b>\$8,724,659</b>						<b>15-Yr Cash Flow after Deferred Fee: \$741,478</b>

DEVELOPMENT COST / ITEMIZED BASIS														
APPLICANT COST / BASIS ITEMS					Prior Underwriting		TDHCA COST / BASIS ITEMS					COST VARIANCE		
	Eligible Basis		Total Costs		Prior Underwriting		Total Costs	Eligible Basis			%	\$		
	Acquisition	New Const. Rehab			Applicant	TDHCA		New Const. Rehab	Acquisition					
Land Acquisition			\$625 / Unit	\$50,000	\$50,000	\$50,000	\$50,000	\$625 / Unit			0.0%	\$0		
Building Acquisition	\$800,000		\$29,125 / Unit	\$2,330,000	\$2,330,000	\$2,330,000	\$2,330,000	\$29,125 / Unit		\$800,000	0.0%	\$0		
Off-Sites			\$ / Unit	\$0	\$0	\$0	\$0	\$ / Unit			0.0%	\$0		
Site Work		\$297,034	\$3,713 / Unit	\$297,034	\$297,034	\$296,865	\$296,865	\$3,711 / Unit	\$296,865		0.1%	\$169		
Site Amenities		\$398,779	\$4,985 / Unit	\$398,779	\$398,779	\$447,032	\$447,032	\$5,588 / Unit	\$447,032		-10.8%	(\$48,253)		
Building Cost		\$3,058,573	\$54.55 /sf	\$38,232/Unit	\$3,058,573	\$3,058,573	\$3,009,664	\$37,621/Unit	\$53.67 /sf	\$3,009,664	1.6%	\$48,909		
Contingency		\$187,719	5.00%	5.00%	\$187,719	\$187,719	\$187,719	\$187,719	5.00%	5.00%	\$187,719	0.0%	\$0	
Contractor Fees		\$525,614	13.33%	13.33%	\$525,614	\$525,614	\$525,614	\$525,614	13.34%	13.34%	\$525,614	0.0%	\$0	
Soft Costs	0	\$552,240	\$7,028 / Unit	\$562,240	\$562,240	\$562,240	\$562,240	\$7,028 / Unit		\$552,240	\$0	0.0%	\$0	
Financing	0	\$261,691	\$4,353 / Unit	\$348,251	\$348,251	\$348,251	\$348,251	\$4,353 / Unit		\$261,691	\$0	0.0%	\$0	
Developer Fee	\$0	\$912,248	17.27%	17.27%	\$912,248	\$912,248	\$792,124	\$792,124	15.00%	15.00%	\$792,124	\$0	15.2%	\$120,124
Reserves			\$2,189 / Unit	\$175,150	\$175,150	\$175,150	\$175,150	\$2,189 / Unit				0.0%	\$0	
<b>UNADJUSTED BASIS / COST</b>	<b>\$800,000</b>	<b>\$6,193,898</b>		\$110,570 / Unit	<b>\$8,845,608</b>	<b>\$8,845,608</b>	<b>\$8,724,659</b>	<b>\$8,724,659</b>	\$109,058 / Unit	<b>\$6,072,949</b>	<b>\$800,000</b>	<b>1.4%</b>	<b>\$120,949</b>	
Acquisition Cost	\$0				\$0									
Contingency		\$0												
Contractor's Fee		\$0												
Interim Interest		\$0												
Developer Fee	\$0	(\$120,000)			(\$120,000)									
Reserves					\$0									
<b>ADJUSTED BASIS / COST</b>	<b>\$800,000</b>	<b>\$6,073,898</b>		\$109,070/unit	<b>\$8,725,608</b>		<b>\$8,724,659</b>	<b>\$8,724,659</b>	\$109,058/unit	<b>\$6,072,949</b>	<b>\$800,000</b>	<b>0.0%</b>	<b>\$949</b>	
<b>TOTAL UNDERWRITTEN USES OF FUNDS BASED ON 3RD PARTY PCA/CNA</b>						<b>\$8,724,659</b>								

**CAPITALIZATION / DEVELOPMENT COST BUDGET / ITEMIZED BASIS ITEMS**

*Liberty Square & Liberty Village, Groesbeck, 9% HTC #15119*

CREDIT CALCULATION ON QUALIFIED BASIS				
	Applicant		TDHCA	
	Acquisition	Construction Rehabilitation	Acquisition	Construction Rehabilitation
<b>ADJUSTED BASIS</b>	\$800,000	\$6,073,898	\$800,000	\$6,072,949
Deduction of Federal Grants	\$0	\$0	\$0	\$0
<b>TOTAL ELIGIBLE BASIS</b>	\$800,000	\$6,073,898	\$800,000	\$6,072,949
High Cost Area Adjustment		130%		130%
<b>TOTAL ADJUSTED BASIS</b>	\$800,000	\$7,896,067	\$800,000	\$7,894,834
Applicable Fraction	100.00%	100.00%	100.00%	100.00%
<b>TOTAL QUALIFIED BASIS</b>	\$800,000	\$7,896,067	\$800,000	\$7,894,834
Applicable Percentage	3.35%	7.87%	3.35%	7.87%
<b>ANNUAL CREDIT ON BASIS</b>	\$26,800	\$621,420	\$26,800	\$621,323
<b>CREDITS ON QUALIFIED BASIS</b>	\$648,220		\$648,123	

Method	ANNUAL CREDIT CALCULATION BASED ON TDHCA BASIS		FINAL ANNUAL LIHTC ALLOCATION		
	Annual Credits	Proceeds	Credit Price	Variance to Request	
			\$0.9999	Credits	Proceeds
<b>Eligible Basis</b>	\$648,123	\$6,480,586	----	----	----
<b>Gap</b>	\$649,831	\$6,497,659	----	----	----
<b>Previous Allocation</b>	\$647,667	\$6,476,022	<b>\$647,667</b>	<b>\$0</b>	<b>\$0</b>

## 30-Year Long-Term Pro Forma

*Liberty Square & Liberty Village, Groesbeck, 9% HTC #15119*

	Growth Rate	Year 1	Year 2	Year 3	Year 4	Year 5	Year 10	Year 15	Year 20	Year 25	Year 30
EFFECTIVE GROSS INCOME	2.00%	\$413,797	\$422,073	\$430,515	\$439,125	\$447,907	\$494,526	\$545,997	\$602,824	\$665,567	\$734,840
TOTAL EXPENSES	3.00%	\$242,181	\$249,239	\$256,505	\$263,985	\$271,685	\$313,722	\$362,325	\$418,527	\$483,524	\$558,700
<b>NET OPERATING INCOME ("NOI")</b>		<b>\$171,616</b>	<b>\$172,834</b>	<b>\$174,009</b>	<b>\$175,140</b>	<b>\$176,222</b>	<b>\$180,804</b>	<b>\$183,672</b>	<b>\$184,298</b>	<b>\$182,043</b>	<b>\$176,140</b>
<b>MUST -PAY DEBT SERVICE</b>											
TOTAL DEBT SERVICE		\$127,704	\$127,704	\$127,704	\$127,704	\$127,704	\$127,704	\$127,704	\$127,704	\$127,704	\$127,704
<b>ANNUAL CASH FLOW</b>		<b>\$43,912</b>	<b>\$45,130</b>	<b>\$46,305</b>	<b>\$47,435</b>	<b>\$48,518</b>	<b>\$53,100</b>	<b>\$55,968</b>	<b>\$56,593</b>	<b>\$54,339</b>	<b>\$48,436</b>
<b>CUMULATIVE NET CASH FLOW</b>		<b>\$43,912</b>	<b>\$89,042</b>	<b>\$135,347</b>	<b>\$182,782</b>	<b>\$231,300</b>	<b>\$488,228</b>	<b>\$763,115</b>	<b>\$1,045,846</b>	<b>\$1,323,345</b>	<b>\$1,578,962</b>
DEBT COVERAGE RATIO		1.34	1.35	1.36	1.37	1.38	1.42	1.44	1.44	1.43	1.38
EXPENSE/INCOME RATIO		58.5%	59.1%	59.6%	60.1%	60.7%	63.4%	66.4%	69.4%	72.6%	76.0%
Deferred Developer Fee Balance		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Residual Cash Flow		\$22,275	\$45,130	\$46,305	\$47,435	\$48,518	\$53,100	\$55,968	\$56,593	\$54,339	\$48,436

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BARRY J. PALMER

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August 26, 2016

Lee Ann Chance, Asset Manager  
Asset Management Division  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, Texas 78701-2410

RE: #15119 – Liberty Square & Liberty Village, Groesbeck, Limestone County, Texas;  
Application Amendment Request.

Dear Lee Ann:

On behalf of Liberty Square & Liberty Village (collectively, the “Development”), we file this request for an Application Amendment. After having received an award of 9% Housing Tax Credits from the 2015 Round, we have reviewed the Application for the Development and recommended the following amendments:

1. Revise the RAD component from 75% to 100% of the units.
2. Revise the organizational structure to make the Groesbeck Housing Authority’s affiliate the managing member of the General Partner, so that the Development will qualify for a governmental ad valorem tax exemption.
3. Revise the approximate references to acreage in the Application to reflect 9.669 acres, which is the acreage as surveyed.
4. Revise the income restrictions to qualify for the points elected for Income Levels of Tenant and Rent Levels of Tenants, but not to exceed these requirements, in order to maximize the Development’s ability to accommodate returning tenants with higher income levels who are entitled to return to the Development pursuant to the RAD Program.

## **Background.**

The Development is a scattered site acquisition/rehab project being developed on two companion public housing sites owned by the Groesbeck Housing Authority (the “GHA”). In the 2015 9% Housing Tax Credit Application, the Development was shown to be 80 total units, of which 58 units were to be RAD units located at Liberty Square, and 22 units were to remain public

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housing units at Liberty Village. This mix of RAD and public housing units was needed to meet the requirements of the At-Risk Set-Aside at the time of application.

**1. Request for amendment to 100% RAD.**

**This Application Amendment Request is to eliminate the 25% retained public housing operating subsidy units and permit a RAD conversion of all 80 units.**

HB 1888 which became effective September 1, 2013, provided that public housing could qualify for a Housing Tax Credit Award out of the At-Risk Set-Aside if a portion of the public housing operating subsidy was retained for the project and a portion of the units were retained to serve public housing tenants. This statutory amendment was intended to make it clear that RAD conversions could qualify for the At-Risk Set-Aside if the requisite amount of public operating subsidy was retained and the requisite number of units were kept for use as public housing. As the affordable housing community became more familiar with the RAD Program, it became aware that a public housing unit receiving Section 9 operating subsidy continues to receive the same Section 9 operating subsidy for a period of time after a RAD conversion takes place. Accordingly, all RAD conversions should qualify for the At-Risk Set-Aside on the basis of the continuation of the Section 9 operating subsidy, without having to exclude 25% of the units from the RAD conversion to Project-Based Rental Assistance.

RAD conversion units are far preferable to public housing units – that is why HUD is encouraging the conversions to reduce the number of housing projects receiving a direct Section 9 subsidy. RAD conversion units are able to provide revenue to pay debt service, while public housing units are prohibited from supporting debt. Additionally, a tenant who moves out of a RAD conversion unit after a year of residency is entitled to receive a Housing Choice Voucher. This feature of the RAD Program promotes Fair Housing by permitting mobility for tenants who were previously tied to public housing. For these reasons, we request that the Application be amended to permit the use of 100% RAD conversion units. Tabs 20 and 24 have been revised to show that the units will be 100% RAD conversions, and are enclosed for your review.

**2. Request for amendment of organizational structure.**

The Application relies upon a 100% ad valorem tax exemption which is available to governmental entities that enter into public-private partnerships for the purpose of carrying out public purposes, such as the development of affordable housing for low-income residents.

Our law firm will be required to opine concerning the qualification for the ad valorem exemption. In order to do so, we require that the Development adhere to the existing guidelines for such an exemption, which are derived from judicial decisions and attorney general opinions. Such guidelines require that the governmental entity retain control over the public-private

partnership to ensure that the public purposes are carried out and are not subverted by private, for-profit purposes. In order for us to provide an opinion, we are requiring that the GHA affiliate which owns 51% of the General Partner also be the managing member of the General Partner. The organizational structure shown in the Application was revised and approved by the TDHCA on October 30, 2015 (see enclosed approval letter). We now request that the organizational structure be further revised to evidence that Liberty Housing Alliance, Inc., the holder of 51% of the ownership interest in the General Partner also be the Managing Member of the General Partner. Housing Solutions Alliance, LLC dba Centerpointe Housing Solutions Alliance, LLC, will be revised to be a 49% non-managing member of the General Partner. Please note that this change does not entail an ownership transfer, but only a change in control. A revised Tab 37 Organizational Chart is enclosed.

### **3. Request for revision of references to acreage.**

Because this was a Rehabilitation Application, there was no requirement that a survey of the Development Site be included in the Application. [Usually the survey is part of the Site Design and Development Feasibility Report, which is only required for New Construction and Reconstruction developments.] Based upon materials available to the applicant, the acreage of the Development Site was estimated to be approximately 9.41 acres. The Application throughout refers to the Development site as being 9.41+/- acres, and in Tab 11, Part 1, it specifically stated "The acreage is a good faith estimate of the acreage of each tract. The ESA describes the tracts by address." On review of the Ground Lease which was submitted with the 10% Test, it was noted that the approximate acreage measurements shown in the Application had been replaced by exact acreages, which are the result of the survey of the Development site performed in anticipation of the construction and equity closing. Staff advised that the Application needed to be amended to deal with a decrease in acreage and concomitant increase in density evidenced by the legal descriptions.

Subsequently we have confirmed that the City of Groesbeck abandoned a portion of Fannin Street and a 20-foot alley that used to run through part of the Liberty Square site. The survey for that part of the Development site has been revised to include the abandoned rights of way. Accordingly, we enclose copies of the current surveys of the four scattered sites that constitute the Development site, along with the field notes for the sites, and request that these be substituted for the estimate used in the Application. The surveys aggregate 9.669 acres ( $3.157 + 1.26 + 1.932 + 3.32 = 9.669$  acres), but constitute all of the land included in the Application and all of the land included in the two public housing projects that are being redeveloped as this Development. Accordingly, there is no loss of land and the increase in land is less than 5%. Likewise, the concomitant decrease in density is less than 5%. The change is an artifact of the inexact estimates of acreage included in the four scattered sites. To this effect, Tab 11 – Site Information Form Part III, has been revised and is enclosed. As part of the construction and equity closing we will amend the Memorandum of Ground Lease to provide a corrected legal description.



#### **4. Request for revision of income/rent restrictions.**

The Application and underwriting by TDHCA were based upon the 2014 HUD income and rent limits for the 9% Housing Tax Credit Program. In 2016, these income and rent limits were substantially reduced in Limestone County, as well as in much of Texas. For this Development the Program's income and rent limits all have been reduced by approximately 10%.

When an existing tenant is relocated due to a RAD conversion, HUD requires that the tenant have the right to return to the converted development. Because the tenant was originally a public housing tenant, that tenant had to originally qualify with an income level of 80% AMGI or less. Through the years the tenant's income may have grown, and the tenant would still be a qualified public housing tenant until income exceeded 140% AMGI. Unfortunately, such a tenant cannot qualify for a LIHTC unit. The GHA has income-qualified the existing tenants who would be returning to the rehabbed development and determined that at this time, they would be qualified as LIHTC residents with incomes of up to 60% AMGI. It should be noted that the Area Median Income is currently \$50,400 instead of the \$55,500 Area Median Income that existed when the Application was filed.

The restrictions in the Application (20 units at 30% AMGI and the remainder at 50% AMGI) do not provide any leeway for qualifying returning tenants, now that the maximum qualifying income levels have been reduced for the 9% Housing Tax Credit Program. Point elections made in the Application under §11.9(c)(1) *Income Levels of Tenants of the 2015 QAP* require that the Development have 16 units at 50% AMGI (16 points) and point elections under §11.9(c)(2) *Rent Levels of Tenants* require that the Development have 6 units at 30% AMGI (11 points). Beyond that, the Application is not required to restrict more deeply than 60% AMGI as a result of point election. As a result of the dropping Area Median Income, the income restrictions that were acceptable when the Application was filed would now prohibit some of the returning tenants under RAD from being considered qualified tenants, and would result in noncompliance issues. We note that the rent limitations are of less concern because all of the Development's units will receive federal subsidy in the form of the CHAP rental assistance, less the administrative fee retained by the GHA..

Section 10.405(a)(6) of the 2106 Uniform Multifamily Rules has a specific process for amendments to the Application's income and rent restrictions. Evidence of infeasibility without the change is required and there is a 24-month suspension from the Housing Tax Credit Program if the loss of low-income targeting points would have resulted in the application not receiving an award in the year of allocation. This situation is different, however:

- ❖ There is no effect upon scoring of the Application - restrictions necessary to preserve all low-income targeting points would be maintained;
- ❖ All units would remain restricted at 60% AMGI or below; and

- ❖ The change requested to the restrictions would not affect the rental income of the Development due to federal rent subsidies.

Because of the above, the issue of “infeasibility” is not really applicable to this situation. Instead, we are requesting the change in order to permit the entire Development to be a RAD conversion, which is considered more stable and therefore preferable to public housing. For the RAD conversion, HUD requires that all previous tenants be permitted to return to the rehabilitated Development, should they so desire. In order to comply with this HUD directive, which is an element of the RAD Program, the Development needs to be able to accommodate tenants with incomes greater than 50% AMGI, but not exceeding 60% AMGI. This was known at time of Application, but the drop in HUD-promulgated income levels was an unexpected change in circumstances and has resulted in the loss of flexibility needed in order to make the RAD Program and the Housing Tax Credit Program work together.

We are advised by the GHA that amending the Application to only require the deeper limitations that were elected in the scoring process will provide the flexibility needed to permit all tenants who wish to return to the Development to do so within the income restrictions that would be imposed by the LURA. For that reason, we request that the TDHCA Board waive the requirement for letters from the equity and debt providers stating that without the change the development would be infeasible and approve the requested revision to the income and rent restrictions. By granting such waiver, the TDHCA Board will fulfill its purpose under Section 2306.001(3) of the Texas Government Code to contribute to the preservation and redevelopment of neighborhoods and communities, including cooperation in the preservation of government-assisted housing occupied by individuals and families of very low and extremely low income.

**Request for Approval of Material Application Amendment, Including Waiver.**

We respectfully request that the TDHCA grant a material amendment to the 2015 9% Housing Tax Credit Application for the Development, waiving the requirement to show that the Development is infeasible under Request 4 above, and approve Requests 1 – 4 above to be implemented.

In connection with your review of this request, enclosed are the following forms from the application, revised in pertinent part: (i) Tab 11 – Site Information Form Part III; (ii) Tab 12 – Supporting Documentation from Site Information Part III (addition of surveys showing true acreage); (iii) Tab 13 – Multiple Site Information Form and page 87; (iv) Tab 17 – Development Narrative, part 4; (v) Tab 19 – Development Activities II, part 2; (vi) Tab 20 - Acquisition and Rehabilitation Information, part 2; (vii) Tab 22 – Architectural Drawings (pages A0, A2 and A3); (viii) Tab 24 – Rent Schedule; (viii) Tab 31 - Financing Narrative and Summary of Sources and Uses; (ix) Tab 34 – Finance Scoring, part 3; and (x) Tab 37 – Org Charts. If any other portions of the application require revision, or if you need any additional information to

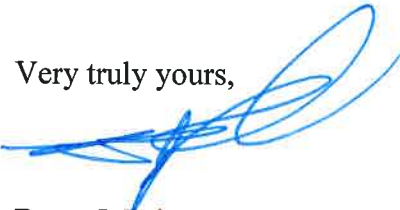
Lee Ann Chance, Asset Manager

August 26, 2016

Page 6

consider this request, please do not hesitate to call. A check in the amount of \$2,500.00 for the Amendment Fee is being delivered to you today by hand, along with a copy of this letter.

Very truly yours,



Barry J. Palmer

Enclosures: Relevant revised portions of Tabs 11, 12, 13, 17, 19, 20, 24, 31, 34 and 37.  
\$2,500.00 Amendment Fee.  
2016 Multifamily Document and Payment Receipt.

cc: Jana Raymond, Executive Director  
Art Schuldt, Jr.  
Donna Rickenbacker

# TAB 11

# Site Information Form Part III

Self Score Total: 128

## 1. Site Acreage

Please identify site acreage as listed in each of the following exhibits/documents.

Site Control: 9.669                      Site Plan: 9.669                      Appraisal: 9.41+/-                      ESA: \*\*

Please provide an explanation of any discrepancies in site acreage below:

**\*\* this is an acquisition/rehabilitation of 80-units located on 2 scattered sites described by multiple addresses. The 9.41+/- acres shown in the Application was a good faith estimate, since no survey was required in the Application. Subsequently, a survey has been done which shows that Liberty Village has 3.157 acres, and Liberty Square has 3.32 + 1.932 + 1.26 = 6.512 acres. The aggregate acreage for the Development is 3.157 + 6.512 = 9.669 acres. The ESA did not show acreage - it used**

## 2. Site Control

The current owner of the Development Site is (If scattered site, & more than one owner, refer to Scattered Site Info. Tab.):

<u>Housing Authority of the City of Groesbeck, Texas</u>	<u>Jana Raymond</u>
<b>Entity Name</b>	<b>Contact Name</b>
<u>407 N. Leon</u>	
<b>Address</b>	
<u>Groesbeck</u>	<u>TX</u>
	<u>76642</u>
	<u>1964/1973</u>
<b>City</b>	<b>State</b>
	<b>Zip</b>
	<b>Date of Last Sale</b>

Is the seller affiliated with the Applicant, Principal, sponsor, or any Development Team member? Yes

If "Yes," please explain: Applicant (Lessor) is an instrumentality of the Housing Authority

Did the seller acquire the property through foreclosure or deed in lieu of foreclosure? No

Identify all of the sellers of the proposed property for the 36 months prior to the first day of the Application Acceptance Period and their relationship, if any, to members of the Development Team:

<b>Name:</b>	<b>Relationship:</b>
<u>Housing Authority of the City of Groesbeck</u>	<u>see above</u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>

Site Control is in the form of:

- Contract for sale.
- Recorded Warranty Deed with corresponding executed closing/settlement statement.
- Contract for lease.  

Expiration of Contract or Option: 12/31/2016      Anticipated Closing Date: 4/30/2016
- Title Commitment or Title Policy is included behind this tab ( as requested in the Multifamily Rules §10.204(12)).

## 3. 30% increase in Eligible Basis "Boost" (9% and 4% HTC Only)

Development qualifies for the boost for:

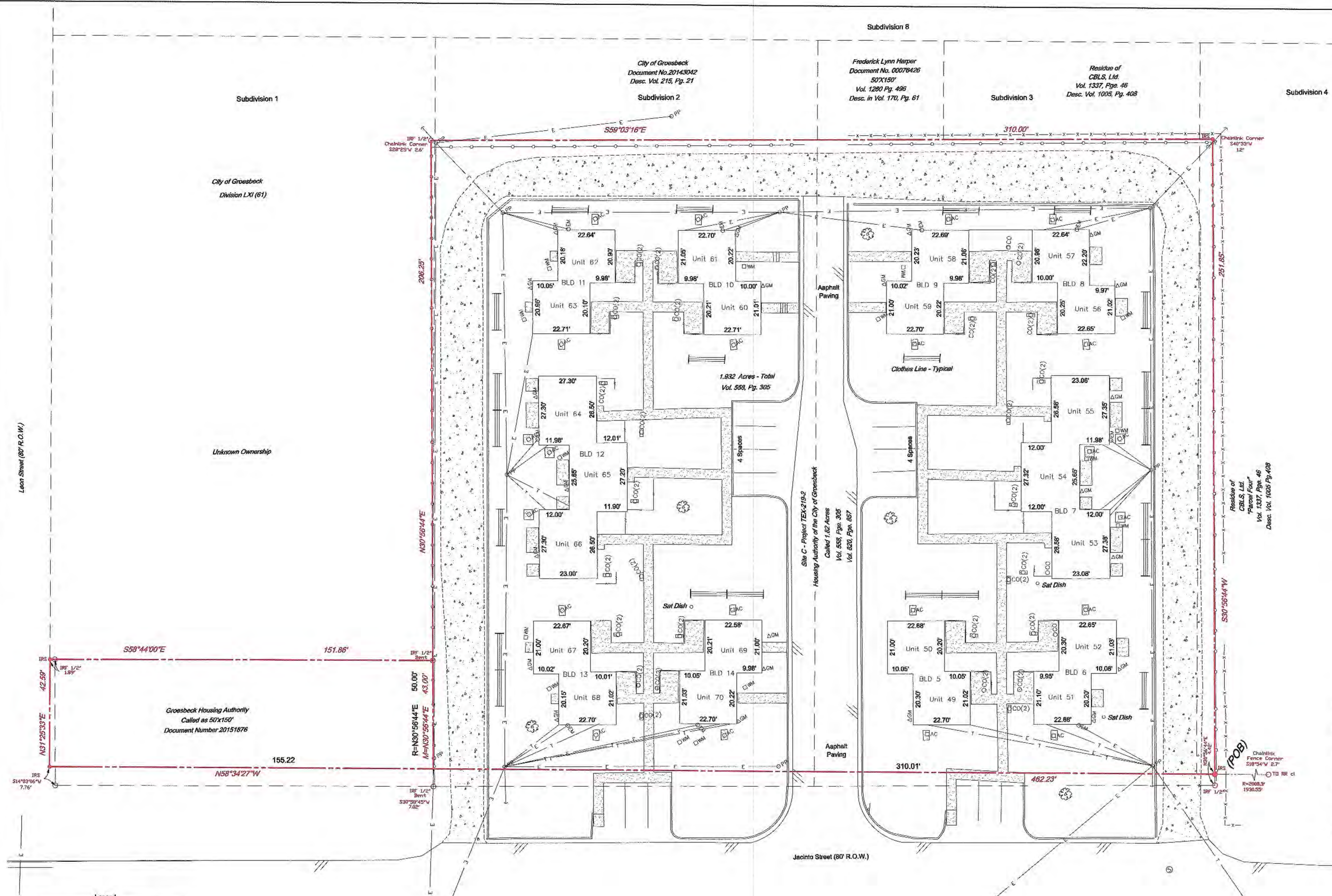
- Qualified Census tract that has less than 20% HTC Units per household
- Rural Development (Competitive HTC only)
- Development is Supportive Housing (Competitive HTC Only)
- Development meets the criteria for the Opportunity Index as identified in §11.9(c)(4) of the Qualified Allocation Plan (Competitive HTC only)
- Development is non-Qualified Elderly not located in a QCT and is targeted under a Community Revitalization Plan. (Competitive HTC only)
- Development includes an additional 10% of units at 30% AMI (over the amount of units needed for point scoring).
- Development is in a QCT with 20% or greater Housing Tax Credit Units per household, and a resolution from the Governing Body of the appropriate municipality or county allowing the construction of the Development is included behind Tab 8\*\*

\*\* Resolution not due until Resolutions Delivery Date for Tax-Exempt Bond Developments

TAB 12

Supporting Documents III  
Surveys





Fieldnote Description to 1.932 acres  
City of Groesbeck - Part of Division LXI (61)  
Varela Survey, A-29  
Limestone County, Texas  
Known as Liberty Square

Fieldnotes to all that certain lot, tract, or parcel of land situated in the City of Groesbeck, A. Varela Survey, A-29, Limestone County, Texas, being 1.932 acres, more or less, being part of Division LXI (61) and comprised of a called 1.82 acre tract described in a deed dated April 23, 1970, from B. L. Bradley, et al to the Housing Authority of the City of Groesbeck, and recorded in Volume 558, Page 305 (further conveyed in a deed recorded in Volume 820, Page 857), and a called 50 foot by 150 foot tract conveyed April 21, 2015, by the City of Groesbeck to the Groesbeck Housing Authority, and recorded as Document Number 20151876, Deed Records, Limestone County, Texas, to which references are hereby made to for any and all purposes. Said tract described by metes and bounds as follows, to wit:

Beginning at a 1/2" iron rod (capped R.P.L.S. 4957) set for the common southern corner of the referenced 1.82 acre tract and a tract conveyed to C.B.L.S. Ltd. by deed of record in Volume 1337, Page 46. Same being in the northeastern right of way of Jacinto Street (80' right of way) and bears N59°34'27"W 1930.85 feet (record call is 2038.3 feet) from the centerline of the main track of the railroad. Said point further bears N30°56'44"E from the acclaimed southern corner of said 1.82 acre tract;

THENCE NORTH 58°34'27" WEST, with the northeastern right of way of Jacinto Street, passing at 310.01 feet an iron rod found bearing S30°58'45"W 7.02 feet for the southern corner of the referenced 50'x150' tract, continuing a total distance of 462.23 feet to a 1/2" iron rod (capped R.P.L.S. 4957) set for corner in the intersection of said northeastern right of way with the southeastern line of Leon Street (80' r.o.w.-unimproved). From said point the record location of the western corner of said 50'x150' tract bears S14°03'06"W 7.76 feet;

THENCE NORTH 31°25'33" EAST 42.59 feet, with the southeastern right of way of Leon Street, to a capped 1/2" iron rod set for corner. From said point a 1/2" iron rod found for the monumented northern corner of said 50'x150' tract bears S58°44'00"E 1.89 feet;

THENCE SOUTH 58°44'00" EAST 151.86 feet, along the monumented northeastern line of said 50'x150' tract, to a 1/2" iron rod found for the eastern corner of same in the northwest line of the referenced 1.82 acre tract;

THENCE NORTH 30°56'44" EAST 206.25 feet, with the northwest line of said 1.82 acre tract and generally along an existing chain link fence to a 1/2" iron rod found for the northern corner of said 1.82 acre tract. Same being in the apparent southwestern line of a tract conveyed to the City of Groesbeck by Document Number 20143042. From said point an existing chain link fence corner bears S28°25'25"W 2.8 feet;

THENCE SOUTH 59°03'16" EAST 310.00 feet, with the northeastern line of the aforesaid 1.82 acre tract and with the apparent southwest line of said City of Groesbeck tract, the apparent southwestern line of a tract conveyed to Frederick Harper by deed of record in Volume 1280, Page 498, and the apparent southwestern line of a tract conveyed to C.B.L.S. Ltd. by deed of record in Volume 1337, Page 46, to a capped 1/2" iron rod set for the eastern corner of said 1.82 acre tract and an "ell" corner of said C.B.L.S. Ltd. tract. From said point an existing chain link fence corner bears S40°33'33"W 1.2 feet;

THENCE SOUTH 30°56'44" WEST 251.85 feet (record call is 256 feet), with the southeastern line of the referenced 1.82 acre tract, to the Point of Beginning and containing 1.932 acres, more or less, as shown on the accompanying survey plat of even date herewith.

Bearing Note: Bearings are based on the centerline of the railroad using a bearing of N31°25'00"E.

The following comments are made with regard to a First American Title Insurance Company title commitment with an effective date of February 1, 2015, and GF No. 16714:

- 1a. The ordinance adopted by the City of Groesbeck, Volume 759, Page 152, deals with requirements pertaining to Mobile Home Parks within the City of Groesbeck. This ordinance establishes design standards, permits, and other items related to Mobile Home Parks. The applicability of this ordinance to the subject properties is inconclusive.
- 10d. The easement recorded in Volume 497, Page 357, is a blanket easement to the City of Groesbeck and is not locatable from the description. It appears to affect Site B - Project TEX-219-2, Record 1284 & 2044 - Units 29-40; Units 71-80, Tract 1 & Tract 2. The approximate sewer line route is shown.
- 10e. The easement recorded in Volume 513, Page 573, is a Blanket Easement to Lone Star Gas Company and is not locatable from the description. This easement covers Lots 1 through 10 in Block 253 and Lots 1 through 10 in Block 226, City of Groesbeck; These lots are referred to as Record 1241 - Units 1-28A, Record 1242 - Units 1-28B, Record 1243 - Units 1-28C, and Record 1244 - Units 1-28D.
- 10f. The Declaration of Trust, of record in Volume 72, Page 78, Deed of Trust Records, does not contain survey related matters. This document identifies Site A and Site B as Project TEX 219-1. Site A is described as, Parcel 1 - being Lots 1 through 10 in Block 226, City of Groesbeck, Limestone County, Texas, and Parcel 2, 3, & 4 - being Lots 1 through 10 in Block 253, City of Groesbeck, Limestone County, Texas. Site B is designated as a called 2.0417 acre tract out of Subdivision 11, in Division LXII (72), in the City of Groesbeck, Limestone County, Texas.
- 10g. The Declaration of Trust recorded in Volume 560, Page 196, does not contain survey related matters. This document identifies Site A as TEX-219-2 and this site is a part of Subdivision 2, in Division LXXX (79) in the City of Groesbeck, Limestone County, Texas. It further designates a called 1.123 acre tract, part of Subdivisions 11 & 12 in Division LXII (72) as Bite B TEX-219-02, and Site C, TEX-219-2, as a part of Subdivision 2, 3, and 4 in Division LXI (61), City of Groesbeck, Limestone County, Texas.
- 10h. The Declaration of Trust recorded in Volume 820, Page 849, does not contain survey related matters. This document identifies TX 219-001 as 40 Units and TX 219-002 as 40 Units in the City of Groesbeck, Limestone County, Texas.

The following Table A items are addressed:

- |           |  |
|-----------|--|
| Item 2    | Addresses were not contained within record documents. The building/unit numbers are shown.   |
| Item 3    | According to Flood Insurance Rate Map 48293C0295C, with an effective date of September 16, 2011, the subject site is not within a designated Zone A. |
| Item 4    | The gross acreage is shown hereon.   |
| Item 6    | The City of Groesbeck does not have a zoning ordinance, but has a Mobile Home Ordinance which pertains to the development of Mobile Home Parks.      |
| Item 7(a) | Exterior building dimensions are shown.  |
| Item 8    | Substantial observed features are shown.   |
| Item 9    | Parking is shown. The majority of the parking site(s) are not stripped.  |
| Item 10   | Interior unit walls are not addressed.   |
| Item 11a  | Visible above ground utilities are shown.  |
| Item 13   | Adjoining ownership information is based on current Limestone County Central Appraisal District Records.   |
| Item 16   | Evidence of current earth moving, building construction, or building additions were not observed.  |
| Item 17   | According to the City of Groesbeck, changes in street right of way lines is not considered.  |
| Item 18   | No evidence of the site(s) was observed as being used for a landfill or solid waste dump.  |
| Item 19   | The US Fish & Wildlife Wetlands Mapper does not identify any wetland areas on the site.  |
| Item 20   | There are no any offsite servitudes.   |

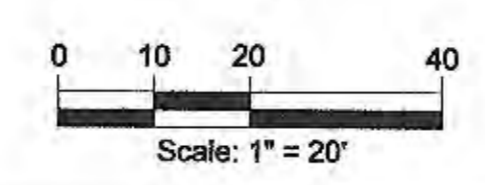
- Legend**
- IR5 Set 1/2" Iron Rod
  - IRF Found Iron Rod
  - CFF Chainlink Fence
  - W Wood Fence
  - I Iron/Metal Fence
  - E Electric Line
  - W Water Line
  - SS Sanitary Sewer Line
  - PP Power Pole
  - GW Guy Wire
  - AC Air Conditioner
  - CO Clean Out
  - EM Electric Meter
  - GM Gas Meter
  - GV Gas Valve
  - ICV Irrigation Control Valve
  - LP Light Pole
  - MB Mailbox
  - MP Meter Pole
  - S Sign
  - TP Telephone Pedestal
  - T Tree
  - W Water Meter
  - V Water Valve
  - H Hydrant
  - SSM Sanitary Sewer Manhole

Block 253

Block 226

Exclusively to Groesbeck Housing Authority and First American Title Insurance Company.

This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2011 Minimum Standard Detail Requirements for ALTSM land title surveys, and includes items 2, 3, 4, 6, 7(a), 8, 9, 10, 11(a), 13, 16, 17, 18, 19, and 20 of Table A.



Kirk Raymond, R.P.L.S. 4957  
April 26, 2016  
The Fieldwork was performed during January-February 2016



RAYMOND SURVEY & MAPPING - A DIVISION OF GOODWIN-LASITER, INC.  
1008 W. BRADDOCK STREET - GROESBECK, TEXAS 75845 (850) 758-8750 - RPLS@RAYMOND-SURVEY.COM - TEL# 101-10002

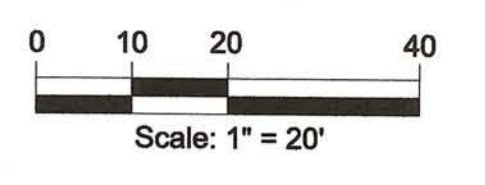
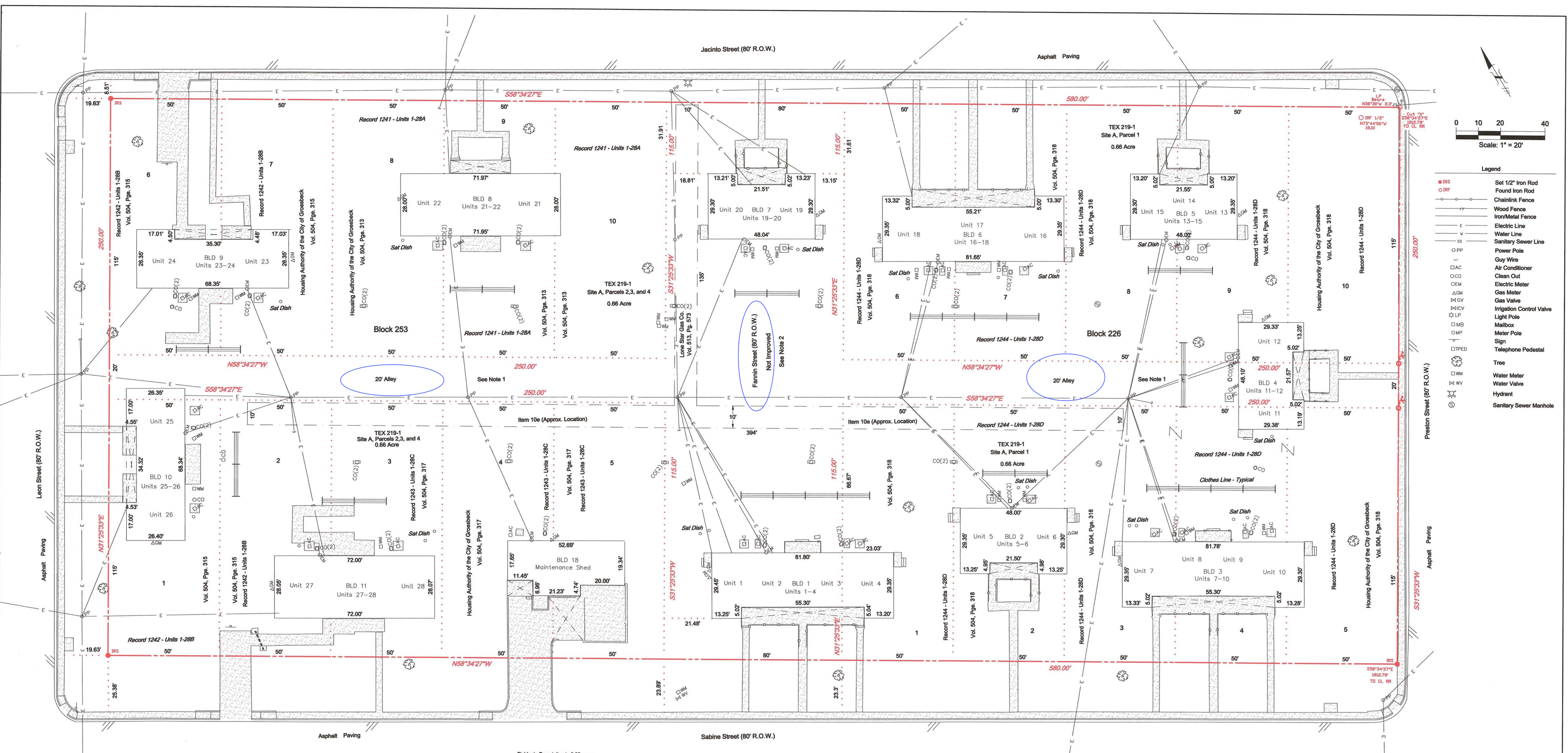
Date: 4-26-16 Drawn By: [Signature] Client: Groesbeck Housing Authority Job #: 645493

Survey Plat of a 1.932 Acre Tract in the City of Groesbeck, Texas, Known as Liberty Square, Limestone County, Texas

GOODWIN-LASITER-STRONG  
1008 W. BRADDOCK STREET - GROESBECK, TEXAS 75845 (850) 758-8750 - RPLS@RAYMOND-SURVEY.COM - TEL# 101-10002

10F4

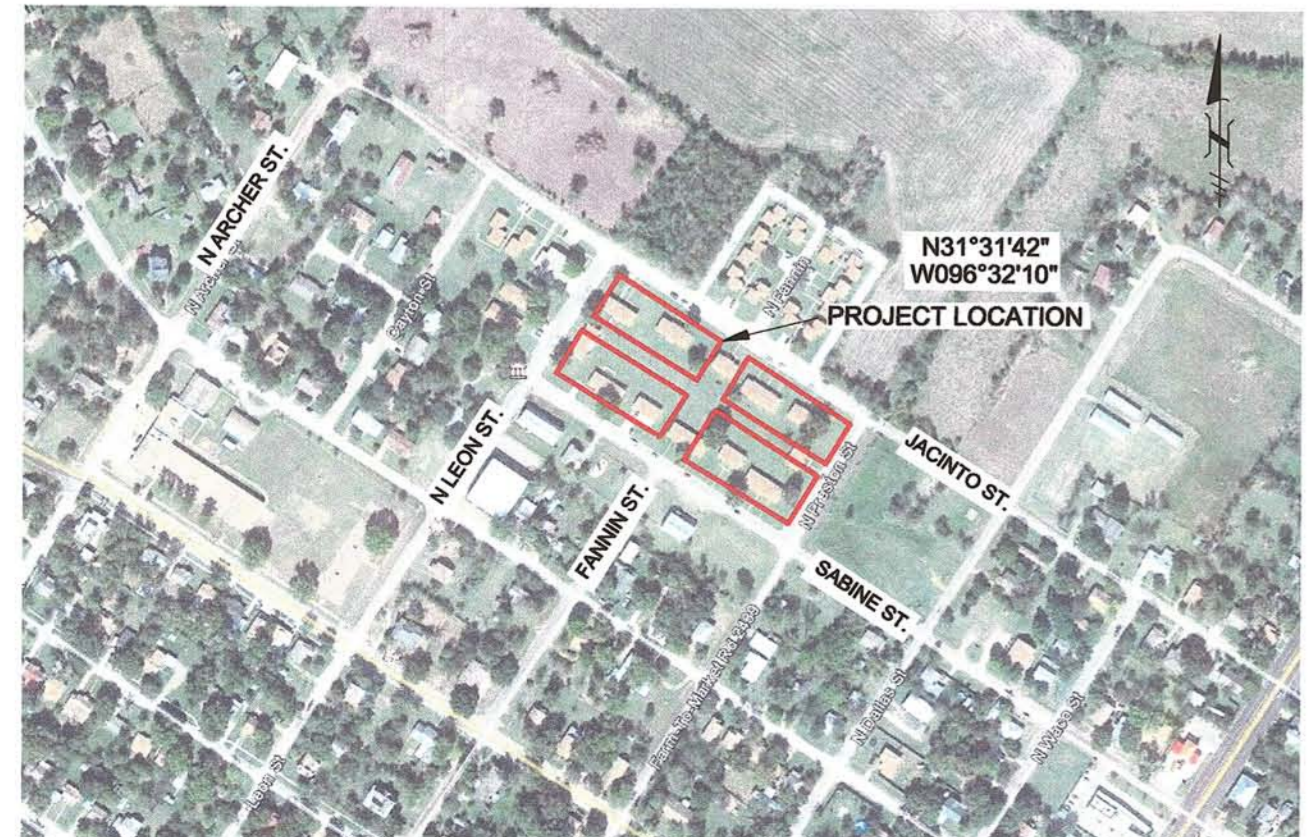




- Legend**
- IRS Set 1/2" Iron Rod
  - IRF Found Iron Rod
  - Chainlink Fence
  - Wood Fence
  - Iron/Metal Fence
  - Electric Line
  - Water Line
  - Sanitary Sewer Line
  - Power Pole
  - Guy Wire
  - Air Conditioner
  - Clean Out
  - Electric Meter
  - Gas Meter
  - Gas Valve
  - MIVC Irrigation Control Valve
  - Light Pole
  - Mailbox
  - Meter Pole
  - Sign
  - Telephone Pedestal
  - Tree
  - Water Meter
  - Water Valve
  - Hydrant
  - Sanitary Sewer Manhole

Fieldnote Description to 3.32 acres  
City of Groesbeck - Part of Block 226  
A. Varela Survey, A-29  
Limestone County, Texas  
Known as Liberty Square

- Notes:**
- Documents abandoning the alleys in Blocks 253 & 226 are recorded as instrument No. 20162728.
  - Documents abandoning Fannin Street are recorded as instrument No. 20162728.



Fieldnote to all that certain lot, tract, or parcel of land situated in the City of Groesbeck, A. Varela Survey, A-29, Limestone County, Texas, being all of Blocks 226 and Block 253, including the alleys and that portion of Fannin Street situated between Block 253 and Block 226. Said property being described in deeds dated March 8, 1964, from James O. Lewis, et ux to the Housing Authority of the City of Groesbeck, conveying Lots One through Ten in Block 226, recorded in Volume 504, Page 318; March 8, 1964, from Ruby M. Lewis, et ux to the Housing Authority of the City of Groesbeck, conveying Lots One, Two, Six, and Seven in Block 253, recorded in Volume 504, Page 315; March 8, 1964, from Velma Dugan, et ux to the Housing Authority of the City of Groesbeck, conveying Lots Three, Four, and Five in Block 253, recorded in Volume 504, Page 317; March 9, 1964, from C. A. Herod, et ux to the Housing Authority of the City of Groesbeck, conveying Lots Eight, Nine, and Ten in Block 253, recorded in Volume 504, Page 313; a City of Groesbeck Ordinance passed April 10, 1964, and recorded in Volume 5, Page 55, City of Groesbeck City Commission Minutes, conveying the portion of Fannin Street situated between Block 253 and Block 226, said Ordinance amended June 12, 1964, to include the alleys within Block 253 and Block 226, and recorded as Instrument Number 20162728, on August 25, 2016, Deed Records, Limestone County, Texas, to which references are hereby made to for any and all purposes. Said tract being described by metes and bounds as follows, to wit:

Beginning at a 1/2" iron rod (capped R.P.L.S. 4957) set for the southern corner of Block 226 in the intersection of the northeastern right of way of Preston Street (80' right of way per City of Groesbeck Townmap map) with the northeastern right of way of Sabine Street (80' right of way). Said point bears N58°34'27"W 1812.78 feet from the centerline of the railroad main track;

THENCE NORTH 58°34'27" WEST, along the southwestern line of Block 226 and the northeastern right of way of Sabine Street, passing at 250.00 feet the western corner of Block 226 and the southeastern right of way of Fannin Street (80' right of way), continuing across Fannin Street and passing at 330 feet the northeastern right of way of Fannin Street and the southern corner of Block 253, continuing with said northeastern right of way and the southwestern line of Block 253 a total distance of 580.00 feet to the 1/2" iron rod set for the northern corner of Block 253 in the intersection of said northeastern right of way with the southwestern right of way of Leon Street (80' right of way);

THENCE NORTH 31°25'33" EAST, along the southeastern right of way of Leon Street and the northwestern line of Block 253, passing at 115.00 feet the southwestern line of a 20' foot wide alley, passing at 135 feet the northeastern line of said alley, continuing with said southeastern right of way and the northwestern line of Block 253 a total distance of 250.00 feet to a capped 1/2" iron rod set for the northern corner of Block 253 in the intersection of said southeastern right of way with the southwestern right of way of Jacinto Street (80' right of way);

THENCE SOUTH 58°34'27" EAST, with said southwestern right of way and the northeastern line of Block 226, passing at 250 feet the eastern corner of Block 253 and the northwestern right of way of Fannin Street, passing at 330 feet the northern corner of Block 226 and the southeastern right of way of Fannin Street, continuing with said southwestern right of way and the northeast line of Block 226 a total distance of 580.00 feet to an "X" cut in concrete for the eastern corner of Block 226 in the intersection of said southwestern right of way with the northwestern right of way of Preston Street. From said point the center of the railroad bears S58°34'27"E 1812.78 feet;

THENCE SOUTH 31°25'33" WEST, with the southeastern line of Block 226 and said northwestern right of way, passing at 115.00 feet the northeastern line of a 20' foot wide alley, passing at 135 feet the southwestern line of said alley, continuing with said northwestern right of way and the southeastern line of Block 226 a total distance of 250.00 feet, to the Point of Beginning and containing 3.32 acres, more or less, as shown on the accompanying survey plat of even date herewith.

Bearing Note: Bearings are based on the centerline of the railroad using a bearing of N31°25'00"E.

The following comments are made with regard to a First American Title Insurance Company title commitment with an effective date of February 1, 2015, and GF No. 16734:

Schedule B Item  
1a. The ordinance adopted by the City of Groesbeck, Volume 759, Page 152, deals with requirements pertaining to Mobile Home Parks within the City of Groesbeck. This ordinance establishes design standards, permits, and other items related to Mobile Home Parks. The applicability of this ordinance to the subject properties is inconclusive.

Item 7(a) Exterior building dimensions are shown.

Item 8 Substantial observed features are shown.

Item 9 Parking is shown. The majority of the parking sites(s) are not striped.

Item 10 Interior units walls are not addressed.

Item 11a Valuable above ground utilities are shown.

Item 12 Adjoining ownership information is based on current Limestone County Central Appraisal District Records.

Item 16 Evidence of current earth moving, building construction, or building additions were not observed.

Item 17 According to the City of Groesbeck, changes in street right of way lines is not considered.

Item 18 No evidence of the site(s) being observed as being used for a landfill or solid waste dump.

Item 19 The US Fish & Wildlife Wetlands Mapper does not identify any wetland areas on the site.

Item 20 There are not any offsite servitudes.

The following Table A items are addressed:

Item 2 Addresses were not contained within record documents. The building/unit numbers are shown.

Item 3 According to Flood Insurance Rate Map 48293C0295C, with an effective date of September 16, 2011, the subject site is not within a designated Zone A.

Item 4 The gross acreage is shown hereon.

Item 6 The City of Groesbeck does not have a zoning ordinance, but has a Mobile Home Ordinance which pertains to the development of Mobile Home Parks.

Item 7(a) Exterior building dimensions are shown.

Item 8 Substantial observed features are shown.

Item 9 Parking is shown. The majority of the parking sites(s) are not striped.

Item 10 Interior units walls are not addressed.

Item 11a Valuable above ground utilities are shown.

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Item 18 No evidence of the site(s) being observed as being used for a landfill or solid waste dump.

Item 19 The US Fish & Wildlife Wetlands Mapper does not identify any wetland areas on the site.

Item 20 There are not any offsite servitudes.

Exclusively to Groesbeck Housing Authority and the Survey on which it is based were made in accordance with the 2011 Minimum Standard Detail Requirements for ALTSM land title surveys, and includes Items 2, 3, 4, 6, 7(a), 8, 9, 10, 11(a), 13, 16, 17, 18, 19, and 20 of Table A.

This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2011 Minimum Standard Detail Requirements for ALTSM land title surveys, and includes Items 2, 3, 4, 6, 7(a), 8, 9, 10, 11(a), 13, 16, 17, 18, 19, and 20 of Table A.

Kirk Raymond, R.P.L.S. 4957  
April 26, 2016  
The Fieldwork was performed during January-February 2016 (REVISED AUGUST 25, 2016)

RAYMOND SURVEY & MAPPING - A DIVISION OF GOODWIN-LASITER, INC.  
3006 W. BRANDED STREET - GROESBECK, TEXAS 75845 - (850) 729-9700 - (936) 686-8400 - (936) 686-8400 - (936) 686-8400

Date: 4-26-16 Drawn By: KR Client: Groesbeck Housing Authority Job #: 64453

Survey Plat of Blocks 253 and 226 (Known as Liberty Square) in the City of Groesbeck, Limestone County, Texas

20F4

GOODWIN-LASITER-STRONG

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City Of Groesbeck

Jacinto Street (80' R.O.W.)

Asphalt Paving



Fieldnote Description to 1.26 acres  
City of Groesbeck - Part of Subdivision 1 & 2 - Division LXXIX (79)  
A. Varela Survey, A-29  
Limestone County, Texas  
Known as Liberty Square Office

Fieldnotes to all that contain lot, tract, or parcel of land situated in the City of Groesbeck, A. Varela Survey, A-29, Limestone County, Texas, being all of Subdivision 1 and a part of Subdivision 2 in Division LXXIX (79), as described in a deed dated March 4, 1970, from Eddie Manning Ford, et al to the Housing Authority of the City of Groesbeck, and recorded in Volume 657, Page 546, Deed Records, Limestone County, Texas, to which reference is hereby made for any and all purposes. Said tract being described by metes and bounds as follows, to wit:

Beginning at a 1/2" iron rod (capped R.P.L.S. 4957) set for the southern corner of Subdivision 1 and the eastern corner of Division LXXIX (79) in the intersection of the southwestern right of way of Jacinto Street (80' right of way) with the northwestern right of way of Leon Street (80' right of way). From said point the eastern corner of the Housing Authority office bears S81°52'W 46.0 feet and the centerline of the railroad main track bears S58°34'27"E 2472.78 feet (record call is 2470 feet);

THENCE SOUTH 31°25'33" WEST 250.00 feet, with the southeastern line of Division LXXIX (79), Subdivisions 1 and 2, and the northwestern right of way of Leon Street, to a capped 1/2" iron rod set for corner. From said point a 1/2" iron rod found for the apparent eastern corner of a tract conveyed to Joy Ministries, by deed of record in Volume 1346, Page 323, bears S33°08'29"W 12.23 feet and the southern corner of an existing housing unit bears N29°59'W 37.9 feet;

THENCE NORTH 58°34'27" WEST, with the southwestern line of the referenced tract and across Subdivision 2, passing at 109.91 feet a 5/8" iron rod, bearing S31°25'33"W 13.46 feet, found for the apparent common corner of said Joy Ministries tract and the eastern corner of a tract conveyed to William Harrison, et ux by deed of record as Document Number 20143290, continuing with the southwestern line of the referenced tract a total distance of 230.00 feet to a capped 1/2" iron rod set for the western corner of the referenced tract in the southeastern right of way of Cayton Street (80' right of way) as shown on a plat of the WK Cayton Subdivision, recorded as Plat Number 34;

THENCE NORTH 31°25'33" EAST 250.00 feet, with the northwestern line of Subdivision 1 and 2, and with the southeastern right of way of Cayton Street, to a capped 1/2" iron rod set for the northern corner of Subdivision 1 in the intersection of said southeastern right of way of Jacinto Street right of way. From said point the northern corner of an existing housing unit bears S03°03'W 45.9 feet;

THENCE SOUTH 58°34'27" EAST 220.00 feet, with the northeastern line of Subdivision 1 and the southwestern right of way of Jacinto Street, to the Point of Beginning and containing 1.26 acres, more or less, as shown on the accompanying survey plat of even date herewith.

Bearing Note: Bearings are based on the centerline of the railroad using a bearing of N31°25'00"E.

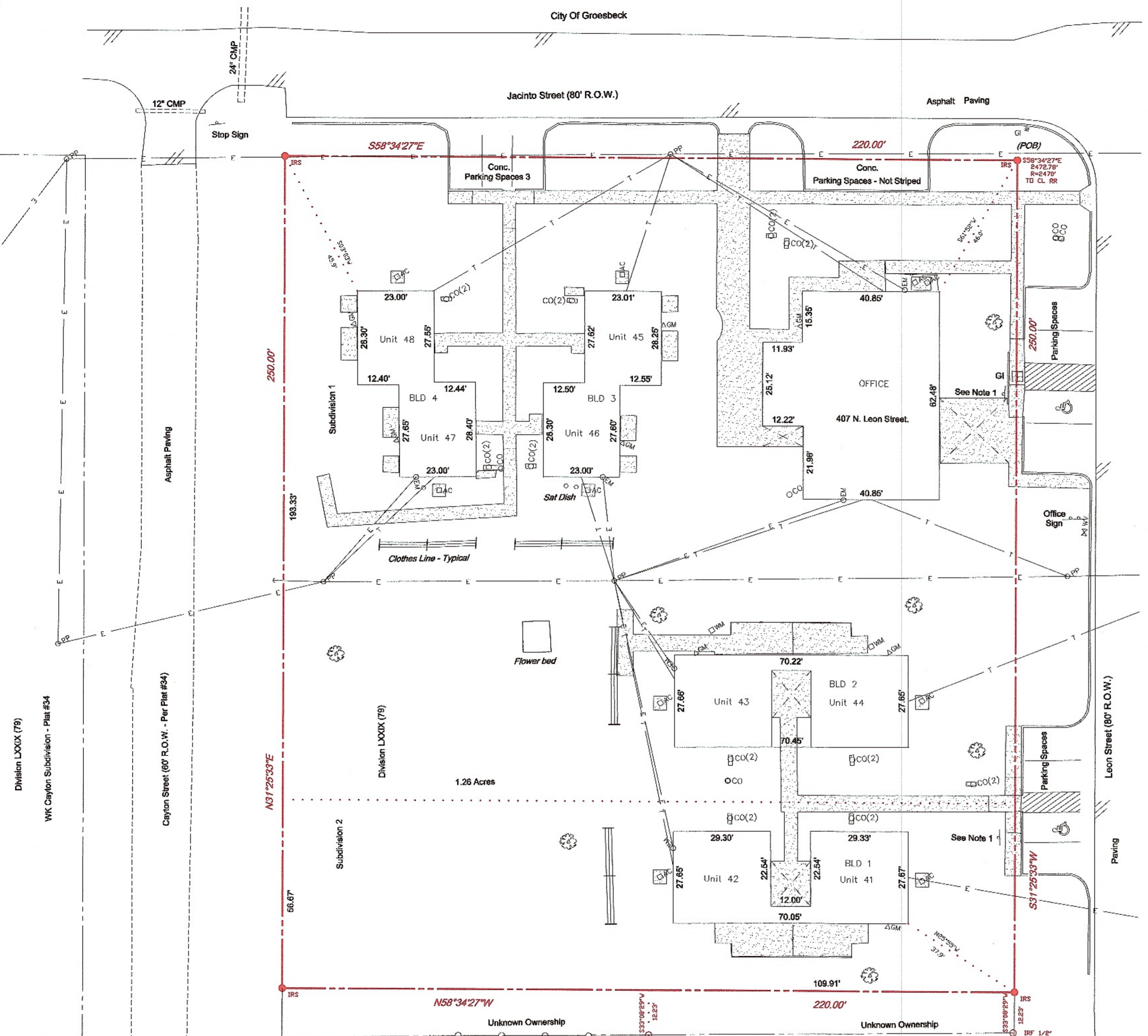
The following comments are made with regard to a First American Title Insurance Company title commitment with an effective date of February 1, 2015, and GF No. 16714:

- 1a. The ordinance adopted by the City of Groesbeck, Volume 759, Page 152, deals with requirements pertaining to Mobile Home Parks within the City of Groesbeck. This ordinance establishes design standards, permits, and other items related to Mobile Home Parks. The applicability of this ordinance to the subject properties is inconclusive.
- 10d. The easement recorded in Volume 497, Page 357, is a blanket easement to the City of Groesbeck and is not locatable from the description. It appears to affect Site B - Project TEX-219-2, Record 1284 & 2044 - Units 29-40; Units 71-80, Tract 1 & Tract 2. The approximate sewer line route is shown.
- 10e. The easement recorded in Volume 513, Page 573, is a Blanket Easement to Lone Star Gas Company and is not locatable from the description. This easement covers Lots 1 through 10 in Block 253 and Lots 1 through 10 in Block 226, City of Groesbeck; These lots are referred to as Record 1241 - Units 1-28A, Record 1242 - Units 1-28B, Record 1243 - Units 1-28C, and Record 1244 - Units 1-28D.
- 10f. The Declaration of Trust, of record in Volume 72, Page 78, Deed of Trust Records, does not contain survey related matters. This document identifies Site A and Site B as Project TEX-219-1. Site A is described as, Parcel 1 - being Lots 1 through 10 in Block 226, City of Groesbeck, Limestone County, Texas, and Parcel 2, 3, & 4 - being Lots 1 through 10 in Block 253, City of Groesbeck, Limestone County, Texas. Site B is designated as a called 2.0417 acre tract out of Subdivision 11, in Division LXXII (72), in the City of Groesbeck, Limestone County, Texas.
- 10g. The Declaration of Trust recorded in Volume 560, Page 196, does not contain survey related matters. This document identifies Site A as TEX-219-2 and this site is a part of Subdivision 2, in Division LXXIX (79) in the City of Groesbeck, Limestone County, Texas. It further designates a called 1.123 acre tract, part of Subdivisions 11 & 12 in Division LXXII (72) as Bite B TEX-219-02, and Site C, TEX-219-2, as a part of Subdivision 2, 3, and 4 in Division LXI (61), City of Groesbeck, Limestone County, Texas.
- 10h. The Declaration of Trust recorded in Volume 820, Page 849, does not contain survey related matters. This document identifies TX 219-001 as 40 Units and TX 219-002 as 40 Units in the City of Groesbeck, Limestone County, Texas.

The following Table A items are addressed:

- Item 2 Addresses were not contained within record documents. The building/units numbers are shown.
- Item 3 According to Flood Insurance Rate Map 48293C0295C, with an effective date of September 16, 2011, the subject site is not within a designated Zone A.
- Item 4 The gross acreage is shown hereon.
- Item 6 The City of Groesbeck does not have a zoning ordinance, but has a Mobile Home Ordinance which pertains to the development of Mobile Home Parks.
- Item 7(a) Exterior building dimensions are shown.
- Item 8 Substantial observed features are shown.
- Item 9 Parking is shown. The majority of the parking site(s) are not stipped.
- Item 10 Interior units walls are not addressed.
- Item 11a Visible above ground utilities are shown.
- Item 13 Adjoining ownership information is based on current Limestone County Central Appraisal District Records.
- Item 16 Evidence of current earth moving, building construction, or building additions were not observed.
- Item 17 According to the City of Groesbeck, changes in street right of way lines is not considered.
- Item 18 No evidence of the site(s) was observed as being used for a landfill or solid waste dump.
- Item 19 The US Fish & Wildlife Wetlands Mapper does not identify any wetland areas on the site.
- Item 20 There are not any offsite servitudes.

Notes: 1. Handicap Parking Sign



Division LXXIX (79)  
WK Cayton Subdivision - Plat #34

Cayton Street (80' R.O.W. - Per Plat #34)

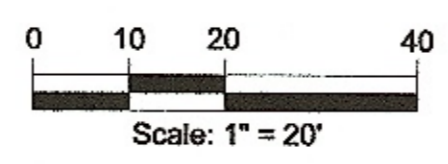
Division LXXIX (79)  
1.26 Acres

Leon Street (80' R.O.W.)  
Paving

William Harris, et ux  
Called 70X110  
Document# 20143290

Apparent Northeastern Line  
Joy Ministries  
Called 0.336 Acre  
Vol. 1346, Pg. 323

- Legend**
- IRS Set 1/2" Iron Rod
  - IRF Found Iron Rod
  - Chainlink Fence
  - Wood Fence
  - Iron/Metal Fence
  - Electric Line
  - Water Line
  - Sanitary Sewer Line
  - PP Power Pole
  - Guy Wire
  - DAC Air Conditioner
  - CO Clean Out
  - EM Electric Meter
  - △ GM Gas Meter
  - △ GV Gas Valve
  - △ IGV Irrigation Control Valve
  - LP Light Pole
  - MMB Mailbox
  - MP Meter Pole
  - Sign
  - TPD Telephone Pedestal
  - Tree
  - WM Water Meter
  - WV Water Valve
  - Hydrant
  - SSM Sanitary Sewer Manhole
  - GI Grate Inlet



Exclusively to Groesbeck Housing Authority and First American Title Insurance Company.  
This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2011 Minimum Standard Detail Requirements for ALTA/ASME land title Surveys, and includes items 2, 3, 4, 6, 7(a), 8, 9, 10, 11(a), 13, 16, 17, 18, 19, and 20 of Table A.  
Raymond, R.P.L.S. 4957  
April 28, 2016  
The Fieldwork was performed during January-February 2016



RAYMOND SURVEY & MAPPING - A DIVISION OF GODWIN-LASITER, INC.  
1808 W. BRIDGES STREET - GROESBECK, TEXAS 75845 | PHONE: 757-373-0700 | FAX: 757-373-0700 | EMAIL: RSM@GODWIN-LASITER.COM | TWP: 13N R10W E10

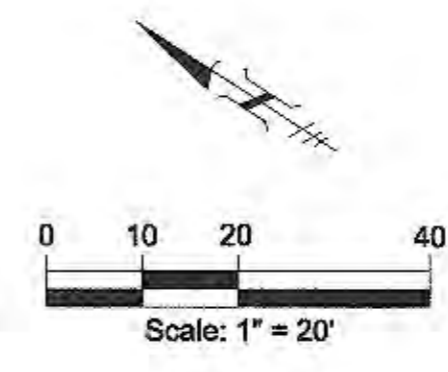
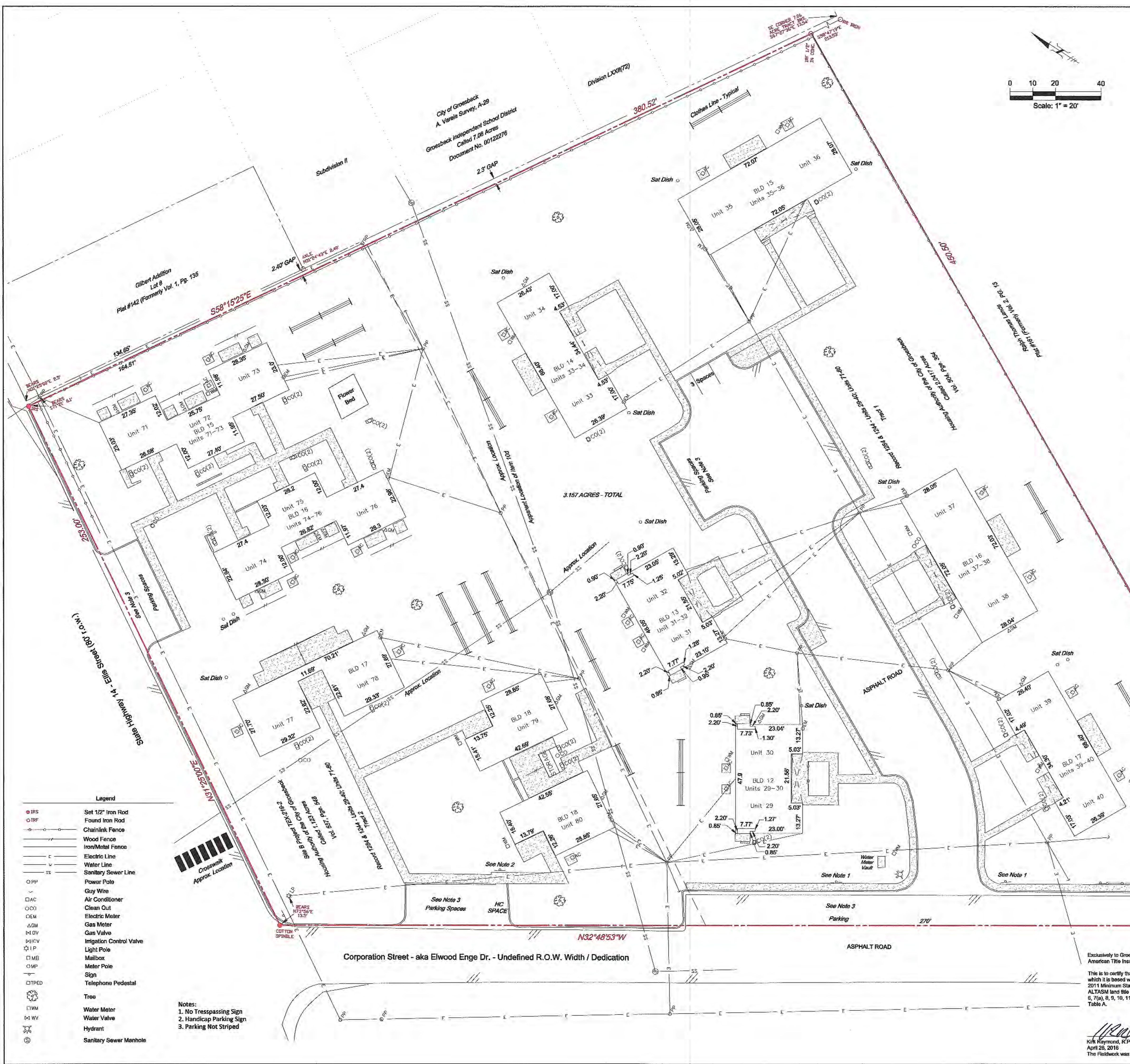
Date: 4-28-16 | Drawn By: CSE | Approved By: CSE | Client: Groesbeck Housing Authority | Job #: 044433

Survey Plat of a 1.26 Acre Tract in the City of Groesbeck, Texas, Known as Liberty Square, Limestone County, Texas

30F4

GODWIN-LASITER-STRONG  
1808 W. BRIDGES STREET - GROESBECK, TEXAS 75845 | PHONE: 757-373-0700 | FAX: 757-373-0700 | EMAIL: GLS@GODWIN-LASITER.COM | TWP: 13N R10W E10





Fieldnote Description to 3.157 acres  
 City of Groesbeck  
 Varela Survey, A-29  
 Limestone County, Texas  
 Known as Liberty Village

Fieldnotes to all that certain lot, tract, or parcel of land situated in the City of Groesbeck, A. Varela Survey, A-29, Limestone County, Texas, being 3.157 acres, more or less, and being comprised of all of a called 2.0417 acre tract described in a deed dated March 11, 1964, from Ernest Grooms, et ux to the Housing Authority of the City of Groesbeck, and recorded in Volume 504, Page 354, and all of a called 1.123 acre tract as described in a deed dated March 17, 1970, from Ernest Grooms, et ux to the Housing Authority of the City of Groesbeck, recorded in Volume 557, Page 548 (referred to as Site B - Project TEX-219-2), Deed Records, Limestone County, Texas, to which references are hereby made to for any and all purposes. Said tract described by metes and bounds as follows, to wit:

Beginning at a 1/2" iron rod (capped R.P.L.S. 4957) set for the common southern corner of the referenced 2.0417 acre tract and the Ralph Thomas Lands, as shown on a plat recorded as Plat #161 (formerly Volume 2, Page 13). Same being in the northern limit of an existing roadway known Corporation Street (undefined right of way width and dedication- aka Elwood Enge) and bears N33°26'46"W 242.65 feet (record distance is 243.1 feet) from a railroad iron found in the northwestern right of way of the railroad for the southern corner of said Ralph Thomas Lands;

THENCE NORTH 32°48'53" WEST, along the southwestern line of the referenced 2.0417 acre tract and the northeast margin of Corporation Street, passing at 270.00 feet the common southern corner of the referenced tracts, continuing with said northeastern margin and the southwestern line of the referenced 1.123 acre tract a total distance of 456.84 feet to a cotton spindle set for the western corner of said 1.123 acre tract in the intersection of said northeastern margin with the southeastern right of way of State Highway 14 (Ellis Street - 80' r.o.w. per TxDOT right of way plans). From said point an existing light pole bears N73°56'E 13.54 feet;

THENCE NORTH 31°25'00" EAST 253.00 feet, with said southeastern right of way and the western line of said 1.123 acre tract, to a capped 1/2" iron rod set for the northwestern corner of said tract. From said point an existing power pole bears S71°21'E 6.1 feet and the western corner of Lot 8, in the H. Gilbert Addition, of record as Plat Number 142 (formerly Volume 1, Page 135), bears N31°25'00"E 2.5 feet;

THENCE SOUTH 68°15'26" EAST, with the northeastern line of said 1.123 acre tract, southwesterly of the southwestern line of a called 7.06 acre tract conveyed to Groesbeck Independent School District by a deed with Document Number 00122276, passing at 134.65 feet an axle found for the southeast corner of said Lot 8, bearing N31°24'43"E 2.40 feet, passing at 164.51 feet (record distance is 165 feet), the common northern corner of the referenced tracts, continuing a total distance of 380.52 feet to a 1/2" iron rod found for the common northern corner of the aforementioned 2.0417 acre tract and said Ralph Thomas Lands. From said point a railroad iron found for the eastern corner of said Ralph Thomas Lands bears S58°47'19"E 213.53 feet and the southeastern corner of said 7.06 acre tract bears S67°27'36"E 13.54 feet;

THENCE SOUTH 27°29'00" WEST 450.50 feet, with the common line of the referenced 2.0417 acre tract and said Ralph Thomas Lands, to the Point of Beginning and containing 3.157 acres, more or less, as shown on the accompanying survey plat of even date herewith.

Bearing Note: Bearings are based on the centerline of the railroad using a bearing of N31°25'00"E.

The following comments are made with regard to a First American Title Insurance Company title commitment with an effective date of February 1, 2015, and GF No. 16714:

- 1a. The ordinance adopted by the City of Groesbeck, Volume 759, Page 152, deals with requirements pertaining to Mobile Home Parks within the City of Groesbeck. This ordinance establishes design standards, permits, and other items related to Mobile Home Parks. The applicability of this ordinance to the subject properties is inconclusive.
- 10d. The easement recorded in Volume 497, Page 357, is a blanket easement to the City of Groesbeck and is not locatable from the description. It appears to affect Site B - Project TEX-219-2, Record 1284 & 2044 - Units 29-40; Units 71-80, Tract 1 & Tract 2. The approximate sewer line route is shown.
- 10e. The easement recorded in Volume 513, Page 573, is a Blanket Easement to Lone Star Gas Company and is not locatable from the description. This easement covers Lots 1 through 10 in Block 253 and Lots 1 through 10 in Block 226, City of Groesbeck; These lots are referred to as Record 1241 - Units 1-28A, Record 1242 - Units 1-28B, Record 1243 - Units 1-28C, and Record 1244 - Units 1-28D.
- 10f. The Declaration of Trust, of record in Volume 72, Page 78, Deed of Trust Records, does not contain survey related matters. This document identifies Site A and Site B as Project TEX-219-1. Site A is described as, Parcel 1 - being Lots 1 through 10 in Block 226, City of Groesbeck, Limestone County, Texas, and Parcel 2, 3, & 4 - being Lots 1 through 10 in Block 253, City of Groesbeck, Limestone County, Texas. Site B is designated as a called 2.0417 acre tract out of Subdivision 11, in Division LXXII (72), in the City of Groesbeck, Limestone County, Texas.
- 10g. The Declaration of Trust recorded in Volume 560, Page 196, does not contain survey related matters. This document identifies Site A as TEX-219-2 and this site is a part of Subdivision 2, in Division LXXIX (79) in the City of Groesbeck, Limestone County, Texas. It further designates a called 1.123 acre tract, part of Subdivisions 11 & 12 in Division LXXII (72) as Bite B TEX-219-02, and Site C, TEX-219-2, as a part of Subdivision 2, 3, and 4 in Division LXI (61), City of Groesbeck, Limestone County, Texas.
- 10h. The Declaration of Trust recorded in Volume 820, Page 849, does not contain survey related matters. This document identifies TX 219-001 as 40 Units and TX 219-002 as 40 Units in the City of Groesbeck, Limestone County, Texas.

The following Table A items are addressed:

- |           |  |
|-----------|--|
| Item 2    | Addresses were not contained within record documents. The building/unit numbers are shown.   |
| Item 3    | According to Flood Insurance Rate Map 48283C0295C, with an effective date of September 16, 2011, the subject site is not within a designated Zone A. |
| Item 4    | The gross acreage is shown hereon.   |
| Item 6    | The City of Groesbeck does not have a zoning ordinance, but has a Mobile Home Ordinance which pertains to the development of Mobile Home Parks.      |
| Item 7(a) | Exterior building dimensions are shown.  |
| Item 8    | Substantial observed features are shown.   |
| Item 9    | Parking is shown. The majority of the parking site(s) are not striped.   |
| Item 10   | Interior unit walls are not addressed.   |
| Item 11a  | Visible above ground utilities are shown.  |
| Item 13   | Adjoining ownership information is based on current Limestone County Central Appraisal District Records.   |
| Item 16   | Evidence of current earth moving, building construction, or building additions were not observed.  |
| Item 17   | According to the City of Groesbeck, changes in street right of way lines is not considered.  |
| Item 18   | No evidence of the site(s) was observed as being used for a landfill or solid waste dump.  |
| Item 19   | The US Fish & Wildlife Wetlands Mapper does not identify any wetland areas on the site.  |
| Item 20   | There are not any offsite servitudes.  |

- Legend**
- IR5 Set 1/2" Iron Rod
  - IRF Found Iron Rod
  - Chainlink Fence
  - Wood Fence
  - Iron/Metal Fence
  - Electric Line
  - Water Line
  - Sanitary Sewer Line
  - PPV Power Pole
  - Guy Wire
  - DAC Air Conditioner
  - COO Clean Out
  - OEM Electric Meter
  - AGM Gas Meter
  - IGV Gas Valve
  - IFCV Irrigation Control Valve
  - R.I.P. Light Pole
  - M.P. Mailbox
  - M.P. Meter Pole
  - Sign
  - Telephone Pedestal
  - Tree
  - W.M. Water Meter
  - W.V. Water Valve
  - Hydrant
  - Sanitary Sewer Manhole

Notes:  
 1. No Trespassing Sign  
 2. Handicap Parking Sign  
 3. Parking Not Striped

Exclusively to Groesbeck Housing Authority and First American Title Insurance Company.  
 This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2011 Minimum Standard Detail Requirements for ALTA&M land title Surveys, and includes Items 2, 3, 4, 6, 7(a), 8, 9, 10, 11(a), 13, 15, 16, 17, 18, 19, and 20 of Table A.  
 Kirk Raymond, R.P.L.S. 4957  
 April 28, 2016  
 The fieldwork was performed during January-February 2016



**RAYMOND SURVEY & MAPPING - A DIVISION OF GOODWIN-LASTER, INC.**  
 808 W. SPRADLING STREET - GROESBECK, TEXAS 75845 - (409) 758-8752 - RPLS@RAYMOND.COM - TSPS FORM 10112003

Date: 4-28-16	Drawn By: CR	App'd By: KR	Client: Groesbeck Housing Authority	Job #: 644433
Survey Plat of a 3.157 Acre Tract (Site B) in the City of Groesbeck, Texas, Known as Liberty Village, Limestone County, Texas				Sheet No: 40F4

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TAB 13

## Multiple Site Information Form

This exhibit is required if a development site is assembled by aggregating noncontiguous tracts conveyed by one contract, or tracts conveyed by more than one contract whether contiguous or not. For each contract, list the address, legal description and acreage of each tract. The sum of the acreages must equal or exceed the acreage of the corresponding site plan(s) before dedications and other foreseeable reductions. Provide a reconciliation of any discrepancy (dedications, takings, reserves for other uses, etc.). **Behind this form, provide a plat of the acquisitions that correspond to each distinct development site. The plat should state the dimensions of each tract and identify the address, legal description and acreage. If the development site boundaries do not match the boundaries of the platted acquisitions, provide an overlay plat of the development site.**

<b>1</b>	<u>Liberty Village</u>	<u>48293970600</u>	<u>3.157</u>	<u>1964/1973</u>
	<b>Contract Number</b>	<b>Census Tract</b>	<b>Acreage</b>	<b>Date of Sale</b>
	<u>See Attached</u>		<u>Groesbeck</u>	
	<b>Street Address</b>	<b>City</b>		
	<u>Jana Raymond</u>	<u>City of Groesbeck Housing Authority</u>		
	<b>Contact Name for Seller</b>	<b>Name of Seller Entity</b>		
	<u>Only list if owner has owned &lt;36 mos.</u>	<u>Only list if owner has owned &lt;36 mos.</u>		
	<b>Contact Name for Previous Seller</b>	<b>Name of Previous Seller Entity</b>		
	<u>407 N. Leon</u>	<u>Groesbeck</u>	<u>TX</u>	<u>76642</u>
	<b>Seller Address</b>	<b>City</b>	<b>State</b>	<b>Zip</b>
	<b>Did the seller acquire the property through foreclosure or deed in lieu of foreclosure?</b>			<input type="checkbox"/> No
	<b>Is the seller affiliated with the Applicant, Principal, sponsor, or Development Team?</b>			<input type="checkbox"/> Yes
	<b>If yes above, describe relationship:</b> <u>Applicant (Lessor) is an instrumentality of the Housing Authority</u>			
	<input checked="" type="checkbox"/> Contract includes more than one tract/lot. Address, legal description, and acreage are below.			
	a. <u>See Attached Summary and No. 2 below</u>	<u>Abbreviated Legal</u>	<u>Acres</u>	
	b. <u>Address</u>	<u>Abbreviated Legal</u>	<u>Acres</u>	
	c. <u>Address</u>	<u>Abbreviated Legal</u>	<u>Acres</u>	

<b>2</b>	<u>Liberty Square</u>	<u>48293970600</u>	<u>6.512</u>	<u>1964-1973</u>
	<b>Contract Number</b>	<b>Census Tract</b>	<b>Acreage</b>	<b>Date of Sale</b>
	<u>See Attached</u>		<u>Groesbeck</u>	
	<b>Street Address</b>	<b>City</b>		
	<u>Jana Raymond</u>	<u>City of Groesbeck Housing Authority</u>		
	<b>Contact Name for Seller</b>	<b>Name of Seller Entity</b>		
	<u>Only list if owner has owned &lt;36 mos.</u>	<u>Only list if owner has owned &lt;36 mos.</u>		
	<b>Contact Name for Previous Seller</b>	<b>Name of Previous Seller Entity</b>		
	<u>407 N. Leon</u>	<u>Groesbeck</u>	<u>TX</u>	<u>76642</u>
	<b>Seller Address</b>	<b>City</b>	<b>State</b>	<b>Zip</b>
	<b>Did the seller acquire the property through foreclosure or deed in lieu of foreclosure?</b>			<input type="checkbox"/> No
	<b>Is the seller affiliated with the Applicant, Principal, sponsor, or Development Team?</b>			<input type="checkbox"/> Yes
	<b>If yes above, describe relationship:</b> <u>Applicant (Lessor) is an instrumentality of the Housing Authority</u>			
	<input checked="" type="checkbox"/> Contract includes more than one tract/lot. Address, legal description, and acreage are below.			
	a. <u>See No. 1 above and attached summary</u>	<u>Abbreviated Legal</u>	<u>Acres</u>	
	b. <u>Address</u>	<u>Abbreviated Legal</u>	<u>Acres</u>	
	c. <u>Address</u>	<u>Abbreviated Legal</u>	<u>Acres</u>	

3

<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<b>Contract Number</b>	<b>Census Tract</b>	<b>Acreage</b>	<b>Date of Sale</b>

<input type="text"/>	<input type="text"/>
<b>Street Address</b>	<b>City</b>

<input type="text"/>	<input type="text"/>
<b>Contact Name for Seller</b>	<b>Name of Seller Entity</b>
<i>Only list if owner has owned &lt;36 mos.</i>	<i>Only list if owner has owned &lt;36 mos.</i>

<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<b>Contact Name for Previous Seller</b>	<b>Name of Previous Seller Entity</b>		

<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<b>Seller Address</b>	<b>City</b>	<b>State</b>	<b>Zip</b>

Did the seller acquire the property through foreclosure or deed in lieu of foreclosure?

Is the seller affiliated with the Applicant, Principal, sponsor, or Development Team?

If yes above, describe relationship:

Contract includes more than one tract/lot. Address, legal description, and acreage are below.

- a.  *Address*       *Abbreviated Legal*       *Acres*
- b.  *Address*       *Abbreviated Legal*       *Acres*
- c.  *Address*       *Abbreviated Legal*       *Acres*

4

<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<b>Contract Number</b>	<b>Census Tract</b>	<b>Acreage</b>	<b>Date of Sale</b>

<input type="text"/>	<input type="text"/>
<b>Street Address</b>	<b>City</b>

<input type="text"/>	<input type="text"/>
<b>Contact Name for Seller</b>	<b>Name of Seller Entity</b>
<i>Only list if owner has owned &lt;36 mos.</i>	<i>Only list if owner has owned &lt;36 mos.</i>

<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<b>Contact Name for Previous Seller</b>	<b>Name of Previous Seller Entity</b>		

<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<b>Seller Address</b>	<b>City</b>	<b>State</b>	<b>Zip</b>

Did the seller acquire the property through foreclosure or deed in lieu of foreclosure?

Is the seller affiliated with the Applicant, Principal, sponsor, or Development Team?

If yes above, describe relationship:

Contract includes more than one tract/lot. Address, legal description, and acreage are below.

- a.  *Address*       *Abbreviated Legal*       *Acres*
- b.  *Address*       *Abbreviated Legal*       *Acres*
- c.  *Address*       *Abbreviated Legal*       *Acres*





TAB 17

# Development Narrative

## 1. The proposed Development is: (Check all that apply)

Acquisition/Rehab

and/or:

Scattered Site

Previous TDHCA #

14175

If Acquisition/Rehab or Rehab, original construction year:

1964/1973

If Reconstruction,

Units Demolished

Units Reconstructed

If Adaptive Reuse, Additional Phase, or Scattered Site, include detailed information in the Narrative (4.) below.

## 2. The Target Population will be:

General

## 3. Staff Determinations regarding definitions of development activity obtained?

If a determination under §10.3(b) of the Uniform Multifamily Rules was made prior to Application submission, provide a copy of such determination behind this form.

## 4. Narrative

Briefly describe the proposed Development, including any relevant information not already identified above.

The Groesbeck Housing Authority (GHA) was created under the Housing Act of 1937 for the purpose of providing decent, safe and sanitary housing to the low and moderate-income residents of Groesbeck, TX, a community in north Texas with a population of about 4,400. Currently, GHA owns and manages 80 units of public housing on two main sites. The buildings were constructed in two phases, 1964 and 1973. In the face of dwindling HUD financial resources, the GHA has embarked on an aggressive plan that includes the comprehensive renovations of its properties utilizing low income housing tax credits.

The renovations of the properties will create a more valuable asset for its residents and the town of Groesbeck. As part of this plan, GHA has formed an affiliate, Liberty Housing Alliance, Inc. This affiliate will participate in the development as the managing member of the general partner.

The strategy utilizes a "lease" of the buildings and land to Groesbeck Housing Development, LP. The award of LIHTC from TDHCA would provide the equity needed to facilitate the rehabilitation of the 80 units. The renovations will include not only upgrades to finishes, but new cabinets, appliances, doors and hardware, plumbing and electrical fixtures, new heating and air conditioning systems, new roofing, windows, the addition of washer-dryers, energy efficient features and ample resident amenities. All 80 units will be RAD conversion units, utilizing Project-based vouchers.

**5. Funding Request:**

Complete the table below to describe this Application's funding request.

Department Funds applying for with this Application	Requested Amount	If funds will be in the form of a Direct Loan by the Department or for Private Activity Bonds, the terms will be:		
		Interest Rate (%)	Amortization (Years)	Term (Years)
<a href="#">TDHCA HOME</a>				
<b>CHDO Operating Expense</b>				
<a href="#">Housing Tax Credits</a>	\$ 647,667			
<a href="#">Private Activity Mortgage Revenue</a>				
<a href="#">TCAP Loan Repayments</a>				

**6. Set-Aside (For Competitive HTC & HOME Applications Only)**

Identify any and all set-asides the application will be applying under.

Set-Asides can not be added or dropped from pre-application to full Application for Competitive HTC Applications.

Competitive HTC Only						HOME Only					
At-Risk		Nonprofit		USDA		CHDO			Persons w/Disabilities		
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

By selecting the set-aside above, I, individually or as the general partner(s) or officers of the Applicant entity, confirm that I (we) are applying for the above-stated Set-Aside(s) and Allocations. To the best of my (our) knowledge and belief, the Applicant entity has met the requirements that make this Application eligible for this (these) Set-Aside(s) and Allocations and will adhere to all requirements and eligibility standards for the selected Set-Aside(s) and Allocations.

**7. Previously Awarded State and Federal Funding**

Has this site/activity previously received or applied for TDHCA funds?

Yes

If "Yes" Enter Project Number:

14175

and TDHCA funding source:

HTC

Has this site/activity previously received non-TDHCA federal funding?

Yes

Will this site/activity receive non-TDHCA federal funding for costs described in this Application?

Yes

**8. Qualified Low Income Housing Development Election (HTC Applications only)**

Pursuant to §42(g)(1)(A) & (B), the term "qualified low income housing development" means any project or residential rental property, if the Development meets one of the requirements below, whichever is elected by the taxpayer." Once an election is made, it is irrevocable. Select only one:

- At least 20% or more of the residential units in such development are both rent restricted and occupied by individuals whose income is 50% or less of the area median gross income, adjusted for family size.
- At least 40% or more of the residential units in such development are both rent restricted and occupied by individuals whose income is 60% or less of the median gross income, adjusted for family size.

TAB 19

# Development Activities (Continued)

self score 128

## 1. Size and Quality of Units (Competitive HTC Applications only)

Development is Rehabilitation and either Supportive Housing or USDA financed OR meets the minimum size requirements identified below: Points claimed: 8

Bedroom Size	0	1	2	3	4
Square Footage	550	650	850	1,050	1,250

Specific amenities and quality features will be provided in every Unit at no extra charge to the tenant; Development will maintain the points selected and associated with those amenities as outlined in §10.101(b)(6)(B) of the Uniform Multifamily Rules. Points claimed: 7

## 2. Income Levels of Tenants (Competitive HTC Applications only)

- 22 Total Number of Units at 50% or less of AMGI
- 6 Number of 30% Units used to score points under §11.9(c)(2)\*
- Number of 30% Units used under §11.4(c)(2)(D) regarding an Increase in Eligible Basis (30% boost)
- 16 Number of Units at 50% or less of AMGI available to use for points under §11.9(c)(1)
- 20.00% Percentage used for calculation of eligible points under §11.9(c)(1)

Mark **only one** box below:

Development is located within a Non-Rural Area of the Dallas, Fort Worth, Houston, San Antonio or Austin MSA; or 0

Developments proposed in all other areas. 16

*\* Applicants electing the 30% boost for additional 30% units are advised to ensure the units used to support the boost are not included in the units needed to achieve the Application's scoring elections.* Points Claimed: 16

## 3. Rent Levels of Tenants (Competitive HTC Applications only)

Mark **only one** box below:

At least 20% (less Units used for eligibility for boost) of all low-income Units are restricted at 30% or less of AMGI; development is Supportive Housing and qualifies under the Nonprofit Set-Aside. 0

Development is urban and at least 10% (less Units used for eligibility for boost) of all low-income Units are restricted at 30% or less of AMGI; or 0

Development is located in a Rural Area and 7.5% (less Units used for eligibility for boost) of all low-income Units are restricted at 30% or less of AMGI; or 11

At least 5% of all low-income Units at 30% or less of AMGI 0

Points Claimed: 11

## 4. Tenant Services (Competitive HTC Applications only)

Development will provide a combination of supportive services as identified in §10.101(b)(7) and those services will be recorded in the Development's LURA.

Supportive Housing Development qualifying under the Nonprofit Set-Aside; or 0

All other Developments. 10

Points Claimed: 10

5. **Tenant Populations with Special Housing Needs (Competitive HTC Applications only)**

Applicant intends to elect 2 points under this scoring item

**Section 811 Eligibility**

Mark **any** of the following that apply (some fields will auto-populate):

- Application is a Qualified Elderly Development or Supportive Housing (as defined by 10 TAC §10.3)
- Development was originally constructed before 1978
- Development does not have units available that do not have other sources of project-based rental or long-term operating assistance.
- Development does not have units available that are not restricted for persons with disabilities
- Development is not located in a qualifying MSA
- Other disqualifying factor (please explain)

Attached behind this tab is the executed Certification for Section 811 Program Participation



Development qualifies to participate in 811:

Application does not qualify for participation in Section 811 Program but elects to set aside at least 5% of the Units for Persons with Special Needs as identified in §11.9(c)(7) of the QAP.

Development elects to set aside at least 5% of Units:

Points Claimed:

6. **Pre-Application Participation (Competitive HTC Applications only)**

Development is requesting Pre-Application Points

7. **Extended Affordability or Historic Preservation (Competitive HTC Applications only)**

Mark **only one** box below:

Development will maintain a 35 year Affordability Period **OR**

Application is proposing the use of historic (rehabilitation) tax credits, is requesting a tax credit amount of less than \$7,000 per unit, and has included a letter from the Texas Historical Commission behind this tab showing preliminary eligibility for at least one building.



Points Claimed:

8. **Right of First Refusal (Competitive HTC Applications only)**

Development Owner agrees to provide a Right of First Refusal to purchase the Development upon or following the end of the Compliance Period.

9. **Funding Request Amount (Competitive HTC Applications only)**

Application reflects funding request for no more than 100% of the amount available in the subregion or set-aside as of 12/1/2014.

TAB 20



# ACQUISITION AND REHABILITATION INFORMATION

## 1. At-Risk Set-Aside (Competitive HTC Applications Only)

Qualification: Must meet the requirements of an At-Risk Development in §11.5(3) of the Qualified Allocation Plan.

Documentation: Must be submitted behind this tab showing that the Development meets the requirements of §2306.6702(a)(5) of the Texas Government Code.

**Part A:** Documentation must show that the subsidy or benefit is from one of the following approved programs (mark all that apply):

- Sections 221(d)(3) and (5), National Housing Act (12 U.S.C. Section 1715l)
- Section 236, National Housing Act (12 U.S.C. Section 1715z-1)
- Section 202, Housing Act of 1959 (12 U.S.C. Section 1701q)
- Section 101, Housing and Urban Development Act of 1965 (12 U.S.C. Section 1701s)
- The Section 8 Additional Assistance Program for housing developments with HUD-Insured and HUD-Held Mortgages administered by the U.S. Department of Housing and Urban Development as specified in 24 CFR Part 886, Subpart A.
- The Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects administered by the U.S. Department of Housing and Urban Development as specified by 24 CFR Part 886, Subpart C.
- Sections 514, 515, and 516, Housing Act of 1949 (42 U.S.C. Sections 1484, 1485 and 1486)
- Section 42, of the Internal Revenue Code of 1986 (26 U.S.C. Section 42)
- Applicant proposes rehabilitation or reconstruction of housing units that:
  - are owned by a Public Housing Authority and received assistance under Section 9;
  - OR
  - received assistance under Section 9 and:
    - are proposed to be demolished by the Public Housing Authority OR
    - have been demolished by the Public Housing Authority in the last 2 years.

**Part B:** Place an "X" by one of the following:

- The stipulation to maintain affordability in the contract granting the subsidy is nearing expiration (expiration will occur within two (2) calendar years of July 31, 2015). See §11.5(3)(E) and (F) of the 2014 QAP concerning At-Risk developments qualifying under Section 42 of the Internal Revenue Code.
- The subsidy marked above is a federally insured mortgage and is eligible for prepayment without penalty or is nearing the end of its mortgage term (the term will end within two (2) calendar years of July 31, 2015)

**Part C:** I certify that:

- the Development is at risk of losing affordability from the financial benefits available to the Development, and those financial benefits and affordability will be retained or renewed unless regulatory barriers necessitate elimination of a portion of that benefit, pursuant to §11.5(3)(D) of the Qualified Allocation Plan.

**Part D:** If proposing demolition of the existing Units which have received the financial benefits described in Part A:

- the redevelopment will include at least a portion of the same site.
- OR
- relocation of the existing units is proposed, and the requirements of §11.5(3)(C)(i) through (iii) of the 2015 Qualified Allocation Plan will be met.

2. Existing Development Assistance On Housing Rehabilitation Activities<sup>1</sup>

Part A.

The existing Property is expected to have or continue the following benefit: Rental Assistance

Provide a brief description of the restrictions or subsidies the existing Property will have or continue in the space below:

The properties will have a RAD contract for all 80 units.

A copy of the contract or agreement securing the funds identified above is provided behind this form.

The source of funds is: Housing Authority of the City of Groesbeck

The annual amount of funds is: \$388,704

The number of units receiving assistance: 80 units

The term of the contract or agreement is (date): 1/1/2018

The expiration of the contract or agreement is (date): 1/1/2038

Part B. Acquisition Of Existing Buildings (applicable only to HTC applications with Acquisition credits requested)

Date of the most recent sale or transfer of the building(s): 1964/1973

In the last ten years, did the previous owner perform rehabilitation work greater than 25% of the building's adjusted basis? No

Was the building occupied at any time during the last ten years? Yes

Was the building occupied or suitable for occupancy at the time of purchase? Yes

Will the acquisition meet the requirements of §42(d)(2)(B)(ii) relating to the 10-year placed in service rule? Yes

If "Yes", provide a copy of a title commitment that the Development meets the requirements of §42(d)(2)(B)(ii) as to the 10 year period.



If "No", does the property qualify for a waiver under §42(d)(6)?

If "Yes", provide the waiver and/or other documentation.

How many buildings will be acquired for the Development? 35

Are all the buildings currently under control by the Development Owner? Yes

If "No", how many buildings are under control by the Development Owner? N/A

When will the remaining buildings be under control? N/A

<sup>1</sup>Per §2306.008, TDHCA shall support the preservation of affordable housing for individuals with special needs and individuals and families of low income at any location considered necessary by TDHCA.

**ACQUISITION AND/OR REHABILITATION (Continued)**

**Part B. Acquisition Of Existing Buildings (continued)**

Identification or address(es) of Building(s) under Owner's Control	Type of Control (Ownership, Option, Purchase Contract)	Expiration Date	# of Units	Acquisition Cost of Building
Building 1 through 35	Option	12/31/2016	80	\$2,330,000

Provide the information listed below concerning the acquisition of building(s) for the Development:

1. Building(s) acquired or to be acquired from:  Related Party  Unrelated Party
2. Building(s) acquired or to be acquired with Buyer's Basis:  
 Determined with reference to Seller's Basis  Not Determined with reference to Seller's Basis

List below by building address, the date the building was placed in service (PIS), the date the building was or is planned for acquisition, and the number of years between the date the building was placed in service and acquisition. Attach separate sheet(s) with additional information if necessary.

Building Address(es)	PIS date of building by most recent owner	Proposed Acquisition date by the Applicant	Years between PIS & Acquisition
Building 1 through 35	1964/1973	6/28/2016	42-51 yrs.

**3. Lead Based Paint (HOME Applications Only)**

Development constructed before January 1, 1978  (If "Yes", continue to next selections)

Check each of the following that applies [24 CFR 35.115]:

- Emergency repairs to the property are being performed to safeguard against imminent danger to human life, health or safety, or to protect the property from further structural damage due to natural disaster, fire or structural collapse. The exemption applies only to repairs necessary to respond to the emergency.
- The property will not be used for human residential habitation. This does not apply to common areas such as hallways and stairways of residential and mixed-use properties.
- Housing "exclusively" for the elderly or persons with disabilities, with the provision that children less than six years of age will not reside in the dwelling unit.
- An inspection performed according to HUD standards found the property contained no lead-based paint.
- According to documented methodologies, lead-based paint has been identified and removed; and the property has achieved clearance.
- The rehabilitation will not disturb any painted surface.
- The property has no bedrooms.
- The property is currently vacant and will remain vacant until demolition.

TAB 22

# Architectural Drawings

TAB 24

Groesbeck Housing Authority  
407 N. Leon  
Groesbeck, Texas 76642  
FAX: (254) 729-8954  
(254) 729-3204

August 22, 2016

Mr. Art Schuldt, Jr.  
Housing Solutions Alliance, LLC  
1935 Airline Drive, #200  
Bossier City, LA 71112

Re: Project-Based Rental Assistance Contract  
TDHCA No.15119, Groesbeck, Texas

The Groesbeck Housing Authority (Authority) hereby commits RAD (Rental Assistance Demonstration) project-based vouchers for 100% of the 80 units and requisite Capital Funds to Groesbeck Housing Development, LP (the Partnership) as part of its contract with the U. S. Department of Housing and Urban Development. This subsidy will be provided to the Partnership for Liberty Square and Liberty Village.

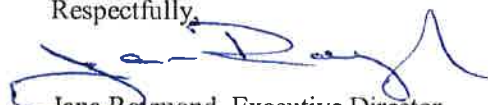
This development consists of the comprehensive rehabilitation of 80 units of existing public housing.

The subsidy will be provided for a minimum period of 15 years following the start of occupancy. The RAD payment schedule to the Partnership is as follows and is determined after reducing the costs required by this agency for operational costs outside the project level.

Bedroom Type	RAD CHAP	PHA costs	Payment to LP
0 BR	\$370.00	\$29.77	\$340.23
1 BR	\$394.00	\$31.56	\$362.44
2 BR	\$523.00	\$74.72	\$448.28
3 BR	\$736.00	\$105.16	\$630.84

The Authority will require Partnership to ensure that the Project is developed in accordance with all requirements applicable to the development of public housing, including RAD and all other pertinent Federal statutory, executive order, and regulatory requirements, as those requirements may be amended from time to time. Further, Partnership will ensure that the requirements for admission to, continued occupancy of, management, and modernization of the Project Units are in accordance with all requirements applicable to public housing and/or RAD and will ensure that it complies with its obligations under any Regulatory and Operating Agreement, the Declaration, and/or any other agreement(s) that may be required by HUD with respect to the development, operation and maintenance of the Project Units.

Respectfully,

  
Jana Raymond, Executive Director  
Groesbeck Housing Authority





## Rent Schedule (Continued)

		% of LI	% of Total	
<b>HOUSING TAX CREDITS</b>	TC30%	8%	8%	6
	TC40%			0
	TC50%	20%	20%	16
	TC60%	73%	73%	58
	<b>HTC LI Total</b>			<b>80</b>
	EO			0
	MR			0
	<b>MR Total</b>			<b>0</b>
	<b>Total Units</b>			<b>80</b>
	<b>MORTGAGE REVENUE BOND</b>	MRB30%		
MRB40%				0
MRB50%				0
MRB60%				0
<b>MRB LI Total</b>				<b>0</b>
MRBMR				0
<b>MRBMR Total</b>				<b>0</b>
<b>MRB Total</b>				<b>0</b>

		% of LI	% of Total	
<b>HOUSING TRUST FUND</b>	HTF30%			0
	HTF40%			0
	HTF50%			0
	HTF60%			0
	HTF80%			0
	<b>HTF LI Total</b>			<b>0</b>
	MR			0
	<b>MR Total</b>			<b>0</b>
	<b>HTF Total</b>			<b>0</b>
	<b>HOME</b>	30%		
LH/50%				0
HH/60%				0
HH/80%				0
<b>HOME LI Total</b>				<b>0</b>
EO				0
MR				0
<b>MR Total</b>				<b>0</b>
<b>HOME Total</b>			<b>0</b>	
<b>OTHER</b>	<b>Total OT Units</b>			<b>80</b>

<b>BEDROOMS</b>	0			22
	1			34
	2			14
	3			10
	4			0
	5			0

<b>ACQUISITION + HARD</b>			
Cost Per Sq Ft	\$	99.97	
<b>HARD</b>			
Cost Per Sq Ft	\$	84.79	
<b>BUILDING</b>			
Cost Per Sq Ft	\$	58.05	
			<b>Total Points claimed:</b>
			<b>12</b>

Applicants are advised to ensure that figure is not rounding down to the maximum dollar figure to support the elected points.

TAB 31

## Financing Narrative and Summary of Sources and Uses

*Describe all sources of funds. Information must be consistent with the information provided throughout the Application (i.e. Financing Narrative, Term Sheets and Development Cost Schedule).*

Financing Participants	Funding Description	Construction Period		Lien Position	Permanent Period					Lien Position
		Loan/Equity Amount	Interest Rate (%)		Loan/Equity Amount	Interest Rate (%)	Amort - ization	Term (Yrs)	Syndication Rate	
<b>Debt</b>										
TDHCA	<u>HOME</u>	\$0	0%		\$ -	0%	0	0		
TDHCA	<u>TCAP Loan Repayments</u>	\$0	0%		\$ -	0%	0	0		
TDHCA	<u>Mortgage Revenue Bond</u>	\$0	0%		\$ -	0%	0	0		
Home Federal Bank of Shreveport	Conventional Loan	\$ 5,510,000.00	5.00%	1	\$ 1,805,000	6.00%	30	20		1
Groesbeck Housing Authority	Conventional Loan	\$ 933,310	2.00%		\$ 392,076	2.00%	0	30		
108300										1.20
<b>Third Party Equity</b>										
R4 Capital	<u>HTC</u> \$ 647,667	\$ 1,295,204.00			\$ 6,476,022					1
<b>Grant</b>										
City of Groesbeck	In-Kind Contribution	\$ 52,000			\$ 52,000					
<b>Deferred Developer Fee</b>										
Housing Solutions Alliance, LLC		\$ 463,865								
<b>Other</b>										
\$ (0)										
<b>Total Sources of Funds</b>		\$ 8,254,379			\$ 8,725,098					
<b>Total Uses of Funds</b>					\$ 8,725,098					

Briefly describe the complete financing plan for the Development, including a discussion of the sources of funds. The information must be consistent with all other documentation in this section. Provide sufficient detail so that the reader can understand all terms related to each source that are not readily apparent above or in the term sheets.

At closing we expect to receive approximately 10% (\$647,602) of the total equity to be received (\$6,476,022) from the sale of tax credits to R4 Capital and a construction to permanent loan from Home Federal Bank of Shreveport for approximately \$5,510,000 at 5% with a 24 month term and a note for up to \$1,550,000 2% 30 year non-amortizing subject to available cash flow from the Groesbeck Housing Authority for the balance of the lease payment not made in cash at closing.

During construction, the Home Federal Bank of Shreveport construction loan will be drawn to cover eligible costs. At construction completion the second equity contribution in the amount of \$647,602 will be received and used to fund some soft costs and the balance applied to reduction of the construction loan debt. At conversion (third equity contribution) approximately \$4,857,017 will be received and will retire the construction loan portion of the Home Federal Bank of Shreveport loan leaving the permanent portion which will then convert to fixed rate long term amortizing debt and \$541,234 will be used to pay down the Groesbeck Housing Authority note.

Post conversion \$1,805,000 of the Home Federal Bank of Shreveport loan will remain in the partnership after conversion as the permanent debt. The final equity contribution of approximately \$323,801 will occur upon delivery of the 8609.

The City of Groesbeck has agreed to in-kind contributions totaling \$52,000.

The final equity contribution occurs at 8609 and is used to pay the balance of the non-deferred developer fees.

Deferred developer fee is approximately \$0.

TAB 34



# Finance Scoring (for Competitive HTC Applications ONLY)

Self Score Total: 128

## 1. Commitment of Development Funding by Local Political Subdivision (§11.9(d)(2))

Local Political Subdivision Funding Amount \$ 52,000

Per Unit Funding Amount: 650

Source of funding used to qualify for points City of Groesbeck

					per unit	scoring threshold:	eligible for points:		
i. Population	4,330	x	0.15	=	\$ 650	or	\$ 15,000	\$ 650 per unit	11
ii. Population	4,330	x	0.10	=	\$ 433	or	\$ 10,000	\$ 433 per unit	10
iii. Population	4,330	x	0.05	=	\$ 217	or	\$ 5,000	\$ 217 per unit	9
iv. Population	4,330	x	0.025	=	\$ 108	or	\$ 1,000	\$ 108 per unit	8
v. Population	4,330	x	0.01	=	\$ 43	or	\$ 500	\$ 43 per unit	7

Firm Commitment from Local Political Subdivision in form of resolution?

Yes

Source is in the form a grant, in-kind donation, or permanent loan.

Total Points Claimed: 14

## 2. Financial Feasibility (§11.9(e)(1))

Eligible Pro-Forma and letter stating the Development is financially feasible.

0

Eligible Pro-Forma and letter stating Development **and** Principals are acceptable.

18

Total Points Claimed: 18

## 3. Leveraging of Private, State, and Federal Resources (§2306.6725(a)(3); §11.9(e)(4))

Percent of Units restricted to serve households at or below 30% of AMGI 7.50%

HTC funding request as a percent of Total Housing Development Cost 7.42%

Development Leverages CDBG Disaster Recovery, HOPE VI, RAD or Choice Neighborhood Funding

eligible for points:

0

Housing Tax Credit Request 8% of Total Housing Development Cost

3

Housing Tax Credit Request 9% of Total Housing Development Cost

2

Housing Tax Credit Request 10% of Total Housing Development Cost

1

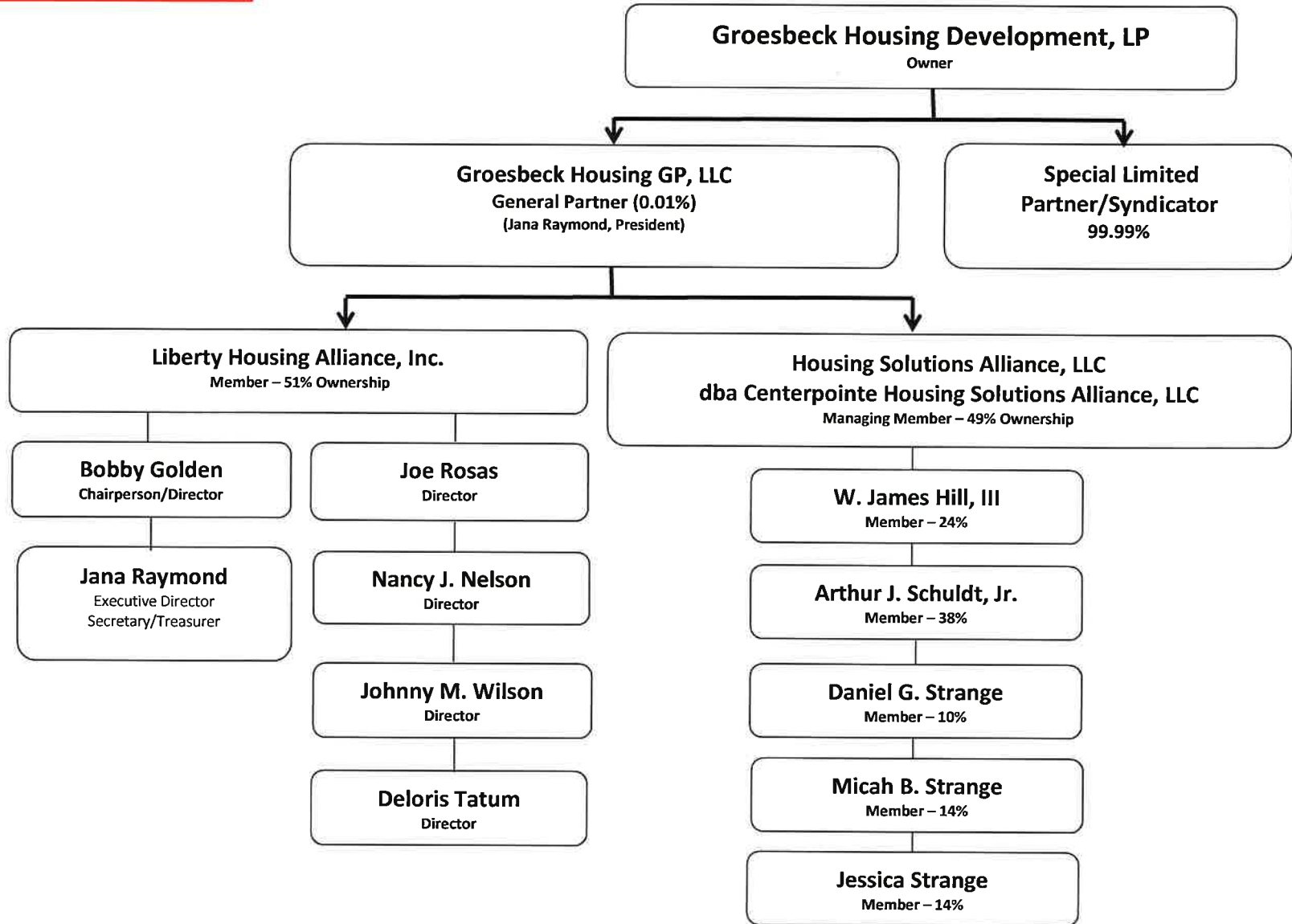
\* Be sure no more than 50% of Developer fees are deferred.

Total Points Claimed: 3

TAB 37

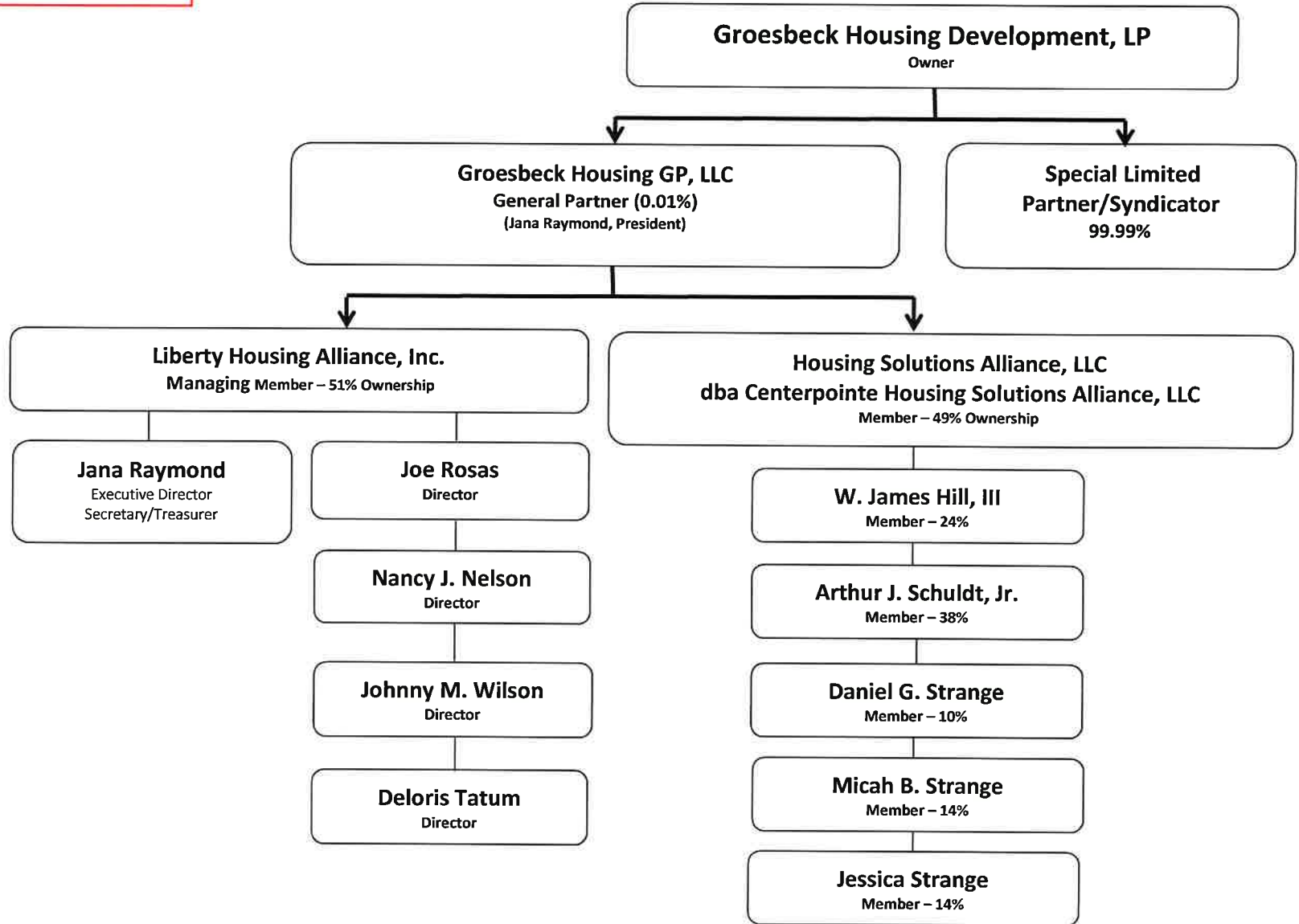
REVISED -  
CURRENT ORG. CHART

**Ownership Structure**  
**TDHCA#: 15119**  
**Liberty Square & Liberty Village**  
**Groesbeck, TX**



Org. Chart  
Proposed - 8-26-16

**Ownership Structure**  
**TDHCA#: 15119**  
**Liberty Square & Liberty Village**  
**Groesbeck, TX**





September 20, 2016

Groesbeck Housing Development, LP  
c/o Art Schuldt  
Housing Solutions Alliance, LLC  
1935 Airline Drive, Suite 200  
Bossier City, LA 71112  
Groesbeck

RE: Liberty Square & Liberty Village  
TDHCA Number: 15119

Dear Mr. Schuldt:

We have been reviewing the issue of selecting a greater number of 30% and 50% AMI units at application than was required by the TDHCA QAP coupled with the RAD conversion requirement of offering housing in the rehabilitated facility regardless of AMI to those residents displaced in the process of the rehabilitation. As you know, this exposes the equity investor to a greater degree of uncertainty as to the timing and volume of delivery of the tax credits because those units and the corresponding proportion of the eligible basis of the building cannot initially qualify for the tax credits until the first qualified occupant moves into their unit.

With the number of potential returning occupants being over income qualified at the current AMI structure, we feel it is imprudent for us to accept this risk which effectively makes this investment for Liberty Square and Liberty Village infeasible from our underwriting perspective. We would and are agreeable to accepting the risk discussed above if the AMI distribution is changed to the proposed six at 30% AMI from twenty (20), sixteen (16) at 50% AMI from sixty (60), and the balance of fifty-eight (58) at 60% AMI from zero (0). The significant shift in the number of units that can accept higher income residents significantly reduces the risk that returning residents, for which you are required to provide housing regardless of AMI, will impact credit delivery.

Please don't hesitate to contact me if you should have any questions.

Sincerely,

A handwritten signature in green ink that reads 'K. Nicole Flores'.

K. Nicole Flores  
Executive Vice President



# HOME FEDERAL BANK

*A Better Way*

September 20, 2016

Groesbeck Housing Development, LP  
c/o Art Schuldt  
Housing Solutions Alliance, LLC  
1935 Airline Drive, Suite 200  
Bossier City, LA 71112

Re: Liberty Square & Liberty Village (the "Project")

Dear Mr. Schuldt:

We have reviewed the equity partner letter from R4 and have considered the issues you have conveyed to us about the requirement for relocated RAD residents to be offered priority housing in the rehabilitated facility regardless of income eligibility in the LIHTC program. We understand that it then impacts the equity dollars contributed to the project and subjects the housing authority and or developer to potential capital short falls.

If the equity party is raising the flag that this transaction would be infeasible in their underwriting opinion and they are 74% of the capital we, at 17%, would have a hard time concluding differently and documenting same for the regulatory bodies and accordingly, we feel it is imprudent for us to accept this risk which effectively makes this investment infeasible from our underwriting perspective.

Sincerely,

K. Matthew Sawrie  
Senior Vice President  
Home Federal Bank



MAIN OFFICE  
624 Market St.  
Shreveport, Louisiana 71101  
(318) 222-1145

COMMERCIAL DIVISION  
222 Florida Street  
Shreveport, Louisiana 71105  
(318) 841-1170

FINANCIAL CENTER  
6363 Youree Dr.  
Shreveport, Louisiana 71105  
(318) 674-2626

FINANCIAL CENTER  
9300 Mansfield Rd., Ste. 101  
Shreveport, Louisiana 71118  
(318) 674-2630

FINANCIAL CENTER  
2555 Viking Dr.  
Bossier City, Louisiana 71111  
(318) 674-2611

FINANCIAL CENTER  
7964 East Texas Street  
Bossier City, Louisiana 71111  
(318) 674-2614



**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**OCTOBER 13, 2016**

Presentation, Discussion, and Possible Action regarding a material amendment to the Housing Tax Credit (“HTC”) Application for Casa Verde (HTC #15251)

**RECOMMENDED ACTION**

**WHEREAS**, Casa Verde (the “Development”) received an award of 9% Housing Tax Credits in 2015 under the At-Risk set-aside for the demolition and reconstruction and new location of existing public housing units in Laredo;

**WHEREAS**, the application for Casa Verde originally proposed to demolish an existing 200 unit public housing development, Russell Terrace, and construct 152 new units at the relocated site of Casa Verde of which 38 units (25%) would remain public housing units supported by public housing operating subsidy;

**WHEREAS**, the At-Risk set aside in the 2015 Qualified Allocation Plan (“QAP”) required Developments qualifying under Tex. Gov’t Code 2306.6702(a)(5)(B) to retain no less than 25% public housing units supported by public housing operating subsidy;

**WHEREAS**, the Texas legislature subsequently passed HB 2926 which allowed for 2016 Developments proposing rehabilitation or reconstruction and including RAD units to be characterized as At-Risk;

**WHEREAS**, the Laredo Housing Authority (the “Applicant”) is requesting that the Development maintain its “At-Risk” character because it contends it is proposing to dispose of public housing units in accordance with Tex. Gov’t Code 2306.6702(a)(5)(B)(ii)(a) and it believes its actions constitute disposal based upon a HUD definition of “dispose”;

**WHEREAS**, the development plan for this application no longer involves demolition of the existing units and reconstruction of such units nor does it involve any rehabilitation of units at the Casa Verde development site and, therefore, the development no longer meets all of the qualifications of the At-Risk set aside; and

**WHEREAS**, Board approval is required for any change that would materially alter a Development;

**NOW, therefore, it is hereby**

**RESOLVED**, that the requested waiver and material application amendment for Casa Verde are denied; and

**RESOLVED**, that the 2015 9% Housing Tax Credits allocated to this application be rescinded, pursuant to Tex. Gov't Code 2306.6712(c) and be reallocated to other applicants on the 2016 9% Housing Tax Credit waiting list for the At-Risk set aside, and the Executive Director and his designees are each authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

### **BACKGROUND**

Casa Verde was submitted during the 2015 9% Housing Tax Credit Cycle and received an award under the At-Risk set aside. The application proposed the demolition of an existing 200 unit public housing development named Russell Terrace, and the relocation of 138 of those units at the newly constructed Casa Verde site, which is located approximately five miles from the existing public housing development. Casa Verde would contain 152 total units (138 HTC units and 14 market rate units). The Applicant received its award under the At-Risk set aside based on its status as a Development proposing to rehabilitate or reconstruct housing units that received assistance under Section 9, United States Housing Act of 1937, and are proposed to be demolished or disposed of by the Public Housing Authority, as allowed under Tex. Gov't Code §2306.6702(a)(5)(B). The Applicant originally planned, as required under the 2015 QAP §11.5(3)(D), that of the 138 restricted units, 38 (or 25%) would remain supported by a public housing operating subsidy.

On May 26, 2016, in conjunction with a 10 Percent Test extension request, the Applicant notified the Department of HUD's decision not to approve the demolition application for Russell Terrace because it did not meet the minimum thresholds for obsolescence.

On July 26, 2016, Raquel Favela of the National Development Council ("NDC") acting on behalf of the Applicant, submitted a formal request to amend the application and seek a waiver of the 2015 QAP §11.5(3)(D) provision that requires no less than 25% of the proposed units at Casa Verde be public housing units and instead allow that no less than 25% be RAD units. Since legislation passed during the 84<sup>th</sup> legislative session (HB 2926) that included RAD conversions under the At-Risk set aside, the portion of the request to amend the Casa Verde application to allow public housing operating subsidy to be replaced by RAD for 38 units (25%) might otherwise be recommended. What is at issue, however, is the fact that the original plan to demolish and reconstruct units from the existing Russell Terrace development to Casa Verde is no longer part of the development plan and therefore the development cannot meet the initial premise of At-Risk.

Tex. Gov't. Code 2306.6702(a)(5)(B), defines At-Risk to mean:

“(B) a development that proposes to rehabilitate (*emphasis supplied*) or reconstruct (*emphasis supplied*) housing units that:

- (i) are owned by a public housing authority and receive assistance under Section 9, United States Housing Act of 1937; or
- (ii) received assistance under Section 9, United States Housing Act of 1937 and:
  - a. are proposed to be disposed of or demolished by a public housing authority; or
  - b. have been disposed of or demolished by a public housing authority in the two-year period preceding the application for housing tax credits; or
- (iii) receive assistance or will receive assistance through the Rental Assistance Demonstration program administered by the United States Department of Housing and Urban Development as specified by the Consolidated and Further Continuing Appropriations Action of 2012 and its subsequent amendments, if the application for assistance through the Rental Assistance Demonstration program is included in the applicable public housing authority’s annual plan that was most recently approved by the United States Department of Housing and Urban Development as specified by 24 C.F.R. Section 903.23.”

While the term rehabilitation is further defined in the statute to include reconstruction, the term reconstruction is not defined in statute. Tex. Gov’t. Code 2306.004 (26-a), defines rehabilitation to mean:

“(26-a) “Rehabilitation” means the improvement or modification of an existing residential development through an alteration, addition, or enhancement. The term includes the demolition of an existing residential development and the reconstruction of any development units, but does not include the improvement or modification of an existing residential development for the purpose of an adaptive reuse of the development.”

The Board has adopted by rule a definition of reconstruction in 10 TAC §10.3 (109):

“(109) Reconstruction--The demolition of one or more residential buildings in an Existing Residential Development and the construction of an equal number of units or less on the Development Site. At least one unit must be reconstructed in order to qualify as Reconstruction.”

Casa Verde was eligible in 2015 under the At-Risk set aside specifically by meeting the provision in 2306.6702(a)(5)(B)(ii)(a) in that the units were being disposed of or demolished. Based on the Applicant’s request to allow RAD subsidy to replace the public housing subsidy, they are now seeking to amend the Application to qualify under 2306.6702(a)(5)(B)(iii). However, the Development cannot qualify under this At-Risk provision due to the fact that the Applicant does not have HUD’s approval to move forward with the demolition of the units at Russell Terrace and there is no longer a plan to rehabilitate or reconstruct housing units under this finance plan or application, which is the central, qualifying requirement under 2306.6702(a)(5)(B).

A supplement to the amendment requested from NDC, received by the Department on September 26, 2016, contends that the proposed disposition and rehabilitation and the RAD commitments for Russell Terrace units meet each element of the statutory At-Risk requirements. The supplement states that the first element is that the development proposes to rehabilitate or reconstruct units, and 162 units at Russell Terrace will be rehabilitated and the public housing units will be disposed of to a for-profit entity as part of a potential 4% tax credit rehabilitation transaction that has not yet been filed, while the other 38 units will be reconstructed at Casa Verde. The supplement further indicates that while the Department’s definition of Reconstruction requires some demolition and reconstruction on a Development Site, that definition is inapplicable to and does not prevent a

scenario where the reconstruction will occur on a different site; otherwise, TDHCA could not have approved Casa Verde to begin with. However, NDC's supplement also states that if a waiver of the definition of Reconstruction is deemed to be required, a waiver is justified because the proposed project to be produced has not changed and the use of RAD and disposition rather than demolition on the Russell Terrace site was unforeseen at the time of application and approval. Staff notes that the Underwriting report for approval referenced the demolition of the units at the Russell Terrace site and the need for HUD approval of the Applicant's plan.

The new plan to be submitted to HUD represents a material amendment to the application in numerous respects: Russell Terrace units in the original application were at risk due to its imminent demolition of all 200 units, 138 units were to be relocated at Casa Verde, 38 of these units were to be public housing units. At present, the HUD application is proposed as a potential rehabilitation of Russell Terrace with an uncertain number of units being remodeled/moved to Casa Verde. While the Applicant has indicated that 38 units of public housing converted to RAD will move to Casa Verde it is not clear if those units at Russell Terrace will be rehabilitated and placed back into service. Regardless, Russell Terrace is not "At Risk" of being removed from the subsidized housing pool which would have eliminated the selection of this application in the At Risk set aside in the 2015 round.

Although final approval from HUD for this revised rehabilitation plan for Russell Terrace has yet to be granted, NDC indicates that the existing 200 units at Russell Terrace have been approved to receive RAD rather than public housing subsidy and concludes that Russell Terrace should qualify as an at-risk development on either of the statutory grounds that the units are being disposed of or are receiving RAD subsidy. The Applicant contends that the HUD definition of "disposed" should be controlling and therefore the application should maintain its At-Risk characteristic.

The supplement also refers to another 2015 At-Risk application where the Department recently accepted RAD as the basis for At-Risk qualification and granted approval. However, the facts related to the other 2015 award are not the same, as that application (15267- Thomas Westfall) continued to meet all of the requirements of the At-Risk set aside, including the housing authority's proposal to demolish and reconstruct units on a one for one basis, while also utilizing RAD subsidy versus public housing operating subsidy.

Staff's last concern with the Applicant's current plan for Casa Verde relates to timing, given that much of the proposal to address the existing public housing units is still being prepared for review and approval by HUD. Staff asked the Applicant's representatives about timing concerns; representatives responded that they have spoken with the City of Laredo, and the City is willing to issue a site work permit which would allow the Applicant to commence construction immediately after approval of the amendment request. The Applicant's representatives indicate it will take at least a few weeks to close into the construction loan after the board meeting but the site work will have commenced prior to the construction loan closing. According to the Applicant's representative, the total construction timeline would be 14 months; thus, leaving adequate time to complete construction prior to the December 31, 2017 placed in service deadline. The lender, the investor, and Brownstone Construction, Ltd. (the General Contractor) are comfortable with this timeline. Delay in action on this request to wait for further HUD approval or statutory change would also make the proposed timeline to meet the placed in service deadline infeasible.

Staff believes the application no longer qualifies for the At-Risk set aside as prescribed by the statute. Staff further believes that statutory language is not waivable by the Board. The Applicant is seeking the Board's reinterpretation of the statutory construction of Tex. Gov't. Code 2306.6702(a)(5)(B) to read the term "reconstruct" to potentially be in conflict with "disposed of" such that the former is inclusive of the latter. This would require the Board to consider a waiver of the Department's definition of reconstruction in rule. Staff recommends denial of the amendment and waiver request. Further, staff recommends the credits for this application be rescinded and reallocated to applicants on the waiting list within the At Risk set aside in accordance with its rules.

**Addendum to Underwriting Report**

TDHCA Application #: 15251 Program(s): 9% HTC

**Casa Verde Apartments**

Address/Location: East side of the 8600 block of Casa Verde Road

City: Laredo County: Webb Zip: 78041

APPLICATION HISTORY	
Report Date	PURPOSE
09/27/16	RAD Amendment
11/12/15	Carryover Memo
06/01/15	Original Underwriting Report

**ALLOCATION**

TDHCA Program	Previous Allocation				RECOMMENDATION				
	Amount	Interest Rate	Amort	Term	Amount	Interest Rate	Amort	Term	Lien
LIHTC (Annual)	\$1,612,000				\$1,593,372				

**CONDITIONS STATUS**

- 1 Receipt and acceptance by Commitment:
  - Contract for Lease that reflects the \$1,145,500 upfront lease cost.  
Contract for Lease Amendment stating the upfront lease cost has been received.  
**Status:** Condition cleared
- 2 Receipt and acceptance by Carryover:
  - Applicant must provide final interest rate and terms for LHOC cash flow loan that will ensure payoff within the maturity date.
  - This condition has been extended to 10% Test since these funds were not used for LPS points and the terms of this particular loan will not be finalized by LHOC until final pricing of the equity and senior debt.  
**Status:** Cleared. Cash Flow Loan has been removed from financing structure.
- 3 Receipt and acceptance by 10% test:
  - a: Applicant must provide final interest rate and terms for LHOC cash flow loan that will ensure payoff within the maturity date.  
**Status:** Cleared. Cash Flow Loan has been removed from financing structure.
  - b: **New Condition:** Pursuant to §10.402(d)(7), a letter from Applicant's Attorney, "...identifying the statutory basis for the exemption and indicating that the exemption is reasonably achievable, subject to appraisal district review.  
**Status:** Pending
- 4 Receipt and acceptance by Cost Certification:
  - Documentation from a CPA to support inclusion of relocation expense in the cost schedule and in eligible basis.  
**Status:** Cleared. Relocation expense no longer in the cost schedule or eligible basis.



5 Should any terms of the proposed capital structure change, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

## **ANALYSIS**

Casa Verde applied to the 2015 9% Tax Credit cycle as an At-Risk set-aside development. Originally, Russell Terrace, a public housing development, was proposed to be demolished and transfer thirty-eight of the Public Housing Units (PHU's) to Casa Verde. These 38 units would be supported by an operating subsidy via an Annual Contributions Contract. The deal was contingent on HUD approval, but HUD has denied Russell Terrace's demolition application stating that it did not meet the minimum thresholds for obsolescence.

In response to the denial, the Applicant secured a HUD Rental Assistance Demonstration (RAD) approval for 38 units at Casa Verde and 162 units at Russell Terrace. These 38 RAD units will substitute for the planned PHU's at Casa Verde.

### **Operating Pro Forma**

The RAD contract provides for higher rents than when proposed as PHU's. This combined with updating the rent schedule with current utility allowances and 2016 HTC rents increases income 13% (\$115k). Expenses increased 3%.

Applicant's pro forma is used for analysis.

### **Development Cost**

Development cost increased 7% (\$1.37M), with building costs contributing \$828k of that increase. Changes include free covered carports for all units, upgraded finishes, and energy efficient washer/dryers in all units. No other significant changes occurred.

Financing costs went up \$300k due to the increase in the debt structure as discussed below.

The equity partner requires 12 months of operating expenses and debt service (\$912,041) which is the maximum allowable reserves. Applicant is also including a \$250k rent up reserve for paying interest during construction. Underwriter has not included the \$250k as it is above the maximum reserve amount.

### **Sources of Funds**

The proposed conversion of the units from Public Housing to RAD eliminates the need for a Related Party Gap loan (LHOC cash flow loan) as the RAD units produce more income which can be utilized to service additional debt. BBVA Compass Bank will now be the construction and permanent lender, offering higher debt amounts with lower interest rates. The RAD conversion eliminates the need for an operating subsidy.

Hudson Housing Capital has increased their credit price from \$0.90 to \$1.01 generating an additional \$1.79M in equity. Deferred developer has decreased dramatically from \$615k to \$62k.

The City of Laredo is still committed to financing \$2,070,000 at 3% interest for 5 years. The Owner anticipates that this financing will be utilized for either predevelopment or interim construction purposes and will be paid in full prior to or concurrent with closing of the perm mortgage loan. The interim sources total to more than the total development budget strictly due to timing issues involving pay downs of the funding sources.

Due to the increased debt and equity proceeds, the credit amount is gapped. Underwriter recommends a reduction of tax credits from the previously allocated amount of \$1,612,000 to \$1,593,372; a reduction of \$18,627 per year.

Underwriter:	<u>Jeanna Rolsing</u>
Manager of Real Estate Analysis:	<u>Thomas Cavanagh</u>
Director of Real Estate Analysis:	<u>Brent Stewart</u>



**STABILIZED PRO FORMA**

**Casa Verde Apartments, Laredo, 9% HTC #15251**

STABILIZED FIRST YEAR PRO FORMA														
COMPARABLES			APPLICANT				PRIOR REPORT		TDHCA			VARIANCE		
Database	County Comps CMTS		% EGI	Per SF	Per Unit	Amount	Applicant	TDHCA	Amount	Per Unit	Per SF	% EGI	%	\$
<b>POTENTIAL GROSS RENT</b>				\$0.60	\$597	\$1,088,976	\$901,152	\$878,952	\$1,088,976	\$597	\$0.60		0.0%	\$0
app fees, late, cleaning/damage, laundry					\$9.18	\$16,752	\$12,768	\$12,768	\$16,752	\$9.18				
Operating Subsidy for Public Hsg Units Only					\$0.00	\$0	67,200							
Total Secondary Income					\$9.18								0.0%	\$16,752
<b>POTENTIAL GROSS INCOME</b>						\$1,105,728	\$981,120	\$891,720	\$1,105,728				0.0%	\$0
Vacancy & Collection Loss					7.5% PGI	(82,930)	(73,584)	(66,879)	(82,930)	7.5% PGI			0.0%	-
Rental Concessions						-	0	93,180	-				0.0%	-
<b>EFFECTIVE GROSS INCOME</b>						\$1,022,798	\$907,536	\$918,021	\$1,022,798				0.0%	\$0

General & Administrative	\$43,814	\$288/Unit	36,594	\$241	4.80%	\$0.33	\$323	\$49,050	\$46,281	\$43,814	\$43,814	\$288	\$0.29	4.28%	11.9%	5,236
Management	\$52,275	4.3% EGI	42,251	\$278	5.00%	\$0.34	\$336	\$51,140	\$45,377	\$45,901	\$51,140	\$336	\$0.34	5.00%	0.0%	0
Payroll & Payroll Tax	\$143,160	\$942/Unit	144,677	\$952	16.41%	\$1.12	\$1,104	\$167,802	\$166,702	\$166,662	\$166,662	\$1,096	\$1.11	16.29%	0.7%	1,140
Repairs & Maintenance	\$86,768	\$571/Unit	67,539	\$444	8.22%	\$0.56	\$553	\$84,048	\$84,000	\$83,600	\$83,600	\$550	\$0.56	8.17%	0.5%	448
Electric/Gas	\$36,963	\$243/Unit	24,569	\$162	1.64%	\$0.11	\$111	\$16,800	\$16,800	\$24,569	\$24,569	\$162	\$0.16	2.40%	-31.6%	(7,769)
Water, Sewer, & Trash	\$79,223	\$521/Unit	77,579	\$510	7.88%	\$0.54	\$530	\$80,592	\$75,888	\$77,579	\$77,579	\$510	\$0.52	7.59%	3.9%	3,013
Property Insurance	\$62,343	\$0.41 /sf	61,586	\$405	4.69%	\$0.32	\$316	\$48,000	\$45,600	\$47,846	\$47,846	\$315	\$0.32	4.68%	0.3%	154
Property Tax 2.3311	\$71,414	\$470/Unit	47,869	\$315	0.00%	\$0.00	\$0	\$0	\$0	\$0	\$0	\$0	\$0.00	0.00%	0.0%	-
Reserve for Replacements	\$60,176	\$396/Unit	-	\$0	4.46%	\$0.30	\$300	\$45,600	\$45,600	\$45,600	\$45,600	\$300	\$0.30	4.46%	0.0%	-
Cable TV				\$0	0.18%	\$0.01	\$12	\$1,800	\$600	\$600	\$1,800	\$12	\$0.01	0.18%	0.0%	-
Supportive Services				\$0	1.11%	\$0.08	\$75	\$11,400	\$11,400	\$11,400	\$11,400	\$75	\$0.08	1.11%	0.0%	-
TDHCA Compliance fees				\$0	0.54%	\$0.04	\$36	\$5,520	\$5,520	\$5,520	\$5,520	\$36	\$0.04	0.54%	0.0%	-
Security				\$0	0.09%	\$0.01	\$6	\$900	\$900	\$900	\$900	\$6	\$0.01	0.09%	0.0%	-
Fidelity Bond & Insurance Placement				\$0	0.11%	\$0.01	\$7	\$1,130	\$1,130	\$1,130	\$1,130	\$7	\$0.01	0.11%	0.0%	-
<b>TOTAL EXPENSES</b>					55.12%	\$3.75	\$3,709	\$563,782	\$545,798	\$555,122	\$ 561,561	\$3,694	\$3.74	54.90%	0.4%	\$ 2,221
<b>NET OPERATING INCOME ("NOI")</b>					44.88%	\$3.05	\$3,020	\$459,016	\$361,738	\$362,900	\$461,238	\$3,034	\$3.07	45.10%	-0.5%	\$ (2,221)

<b>CONTROLLABLE EXPENSES</b>							\$2,620/Unit					\$2,607/Unit				
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**CAPITALIZATION / TOTAL DEVELOPMENT BUDGET / ITEMIZED BASIS**  
**Casa Verde Apartments, Laredo, 9% HTC #15251**

DEBT / GRANT SOURCES																			
APPLICANT'S PROPOSED DEBT/GRANT STRUCTURE									AS UNDERWRITTEN DEBT/GRANT STRUCTURE										
DEBT (Must Pay)	MIP	Cumulative DCR		Pmt	Rate	Amort	Term	Principal	Prior Underwriting		Principal	Term	Amort	Rate	Pmt	Cumulative			
		UW	App						Applicant	TDHCA						DCR	LTC		
BBVA Compass Bank		1.61	1.60	\$287,118	5.35%	30	15	\$5,200,000	\$4,100,000	\$4,100,000	\$5,200,000	15	30	5.35%	\$348,450	1.32	24.4%		
<b>CASH FLOW DEBT</b>																			
Laredo Housing Opportunities Corp		1.61	1.60		0.00%	0	0	\$0	\$950,000	\$950,000	\$0	0		0.00%		1.32	0.0%		
				\$287,118	<b>TOTAL DEBT / GRANT SOURCES</b>				\$5,200,000	\$5,050,000	\$5,050,000	\$5,200,000	<b>TOTAL DEBT SERVICE</b>				\$348,450	1.32	24.4%
<b>NET CASH FLOW</b>		\$174,120	\$171,899											<b>NET OPERATING INCOME</b>	\$459,016	\$110,566	<b>NET CASH FLOW</b>		

EQUITY SOURCES													
APPLICANT'S PROPOSED EQUITY STRUCTURE						AS UNDERWRITTEN EQUITY STRUCTURE							
EQUITY / DEFERRED FEES	DESCRIPTION	% Cost	Annual Credit	Credit Price	Amount	Prior Underwriting		Amount	Credit Price	Annual Credit	% Cost	Annual Credits per Unit	
						Applicant	TDHCA						
Hudson Housing Capital	LIHTC Equity	76.5%	\$1,612,000	1.01	\$16,279,572	\$14,506,549	\$14,506,549	\$16,091,451	\$1.01	\$1,593,372	75.6%	\$10,483	
Brownstone Affordable Housing	Deferred Developer Fees	0.3%	(3% Deferred)		\$61,879	\$614,754	\$614,754			(0% Deferred)	0.0%		\$2,384,067
Additional (Excess) Funds Req'd		0.0%				\$0	\$0				0.0%		
<b>TOTAL EQUITY SOURCES</b>		76.8%			\$16,341,451	\$15,121,303	\$15,121,303	\$16,091,451			75.6%		15-Year Cash Flow: \$2,041,957
<b>TOTAL CAPITALIZATION</b>						\$21,541,451	\$20,171,303	\$20,171,303	\$21,291,451			15-Yr Cash Flow after Deferred Fee:	\$2,041,957

DEVELOPMENT COST / ITEMIZED BASIS													
APPLICANT COST / BASIS ITEMS					TDHCA COST / BASIS ITEMS				COST VARIANCE				
Eligible Basis	Acquisition	New Const. Rehab	Total Costs		Prior Underwriting		Total Costs	Eligible Basis		%	\$		
					Applicant	TDHCA		New Const. Rehab	Acquisition				
Capitalized Ground Lease			\$1,145,500		\$1,145,500	\$1,145,500	\$1,145,500				\$0		
Off-Sites			\$263 / Unit	\$40,000	\$35,088	\$35,088	\$40,000	\$263 / Unit			\$0		
Site Work		\$1,706,250	\$11,225 / Unit	\$1,706,250	\$2,205,000	\$2,205,000	\$1,706,250	\$11,225 / Unit	\$1,706,250		\$0		
Site Amenities		\$542,525	\$3,569 / Unit	\$542,525	\$355,000	\$355,000	\$542,525	\$3,569 / Unit	\$542,525		\$0		
Building Cost		\$10,210,764	\$67.95 /sf	\$67,176/Unit	\$10,210,764	\$9,383,000	\$9,456,429	\$9,764,496	\$64,240/Unit	\$64.98 /sf	\$446,268		
Contingency		\$0	0.00%	5.70%	\$712,474	\$628,850	\$628,850	\$712,474	5.91%	0.00%	\$0		
Contractor Fees		\$1,746,000	14.01%	13.25%	\$1,749,935	\$1,676,932	\$1,676,932	\$1,749,935	13.71%	14.00%	\$0		
Soft Costs		\$697,500	\$5,214 / Unit	\$792,500	\$920,400	\$920,400	\$792,500	\$5,214 / Unit	\$697,500	\$0	\$0		
Financing		\$905,394	\$7,205 / Unit	\$1,095,204	\$790,442	\$790,442	\$1,095,204	\$7,205 / Unit	\$905,394	\$0	\$0		
Developer Fee		\$2,239,067	14.16%	14.40%	\$2,384,067	\$2,357,385	\$2,350,083	\$2,384,067	14.85%	14.64%	\$0		
Reserves			\$7,646 / Unit	\$1,162,232	\$673,706	\$673,706	\$912,232	\$6,002 / Unit			\$250,000		
<b>UNADJUSTED BASIS / COST</b>		\$0	\$18,047,500	\$141,720 / Unit	\$21,541,451	\$20,171,303	\$20,237,430	\$20,845,184	\$137,139 / Unit	\$17,537,090	\$0	3.3%	\$696,267
Acquisition Cost		\$0			\$0								
Contingency		\$0											
Contractor Fee		(\$1,665)											
Interim Interest		\$0											
Developer Fee		\$0			\$0								
Reserves					(\$250,000)								
<b>ADJUSTED BASIS / COST</b>		\$0	\$18,045,835	\$140,075/unit	\$21,291,451	\$20,171,303	\$20,237,430	\$20,845,184	\$137,139/unit	\$17,537,090	\$0	2.1%	\$446,268
<b>TOTAL UNDERWRITTEN COSTS (Applicant's Uses are within 5% of TDHCA Estimate):</b>						\$21,291,451							

**CAPITALIZATION / DEVELOPMENT COST BUDGET / ITEMIZED BASIS ITEMS**

*Casa Verde Apartments, Laredo, 9% HTC #15251*

CREDIT CALCULATION ON QUALIFIED BASIS				
	Applicant		TDHCA	
	Acquisition	Construction Rehabilitation	Acquisition	Construction Rehabilitation
	<b>ADJUSTED BASIS</b>	\$0	\$18,045,835	\$0
Deduction of Federal Grants	\$0	\$0	\$0	\$0
<b>TOTAL ELIGIBLE BASIS</b>	\$0	\$18,045,835	\$0	\$17,537,090
High Cost Area Adjustment		130%		130%
<b>TOTAL ADJUSTED BASIS</b>	\$0	\$23,459,586	\$0	\$22,798,218
Applicable Fraction	90.69%	90.69%	90.69%	90.69%
<b>TOTAL QUALIFIED BASIS</b>	\$0	\$21,276,174	\$0	\$20,676,359
Applicable Percentage	9.00%	9.00%	9.00%	9.00%
<b>ANNUAL CREDIT ON BASIS</b>	\$0	\$1,914,856	\$0	\$1,860,872
<b>CREDITS ON QUALIFIED BASIS</b>		\$1,914,856		\$1,860,872

Method	ANNUAL CREDIT CALCULATION BASED ON APPLICANT BASIS		FINAL ANNUAL LIHTC ALLOCATION		
	Annual Credits	Proceeds	Credit Price \$1.0099	Variance to Request	
			Credit Allocation	Credits	Proceeds
<b>Eligible Basis</b>	\$1,914,856	\$19,338,108	----	----	----
<b>Gap</b>	\$1,593,372	\$16,091,451	<b>\$1,593,372</b>	<b>(\$18,628)</b>	<b>(\$188,121)</b>
<b>Previous Request</b>	\$1,612,000	\$16,279,572	----	----	----

BUILDING COST ESTIMATE				
CATEGORY	FACTOR	UNITS/SF	PER SF	AMOUNT
Base Cost:	Garden/Townhome	150,272 SF	\$63.93	9,606,815
Adjustments				
Exterior Wall Finish	0.00%		0.00	\$0
	0.00%		0.00	0
9 ft. ceilings	3.00%		1.92	288,204
Roofing			0.00	0
Subfloor			(0.26)	(38,937)
Floor Cover			2.41	362,156
Breezeways	\$25.38	14,350	2.42	364,259
Balconies	\$26.36	12,560	2.20	331,019
Plumbing Fixtures	\$970	336	2.17	325,920
Rough-ins	\$475	304	0.96	144,400
Built-In Appliances	\$2,590	152	2.62	393,680
Exterior Stairs	\$2,425	44	0.71	106,700
Heating/Cooling			2.06	309,560
Enclosed Corridors	\$47.72	0	0.00	0
Carports	\$11.94	24,624	1.96	294,011
Garages		0	0.00	0
Comm &/or Aux Bldgs	\$87.72	3,091	1.80	271,153
Elevators	\$0	0	0.00	0
<b>Other:</b>	\$0	0	0.00	0
Fire Sprinklers	\$2.47	167,713	2.76	414,251
<b>SUBTOTAL</b>			<b>87.66</b>	<b>13,173,191</b>
Current Cost Multiplier	0.99		(0.88)	(131,732)
Local Multiplier	0.88		(10.52)	(1,580,783)
<b>TOTAL BUILDING COSTS</b>			<b>76.27</b>	<b>\$11,460,677</b>
Plans, specs, survey, bldg permits	3.30%		(2.52)	(\$378,202)
Contractor's OH & Profit	11.50%		(8.77)	(1,317,978)
<b>NET BUILDING COSTS</b>		\$64,240/unit	\$64.98/sf	\$9,764,496

## 30-Year Long-Term Pro Forma

*Casa Verde Apartments, Laredo, 9% HTC #15251*

	Growth Rate	Year 1	Year 2	Year 3	Year 4	Year 5	Year 10	Year 15	Year 20	Year 25	Year 30
<b>EFFECTIVE GROSS INCOME</b>	2.00%	\$1,022,798	\$1,043,254	\$1,064,119	\$1,085,402	\$1,107,110	\$1,222,339	\$1,349,561	\$1,490,024	\$1,645,107	\$1,816,331
<b>TOTAL EXPENSES</b>	3.00%	\$563,782	\$580,184	\$597,068	\$614,448	\$632,339	\$729,999	\$842,895	\$973,422	\$1,124,351	\$1,298,891
<b>NET OPERATING INCOME ("NOI")</b>		<b>\$459,016</b>	<b>\$463,070</b>	<b>\$467,052</b>	<b>\$470,954</b>	<b>\$474,771</b>	<b>\$492,340</b>	<b>\$506,666</b>	<b>\$516,602</b>	<b>\$520,756</b>	<b>\$517,440</b>
<b>MUST -PAY DEBT SERVICE</b>											
BBVA Compass Bank		\$348,450	\$348,450	\$348,450	\$348,450	\$348,450	\$348,450	\$348,450	\$348,450	\$348,450	\$348,450
<b>ANNUAL CASH FLOW</b>		<b>\$110,566</b>	<b>\$114,620</b>	<b>\$118,601</b>	<b>\$122,504</b>	<b>\$126,321</b>	<b>\$143,890</b>	<b>\$158,215</b>	<b>\$168,152</b>	<b>\$172,306</b>	<b>\$168,990</b>
<b>CUMULATIVE NET CASH FLOW</b>		<b>\$110,566</b>	<b>\$225,186</b>	<b>\$343,788</b>	<b>\$466,292</b>	<b>\$592,613</b>	<b>\$1,278,021</b>	<b>\$2,041,957</b>	<b>\$2,864,858</b>	<b>\$3,720,706</b>	<b>\$4,575,654</b>
DEBT COVERAGE RATIO		1.32	1.33	1.34	1.35	1.36	1.41	1.45	1.48	1.49	1.48
EXPENSE/INCOME RATIO		55.1%	55.6%	56.1%	56.6%	57.1%	59.7%	62.5%	65.3%	68.3%	71.5%
Deferred Developer Fee Balance		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Residual Cash Flow		110,566	114,620	118,601	122,504	126,321	143,890	158,215	168,152	172,306	168,990





**TO:** TOM GOURIS, MARNI HOLLOWAY, RAQUEL MORALES, COLTON SANDERS

**FROM:** LAREDO HOUSING AUTHORITY (LHA) THROUGH RAQUEL FAVELA,  
DIRECTOR, NATIONAL DEVELOPMENT COUNCIL

*RF*

**CC:** Jose L. Ceballos, LHA Board Chairman; Melissa Ortiz, Interim/Acting LHA CEO

**DATE:** July 26, 2016

**RE:** Casa Verde Waiver of §11.5(3)(D) under 2015 QAP

The Casa Verde project was approved during the 2015 competitive 9% Housing Tax Credit cycle under the At-Risk set aside. Originally, a public housing development, Russell Terrace, was proposed to be demolished and 38 of the public housing units would be transferred to Casa Verde, thereby meeting:

(D) Developments must be at risk of losing affordability from the financial benefits available to the Development and must retain or renew the existing financial benefits and affordability unless regulatory barriers necessitate elimination of a portion of that benefit for the Development. For Developments qualifying under §2306.6702(a)(5)(B), only a portion of the subsidy must be retained for the proposed Development, but no less than 25 percent of the proposed Units must be public housing units supported by public housing operating subsidy. (§2306.6714(a-1))

The demolition application was not approved because HUD determined that Russell Terrace did not meet the minimum thresholds for obsolescence. Consequently, the LHA secured HUD Rental Assistance Demonstration (RAD) approval for 38 units at Casa Verde and 162 units at Russell Terrace. The 38 units at Casa Verde will substitute for the planned public housing units there and still represent 25% of the total number of units (152); as originally proposed, a total of 138 units will be income-restricted and 14 will be market rate. The 162-unit RAD conversion at Russell Terrace contemplates disposition of the units and their rehabilitation as part of a 4% housing tax credit transaction.

The project still meets the requirements of §2306.6702(a)(5)(B), because the Casa Verde units will receive RAD subsidy instead of public housing operating subsidy and the Russell Terrace units will be disposed of as just discussed. Furthermore, the 2016 QAP rule provisions related to RAD have changed and no longer require the retention of 25% of public housing operating subsidy and HB 2926 became effective September 1, 2015, and amended the definition of at-risk development that expressly includes developments undergoing RAD conversions (§ 2306.6702(a)(5)(B)(iii)). Funding for RAD units is derived from reallocation of public housing operating and capital subsidy.

Therefore, we request approval of (1) a non-material amendment to allow use of RAD rather than public housing operating subsidy, and (2) waiver of the quoted 2015 QAP provision

otherwise requiring no less than 25 percent of the proposed units at Casa Verde to be public housing units, so that no less than 25% can be RAD units. Please place the requested approvals on the agenda for the Board meeting of September 8, 2016.

Thank you for your consideration.





OFFICE OF PUBLIC AND INDIAN HOUSING

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Special Applications Center  
77 W. Jackson Blvd., Room 2401  
Chicago, Illinois 60604-3507  
Phone: (312) 353-6236 Fax: (312) 886-6413

April 22, 2016

Ms. Melissa Ortiz  
Acting Executive Director  
Laredo Housing Authority  
2000 San Francisco Avenue  
Laredo, TX 78040

Dear Ms. Ortiz:

The U.S. Department of Housing and Urban Development's (Department) Special Applications Center (SAC) reviewed the Laredo Housing Authority's (LHA) application, demolition of 2 non-dwelling buildings and 100 dwelling buildings containing 200 dwelling units at Russell Terrace, TX011000002. On December 14, 2015, the Department received application DDA0006860 via the Public and Indian Housing Information Center (PIC) system. According to the application, the reason for demolition is physical obsolescence (deterioration) in accordance with 24 CFR 970.15; and the LHA provided an itemized rehabilitation costs estimate. The Department notes that the rehabilitation cost estimates must be based upon the dwelling structure's existing condition.

The Total Development Cost (TDC) limit for the 200 units proposed for demolition is calculated below. The Department used the TDC applicable at the time of application. For non-dwelling buildings, the Department determines obsolescence using building information in comparison to the RS Means standards of construction. The Department initially determines the dwelling unit obsolescence, then non-dwelling obsolescence. The non-dwelling buildings were not calculated and any data forwarded by the agency is not included in the Department's obsolescence determination.

TDC per Notice PIH-2011-38; Year: 2015			
Type of Structure: Semi-Detached Area: Laredo, TX			
Bedroom Size	Number of Unit	TDC/Unit	Total Cost
1-BR	24	159,083	3,817,992
2-BR	64	190,220	12,174,080
3-BR	84	228,376	19,183,584
4-BR	28	269,149	7,536,172
<b>TOTAL</b>	<b>200</b>		<b>\$42,711,828</b>

The LHA \$43,398,166 rehabilitation cost estimate, which includes non-dwelling building rehabilitation costs, is 101.6 percent of the TDC limit of \$42,711,828. The Department, through examination of the agency's submitted documentation, notes that the LHA used a 1.75 "HUD trending factor" to determine their construction cost estimate. The Department does not use a trending factor to determine obsolescence for inventory removals and used the agency's base

construction cost estimate of \$24,798,952. Pursuant to Notice PIH 2012-7 (HA), the Department made adjustments to the LHA's cost estimates through modification or elimination of line items. The adjustments are in Exhibit B and line items without repair costs were excluded for brevity. The Department's adjusted cost estimate of \$8,819,316 is 20.65 percent of TDC.

An application for the demolition of all or a portion of a public housing project must certify that the project is obsolete as to physical condition, location, or other factors, making it unsuitable for housing purposes, and no reasonable program of modifications is cost-effective to return the public housing project or portion of the project to useful life. In accordance with 24 CFR 970.15(b)(2), the rehabilitation costs must exceed 57.14 percent of the TDC. In order to exhibit functional obsolescence, the property's usability or portion thereof must be demonstrably affected. The Department notes that at the time of application submission, the property was 100 percent occupied. The agency did not indicate or document demolition justification due to location. The agency's request does not meet the 24 CFR 970.15 regulatory requirement; therefore, effective April 21, 2016, the Department discontinued processing PIC application DDA0006860 and changed the status of application to "Draft". The San Antonio Office of Public Housing received a copy of this letter. If the agency has any questions, please contact [SACTA@hud.gov](mailto:SACTA@hud.gov).

Sincerely,

  
Darryl R. McGee  
Acting Director

cc: San Antonio OPH

Enclosure



Exhibit B							
Section	ITEMS	Condition	ACTION	Cost for Repair	SAC Adjustments	SAC Revised Cost	SAC Comments
3.1	Walls, Brick/block	F	Replace brick /point up brick and seal	\$551,390	-\$551,390	\$0	Must be in poor condition
3.1	Walls, Wood siding, trim	F	Replace and Paint	\$190,000	-\$190,000	\$0	Must be in poor condition
3.1	Soffits and Fascia	F	Replace and Paint	\$175,250	-\$175,250	\$0	Must be in poor condition
3.2	Windows, frames and glazing	F-P	Remove and replace with low-e double pane windows	\$497,790	-\$248,895	\$248,895	50% allowance for condition
3.3	Doors, solid core	F-P	Replace	\$140,150	-\$70,075	\$70,075	50% allowance for condition
3.3	Doors, screen doors	P	Replace	\$46,000	\$0	\$46,000	
3.6	Demolition	P	Remove internal walls and miscellaneous	\$185,240	\$0	\$185,240	
4.1a	Walls, common & unit	F-P	Replace/prep and paint	\$954,040	-\$477,020	\$477,020	50% allowance for condition
4.1b	Insulation	P	Self contained foam attic and walls	\$625,000	\$0	\$625,000	
4.2	Ceilings, common & unit	P	Replace/prep and paint	\$364,000	\$0	\$364,000	
4.3	Flooring, Tile	P	Replace for with ceramic tile	\$1,848,000	-\$1,093,000	\$755,000	Quality cannot exceed HUD construction standard. \$5.81/sf. \$3775 per unit
4.4	Cabinets and Countertops	F	Replace	\$550,350	-\$550,350	\$0	Must be in poor condition or demonstrable justification
4.5	Refrigerators	F-P	Replace energy efficient	\$185,000	-\$185,000	\$0	Dwelling equipment is not an allowable cost
4.6	Ranges/vent hoods	F-P	Replace energy efficient	\$178,400	-\$178,400	\$0	Dwelling equipment is not an allowable cost
4.6	Disposals	N/A	New	\$38,400	-\$38,400	\$0	Dwelling equipment is not an allowable cost
4.6	Dishwashers	N/A	New/ energy efficient	\$84,200	-\$84,200	\$0	Dwelling equipment is not an allowable cost
4.7	Interior Doors and Trim	F-P	Replace material and labor	\$506,024	-\$253,012	\$253,012	50% allowance for condition
4.8	Ceiling Fans/lights/phone jacks/mirrors	N/A	Replace with new energy lights and fans	\$320,138	-\$320,138	\$0	Item must be present
4.9	Demolition	N/A	Performed during rehab	\$375,125	\$0	\$375,125	
4.9a	Asbestos Removal	N/A	Performed first during construction	\$540,000	-\$540,000	\$0	No verification report provided
5.1	Foundation	F	Inspection report	\$19,250	\$0	\$19,250	Report cost accepted
5.1	Foundation work	F	Leveling and placing piers under grade beams	\$209,150	-\$104,575	\$104,575	SAC acknowledges that settling may have occurred. Allow 50% of estimated item cost
5.2	Framing	F-P	Repair and sealing Rough Open.	\$198,230	-\$99,115	\$99,115	50% allowance for condition
6.2	HVAC	N/A	Replace AC system with heat pump system	\$1,360,234	\$0	\$1,360,234	
7.1	Service	P	Replace with underground service	\$290,000	\$0	\$290,000	
7.2	Wiring of units	F	Replace wiring in units	\$850,150	-\$850,150	\$0	Must be in poor condition
7.3	Light fixtures / Interior	F	Replace with energy efficient light and bulbs	\$253,920	-\$253,920	\$0	Must be in poor condition
7.4	Light fixtures / exterior	P	Replace security and light fixtures on exterior walls	\$76,125	\$0	\$76,125	
8.1	Supply/Waste lines	F	Replace sewer lines at each unit	\$220,000	-\$220,000	\$0	Must be in poor condition
8.2	Replace sewer lines under slabs	F	Replace and back fill with stabilized material	\$370,500	-\$370,500	\$0	Must be in poor condition
Sib	Replace interior	F-P	Replace all water and sewer piping in units	\$970,000	-\$485,000	\$485,000	50% allowance for condition



Exhibit B							
Section	ITEMS	Condition	ACTION	Cost for Repair	SAC Adjustments	SAC Revised Cost	SAC Comments
	plumbing system						
8.1c	Add one bathroom	N/A	Add one bathroom to the two, three and four bedroom units	\$1,628,000	-\$1,628,000	\$0	Occupancy does not support functional obsolescence
8.2	Tankless Water heater	F-P	Replace heater with tankless water heater	\$370,650	-\$185,325	\$185,325	50% allowance for condition
8.3	Dishwashers	N/A	Install energy efficient unit	\$98,000	-\$98,000	\$0	Dwelling equipment is not an allowable cost
8.4a	Toilets	F	Replace water saving unit	\$70,000	-\$70,000	\$0	Must be in poor condition
8.4b	Vanities w/sinks	F	Replace	\$107,160	-\$107,160	\$0	Must be in poor condition
8.4c	Tubs w/ shower walls	F	Replace	\$164,000	-\$164,000	\$0	Must be in poor condition
9.1	Gutters	N/A	Replace	\$97,250	-\$97,250	\$0	Included in roof price
9.1	Roofs, metal	F	New standing seam metal roof	\$1,836,500	-\$1,000,000	\$836,500	Adjusted at \$4 per s.f.
101	Sprinkler System	N/A	Add new system	\$568,817	-\$568,817	\$0	Only allowed for mandatory safety system not due to significant rehabilitation cost threshold
10.2	Unit Fire/Smoke Detectors	F-P	Install/Replace	\$88,852	\$0	\$88,852	100% allowance for mandatory safety system not due to significant rehabilitation cost threshold
12.0	Office/Comm. Bldg.	F-P	Space for activities and learning center	\$876,000	-\$876,000	\$0	Excluded from dwelling unit calculations
12.1	Maintains Bldg.	F	Demo and replace	\$187,600	-\$187,600	\$0	Excluded from dwelling unit calculations
14.1	Security Systems	N/A	Put alarm system in all units	\$150,250	-\$150,250	\$0	Item must be present
					\$0		
			Cost of Construction	\$19,415,135	-\$12,470,792	\$6,944,343	
			General Requirements (6%)	\$1,164,908		\$138,887	
			Builders Overhead (2%)	\$388,303		\$111,682	
			Builders Profit (6%)	\$1,164,908		\$416,661	
			Architecture & Engineering (6%)	\$1,164,908		\$416,661	
			Housing Authority Administration Fee (2%)	\$388,303		\$138,887	
			Contingency Fee (5%)	\$970,757		\$347,217	
			Total Itemized Costs	\$24,657,221		\$8,819,316	
			TDC	\$42,711,828		\$42,711,828	
			Rehabilitation Percent(Item Cost/ TDC)	57.73%		20.65%	



From: [rsolomon@hawkins.com](mailto:rsolomon@hawkins.com) RSolomon@hawkins.com  
Subject: FW: Laredo Housing Authority- New Application Prioritization  
Date: Today at 3:53 PM  
To: Raquel Favela [RFavela@ndconline.org](mailto:RFavela@ndconline.org)

Rod Solomon

**Hawkins Delafield & Wood LLP**

601 - 13th Street, NW, 800 South

Washington, DC 20005

202-682-1485 direct

202-682-1486 fax

---

**From:** Little, Jeffrey D [<mailto:Jeffrey.D.Little@hud.gov>]  
**Sent:** Friday, July 15, 2016 11:03 AM  
**To:** Rod Solomon  
**Cc:** Byrne, Gregory A  
**Subject:** RE: Laredo Housing Authority- New Application Prioritization

Rod-

I confirmed that Laredo's applications have passed our "threshold review" for applications, which includes a determination that funding letters and other financial aspects of the application are acceptable. The only remaining reviews before CHAP award will be confirming the eligibility of the PHA and the subject units for RAD conversion. If there are no open compliance issues with the PHA or problems identified with the units in PIC, we expect that a CHAP award will be issued in the weeks ahead.

PIH has agreed to expedite this review and to provide an update on the staff-level eligibility review by next week.

Please let me know if you need additional information, and we will touch base again early next week.

**Jeffrey Little**

Deputy Director, Office of Recapitalization  
U.S. Department of Housing and Urban Development  
451 7th St SW, Room 6230  
(202) 402-5649

\*\*\*\*\*

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U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-5000

OFFICE OF PUBLIC AND INDIAN HOUSING

AUG 03 2016

Laura Llanes  
Executive Director  
Housing Authority of the City of Laredo  
2000 San Francisco Avenue  
Laredo, TX 78040-4153

Dear Ms. Llanes:

Thank you for your application under the Rental Assistance Demonstration (RAD) for the conversion to Project Based Vouchers of assistance of 38 units at the following PIC Development TX011000002, RUSSELL TERRACE.

We are pleased to approve your request for conversion as described in the application, subject to the conditions below.

This award letter serves as the Department's Commitment to Enter into a Housing Assistance Payments (CHAP) for the above-referenced project, provided the Owner meets all the requirements contained in the PIH Notice 2012-32, Revision 2 ("Notice") and all subsequent revisions. In addition, the owner must comply with all "CHAP Milestones" identified in section 1.12 of the Notice as applicable.

This award is issued pursuant to the Consolidated and Further Continuing Appropriations Act, 2012, Pub. L. No. 112-55, approved November 18, 2011 and the Consolidated and Further Continuing Appropriations Act of 2015 (P.L. 113-235), approved December 6, 2014; section 8 of the United States Housing Act of 1937 (Act), 42 U.S.C. 1437 et seq.; and the Department of Housing and Urban Development Act, 42 U.S.C. 3531 et seq. The purpose of this award is to begin the process of effectuating the conversion of Public Housing to a form of project-based assistance under section 8 of the Act. This award cannot be transferred without the prior written consent of HUD.

In order to convert your project, the PHA must fulfill the CHAP milestones and deadlines identified in section 1.12 of the Notice. HUD will rely solely on documents and certifications the PHA submits through the RAD Resource Desk to monitor compliance with CHAP milestones. If HUD, in its sole judgment, determines that the PHA fails to meet any of the requirements, the CHAP will be revoked, unless the PHA submits and HUD approves a request for a deadline extension. Any extension request must include both a justification and an explanation of why failure to meet the milestone will not jeopardize the PHA's ability to complete the RAD conversion. Approval of any request for an extension is at HUD's sole discretion.

Within 30 days of CHAP issuance, you must **confirm your acceptance of a CHAP by submitting an application into the Inventory Removals module in PIC** in order to identify the units that will be removed from public housing Annual Contributions Contract (ACC) when the project completes conversion. HUD has made instructions for submitting a Removal Application into PIC available at [www.hud.gov/rad](http://www.hud.gov/rad).<sup>1</sup> Failure to submit a Removal application into PIC will result in a suspension of the CHAP and a revocation if not corrected within a reasonable time period. Contact your PIH Field Office if you have any questions about this submission.

As the award is a conditional commitment by HUD, HUD reserves the right to revoke or amend its commitment at any time prior to closing if HUD, in its sole judgment, determines that any of the following conditions are present:

- A. any of the contract units were not eligible for selection;
- B. the proposed conversion is not or will not be financially feasible;
- C. the Owner fails to meet any applicable deadline;
- D. the Owner fails to cooperate;
- E. there is any violation of program rules, including fraud; or
- F. the terms of the conversion would be inconsistent with fair housing and civil rights laws or a fair housing or civil rights court order, settlement agreement, or voluntary compliance agreement.

This award shall be interpreted and implemented in accordance with all statutory requirements, and with all HUD requirements, including amendments or changes in HUD requirements, the Notice, and all other applicable RAD guidance.

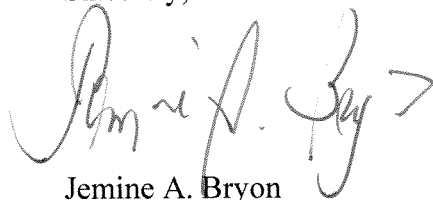
As you start the process of conversion, we urge you to continue to maintain an open dialogue with your residents and local officials. If you have any questions or concerns regarding

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<sup>1</sup> See [http://portal.hud.gov/hudportal/documents/huddoc?id=RADPICinventory\\_removal.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=RADPICinventory_removal.pdf)

the conversion process or fulfilling the CHAP Milestones, please contact your RAD Transaction Manager.

Sincerely,

A handwritten signature in black ink, appearing to read "Jemine A. Bryon". The signature is fluid and cursive, with a long horizontal stroke at the end.

Jemine A. Bryon  
General Deputy Assistant Secretary  
Office of Public and Indian Housing

Enclosure

CC: Bulmaro Cruz

**EXHIBIT A**

**IDENTIFICATION OF UNITS (“CONTRACT UNITS”)  
BY SIZE AND APPLICABLE CONTRACT RENTS**

The Contract Rents below for the subject project are based on Fiscal Year 2014 Federal Appropriations and assumptions regarding applicable rent caps. The final RAD contracts rents, which will be reflected in the RAD HAP contract, will be based on Fiscal Year 2014 Federal Appropriations, as well as applicable program rent caps and Operating Cost Adjustment Factors (OCAFs), and, as such, may change. In addition, prior to conversion, the PHA must provide HUD updated utility allowances to be included in the HAP contract.

**Existing PIC Development Number: TX011000002**

**PIC Development Number for Tracking Purposes Only: TX011000002B**

**New Project Name (for tracking purposes only): RUSSELL TERRACE B**

Number of Contract Units	Number of Bedrooms	Contract Rent	Utility Allowance	Gross Rent
12	1	\$396	\$79	\$475
16	2	\$498	\$99	\$597
10	3	\$654	\$124	\$778

Please note that this rent schedule includes the 2015 and 2016 OCAF adjustments that the PHA is eligible for, and will be confirmed during the Financing Plan review.





**TO:** TOM GOURIS, MARNI HOLLOWAY, RAQUEL MORALES, COLTON SANDERS

**FROM:** LAREDO HOUSING AUTHORITY (LHA) THROUGH RAQUEL FAVELA, DIRECTOR,  
NATIONAL DEVELOPMENT COUNCIL

**CC:** Jose L. Ceballos, LHA Board Chairman; Melissa Ortiz, Interim/Acting LHA CEO; Rod Solomon; Doug Poneck; Mark D. Foster

**DATE:** September 22, 2016

**RE:** Supplement to LHA Request for Non-Material Amendment and Waiver: Casa Verde

On July 26, 2016, the Laredo Housing Authority (LHA) requested (1) a non-material amendment to allow use of Rental Assistance Demonstration (RAD) rather than public housing operating subsidy, and (2) waiver of the Qualified Allocation Plan (QAP) provision otherwise requiring no less than 25 percent of the proposed units at Casa Verde to be public housing units, so that no less than 25% can be RAD units (attached for reference). Discussions with TDHCA staff have indicated that more information would be helpful as to the continued eligibility of the award for the at-risk set-aside.

In summary, 138 9% tax credit units were approved for Casa Verde based on LHA's proposed demolition of 200 public housing units at Russell Terrace. After HUD did not approve that demolition LHA sought and promptly received from HUD two RAD awards to fully dispose of and rehabilitate or reconstruct Russell Terrace units, based on a priority category for developments "in imminent danger of losing financing...(e.g., as evidenced by a 9% tax credit award)". The RAD awards included 162 units for an on-site disposition of the units to a for-profit entity that would use equity from 4% tax credits and other sources to rehabilitate the property, and 38 units for the new construction development at Casa Verde. In recognition of the timing constraints, HUD has expedited approval of the site and the necessary PHA Plan amendment and review of the RAD Financing Plan with the goal that Casa Verde soon can proceed to closing.

Under the original plan, the 200 Russell Terrace public housing units would have replaced by eligibility for tenant protection vouchers in connection with units to be demolished and retention of the 38 public housing subsidies for Casa Verde. Instead, the 200 public housing units now would be replaced with 162 RAD units for Russell Terrace and 38 RAD units for Casa Verde. The 38 Russell Terrace units for which subsidy is being transferred to support RAD at Casa Verde will receive no public housing or RAD subsidy allocation; any subsidy to support those units in the future would have to come from LHA's current voucher pool or other sources

The proposed disposition and rehabilitation and RAD commitments for Russell Terrace units meet each element of the statutory at-risk requirement at Section 2306.6702(a)(5)(B) of the Texas Government Code. The first requirement is that the development "proposes to rehabilitate or reconstruct units..." - 162 units, more than the entire tax credit award for Casa Verde, will be rehabilitated at Russell Terrace. The other 38 units will be reconstructed at Casa Verde. While TDHCA's Uniform Multifamily Rules definition of Reconstruction requires some demolition and reconstruction on a Development Site, that definition is

inapplicable to and does not prevent a scenario where the reconstruction will occur on a different site; otherwise, TDHCA could not have approved Casa Verde to begin with. If a waiver of this regulatory definition of Reconstruction nevertheless is judged to be required, a waiver is justified because the proposed project to be produced has not changed and the use of RAD and disposition rather than demolition on the Russell Terrace site was unforeseen at the time of application and approval.

The second requirement is that the units either are owned by a public housing authority (PHA) and receive public housing operating subsidy; received such assistance and are proposed to be disposed of or demolished by a PHA; or receive or will receive assistance through RAD. While Russell Terrace no longer will be demolished, Russell Terrace units will be disposed of to a for-profit entity as part of the 4% tax credit rehabilitation transaction. 200 units will receive RAD rather than public housing subsidy. Russell Terrace qualifies as an at-risk development on either of these statutory grounds (disposition or RAD), both of which are addressed in the QAP through reference to the statute rather than more specific implementing provisions in the QAP. TDHCA recently accepted RAD as the basis for at-risk qualification for a 2015 tax credit award and granted approval of a similar request to this one.

The LHA's request appropriately should be treated as a non-material application amendment. The proposed development to be supported by 9% tax credits at Casa Verde has not changed, except that RAD subsidy will be substituted for public housing operating subsidy for the 38 low-income units. None of the categories described in Section 10.405(a)(3) of the Uniform Multifamily Rules that would require a material amendment are applicable to the proposed changes in the application. If the amendment were to be considered material, however, it should be approved because the amendment would not have changed the scoring so as to affect the funding award, the need for the amendment (HUD's decision not to approve Russell Terrace demolition) was not reasonably foreseeable or preventable at the time the Application was submitted as TDHCA found when granting an extension to the 10% Test deadline, and in any event there is good cause to approve the amendment to allow this important potential affordable housing resource to be produced.

As has been the case from the outset, Casa Verde will provide much-needed affordable housing in a favorable location in Laredo. For all of the reasons discussed above, TDHCA should approve the proposed modifications and allow Casa Verde and with it the on-site rehabilitation of Russell Terrace to move forward.



U.S. Department of Housing and Urban Development  
San Antonio Field Office, Region VI  
Office of Public Housing  
Hipolito Garcia Post Office and Courthouse  
615 E. Houston Street, Suite 347  
San Antonio, Texas 78205  
Phone (210) 475-6860 Fax (210) 472-6817  
[www.hud.gov](http://www.hud.gov) [www.espanol.hud.gov](http://www.espanol.hud.gov)

SEP - 8 2016

Ms. Melissa Ortiz  
Interim Executive Director  
Laredo Housing Authority  
2000 San Francisco Avenue  
Laredo, TX 78040

Dear Ms. Ortiz:

**SUBJECT: Laredo HA 2016 Rental Assistance Demonstration (RAD) Annual  
PHA Plan Amendment**


This letter is to inform you that Laredo HA's 2016 RAD Annual PHA Plan amendment submission for the fiscal year beginning April 1, 2016, is approved. This approval does not constitute an endorsement of the strategies and policies outlined in that plan. In providing assistance to families under programs covered, Laredo HA will comply with the rules, standards, and policies established in that approved plan. All required attachments and documents must be made available for review and inspection at the principal office of Laredo HA during normal business hours.

The Capital Fund Program dollars, as detailed in the referenced 5 Year Action Plan, will be made available through a separate funds obligation process. These dollars will not be available for drawdown until the obligations have been finalized.

Finally, the final approval of the RAD application will be issued through a separate approval process.

Any questions concerning this correspondence should be directed to Margaret J. Sandoval, Facilities Management Specialist at 210-475-6836.

Sincerely

  
for David Pohler  
Director  
Office of Public Housing

Housing Authority of the City of Laredo  
Rental Assistance Demonstration (RAD)  
and  
Project-Based Voucher (PBV)  
Amendments  
to  
The 2016 Five-Year/Annual PHA Plan

**Rental Assistance Demonstration (RAD) and Project-Based Voucher (PBV) Amendments to the 2016 Five-Year/Annual PHA Plan**

**A. RAD Amendment**

**Introduction**

The Housing Authority of the City of Laredo is amending its 2016 Five-year/Annual PHA Plan because it was a successful applicant in the Rental Assistance Demonstration (RAD). As a result, the Housing Authority of the City of Laredo will be converting to Project Based Vouchers under the guidelines of PIH Notice 2012-32, REV-1 and any successor Notices.

Upon conversion to Project Based Vouchers the Authority will adopt the resident rights, participation, waiting list and grievance procedures listed in Section 1.6 of PIH Notice 2012--32, REV-2 and Joint Housing PIH Notice H-2014-09/PIH 2014-17. These resident rights, participation, waiting list and grievance procedures are appended to this Attachment as Attachment 1. Additionally, the Housing Authority of the City of Laredo certifies that it is currently compliant with all fair housing and civil rights requirements, including those imposed by any remedial orders or agreements (none for the Housing Authority of the City of Laredo).

RAD was designed by HUD to assist in addressing the capital needs of public housing by providing the Housing Authority of the City of Laredo with access to private sources of capital to repair and preserve its affordable housing assets. Please be aware that upon conversion, the Authority’s Capital Fund Budget will be reduced by the pro rata share of Public Housing Developments converted as part of the Demonstration, and that the Housing Authority of the City of Laredo may also borrow funds to address their capital needs. For RAD Application #2 as described below, the PHA will also be contributing Operating Reserves in the amount of \$3,000,000.

**Development Description and Information**

**RAD Application #1**

<b>Name of Public Housing Project</b>	<b>PIC Development ID</b>	<b>Conversion Type</b>	<b>Transfer of Assistance</b>
Russell Terrace	TX011000002	PBV	Yes
<b>Total Units</b>	<b>Pre-RAD Unit Type</b>	<b>Post-RAD Unit Type</b>	<b>Capital Fund Allocation of Development*</b>
38	Family	Family	\$ 52,609.48
<b>Bedroom Type</b>	<b>Number of Units Pre-Conversion</b>	<b>Number of Units Post-Conversion</b>	<b>Change in Number of Units per Bedroom Type and Why</b>
One Bedroom	12	12	No Change
Two Bedroom	16	16	No Change
Three Bedroom	10	10	No Change

\* Calculated as Annual Capital Fund Grant, 2016 Formula Funding by Development (per unit funding), multiplied by total number of units in project.

**RAD Application #2**

<b>Name of Public Housing Project</b>	<b>PIC Development ID</b>	<b>Conversion Type</b>	<b>Transfer of Assistance</b>
Russell Terrace	TX011000002	PBV	No
<b>Total Units</b>	<b>Pre-RAD Unit Type</b>	<b>Post-RAD Unit Type</b>	<b>Capital Fund Allocation of Development *</b>
162	Family	Family	\$224,282.52
<b>Bedroom Type</b>	<b>Number of Units Pre-Conversion</b>	<b>Number of Units Post-Conversion</b>	<b>Change in Number of Units per Bedroom Type and Why</b>
One Bedroom	12	12	No Change
Two Bedroom	48	48	No Change
Three Bedroom	74	74	No Change
Four Bedroom	28	28	No Change

\* Calculated as Annual Capital Fund Grant, 2016 Formula Funding by Development (per unit funding), multiplied by total number of units in project.

There are no proposed changes in the policies that govern eligibility, admissions, selection and occupancy of the RAD units apart from what is required by RAD. LHA will select households for the transfer of assistance to Casa Verde under Application #1 by honoring the preferences of households who want to move there to the extent possible. If the number of such households exceeds the units available by bedroom size, LHA proposes to give preference first to any households who have particular needs to relocate there and second by lottery. LHA will discuss those proposals further with the Resident Council and reserves the right to change the proposals in consultation with the Resident Council.

The LHA certifies that the RAD conversions will comply with all applicable site selection and neighborhood review standards and that all appropriate procedures have been or will be followed. For Casa Verde, HUD approved the site when the plan was to locate 38 public housing units there.

**PBV Resident Rights, Participation, Waiting List and Grievance Procedures**

Please see Exhibit A, PIH Notice 2012-32, REV-2 Section 1.6 C and Section 1.6 D, and Exhibit B, Joint Housing/PIH Notice 2014-09/PIH 2014-17, which are attached and incorporated into this amendment to the 2016 Five Year/ Plan by reference.

**Revised definition of “Substantial Deviation” from PHA Plan**

To facilitate the RAD conversions, the following items are excluded from the definition of Substantial Deviation:



- 1.** The decision to convert to either Project Based Rental Assistance or Project Based Voucher Assistance;
  - a.** Changes to the Capital Fund Budget produced as a result of each approved RAD Conversion, regardless of whether the proposed conversion will include use of additional Capital Funds;
  - b.** Changes to the construction and rehabilitation plan for each approved RAD conversion; and
  - c.** Changes to the financing structure for each approved RAD conversion.

## B. PBV Amendment

The recently-enacted Housing Opportunity through Modernization Act of 2016 adds a new Section 8(o)(13)(N) to the United States Housing Act of 1937 that reads as follows:

“(N) STRUCTURE OWNED BY AGENCY.—A public housing agency engaged in an initiative to improve, develop, or replace a public housing property or site may attach assistance to an existing, newly constructed, or rehabilitated structure **in which the agency has an ownership interest or which the agency has control of without following a competitive process**, provided that the agency has notified the public of its intent through its public housing agency plan and subject to the limitations and requirements of this paragraph.”

Accordingly, subject to any implementation requirements for the new statute, **the Housing Authority of the City of Laredo is amending its 2016 Five-year/Annual PHA Plan to notify the public of its intent to attach PBV assistance to 38 units in existing structures at the Russell Terrace site that no longer will be public housing after the location of 38 RAD units at Casa Verde.**

Also, **it is possible although not currently anticipated that to allow Casa Verde to proceed in a timely fashion, LHA might need to commit 38 PBV units to Casa Verde with the intention that HUD would approve a later substitution of RAD units.** LHA is including this possibility in the amendment so that it is not precluded if it later becomes necessary and feasible.

# **EXHIBIT A**

### **1.6 C. PBV Resident Rights, Participation.**

1. **No Re-screening of Tenants upon Conversion.** Pursuant to the RAD statute, at conversion, current households are not subject to rescreening, income eligibility, or income targeting. Consequently, current households will be grandfathered for conditions that occurred prior to conversion but will be subject to any ongoing eligibility requirements for actions that occur after conversion. For example, a unit with a household that was over-income at time of conversion would continue to be treated as an assisted unit. Thus, 24 CFR § 982.201, concerning eligibility and targeting, will not apply for current households.<sup>24</sup> Once that remaining household moves out, the unit must be leased to an eligible family. MTW agencies may not alter this requirement.
2. **Right to Return.** See section 1.4.A.4 (b) regarding a resident’s right to return.
3. **Renewal of Lease.** Since publication of the PIH Notice 2012-32 Rev 1, the regulations under 24 CFR § 983.257(b)(3) have been amended requiring Project Owners to renew all leases upon lease expiration, unless cause exists. MTW agencies may not alter this requirement.
4. **Phase-in of Tenant Rent Increases.** If a tenant’s monthly rent increases by more than the greater of 10 percent or \$25 purely as a result of conversion, the rent increase will be phased in over 3 or 5 years. To implement this provision, HUD is specifying alternative requirements for section 3(a)(1) of the Act, as well as 24 CFR § 983.3 (definition of “total tenant payment” (TTP)) to the extent necessary to allow for the phase-in of tenant rent increases. A PHA must create a policy setting the length of the phase in period at three years, five years or a combination depending on circumstances. For example, a PHA may create a policy that uses a three year phase in for smaller increases in rent and a five year phase-in for larger increases in rent. This policy must be in place at conversion and may not be modified after conversion.

The method described below explains the set percentage-based phase-in a Project Owner must follow according to the phase-in period established. For purposes of this section “standard TTP” refers to the TTP calculated in accordance with regulations at 24 CFR §5.628 and the “most recently paid TTP” refers to the TTP recorded on line 9j of the family’s most recent HUD Form 50058. If a family in a project converting from Public Housing to PBV was paying a flat rent immediately prior to conversion, the PHA should use the flat rent amount to calculate the phase-in amount for Year 1, as illustrated below.

- Three Year Phase-in:

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<sup>24</sup> These protections (as well as all protections in this Notice for current households) apply when in order to facilitate repairs a household is relocated following the conversion and subsequently returns to the property, even if they are considered a “new admission” upon return.

- Year 1: Any recertification (interim or annual) performed prior to the second annual recertification after conversion – 33% of difference between most recently paid TTP or flat rent and the standard TTP
- Year 2: Year 2 Annual Recertification (AR) and any Interim Recertification (IR) prior to Year 3 AR – 66% of difference between most recently paid TTP and the standard TTP
- Year 3: Year 3 AR and all subsequent recertifications – Full standard TTP
  
- Five Year Phase in:
  - Year 1: Any recertification (interim or annual) performed prior to the second annual recertification after conversion – 20% of difference between most recently paid TTP or flat rent and the standard TTP
  - Year 2: Year 2 AR and any IR prior to Year 3 AR – 40% of difference between most recently paid TTP and the standard TTP
  - Year 3: Year 3 AR and any IR prior to Year 4 AR – 60% of difference between most recently paid TTP and the standard TTP
  - Year 4: Year 4 AR and any IR prior to Year 5 AR – 80% of difference between most recently paid TTP and the standard TTP
  - Year 5 AR and all subsequent recertifications – Full standard TTP

***Please Note:*** In either the three year phase-in or the five-year phase-in, once the standard TTP is equal to or less than the previous TTP, the phase-in ends and tenants will pay full TTP from that point forward. MTW agencies may not alter this requirement.

**5. Family Self Sufficiency (FSS) and Resident Opportunities and Self Sufficiency Service Coordinator (ROSS-SC) programs.** Public Housing residents that are current FSS participants will continue to be eligible for FSS once their housing is converted under RAD, and PHAs will be allowed to use any remaining PH FSS funds, to serve those FSS participants who live in units converted by RAD. Due to the program merger between PH FSS and HCV FSS that took place pursuant to the FY14 Appropriations Act (and was continued in the FY15 Appropriations Act), no special provisions are required to continue serving FSS participants that live in public housing units converting to PBV under RAD.

However, PHAs should note that there are certain FSS requirements (e.g. escrow calculation and escrow forfeitures) that apply differently depending on whether the FSS participant is a participant under the HCV program or a public housing resident, and PHAs must follow such requirements accordingly. All PHAs will be required to administer the FSS program in accordance with FSS regulations at 24 CFR Part 984, the participants’ contracts of participation, and the alternative requirements established in the “Waivers and Alternative Requirements for the FSS Program” Federal Register notice,

published on December 29, 2014, at 79 FR 78100.<sup>25</sup> Further, upon conversion to PBV, already escrowed funds for FSS participants shall be transferred into the HCV escrow account and be considered TBRA funds, thus reverting to the HAP account if forfeited by the FSS participant.

Current ROSS-SC grantees will be able to finish out their current ROSS-SC grants once their housing is converted under RAD. However, once the property is converted, it will no longer be eligible to be counted towards the unit count for future ROSS-SC grants, nor will its residents be eligible to be served by future ROSS-SC grants, which, by statute, can only serve public housing residents.

6. **Resident Participation and Funding.** In accordance with Attachment 1B, residents of Covered Projects with converted PBV assistance will have the right to establish and operate a resident organization for the purpose of addressing issues related to their living environment and be eligible for resident participation funding.
7. **Resident Procedural Rights.** The following items must be incorporated into both the Section 8 Administrative Plan and the Project Owner's lease, which includes the required tenancy addendum, as appropriate. Evidence of such incorporation may be requested by HUD for purposes of monitoring the program.
  - i. **Termination Notification.** HUD is incorporating additional termination notification requirements to comply with section 6 of the Act for public housing projects that convert assistance under RAD. In addition to the regulations at 24 CFR § 983.257 related to Project Owner termination of tenancy and eviction (which MTW agencies may not alter) the termination procedure for RAD conversions to PBV will require that PHAs provide adequate written notice of termination of the lease which shall not be less than:
    - a. A reasonable period of time, but not to exceed 30 days:
      - i. If the health or safety of other tenants, PHA employees, or persons residing in the immediate vicinity of the premises is threatened; or
      - ii. In the event of any drug-related or violent criminal activity or any felony conviction;

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<sup>25</sup> The funding streams for the PH FSS Program and the HCV FSS Program were first merged pursuant to the FY 2014 appropriations act. As a result, PHAs can serve both PH residents and HCV participants, including PBV participants, with FSS funding awarded under the FY 2014 FSS Notice of Funding Availability (FSS NOFA) and any other NOFA under which the combination of funds remains in the applicable appropriations act. For PHAs that had managed both programs separately and now have a merged program, a conversion to PBV should not impact their FSS participants.



- b. 14 days in the case of nonpayment of rent; and
- c. 30 days in any other case, except that if a State or local law provides for a shorter period of time, such shorter period shall apply.

**ii. Grievance Process.** Pursuant to requirements in the RAD Statute, HUD is establishing additional procedural rights to comply with section 6 of the Act. For issues related to tenancy and termination of assistance, PBV program rules require the Project Owner to provide an opportunity for an informal hearing, as outlined in 24 CFR § 982.555. RAD will specify alternative requirements for 24 CFR § 982.555(b) in part, which outlines when informal hearings are not required, to require that:

**a.** In addition to reasons that require an opportunity for an informal hearing given in 24 CFR § 982.555(a)(1)(i)-(vi),<sup>26</sup> an opportunity for an informal hearing must be given to residents for any dispute that a resident may have with respect to a PHA (as owner) action in accordance with the individual's lease or the contract administrator in accordance with RAD PBV requirements that adversely affect the resident's rights, obligations, welfare, or status.

**i.** For any hearing required under 24 CFR § 982.555(a)(1)(i)-(vi), the contract administrator will perform the hearing, as is the current standard in the program.

**ii.** For any additional hearings required under RAD, the Project Owner will perform the hearing.

**b.** There is no right to an informal hearing for class grievances or to disputes between residents not involving the Project Owner or contract administrator.

**c.** The Project Owner gives residents notice of their ability to request an informal hearing as outlined in 24 CFR § 982.555(c)(1) for informal hearings that will address circumstances that fall outside of the scope of 24 CFR § 982.555(a)(1)(i)-(vi).

**d.** The Project Owner provides opportunity for an informal hearing before an eviction.

Current PBV program rules require that hearing procedures must be outlined in the PHA's Section 8 Administrative Plan.

**8. Earned Income Disregard (EID).** Tenants who are employed and are currently receiving the EID exclusion at the time of conversion will continue to receive the EID

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<sup>26</sup> § 982.555(a)(1)(iv) is not relevant to RAD as the tenant-based certificate has been repealed.

after conversion, in accordance with regulations at 24 CFR § 5.617. Upon the expiration of the EID for such families, the rent adjustment shall not be subject to rent phase-in, as described in Section 1.6.C.4; instead, the rent will automatically rise to the appropriate rent level based upon tenant income at that time.

Under the Housing Choice Voucher program, the EID exclusion is limited only to persons with disabilities (24 CFR § 5.617(b)). In order to allow all tenants (including non-disabled persons) who are employed and currently receiving the EID at the time of conversion to continue to benefit from this exclusion in the PBV project, the provision in section 5.617(b) limiting EID to disabled persons is waived. The waiver, and resulting alternative requirement, apply only to tenants receiving the EID at the time of conversion. No other tenant (e.g., tenants who at one time received the EID but are not receiving the EID exclusion at the time of conversion e.g., due to loss of employment; tenants that move into the property following conversion, etc.) is covered by this waiver.

9. **Jobs Plus.** Jobs Plus grantees awarded FY14 and future funds that convert the Jobs Plus target projects(s) under RAD will be able to finish out their Jobs Plus period of performance at that site unless significant re-location and/or change in building occupancy is planned. If either is planned at the Jobs Plus target project(s), HUD may allow for a modification of the Jobs Plus work plan or may, at the Secretary's discretion, choose to end the Jobs Plus program at that project.
10. **When Total Tenant Payment Exceeds Gross Rent.** Under normal PBV rules, the PHA may only select an occupied unit to be included under the PBV HAP contract if the unit's occupants are eligible for housing assistance payments (24 CFR §983.53(d)). Also, a PHA must remove a unit from the contract when no assistance has been paid for 180 days because the family's TTP has risen to a level that is equal to or greater than the contract rent, plus any utility allowance, for the unit (i.e., the Gross Rent)) (24 CFR §983.258).

Since the rent limitation under this Section of the Notice may often result in a family's TTP equaling or exceeding the gross rent for the unit, for current residents (i.e residents living in the public housing property prior to conversion), HUD is waiving both of these provisions and requiring that the unit for such families be placed on and/or remain under the HAP contract when TTP equals or exceeds than the Gross Rent. Further, HUD is establishing the alternative requirement that the rent to owner for the unit equal the family's TTP until such time that the family is eligible for a housing assistance payment. HUD is waiving as necessary to implement this alternative provision, the provisions of Section 8(o)(13)(H) of the Act and the implementing regulations at 24 CFR 983.301 as modified by Section 1.6.B.5 of this Notice.<sup>27</sup> In such cases, the resident is considered a

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<sup>27</sup> For example, a public housing family residing in a property converting under RAD has a TTP of \$600. The property has an initial Contract Rent of \$500, with a \$50 Utility Allowance. Following conversion, the residents is still responsible for paying \$600 in tenant rent and utilities.

participant under the program and all of the family obligations and protections under RAD and PBV apply to the resident. Likewise, all requirements with respect to the unit, such as compliance with the HQS requirements, apply as long as the unit is under HAP contract. Assistance may subsequently be reinstated if the tenant becomes eligible for assistance. The PHA is required to process these individuals through the Form-50058 submodule in PIC.

Following conversion, 24 CFR §983.53(d) applies, and any new families referred to the RAD PBV project must be initially eligible for a HAP payment at admission to the program, which means their TTP may not exceed the gross rent for the unit at that time. Further, a PHA must remove a unit from the contract when no assistance has been paid for 180 days. If units are removed from the HAP contract because a new admission's TTP comes to equal or exceed the gross rent for the unit and if the project is fully assisted, HUD is imposing an alternative requirement that the PHA must reinstate the unit after the family has vacated the property; and, if the project is partially assisted, the PHA may substitute a different unit for the unit on the HAP contract in accordance with 24 CFR §983.207 or, where "floating" units have been permitted, Section 1.6.B.10 of this Notice.

11. **Under-Occupied Unit.** If a family is in an under-occupied unit under 24 CFR 983.259 at the time of conversion, the family may remain in this unit until an appropriate-sized unit becomes available in the Covered Project. When an appropriate sized unit becomes available in the Covered Project, the family living in the under occupied unit must move to the appropriate-sized unit within a reasonable period of time, as determined by the administering Voucher Agency. In order to allow the family to remain in the underoccupied unit until an appropriate-sized unit becomes available in the Covered Project, 24 CFR 983.259 is waived. MTW agencies may not modify this requirement.

#### **1.6 D. PBV: Other Miscellaneous Provisions:**

1. **Access to Records, Including Requests for Information Related to Evaluation of Demonstration.** PHAs must agree to any reasonable HUD request for data to support program evaluation, including but not limited to project financial statements, operating data, Choice-Mobility utilization, and rehabilitation work. Please see Appendix IV for reporting units in Form HUD-50058.
2. **Additional Monitoring Requirement.** The PHA's Board must approve the operating budget for the Covered Project annually in accordance with HUD requirements.<sup>28</sup>

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<sup>28</sup> For PBV conversions that are not FHA-insured, a future HUD notice will describe project financial data that may be required to be submitted by a PBV owner for purposes of the evaluation, given that PBV projects do not submit annual financial statements to HUD/REAC.

3. **Davis-Bacon Act and Section 3 of the Housing and Urban Development Act of 1968 (Section 3).** This section has been moved to 1.4.A.13 and 1.4.A.14.
4. **Establishment of Waiting List.** 24 CFR § 983.251 sets out PBV program requirements related to establishing and maintaining a voucher-wide, PBV program-wide, or site-based waiting list from which residents for the Covered Project will be admitted. These provisions will apply unless the project is covered by a remedial order or agreement that specifies the type of waiting list and other waiting list policies. The PHA shall consider the best means to transition applicants from the current public housing waiting list, including:
  - i. Transferring an existing site-based waiting list to a new site-based waiting list. If the PHA is transferring the assistance to another neighborhood, the PHA must notify applicants on the wait-list of the transfer of assistance, and on how they can apply for residency at the new project site or other sites. Applicants on a project specific waiting list for a project where the assistance is being transferred shall have priority on the newly formed waiting list for the new project site in accordance with the date and time of their application to the original project's waiting list.
  - ii. Informing applicants on the site-based waiting list on how to apply for a PBV program-wide or HCV program-wide waiting list.
  - iii. Informing applicants on a public housing community-wide waiting list on how to apply for a voucher-wide, PBV program-wide, or site-based waiting list. If using a site-based waiting list, PHAs shall establish a waiting list in accordance with 24 CFR § 903.7(b)(2)(ii)-(iv) to ensure that applicants on the PHA's public housing community-wide waiting list have been offered placement on the converted project's initial waiting list. In all cases, PHAs have the discretion to determine the most appropriate means of informing applicants on the public housing community-wide waiting list given the number of applicants, PHA resources, and admissions requirements of the projects being converted under RAD. A PHA may consider contacting every applicant on the public housing waiting list via direct mailing; advertising the availability of housing to the population that is less likely to apply, both minority and nonminority groups, through various forms of media (e.g., radio stations, posters, newspapers) within the marketing area; informing local non-profit entities and advocacy groups (e.g., disability rights groups); and conducting other outreach as appropriate. Applicants on the agency's public housing community-wide waiting list who wish to be placed onto the newly-established site-based waiting list must be done so in accordance with the date and time of their

original application to the centralized public housing waiting list. Any activities to contact applicants on the public housing waiting list must be conducted in accordance with the requirements for effective communication with persons with disabilities at 24 CFR § 8.6 and with the obligation to provide meaningful access for persons with limited English proficiency (LEP).<sup>29</sup>

A PHA must maintain any site-based waiting list in accordance with all applicable civil rights and fair housing laws and regulations unless the project is covered by a remedial order or agreement that specifies the type of waiting list and other waiting list policies.

To implement this provision, HUD is specifying alternative requirements for 24 CFR § 983.251(c)(2). However, after the initial waiting list has been established, the PHA shall administer its waiting list for the converted project in accordance with 24 CFR §983.251(c).

5. **Mandatory Insurance Coverage.** The Covered Project shall maintain at all times commercially available property and liability insurance to protect the project from financial loss and, to the extent insurance proceeds permit, promptly restore, reconstruct, and/or repair any damaged or destroyed project property.
6. **Agreement Waiver.** This section has been moved to 1.6.(B)(7).
7. **Future Refinancing.** Project Owners must receive HUD approval for any refinancing or restructuring of permanent debt during the HAP contract term, to ensure the financing is consistent with long-term preservation. (Current lenders and investors are also likely to require review and approval of refinancing of the primary permanent debt.)
8. **Administrative Fees for Public Housing Conversions during Transition Period.** For the remainder of the Calendar Year in which the HAP Contract is effective (i.e. “transition period”), RAD PBV projects will be funded with public housing funds. For example, if the project’s assistance converts effective July 1, 2015, the public housing Annual Contributions Contract (ACC) between the PHA and HUD will be amended to reflect the number of units under HAP contract, but will be for zero dollars, and the RAD PBV contract will be funded with public housing money for July through December 2015. Since TBRA is not the source of funds, PHAs should not report leasing and expenses into VMS during this period, and PHAs will not receive section 8 administrative fee funding for converted units during this time.

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<sup>29</sup> For more information on serving persons with LEP, please see HUD’s Final guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (72 FR 2732), published on January 22, 2007.

For fiscal years 2014 and 2015, PHAs operating HCV program received administrative fees for units under a HAP contract, consistent with recent appropriation act references to "section 8(q) of the [United States Housing Act of 1937] and related appropriations act provisions in effect immediately before the Quality Housing and Responsibility Act of 1998" and 24 CFR § 982.152(b). During the transition period mentioned in the preceding paragraph, these provisions are waived, and PHAs will not receive section 8 ongoing administrative fees for PBV RAD units.

After this transition period, the section 8 ACC will be amended to include section 8 funding that corresponds to the units covered by the section 8 ACC. At that time, the regular section 8 administrative fee funding provisions will apply.

9. **Choice-Mobility.** One of the key features of the PBV program is the mobility component, which provides that if the family has elected to terminate the assisted lease at any time after the first year of occupancy in accordance with program requirements, the PHA must offer the family the opportunity for continued tenant-based rental assistance, in the form of either assistance under the voucher program or other comparable tenant-based rental assistance.

If as a result of participation in RAD a significant percentage of the PHA's HCV program becomes PBV assistance, it is possible for most or all of a PHA's turnover vouchers to be used to assist those RAD PBV families who wish to exercise mobility. While HUD is committed to ensuring mobility remains a cornerstone of RAD policy, HUD recognizes that it remains important for the PHA to still be able to use tenant based vouchers to address the specific housing needs and priorities of the community. Therefore, HUD is establishing an alternative requirement for PHAs where, as a result of RAD, the total number of PBV units (including RAD PBV units) under HAP contract administered by the PHA exceeds 20 percent of the PHA's authorized units under its HCV ACC with HUD.

The alternative mobility policy provides that an eligible voucher agency would not be required to provide more than three-quarters of its turnover vouchers in any single year to the residents of Covered Projects. While a voucher agency is not required to establish a voucher inventory turnover cap, if such a cap is implemented, the voucher agency must create and maintain a waiting list in the order in which the requests from eligible households were received. In order to adopt this provision, this alternative mobility policy must be included in an eligible PHA's administrative plan.

To effectuate this provision, HUD is providing an alternative requirement to Section 8(o)(13)(E) and 24 CFR part 983.261(c). Please note that this alternative requirement does not apply to PBVs entered into outside of the context of RAD. MTW agencies may not alter this requirement.



- 10. Reserve for Replacement.** The Project Owner shall establish and maintain a replacement reserve in an interest-bearing account to aid in funding extraordinary maintenance and repair and replacement of capital items in accordance with applicable regulations. The reserve must be built up to and maintained at a level determined by HUD to be sufficient to meet projected requirements. For FHA transactions, Replacement Reserves shall be maintained in accordance with the FHA Regulatory Agreement. For all other transactions, Replacement Reserves shall be maintained in a bank account covered under a General Depository Agreement (HUD-51999) or similar instrument, as approved by HUD, where funds will be held by the Project Owner or mortgagee and may be drawn from the reserve account and used subject to HUD guidelines and as directed by HUD.

# **EXHIBIT B**



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-  
FEDERAL HOUSING COMMISSIONER

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**Special Attention of:**

Public Housing Agencies  
Public Housing Hub Office Directors  
Public Housing Program Center Directors  
Regional Directors  
Field Office Directors  
RAD Transaction Managers

**Notice H 2014-09**  
PIH 2014-17

Issued: July 14, 2014

This notice remains in effect until amended,  
superseded, or rescinded.

Cross Reference: PIH Notice 2012-32 (HA)  
REV 1

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**Subject: Relocation Requirements under the Rental Assistance Demonstration (RAD) Program, Public Housing in the First Component**

**1. Purpose**

This Notice provides public housing agencies (PHAs)<sup>1</sup> and their partners with information and resources on applicable program and relocation assistance requirements when planning for or implementing resident moves as a result of a **Rental Assistance Demonstration (RAD)** conversion<sup>2</sup> under the first component of the demonstration.<sup>3</sup> This Notice provides guidance on RAD relocation requirements and requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (URA), as they relate to the public housing conversion process under the first component.<sup>4</sup>

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<sup>1</sup> This Notice always uses the term “PHA” to refer to the owner of the project prior to and after the RAD conversion, even though, in some cases, the owner of the converted RAD project may be another public entity, a non-profit organization, or other owner (e.g., low-income housing tax credit owner). In addition, this Notice uses “PHA” to refer to the “displacing agency,” a URA term that means the agency or person that carries out a program or project, which will cause a resident to become a displaced person. Projects vary and, for any specific task described in this Notice, may require substituting in a reference to a party that is more appropriate for a specific project.

<sup>2</sup> The content of this Notice should not be relied upon in carrying out any other activities funded under any other HUD program, except where specifically directed by HUD.

<sup>3</sup> The “first component” of RAD allows public housing and Moderate Rehabilitation properties to convert assistance; the “second component” refers to conversion of Rent Supplement, Rental Assistance Payment, and Moderate Rehabilitation properties upon contract expiration or termination.

<sup>4</sup> Relocation concerns and URA requirements apply to both components of RAD. This notice provides guidance only as to the first component.

Relocation assistance provided pursuant to public housing and RAD requirements is broader than URA relocation assistance requirements. Not all specific situations requiring relocation under RAD may trigger URA assistance requirements. In addition, whereas all qualifying residents<sup>5</sup> of a converting public housing project are eligible for relocation assistance under RAD, some residents or household members may not meet the statutory and regulatory requirements for eligibility under URA. This Notice supersedes PIH Notice 2012-32 (HA), REV-1, with respect to relocation matters. This Notice also specifically addresses when relocation may begin (see Section 9 below). As necessary, the Department will issue additional guidance on relocation issues and requirements as they relate to RAD.

## **2. Background**

**RAD allows public housing properties to convert assistance to long-term project-based Section 8 contracts. In many cases, a RAD project may require relocation of residents when properties undergo repairs, are demolished and rebuilt, or when the assistance is transferred to another site.** PIH Notice 2012-32 REV-1 (see also FR Notice 5630-N-05, 78 FR 39759-39763 (July 2, 2013)) details RAD program requirements.

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (URA) is a federal law that establishes minimum standards for federally-funded programs and projects that include the acquisition of real property (real estate) and/or displace persons from their homes, businesses, or farms as a result of acquisition, rehabilitation, or demolition of real property.<sup>6</sup> The URA will apply to acquisitions of real property and relocation of persons from real property that occurs as a direct result of acquisition, rehabilitation, or demolition for a project that involves conversion of assistance to Project-Based Voucher (PBV) or Project-Based Rental Assistance (PBRA) programs under RAD.

Additionally, all relocation conducted as part of a RAD conversion and all relocation assistance provided under URA must be consistent with applicable fair housing and civil rights laws, including, but not limited to, the Fair Housing Act, Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973.

Because each RAD proposal varies in its scope, this Notice may not address each PHA's specific circumstances. RAD PHAs and participants should carefully review the regulations, notices, and guidance material referenced in this Notice. Any questions related to the applicability of these requirements should be referred to the RAD Transaction Managers (TM) or may be emailed to [rad@hud.gov](mailto:rad@hud.gov).

## **3. Applicable Legal Authorities**

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<sup>5</sup> The term "resident" as used in this Notice refers to eligible resident families of public housing residing in a property applying for participation in RAD or a property that undergoes a conversion of assistance through RAD.

<sup>6</sup> HUD Handbook 1378 (Tenant Assistance, Relocation, and Real Property Acquisition), available at: [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning/library/relocation/policyandguidance/handbook1378](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/library/relocation/policyandguidance/handbook1378).

- RAD: Consolidated and Further Continuing Appropriations Act of 2012 (Public Law 112-55, approved November 18, 2011), with the implementing PIH Notice 2012-32, REV-1
- URA statute and implementing regulations: 49 CFR part 24
- FHEO: Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Fair Housing Act
- Section 104(d) of the Housing and Community Development Act of 1974, statute and implementing regulations (if CDBG and/or HOME funds are used): 24 CFR part 42, subpart C

#### **4. Relocation Planning**

If there is a possibility that residents will be relocated as a result of acquisition, demolition, or rehabilitation for a project converting under RAD, PHAs must undertake a planning process in conformance with URA in order to minimize the adverse impact of relocation (49 CFR 24.205(a)).

While a written Relocation Plan is not a requirement under RAD or URA, the Department strongly encourages PHAs to prepare a written Relocation Plan, both to establish their relocation process and to communicate this process consistently and effectively to all relevant stakeholders. Appendix 1 contains recommended elements of a Relocation Plan.

The following presents a general sequencing of relocation planning activities within the RAD milestones:

<b>Stage</b>	<b>Activities</b>
1. Prior to submission of RAD application	<ul style="list-style-type: none"> <li>• Determine potential need for relocation</li> <li>• Meet with residents to discuss plans, communicate right to return, and solicit feedback</li> <li>• Provide <i>General Information Notice</i> (GIN) to residents</li> <li>• Survey residents to prepare Relocation Plan and relocation process cost estimate</li> </ul>
2. After receipt of the Commitment to Enter into a HAP Contract (CHAP) Award	<ul style="list-style-type: none"> <li>• Prepare Significant Amendment to PHA Plan</li> <li>• Assess and refine need for relocation</li> <li>• Develop a Relocation Plan (See Appendix 1 for recommended content)</li> <li>• Identify relocation housing options</li> </ul>
3. Preparing Financing Plan (due to RAD Transaction Manager no later than 180 days following	<ul style="list-style-type: none"> <li>• Budget for relocation expenses</li> <li>• Submit FHEO Accessibility &amp; Relocation checklist (PHAs may submit Relocation Plan along with checklist)</li> </ul>

Stage	Activities
CHAP award)	
4. Receipt of RAD Conversion Commitment (RCC)	<ul style="list-style-type: none"> <li>• The date of issuance of the HUD RCC marks the date of “Initiation of Negotiations” (ION), as defined in the URA (49 CFR 24.2(a)(15))</li> <li>• Provide residents with appropriate notice informing them if they will be relocated and any associated relocation assistance</li> <li>• Meet with residents to describe approved conversion plans and discuss required relocation</li> </ul>
5. Closing/RAD conversion	<ul style="list-style-type: none"> <li>• Generally, resident relocation should not begin until after the date of closing/conversion of assistance under RAD</li> <li>• PHAs must adhere to notification requirements (described in Paragraph 8 of this Notice): generally, a minimum of 30 days for residents to be temporarily relocated for up to a year, and 90 days for permanent relocation</li> <li>• PHAs seeking to move residents prior to closing must receive prior approval from HUD as described in Paragraph 9 of this Notice</li> </ul>

## **5. Resident Right to Return**

RAD program rules prohibit the permanent involuntary relocation of residents as a result of conversion. Residents that are temporarily relocated retain the right to return to the project once it has been completed and is in decent, safe, and sanitary conditions.<sup>7</sup> The period during which residents may need to be temporarily relocated is determined by the period of rehabilitation or construction, which will be specific to each project.

If proposed plans for a project would preclude a resident from returning to the RAD project, the resident must be given an opportunity to comment and/or object to such plans. If the resident objects to such plans, the PHA must alter the project plans to accommodate the resident in the converted project. If a resident agrees to such plans, the PHA must secure informed, written consent from the resident to receive permanent relocation assistance and payments consistent with URA and acknowledge that acceptance of such assistance terminates the resident’s right to return to the project. In obtaining this consent, PHAs must inform residents of their right to return, potential relocation, and temporary and permanent housing options at least 30 days before residents must make a decision. The PHA cannot employ any tactics to pressure residents into

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<sup>7</sup> Where the transfer of assistance to a new site is approved, residents of the converting project will have the right to reside in an assisted unit at the new site once rehabilitation or new construction is complete.



relinquishing their right to return or accepting permanent relocation assistance and payments.<sup>8</sup> A PHA may not terminate a resident's lease if it fails to obtain this consent.

PHAs must keep documentation of such information provided to residents and such consent by residents. While HUD does not require PHAs to submit documentation of obtaining this consent, PHAs and participants must properly brief residents on their housing and relocation options and must keep auditable written records of such consultation and decisions. HUD may request this documentation during a review of the FHEO Relocation and Accessibility Checklist or if relocation concerns arise.

Examples of project plans that may preclude a resident from returning to the converted RAD project include, but are not limited to:

- Changes in bedroom distribution (i.e. when larger units will be replaced with smaller units such that current residents would become under-housed or when smaller units will be replaced with larger units such that current residents would become over-housed);
- Where a PHA is reducing the number of assisted units at a property by a de minimis amount<sup>9</sup>, but those units are occupied by assisted residents; or
- The reconfiguration of efficiency apartments, or the repurposing of dwelling units in order to facilitate social service delivery.

In all scenarios where residents voluntarily accept permanent relocation to accommodate project plans, these residents are eligible for permanent relocation assistance and payments under URA. If a resident accepts permanent relocation assistance, the resident surrenders his or her right to return to the completed project.

## **6. Relocation Assistance**

Under RAD, relocation assistance may vary depending on the length of time relocation is required.<sup>10</sup>

- a. In instances when the PHA anticipates that a resident will be relocated for more than a year, the PHA must offer the resident the choice of:
  - Permanent relocation assistance and payments at URA levels; or
  - Temporary relocation assistance, including temporary housing, while the resident retains his or her right to return and reimbursement for all reasonable out-of-pocket expenses associated with the temporary relocation.

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<sup>8</sup> Persons with disabilities returning to the RAD project may not be turned away or placed on a waiting list due to a lack of accessible units. Their accessibility needs must be accommodated.

<sup>9</sup> A reduction in total number of assisted units at RAD project of 5% or less. (Section 1.5.B of PIH 2012-32 REV-1)

<sup>10</sup> Some residents may not qualify for relocation assistance under URA. A nonexclusive listing of persons who do not qualify as displaced persons under URA is at 49 CFR 24.2(a)(9)(ii). See also, Paragraph 1-4(J) of HUD Handbook 1378.

The PHA must give the resident no less than 30 days to decide between permanent and temporary relocation assistance. If the resident elects to permanently relocate with assistance at URA levels, the PHA must inform the resident that his or her acceptance of permanent relocation assistance terminates the resident's right to return to the completed RAD project.

- b. In instances when a resident elects temporary relocation assistance and reoccupies a unit in the completed project within one year, the resident need not be offered permanent relocation assistance pursuant to URA.

Great care must be exercised to ensure that residents are treated fairly and equitably. If a resident is required to relocate temporarily in connection with the project, his or her temporarily occupied housing must be decent, safe, and sanitary and the resident must be reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation. These expenses include, but are not limited to, moving expenses and increased housing costs during the temporary relocation.

- c. In the event that a resident elects to receive temporary relocation assistance and the temporary relocation exceeds one year, the resident becomes eligible for all permanent relocation assistance and payments under URA. (This assistance would be in addition to any assistance the person has already received for temporary relocation, and may not be reduced by the amount of any temporary relocation assistance.) In such event, the PHA shall give the resident the opportunity to choose to remain temporarily relocated for an agreed-to period (based on new information about when they can return to the completed RAD unit), or choose to permanently relocate with URA assistance.

PHAs may not propose or request that a displaced person waive rights or entitlements to relocation assistance under the URA. If the resident elects to permanently relocate with URA assistance, the PHA must inform the person that the person's acceptance of URA relocation assistance to permanently relocate will terminate the person's right to return to the completed RAD project. Conversely, unless and until the resident elects to be permanently relocated, the resident may remain temporarily relocated with a right to return to the completed project.

## **7. Initiation of Negotiations (ION) Date**

Eligibility for URA relocation assistance is generally effective on the date of initiation of negotiations (ION) (49 CFR 24.2(a)(15)). For RAD projects, the ION date is the date of the issuance of the RAD Conversion Commitment (RCC).

## **8. Resident Notification**

When a project converting under RAD will include relocation of residents, notice must be provided to those resident households. For each notice listed below, one notice shall be given to each resident household. The purpose of these notifications is to ensure that residents are

informed of their potential rights and the relocation assistance available to them. During initial meetings with residents about RAD and in subsequent communications with residents related to relocation, the PHA should inform residents that if they choose to move after receiving a written GIN, but prior to receiving a RAD Notice of Relocation, they may jeopardize their eligibility for relocation assistance. However, PHAs should note that a resident move undertaken as a direct result of the project may still require relocation assistance and the resident may be eligible to receive permanent relocation assistance under the URA even though the PHA has not yet issued notices.

a. *General Information Notice* (49 CFR 24.203(a) & Handbook 1378, Paragraph 2-3(B))

As soon as feasible in the planning process, the PHA must provide each resident with a written GIN (see sample in Appendix 2) to provide a general description of the project, the activities planned, and the relocation assistance that may become available. URA regulations state that the GIN should be provided *as soon as feasible*. Under RAD, PHAs must provide GINs during the initial RAD resident meetings, before submitting a RAD application. GINs must do at least the following:

- Inform the resident that he or she may be displaced for the project and generally describe the relocation payment(s) for which the resident may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s);
- Inform the resident that he or she will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other necessary assistance to help the resident successfully relocate;
- Inform the resident that, if he or she qualifies for relocation assistance as a displaced person under the URA, he or she will not be required to move without at least 90 days advance written notice, and inform any person to be displaced from a dwelling that he or she cannot be required to move permanently unless at least one comparable replacement dwelling has been made available;
- Inform the resident that any person who is an alien not lawfully present in the United States is ineligible for relocation advisory services and relocation payments, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child (see 49 CFR 24.208(h) for additional information); and
- Describe the resident's right to appeal the PHA's determination as to a person's eligibility for URA assistance.

b. *RAD Notice of Relocation*

If a resident will be relocated to facilitate the RAD conversion, the PHA shall provide notice of such relocation (RAD Notice of Relocation). The PHA shall issue this notice upon the PHA's receipt of the RCC from HUD, which is the ION date.

If residents will not be relocated, notice of relocation is not required, but the PHA should

notify them that they are not being relocated.<sup>11</sup>

The RAD Notice of Relocation must conform to the following requirements:

- The notice must state the anticipated duration of the resident's relocation.
- PHAs must provide this notice a minimum of 30 days prior to relocation to residents who will be temporarily relocated.<sup>12</sup> Longer notice may be appropriate for persons who will be relocated for an extended period of time (over 6 months), or if necessary due to personal needs or circumstances.
- Residents whose temporary relocation is anticipated to exceed one year must be informed that they will have no less than 30 days to elect temporary or permanent relocation as described in Section 6 of this Notice. When timing is critical for project completion, the 30-day decision period can run concurrently with the 30-day notice period for temporary relocation and with the 90-day period for permanent relocation if the PHA makes available comparable replacement dwellings consistent with 24.204(a).
- Residents who will be permanently relocated must receive written notice a minimum of 90 days prior to relocation. This 90-day time period may only begin once the PHA has made available at least one comparable replacement dwelling consistent with 49 CFR 24.204(a).<sup>13</sup>
- The notice must describe the available relocation assistance, the estimated amount of assistance based on the individual circumstances and needs, and the procedures for obtaining the assistance. The notice must be specific to the resident and his or her situation so that the resident will have a clear understanding of the type and amount of payments and/or other assistance the resident household may be entitled to claim.
- The notice must explain the reasonable terms and conditions under which the resident may continue to lease and occupy a unit in the completed project.
- The notice must state that the PHA will reimburse the resident for all reasonable out-of-pocket expenses incurred in connection with any temporary move. These expenses include, but are not limited to, moving expenses and increased housing costs (rent, utilities, etc.).

*c. Notice of Intent to Acquire (49 CFR 24.203(d))*

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<sup>11</sup> HUD policy generally requires a "notice of non-displacement" in certain instances; the RAD program does not require this notice. Although the scope of this notice is limited to guidance for projects requiring relocation, PHAs should note, however, that there may be notification requirements for projects that do not involve relocation. The RAD conversion will terminate the resident's public housing lease and commence a PBV or PBRA lease, even when there is no relocation required. In such instances, state law may impose certain notification requirements. In addition, public housing regulations generally require 30 days' notice prior to lease termination. PHAs are encouraged to review public housing requirements set forth in 24 CFR parts 5 and 966.

<sup>12</sup> HUD may approve shorter notice periods based on an urgent need due to danger, health, or safety issues or if the person will be temporarily relocated for only a short period.

<sup>13</sup> PHAs should note that URA regulations also require, where possible, that three or more comparable replacement dwellings be made available before a resident is required to move from his or her unit.

For RAD projects involving acquisition, residents may be provided with a notice of intent to acquire (“*Notice of Intent to Acquire*”) prior to the ION date with HUD’s prior approval. Once the Notice of Intent to Acquire is provided, a resident’s eligibility for relocation assistance and payments is established. Therefore, the RAD Notice of Relocation must be provided in conjunction with or after the Notice of Intent to Acquire. A RAD Notice of Relocation would not otherwise be sent prior to the ION date.

Since residents who accept permanent relocation must receive 90 days advanced written notice prior to being required to move, providing residents the Notice of Intent to Acquire and RAD Notice of Relocation prior to the ION date may be necessary to provide sufficient notice of relocation to a resident in instances where there may not be 90 days between the issuance of the RCC (ION date) and the anticipated closing date. This allows the PHA to issue the notice earlier so that relocation may begin upon closing. This allows program participants to conduct orderly relocation upon closing, minimize adverse impacts on displaced persons, and to expedite project advancement and completion.<sup>14</sup>

- d. *URA Notice of Relocation Eligibility – for residents whose temporary relocation exceeds one year* (49 CFR 24.203(b) & Handbook 1378, Paragraph 2-3(C))

After a resident has been temporarily relocated for one year, the PHA must provide a notice of relocation eligibility in accordance with URA requirements (“*Notice of Relocation Eligibility*”). This notice is not required if the resident has already accepted permanent relocation assistance.

The Notice of Relocation Eligibility must conform to URA requirements as set forth in 49 CFR Part 24, to HUD Handbook 1378 and to the following requirements:

- The PHA must provide updated information as to when it is anticipated that the resident will be able to return to the completed project.
- The resident may choose to remain temporarily relocated based upon such updated information or may choose to accept permanent URA relocation assistance in lieu of exercising the right to return.
- If the resident chooses to accept permanent URA relocation assistance and such assistance requires that the resident move, the URA requires such resident to receive 90 days advance written notice of the earliest date they will be required to move (i.e., 90-Day Notice, 49 CFR 24.203(c)). The PHA should be mindful that the 90-day time period may only begin once the PHA has made available at least one “comparable replacement dwellings” as set forth in 49 CFR 24.204(a).

## **9. Initiation of Relocation**

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<sup>14</sup> PHAs and program participants should note that, in most instances, it will be most appropriate for the acquiring entity to send this notice.

Unless otherwise approved by HUD, relocation may not begin until the date of closing of the RAD transaction and recordation of the RAD Use Agreement. PHAs must provide residents being temporarily relocated at least 30 days advance written notice of the required move. PHAs must give residents being permanently relocated at least 90 days advance written notice of the required move. This means PHAs are advised to plan carefully to account for this 30-day or 90-day notice period to ensure the closing is not delayed.

However, HUD is aware that, in rare cases, some project plans necessitate relocation prior to closing. With prior HUD approval, for projects involving acquisition, PHAs may relocate residents prior to the closing date subject to public housing requirements (see 24 CFR part 5 and 24 CFR 966). PHAs must contact their assigned RAD transaction manager (TM) to discuss plans as early as possible in the process to ensure compliance with all RAD and URA requirements.

If relocation prior to closing is desired, PHAs should submit to the TM the following information, as early as possible in the process:

- A written request for relocation prior to closing. The request must include justification of why the early relocation is necessary for the viability of the RAD transaction. Justification may include the presence of outside financing, such as Low Income Housing Tax Credit (LIHTC) awards, if the PHA can show that early relocation is necessary to meet critical LIHTC deadlines.
- FHEO Accessibility and Relocation Checklist.
- Evidence of intent to comply with public housing requirements, as applicable. Generally, public housing regulations require public housing residents to receive 30 days' notice prior to relocation and that such notice either be published in the PHA's admissions and continued occupancy policies (ACOP) or published elsewhere at least 30 days prior to receipt of such notice (24 CFR parts 5 and 966).

When seeking to relocate residents prior to closing, submission of this request as early as possible is preferred, prior to the 180-day Financing Plan milestone if possible (with Financing Plan submission following the request).

HUD reserves the right to request additional follow-up information, including a Relocation Plan and related budget, prior to approving such requests. PHAs must receive written HUD approval before beginning relocation of residents prior to closing.

Early planning and submission of the Financing Plan and FHEO checklist to HUD will ensure the PHA has built in the 30- or 90-day notice period prior to initiating relocation.

## **10. Fair Housing and Civil Rights Requirements**

PHAs must comply with all applicable fair housing and civil rights laws, including, but not limited to, the Fair Housing Act, Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973, when conducting relocation planning and providing relocation assistance. Further, communication must be provided in a manner that is effective for persons



with disabilities (24 CFR 8.6) and for person who are Limited English Proficient (see 72 FR 2732). This section discusses some of the PHA's obligations under these laws and regulations. However, the applicability of civil rights laws is not limited to the activities discussed in this section. PHAs conducting relocation activities should familiarize themselves with applicable civil rights statutes, regulations, and guidance, including but not limited to, those listed at the end of this section.

- **Effective Communication for Persons with Disabilities:** Communications and materials must be provided in a manner that is effective for persons with hearing, visual, and other communication-related disabilities consistent with Section 504 of the Rehabilitation Act of 1973 (24 CFR 8.6), and as applicable, the Americans with Disabilities Act; and for persons who are limited English proficient (*see* 72 Fed Reg 2732). This includes ensuring that training materials are in appropriate alternative formats as needed, e.g., Braille, audio, large type, assistive listening devices, and sign language interpreters.
- **Accessible Meeting Facilities for Persons with Disabilities:** When holding public meetings, PHAs must give priority to methods that provide physical access to individuals with disabilities, i.e., holding the meetings, workshops, and briefings or any other type of meeting in an accessible location, in accordance with the regulations implementing Section 504 of the Rehabilitation Act of 1973 and Titles II and III of the Americans with Disabilities Act of 1990, as applicable. All programs and activities must be held in accessible locations unless doing so would result in an undue financial and administrative burden, in which case the PHA must take any action that would not result in such an alteration or such burden but would nevertheless ensure that individuals with disabilities receive the benefits and services of the program or activity, e.g., briefings at an alternate accessible, in-home briefing. Individuals with disabilities must receive services in the most integrated setting appropriate to their needs. The most integrated setting appropriate to the needs of qualified individuals with disabilities is a setting that enables individuals with disabilities to interact with nondisabled person to the fullest extent possible (28 CFR part 35, appendix B).
- **Meaningful Access for Persons with Limited English Proficiency (LEP):** PHAs must provide meaningful access to programs and activities for persons who have a limited ability to read, speak, or understand English. Any person with LEP who will be temporarily relocated or permanently displaced must have meaningful access to any public meetings regarding the project. In addition, any information provided to residents including, but not limited to, any notices required under the URA, should be provided in the appropriate language to persons with LEP. Generally, PHAs will be responsible for providing oral interpreters at meetings, including ensuring their competence, and covering any associated translation and interpretation costs.
- URA requires that PHAs provide persons who are unable to read or understand the notices, such as persons with disabilities or persons with LEP, with appropriate translation and counseling to ensure that they understand their rights and responsibilities and the assistance available to them (49 CFR 24.5). URA also requires that each notice indicate the name and telephone number of a person to contact with questions or for other

needed help (49 CFR 24.5). This notice should include the number for the telecommunication device for the deaf (TDD) or other appropriate communication device, if applicable (24 CFR 8.6(a)(2)).

- **Comparable Housing for Persons with Disabilities:** PHAs should identify the accessibility needs of residents to be relocated by consulting existing information (e.g., tenant characteristics forms, including identification of the need for accessible unit features; records of approved reasonable accommodations, and records of the presence of accessible unit features). For guidance on providing relocation assistance to persons with disabilities, see Exhibit 3-1 in HUD Handbook 1378.
- **Advisory Services:** PHAs should determine the advisory services that will be necessary to ensure a successful relocation program consistent with 49 CFR 24.205(c). Such advisory services may include housing counseling that should be facilitated to ensure that residents affected by the project understand their rights and responsibilities and the assistance available to them (49 CFR 24.205(c)). Advisory counseling must also inform residents of their fair housing rights and be carried out in a manner that satisfies the requirements of Title VI of the Civil Rights Act of 1964, the Fair Housing Act, and Executive Order 11063 (49 CFR 24.205(c)(1)). In addition, PHAs should inform residents that if they believe they have experienced unlawful discrimination, they may contact HUD at 1-800669-9777 (Voice) or 1-800-927-9275 (TDD) or at <http://www.hud.gov>.

#### Fair Housing References:

- Section 504 of the Rehabilitation Act of 1973
  - Regulations: 24 CFR part 8
  - Fair Housing Act Regulations: 24 CFR part 100
  - Title VI of the Civil Rights Act of 1964
  - Regulations: 24 CFR part 1
  - Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (LEP Guidance) (72 FR 2732)
  - Exhibit 3-1 Compliance with Section 504 of the Rehabilitation Act in HUD Handbook 1378 (Tenant Assistance Relocation and Real Property Acquisition)
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## **11. Other Requirements**

### **a. Public Housing Program Compliance**

PHAs should note that public housing resident provisions related to occupancy and termination, including grievances and related hearings, will remain in effect until the execution of the new PBV or PBRA Housing Assistance Payment (HAP) contract.

### **b. Evictions for Cause**

If the PHA determines that a resident was evicted in accordance with applicable state and local law for serious or repeated violation of material terms of the lease, and the eviction was not undertaken for the purpose of evading the obligation to make available URA payments and other assistance, the resident is not entitled to relocation payments and assistance under the URA (49 CFR 24.206).

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Jemine A. Bryon  
General Deputy Assistant Secretary  
for Public and Indian Housing

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Carol J. Galante, Assistant Secretary for  
Housing-Federal Housing Commissioner

## **APPENDICES**

### **Appendix 1**

#### **Recommended Relocation Plan Contents**

### **Appendix 2**

#### **Sample RAD General Information Notice (GIN)**

### **Appendix 3**

#### **Sample RAD Notice of Relocation (for relocation anticipated for a year or less)**

### **Appendix 4**

#### **Sample RAD Notice of Relocation (for relocation anticipated for more than a year)**

### **Appendix 5**

#### **Sample Notice of Eligibility for URA Relocation Assistance (for residents who have been temporarily relocated for more than a year)**

## **Appendix 1: RECOMMENDED RELOCATION PLAN CONTENTS**

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While written Relocation Plans are not required under RAD or URA, the Department strongly encourages PHAs to document their relocation planning process and procedures in a written Relocation Plan. The following provides suggested content for Relocation Plans.

### **I. Project Summary**

The Relocation Plan should provide a general description of and purpose for the project (e.g., year built, location, number of units, configuration, occupancy information, and funding sources).

The basic components of a plan include:

- A general description of the project and the site, including acquisition, demolition, rehabilitation, and construction activities and funding sources;
- A detailed discussion of the specific steps to be taken to minimize the adverse impacts of relocation, including when transferring the assistance to a new site;
- Information on occupancy (including the number of residents, residential owner-occupants and non-residential occupants, if any, to be permanently or temporarily relocated);
- Information on relocation needs and costs (including the number of residents who plan to relocate with Section 8 assistance);
- General moving assistance information;
- Temporary move assistance (including information on the duration of temporary moves);
- Permanent move assistance; and
- Appeals process.

### **II. Resident Return and Re-occupancy Policies**

For residents that will be temporarily relocated, the plan should include the criteria that will be used to determine the priority for residents to re-occupy units at the project after rehabilitation, demolition, and/or construction is completed. For example, if units will come online in stages, the plan should outline how the PHA will determine when each resident will return to the project. PHAs should ensure that any written return or re-occupancy policy is compliant with related RAD requirements, such as the right-to-return policy and the “no re-screening upon conversion” policy, as described in the RAD Notice.

### **III. Summary of Moving Costs**

The plan should include a summary of moving costs, identified by move types, including the following:

### Temporary Moves

- Number of and cost amount for two-way moves (i.e., a move to another unit and then a return move) within the same building/complex.
- Number of and cost amount for two-way moves to a unit not in the same building/complex, carried out by the PHA.
- Number of and cost amount for two-way moves to a unit not in the same building/complex not carried out by the PHA.

### Permanent Moves

- Number of and cost amount for one-time moves into another unit in the same building/complex.<sup>15</sup>
- Number of and cost amount for one permanent move to a unit not within the same building/complex, carried out by the PHA.  
PHAs should note that if a residential move is carried out by the PHA at no cost to the resident, this per-household estimate must include the required dislocation allowance (currently \$100). The URA Fixed Residential Moving Cost Schedule lists the most current dislocation allowance:  
[http://www.fhwa.dot.gov/real\\_estate/practitioners/uniform\\_act/relocation/moving\\_cost\\_schedule.cfm](http://www.fhwa.dot.gov/real_estate/practitioners/uniform_act/relocation/moving_cost_schedule.cfm)
- Number of and cost amount for one permanent move to a unit not within the same building/complex that is not carried out by the PHA.

## IV. Temporary Relocation Assistance

The PHA will assist residents who are required to move temporarily. At the Initiation of Negotiations (ION), the PHA will send a RAD Notice of Relocation to residents who will be relocated. Appendices 3 and 4 of this Notice contain sample RAD Notices of Relocation to be provided to residents that will be temporarily relocated.

The plan should detail the temporary relocation assistance the PHA will provide for residents (Paragraph 2-7 of HUD Handbook 1378). This assistance includes:

- Temporary Housing - The PHA will provide temporary housing that is decent, safe, and sanitary on a nondiscriminatory basis for residents who are relocated temporarily. The PHA will also pay for reasonable increased housing costs that the resident incurs in connection with the temporary relocation.

NOTE: If a resident's relocation exceeds one year, the PHA must then issue a *Notice of Relocation Eligibility* (49 CFR 24.203(b)) to the resident and offer the resident permanent

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<sup>15</sup> A resident who moved to another unit in the same building/complex may be considered a displaced person under URA if the resident moves from the building/complex permanently and was not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move within the same building/complex and/or if other conditions of the move within the building/complex were not reasonable.

relocation assistance and payments at URA levels. The PHA must provide this notice to affected residents as soon as the temporary relocation exceeds one year.

- Packing and Moving Assistance - Since most residents prefer to pack their own personal possessions and items of value, they should be provided packing instructions, boxes, markers, and tape for the move. If assistance in packing is needed, the PHA should provide the resident with information on how to request this assistance. The PHA is responsible for covering all reasonable moving expenses incurred in connection with temporarily relocating a resident. The PHA may reimburse the resident's out-of-pocket moving expenses and/or directly carry out the move.
- Payment for Temporary Relocation Moving Expenses - The plan should also indicate how the PHA intends to provide or reimburse for moving services and expenses. The PHA can choose to do one or more of the following:
  - Undertake the moves itself, using force account labor or a moving company; – Use PHA's contractor or moving company;
  - Carry out moves with employees of the PHA;
  - Reimburse residents for all actual and reasonable moving costs.

NOTE: The PHA will not make fixed payments since such payments may not be representative of actual reasonable costs incurred. However, in order for a resident to be sure of full reimbursement, the resident should submit a moving cost estimate to the PHA for approval prior to the move unless the PHA is directly carrying out the move and the resident will not incur any reasonable out-of-pocket moving expenses. Failure to do so may result in the resident not being fully reimbursed.

- Utility Costs - The PHA is responsible for covering the expenses relating to disconnection and reconnection of necessary utilities. If the resident has telephone, cable service or Internet access, the PHA is responsible for covering the expenses involved in transferring existing service. The PHA may also pay utility deposits, if required at the temporary relocation housing (HUD Handbook 1378, paragraph 2-7(A)(3)). If a resident is temporarily relocating from a public housing unit to a non-public housing unit, the resident must be reimbursed for reasonable increases in utility costs even if the PHA utility allowance is lower than the actual costs to the resident.

## **V. Permanent Relocation Assistance**

Based on the local housing resources available, the PHA should identify the replacement housing options that will be available to meet the housing needs of residents to be permanently relocated. Replacement housing options for residents that meet the definition of a "displaced person" (49 CFR 24.2(a)(9)) under the URA include, but are not limited to:

- Other Public Housing;
- Section 8 Project-Based Voucher unit;
- Section 8 Housing Choice Voucher unit;
- Homeownership housing;



- Private-market rental housing (affordable, non-subsidized).<sup>16</sup>

The plan should describe each type of replacement housing projected to be available, including:

1. Number of units, by bedroom size, expected to be available, and discussion of whether available units will meet dwelling requirements of relocated residents;
2. General area or location of unit(s);
3. Criteria for receiving relocation assistance; and
4. Any other information that might benefit residents in their consideration of housing choices.

The plan should include a description of the permanent relocation assistance the PHA will provide to residents. This assistance includes:

- Availability of Comparable Replacement Housing – Under URA, no displaced resident will be required to move unless at least one comparable replacement dwelling (49 CFR 24.2(a)(6)) is made available at least 90 days before the required move (49 CFR 24.203(c)). Comparable replacement dwellings must contain the accessibility features needed by displaced persons with disabilities (49 CFR 24.2(a)(8)(vii); 49 CFR part 24, Appendix A, §24.2(a)(8)(vii)). If the comparable replacement dwelling is not subsidized housing, the PHA should contact the RAD staff for advice on replacement housing payment requirements.
- Referral to Housing Not Located in an Area of Minority Concentration - Whenever possible, minority persons shall be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings that are within their financial means and not located in areas of minority concentration (49 CFR 24.205(c)(2)(ii)(D)). However, this policy does not require a PHA to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling unit.
- Permanent Relocation Moving Expenses from Public Housing to Public Housing - The PHA may choose one of the following options for covering the expenses involved in moving public housing residents that are relocated into other public housing:
  - Undertake the move itself, using force account labor or a moving company. Residents should incur no moving costs under this option, but if such expenses are incurred, the PHA is responsible for reimbursing the resident for any such actual and reasonable expenses. In such case, the resident is also entitled to a dislocation allowance (currently \$100). The URA Fixed Residential Moving Cost Schedule lists the current dislocation allowance and is available at:  
[http://www.fhwa.dot.gov/real\\_estate/practitioners/uniform\\_act/relocation/moving\\_cost\\_schedule.cfm](http://www.fhwa.dot.gov/real_estate/practitioners/uniform_act/relocation/moving_cost_schedule.cfm)

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<sup>16</sup> Every effort should be made to find another subsidized unit as replacement housing for a resident relocating from subsidized housing so that the resident will continue receiving the housing subsidy as long as it is needed.

NOTE: Residents who prefer to pack their own personal possessions and items of value may be provided packing instructions, boxes, markers, and tape for their move. If a resident needs assistance in packing, they should contact the PHA. It is the responsibility of the PHA to pack and move all of their belongings and household goods, if so desired.

Allow the resident to elect one of the following choices:

1) The PHA will reimburse the resident for the cost of all actual reasonable and necessary moving and related expenses (49 CFR 24.301), such as:

- Transportation of the resident and personal property. This may include reimbursement at the current mileage rate for personally owned vehicles that need to be moved. Transportation costs for a distance beyond 50 miles are not eligible, unless the PHA determines that relocation beyond 50 miles is justified.
- Packing, crating, uncrating, and unpacking of personal property.
- Storage of personal property for a period not to exceed 12 months, unless the PHA determines that a longer period is necessary.
- Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances and other personal property.
- Insurance for the replacement value of the property in connection with the move and necessary storage.
- The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

2) The PHA will pay directly to the resident the applicable and current fixed moving cost payment according to the URA Fixed Residential Moving Cost Schedule (49 CFR 24.302), available at:

[http://www.fhwa.dot.gov/real\\_estate/practitioners/uniform\\_act/relocation/moving\\_cost\\_schedule.cfm](http://www.fhwa.dot.gov/real_estate/practitioners/uniform_act/relocation/moving_cost_schedule.cfm)

Permanent Relocation Moving Expenses for All Other Moves – Under URA, residents who are permanently displaced, except for those residents displaced from public housing and moving to other public housing, are entitled to the assistance described in the brochure *Relocation Assistance To Residents Displaced From Their Homes*, available in English at [http://portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_16280.doc](http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_16280.doc) and in Spanish at [http://portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_16281.doc](http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_16281.doc). Residents may choose moving assistance from one of the following two options.

1) The PHA will reimburse the resident for the cost of all actual reasonable moving and related expenses (49 CFR 24.301).

2) The PHA will pay directly to the resident the applicable and current fixed moving cost payment according to the URA Fixed Residential Moving Cost Schedule (49

CFR 24.302), available at:

[http://www.fhwa.dot.gov/real estate/practitioners/uniform act/relocation/moving cost schedule.cfm](http://www.fhwa.dot.gov/real%20estate/practitioners/uniform%20act/relocation/moving%20cost%20schedule.cfm).

- Replacement Housing Payment - In addition to covering moving expenses, displaced residents may be entitled to a replacement housing payment (RHP). This payment is intended to cover the increase, if any, in monthly housing costs for a 42-month period.

When calculating the RHP, the PHA must consider the comparable replacement housing unit offered to the resident. Since the PHA is not required to pay an RHP amount that exceeds the amount of RHP calculated for the offered comparable replacement dwelling, residents are cautioned to work closely with the PHA prior to their move.

- Accessible Housing for Persons with Disabilities - Under the URA, persons with disabilities who will be permanently displaced must be relocated to a replacement dwelling that contains the accessibility features they need (49 CFR 24.2(a)(8)(vii); 49 CFR Appendix A, 24.2(a)(8)(vii)). A person with disabilities who has been relocated must be offered a comparable replacement dwelling unit that contains accessible features comparable to the housing from which the tenant has been displaced or relocated. This is so even if the tenant has paid for the acquisition and/or installation of accessible features in the housing from which he or she has been relocated; in such instances, the recipient must ensure that the replacement housing contains comparable accessible features or provide relocation assistance to the tenant in an amount that covers the cost of acquiring and/or installing comparable accessible features. Under the URA, an agency may use project funds to remove architectural barriers for displaced owners and tenants with disabilities or take other last resort housing measures if comparable replacement dwelling units are not available within the monetary limits prescribed under the URA regulations (49 CFR 24.404(c)(vii); HUD Handbook 1378, Paragraph 3-8).

## **VI. Relocation Budget**

Based on the results of the planning process, the PHA should create a relocation budget that includes the following six components:

- 1) The cost of administering the plan and providing assistance and counseling.
- 2) Reasonable moving expenses for a person with disabilities, which may include the cost of moving assistive equipment that is the personal property of the residents, the furnishings and personal belonging of a live-in aide, and/or other reasonable accommodations (HUD Handbook 1378, Paragraph 3-2).
- 3) The cost of the physical move of the residents' belongings. (It is suggested that the move costs be broken down by average cost per move type multiplied by the number of moves.)

NOTE: This physical move cost total should be based on the move scenarios anticipated

or projected by the resident survey.

- 4) The cost estimated to pay for projected increases in monthly housing costs for temporary relocation.
- 5) The cost estimated to pay for the replacement housing payment (RHP) (42-month period for URA or 60-month period if section 104(d) applies).
- 6) Contingency costs estimated for carrying out the relocation process necessary to complete the proposed project. (The PHA should state where these costs are indicated in the application, or attach any other information required by HUD, to support these costs.)

## **VII. Appeal Process**

If a resident disagrees with the PHA's decision as to the resident's eligibility to receive relocation assistance, the amount of a relocation payment, or the adequacy of a comparable replacement dwelling offered to a resident, the resident may file a written appeal to the PHA. The Relocation Plan should describe the specific appeal procedures to be followed consistent with 49 CFR 24.10 (and 24 CFR 42.390 if section 104(d) is involved). At a minimum, the resident will have 60 days to file an appeal with the PHA after receiving written notification of a claim or ineligibility determination.

## **VIII. Certification**

The plan should contain a certification of compliance with the URA and, if applicable, section 104(d).

## **Technical Assistance**

The PHA should direct questions on this Notice's relocation assistance requirements to their RAD Transaction Manager or [email rad@hud.gov](mailto:email_rad@hud.gov).

## Appendix 2: SAMPLE RAD GENERAL INFORMATION NOTICE (GIN)

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### PHA LETTERHEAD

#### RENTAL ASSISTANCE DEMONSTRATION (RAD) GENERAL INFORMATION NOTICE (GIN)

[Date]

Dear [Resident Name],

The property you currently occupy is being proposed for participation in the Department of Housing and Urban Development's (HUD) Rental Assistance Demonstration (RAD) program. At this time, we expect that [the proposed acquisition, rehabilitation or demolition, may require you to be relocated (temporarily or permanently) from your unit]. We will provide further details to you as plans develop. **This notice does not mean that you need to leave the property at this time. This is not a notice of eligibility for relocation assistance.** The remainder of this letter only applies to situations where you will need to be relocated from your unit.

This notice serves to inform you of your potential rights under the RAD program and a federal law known as the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA). If the proposed RAD project receives HUD approval and if you are displaced permanently as a result, you may become eligible for relocation assistance and payments under the URA, including:

- 1) Relocation advisory services that include referrals to replacement properties, help in filing payment claims and other necessary assistance to help you successfully relocate;
- 2) At least 90 days' advance written notice of the date you will be required to move;
- 3) Payment for moving expenses; and
- 4) Payments to enable you to rent a similar replacement home.

NOTE: Aliens not lawfully present in the United States are not eligible for URA relocation assistance, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child as defined at 49 CFR 24.208(h). All persons seeking relocation assistance will be required to certify that they are a United States citizen or national, or an immigrant lawfully present in the United States.

As a resident of a property participating in RAD, you have the right to return to the project after the project is complete. You will be able to lease and occupy a unit in the converted project when rehabilitation is complete.

If you are permanently displaced from your home, you will not be required to move until you are given at least 90-day advance written notice of any required move and at least one comparable replacement dwelling has been made available to you. If you are temporarily relocated and your temporary relocation lasts more than one year, you will be contacted and offered permanent relocation assistance as a displaced person under the URA. This assistance would be in addition

to any assistance you may receive in connection with temporary relocation and will not be reduced by the amount of any temporary relocation assistance you have already received.

If you are required to relocate from the property in the future, you will be informed in writing. [PHA] will inform you of what assistance and payments you are eligible for if you will be relocated because of RAD and how you will receive these payments. If you become a displaced person, you will be provided reasonable assistance necessary to complete and file any required claim to receive a relocation payment. If you feel that your eligibility for assistance is not properly considered, you will also have the right to appeal a determination on your eligibility for relocation assistance.

You should continue to pay your rent and meet any other requirements specified in your lease. If you fail to do so, [PHA] may have cause for your eviction. If you choose to move, or if you are evicted, prior to receiving a formal notice of relocation eligibility, you may become ineligible to receive relocation assistance. It is very important for you to contact us before making any moving plans.

You will be contacted soon so that we can provide you with more information about the proposed project. If the project is approved, we will make every effort to accommodate your needs. In the meantime, if you have any questions about our plans, please contact: [Name, Title, Address, Phone, Email Address]. This letter is important to you and should be retained.

Sincerely,

[Name]

[Title]

NOTES:

1. Files must indicate how this notice was delivered (e.g., personally served or certified mail, return receipt requested) and the date of delivery. (49 CFR 24.5 and Paragraph 2-3(J) of Handbook 1378)
2. This is a sample GIN. PHAs should revise it to reflect project-specific circumstances.
3. PHAs may provide residents with HUD brochure "Relocation Assistance To Residents Displaced From Their Homes" available at:  
<http://www.hud.gov/offices/cpd/library/relocation/publications/1042.pdf>.



**Appendix 3: SAMPLE RAD NOTICE OF RELOCATION (For relocation anticipated for a year or less)**

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***THIS IS A GUIDE FORM.  
REVISE TO REFLECT THE PROJECT-SPECIFIC CIRCUMSTANCES.***

PHA Letterhead

(date)

Dear [*Resident Name*],

The property you currently occupy is participating in the Department of Housing and Urban Development's (HUD) Rental Assistance Demonstration (RAD) program. On [*date*], the [*Public Housing Authority*] (PHA) notified you of proposed plans to [acquire/ rehabilitate/demolish] the property you currently occupy at [*address*]. On [*date*], HUD issued the RAD Conversion Commitment (RCC) and committed federal financial assistance to the project. [*In instances where a Notice of Intent to Acquire is applicable and this notice is being sent before the RCC is issued, in lieu of the previous sentence noting the RCC issuance date, insert: [Name of entity acquiring the property] (Displacing Agency) intends to acquire the property you currently occupy. This is a Notice of Intent to Acquire.*]

In order for PHA to complete the project, you will need to be relocated for [*anticipated duration of relocation*]. Upon completion of the project, you will be able to lease and occupy your present unit or another decent, safe and sanitary unit in the completed project under reasonable terms and conditions. You are eligible for relocation payments and assistance.

However, **you do not need to move now.** This notice informs you that a decent, safe, and sanitary dwelling unit, listed below, has been made available to you and you will be required to move by [*insert date at least 30 days after the date of this notice*].

If your temporary relocation exceeds one year and you qualify as a "displaced person" under the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA), you may be eligible for further relocation assistance and payments under URA.

NOTE: Aliens not lawfully present in the United States are not eligible for URA relocation assistance, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child as defined at 49 CFR 24.208(h). 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.

The relocation assistance to which you are entitled includes:

- Payment for Moving Expenses.** You are entitled to be reimbursed for all reasonable out-of-pocket expenses incurred in connection with any temporary

move. [*PHA should list the form of payment for moving expenses selected in accordance with Appendix 1, Section 4 of this Notice.*]

- The location of your temporary replacement unit is [*address*]. This temporary housing has been determined to be decent, safe and sanitary.
- [*List appropriate relocation advisory services and any other services and assistance provided.*]

If you disagree with this determination, you may file a written appeal to the PHA in accordance with 49 CFR 24.10.

If you have any questions about this notice and your eligibility for relocation assistance and payments, please contact [*Name, Title, Address, Phone, Email Address*] before you make any moving plans. He/she will assist you with your move to a temporary unit and help ensure that you preserve your eligibility for any relocation payments to which you may be entitled.

**Remember, do not move or commit to the purchase or lease of a replacement home** before we have a chance to further discuss your eligibility for relocation assistance. This letter is important to you and should be retained.

Sincerely,

\_\_\_\_\_  
Print name:

Title:

*NOTE: The case file must indicate the manner in which this notice was delivered (e.g., personally served or certified mail, return receipt requested) and the date of delivery. (See 49 CFR 24.5 and Paragraph 2-3(J) of Handbook 1378.)*

**Appendix 4: SAMPLE RAD NOTICE OF RELOCATION (For relocation anticipated for more than a year)**

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***THIS IS A GUIDE FORM.  
REVISE TO REFLECT THE PROJECT-SPECIFIC CIRCUMSTANCES.***

PHA Letterhead

(date)

Dear [*Resident Name*],

The property you currently occupy is participating in the Department of Housing and Urban Development's (HUD) Rental Assistance Demonstration (RAD) program. On [*date*], the [*Public Housing Authority*] (PHA), notified you of proposed plans to [acquire/ rehabilitate/demolish] the property you currently occupy at [*address*]. On [*date*], HUD issued the RAD Conversion Commitment (RCC) and committed federal financial assistance to the project. [*In instances where a Notice of Intent to Acquire is applicable and this notice is being sent before the RCC is issued, in lieu of the previous sentence noting the RCC issuance date, insert: [Name of entity acquiring the property] (Displacing Agency) intends to acquire the property you currently occupy. This is a Notice of Intent to Acquire.*]

In order for PHA to complete the project, you will need to be relocated for [*anticipated duration of relocation*]. Upon completion of the project, you will be able to lease and occupy your present unit or another decent, safe and sanitary unit in the completed project under reasonable terms and conditions. You are eligible for relocation assistance and payments. Because we expect your relocation to exceed one year, you have the choice to either:

- Receive temporary relocation assistance and return to a unit in the RAD project once it is complete; or
- Receive permanent relocation assistance and payments consistent with the URA instead of returning to the completed RAD project.

You must inform us of your choice within 30 days.

However, **you do not need to move now.** If you choose temporary relocation assistance, you will not be required to move sooner than 30 days after you receive notice that a temporary unit is available for you. If you choose permanent relocation assistance, you will not be required to move sooner than 90 days after you receive written notice that at least one comparable replacement unit is available to you in accordance with 49 CFR 24.204(a). [*Note to PHA: These time periods may start running as of the date of this Notice if the notice of relocation includes such information on the temporary and/or comparable replacement dwelling options, as applicable. In such circumstance, add applicable sentences to adequately notify the resident. For example: This notice informs you that a temporary unit, listed below, has been made available to you and, if you choose this option, you will be required to move by [date no sooner than 30 days after notice]. This notice informs you*

that a comparable unit, listed below, has been made available to you and, if you choose this option, you will be required to move by *[date no sooner than 90 days after notice].*

If you choose temporary relocation, your relocation exceeds one year and you qualify as a “displaced person” under the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA), you may become eligible for further relocation assistance and payments under URA.

NOTE: Aliens not lawfully present in the United States are not eligible for URA relocation assistance, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child as defined at 49 CFR 24.208(h). 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.

If you choose to receive temporary relocation assistance, this assistance will include:

- Payment for Moving Expenses. You are entitled to be reimbursed for all reasonable out-of-pocket expenses incurred in connection with any temporary move. *[PHA should list the form of payment for moving expenses selected in accordance with Appendix 1, Section 4 of this Notice.]*
- The location of your temporary replacement unit is *[address]*. This temporary housing has been determined to be decent, safe and sanitary.
- *[List appropriate relocation advisory services and any other services and assistance provided.]*

If you elect to receive permanent relocation assistance, this assistance will include:

- Relocation Advisory Services. You are entitled to receive current and continuing information on available comparable replacement units and other assistance to help you find another home and prepare to move.
- Payment for Moving Expenses. *[PHA should list the form of payment for moving expenses selected in accordance with Appendix 1, Section 5 of this Notice.]*
- Replacement Housing Payment. You may be eligible for a replacement housing payment to rent or buy a replacement home. The payment is based on several factors including: (1) the monthly rent and cost of utility services for a comparable replacement unit, (2) the monthly rent and cost of utility services for your present unit, and (3) 30% of your average monthly gross household income. This payment is calculated on the difference between the old and new housing costs for a one-month period and multiplied by 42.
- *[PHA: list here any permanent relocation assistance offered, such as a Housing Choice Voucher.]*

- Listed below are three comparable replacement units that you may wish to consider for your replacement home. If you would like, we can arrange transportation for you to inspect these and other replacement units.

	Address	Rent & Utility Costs	Contact Info
1.			
2.			
3.			

We believe that the unit located at [address] is most representative of your original unit in the converting RAD project. The monthly rent and the estimated average monthly cost of utilities for this unit is [\$ amount] and it will be used to calculate your maximum replacement housing payment. Please contact us immediately if you believe this unit is not comparable to your original unit. We can explain our basis for selecting this unit as most representative of your original unit and discuss your concerns.

Based on the information you have provided about your income and the rent and utilities you now pay, you may be eligible for a maximum replacement housing payment of approximately [\$ (42 x monthly amount)], if you rent the unit identified above as the most comparable to your current home or rent another unit of equal cost.

Replacement housing payments are not adjusted to reflect future rent increases or changes in income. This is the maximum amount that you would be eligible to receive. If you rent a decent, safe and sanitary home where the monthly rent and average estimated utility costs are less than the comparable unit, your replacement housing payment will be based on the actual cost of that unit. All replacement housing payments must be paid in installments. Your payment will be paid in [#] installments.

You may choose to purchase (rather than rent) a decent, safe and sanitary replacement home. If you do, you would be eligible for a down-payment assistance payment which is equal to your maximum replacement housing payment, [\$amount.] [PHAs should note that, at the agency's discretion, a down-payment assistance payment that is less than \$5,250 may be increased to any amount not to exceed \$5,250. (See 49 CFR 24.402(c)(1)).] Let us know if you are interested in purchasing a replacement home and we will help you locate such housing.

Please note that all replacement housing must be inspected in order to ensure it is decent, safe and sanitary before any replacement housing payments are made.

If you have any questions about this notice and your eligibility for relocation assistance and payments, please contact [Name, Title, Address, Phone, Email Address] before you make any moving plans. He/she will assist you with your move to a new home and help ensure that you preserve your eligibility for all relocation payments to which you may be entitled.

**Remember, do not move or commit to the purchase or lease of a replacement home** before we have a chance to further discuss your eligibility for relocation assistance. This letter is important to you and should be retained.

Sincerely,

\_\_\_\_\_

Print name:

Title:

Enclosure/s

*NOTE: The case file must indicate the manner in which this notice was delivered (e.g., personally served or certified mail, return receipt requested) and the date of delivery. (See 49 CFR 24.5 and Paragraph 2-3(J) of Handbook 1378.)*



**Appendix 5: SAMPLE NOTICE OF ELIGIBILITY FOR URA RELOCATION ASSISTANCE (For residents who have been temporarily relocated for more than a year)**

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***THIS IS A GUIDE FORM.  
IT SHOULD BE REVISED TO REFLECT THE CIRCUMSTANCES.***

PHA Letterhead

(date)

Dear [*Resident*]:

The property you formerly occupied at [*address*] is participating in the Department of Housing and Urban Development's (HUD) Rental Assistance Demonstration (RAD) program. You have been temporarily relocated from that property since [*date*.] Your temporary relocation has exceeded one year.

It has been determined that you qualify as a "displaced person" according to the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA). You are eligible for relocation assistance and payments under the URA.

**You may choose to remain temporarily relocated and return to a unit in the RAD project once it is completed.** It is currently estimated that you may return to the RAD project by [*date*]. If you choose to remain temporarily relocated, you will stay at your current location until the RAD project is completed.

Alternatively, you may choose permanent relocation assistance and payments for which you are eligible, as listed below. If you choose permanent relocation assistance, you give up your right to return to the completed RAD project. However, **you do not need to move now.** If you choose permanent relocation assistance instead of exercising your right to return to the completed RAD project, you will not be required to move sooner than 90 days from the date that at least one comparable replacement unit has been made available to you. [*Alternatively: You will not be required to move sooner than 90 days from the date of this notice, which informs you of a comparable replacement unit that has been made available for you.*]

**This is your Notice of Eligibility for relocation assistance.**

**The effective date of your eligibility is [*insert date that relocation exceeds one year.*]**

**NOTE: Aliens not lawfully present in the United States are not eligible for URA relocation assistance, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child as defined at 49 CFR 24.208(h).** 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.

Enclosed is a brochure entitled, "Relocation Assistance to Tenants Displaced From Their Homes." Please read the brochure carefully. It explains your rights and provides additional information on eligibility for relocation payments and what you must do in order to receive these payments.

The relocation assistance to which you are entitled includes:

- Relocation Advisory Services. You are entitled to receive current and continuing information on available comparable replacement units and other assistance to help you find another home and prepare to move.
- Payment for Moving Expenses. [*PHA should list the form of payment for moving expenses selected in accordance with Appendix 1, Section 5 of this Notice.*] This is in addition to any amounts received to reimburse for any reasonable out-of-pocket expenses incurred in connection with the temporary move.
- Replacement Housing Payment. You may be eligible for a replacement housing payment to rent or buy a replacement home. The payment is based on several factors including: (1) the monthly rent and cost of utility services for a comparable replacement unit, (2) the monthly rent and cost of utility services for your present home, and (3) for low-income persons, 30 percent of your average monthly gross household income. This payment is calculated on the difference between the old and new housing costs for a one-month period and multiplied by 42.
- [*PHA list here any other relocation assistance offered the resident, such as Housing Choice Voucher .*]

Listed below are three comparable replacement units that you may wish to consider for your replacement home. If you would like, we can arrange transportation for you to inspect these and other replacement units.

	Address	Rent & Utility Costs	Contact Info
1.			
2.			
3.			

We believe that the unit located at [*address*] is most representative of the original unit you occupied in the converting RAD project. The monthly rent and the estimated average monthly cost of utilities for this unit is \$[*amount*] and it will be used to calculate your maximum replacement housing payment. Please contact us immediately if you believe this unit is not comparable to your original unit. We can explain our basis for selecting this unit as most representative of your original unit and discuss your concerns.

Based on the information you have provided about your income and the rent and utilities you now pay, you may be eligible for a maximum replacement housing payment of approximately \$ [42 x \$Amount], if you rent the unit identified above as the most comparable to your current home or rent another unit of equal cost.

Replacement housing payments are not adjusted to reflect future rent increases or changes in income. This is the maximum amount that you would be eligible to receive. If you rent a decent, safe and sanitary home where the monthly rent and average estimated utility costs are less than the comparable unit, your replacement housing payment will be based on the actual cost of that unit. All replacement housing payments must be paid in installments. Your payment will be paid in [#] installments.

Should you choose to purchase (rather than rent) a decent, safe and sanitary replacement home, you would be eligible for a downpayment assistance payment which is equal to your maximum replacement housing payment, [\$ amount] *[PHAs should note that, at the agency's discretion, a downpayment assistance payment that is less than \$5,250 may be increased to any amount not to exceed \$5,250. (See 49 CFR 24.402(c)(1)).]* Let us know if you are interested in purchasing a replacement home and we will help you locate such housing.

Please note that all replacement housing must be inspected in order to ensure it is decent, safe, and sanitary before any replacement housing payments are made.

If you have any questions about this notice and your eligibility for relocation assistance and payments, please contact [Name, Title, Address, Phone, Email Address] before you make any moving plans. He/she will assist you with your move to a new home and help ensure that you preserve your eligibility for any applicable relocation payments.

**Remember, do not move or commit to the purchase or lease of a replacement home** before we have a chance to further discuss your eligibility for relocation assistance. This letter is important to you and should be retained.

Sincerely,

---

Print Name:

Title:

Enclosure/s

*NOTE: The case file must indicate the manner in which this notice was delivered (e.g., personally served or certified mail, return receipt requested) and the date of delivery. (See 49 CFR 24.5 and Paragraph 2-3(J) of Handbook 1378.)*

- 1.** The decision to convert to either Project Based Rental Assistance or Project Based Voucher Assistance;
  - a.** Changes to the Capital Fund Budget produced as a result of each approved RAD Conversion, regardless of whether the proposed conversion will include use of additional Capital Funds;
  - b.** Changes to the construction and rehabilitation plan for each approved RAD conversion; and
  - c.** Changes to the financing structure for each approved RAD conversion.

## **B. PBV Amendment**

The recently-enacted Housing Opportunity through Modernization Act of 2016 adds a new Section 8(o)(13)(N) to the United States Housing Act of 1937 that reads as follows:

“(N) STRUCTURE OWNED BY AGENCY.—A public housing agency engaged in an initiative to improve, develop, or replace a public housing property or site may attach assistance to an existing, newly constructed, or rehabilitated structure in which the agency has an ownership interest or which the agency has control of without following a competitive process, provided that the agency has notified the public of its intent through its public housing agency plan and subject to the limitations and requirements of this paragraph.”

Accordingly, subject to any implementation requirements for the new statute, the Housing Authority of the City of Laredo is amending its 2016 Five-year/Annual PHA Plan to notify the public of its intent to attach PBV assistance to 38 units in existing structures at the Russell Terrace site that no longer will be public housing after the location of 38 RAD units at Casa Verde.

Also, it is possible although not currently anticipated that to allow Casa Verde to proceed in a timely fashion, LHA might need to commit 38 PBV units to Casa Verde with the intention that HUD would approve a later substitution of RAD units. LHA is including this possibility in the amendment so that it is not precluded if it later becomes necessary and feasible.

**Pages from 2015 Housing Tax  
Credit Application**



# Development Narrative

## 1. The proposed Development is: (Check all that apply)

New Construction

and/or:

Previous TDHCA #

14091 (not awarded)

If Acquisition/Rehab or Rehab, original construction year:

n/a

If Reconstruction,

138

Units Demolished

138

Units Reconstructed

If Adaptive Reuse, Additional Phase, or Scattered Site, include detailed information in the Narrative (4.) below.

## 2. The Target Population will be:

General

## 3. Staff Determinations regarding definitions of development activity obtained?

If a determination under §10.3(b) of the Uniform Multifamily Rules was made prior to Application submission, provide a copy of such determination behind this form.

## 4. Narrative

Briefly describe the proposed Development, including any relevant information not already identified above.

Casa Verde Apartments involves the relocation of 138 units (out of 200 total) of existing public housing owned by the Laredo Housing Authority. The proposed development is considered new construction by definition because the new development will contain 152 total units (138 HTC and 14 market rate). As required, the proposed development will contain 38 (25%) public housing units supported by an operating subsidy via an Annual Contributions Contract. The relocation of existing residents and new operating subsidy is subject to HUD approval. Because the existing residents will be relocated to a new site, the existing site will be demolished separately and the demolition cost is not included in this application. The applications to HUD will be submitted during the TDHCA application review process and approval will be obtained by HTC commitment as required by the QAP. The Laredo Housing Opportunities Corporation ("LHOC"), a public facility corporation of the Laredo Housing Authority, will retain ownership of the land and will execute a 75 year ground lease to the Partnership. LHOC will be majority Member of the General Partner of the Owner entity. Accordingly, the development qualifies for a 100% exemption of property taxes (as evidenced by a 2013 HTC transaction of similar structure). As an identity of interest transaction, the capitalized ground lease payment is equivalent to the purchase price of the land and the LHOC receives no gain on the land transaction.

**5. Funding Request:**

Complete the table below to describe this Application's funding request.

Department Funds applying for with this Application	Requested Amount	If funds will be in the form of a Direct Loan by the Department or for Private Activity Bonds, the terms will be:		
		Interest Rate (%)	Amortization (Years)	Term (Years)
<a href="#">TDHCA HOME</a>				
<b>CHDO Operating Expense</b>				
<a href="#">Housing Tax Credits</a>	\$ 1,612,000			
<a href="#">Private Activity Mortgage Revenue</a>				
<a href="#">TCAP Loan Repayments</a>				

**6. Set-Aside (For Competitive HTC & HOME Applications Only)**

Identify any and all set-asides the application will be applying under.

Set-Asides can not be added or dropped from pre-application to full Application for Competitive HTC Applications.

Competitive HTC Only						HOME Only					
At-Risk		Nonprofit		USDA		CHDO			Persons w/Disabilities		
<input checked="" type="checkbox"/>											

By selecting the set-aside above, I, individually or as the general partner(s) or officers of the Applicant entity, confirm that I (we) are applying for the above-stated Set-Aside(s) and Allocations. To the best of my (our) knowledge and belief, the Applicant entity has met the requirements that make this Application eligible for this (these) Set-Aside(s) and Allocations and will adhere to all requirements and eligibility standards for the selected Set-Aside(s) and Allocations.

**7. Previously Awarded State and Federal Funding**

Has this site/activity previously received or applied for TDHCA funds? Yes

If "Yes" Enter Project Number: 14092 and TDHCA funding source: 9% HTC (not awarded)

Has this site/activity previously received non-TDHCA federal funding? Yes

Will this site/activity receive non-TDHCA federal funding for costs described in this Application? Yes

**8. Qualified Low Income Housing Development Election (HTC Applications only)**

Pursuant to §42(g)(1)(A) & (B), the term "qualified low income housing development" means any project or residential rental property, if the Development meets one of the requirements below, whichever is elected by the taxpayer." Once an election is made, it is irrevocable. Select only one:

- At least 20% or more of the residential units in such development are both rent restricted and occupied by individuals whose income is 50% or less of the area median gross income, adjusted for family size.
- At least 40% or more of the residential units in such development are both rent restricted and occupied by individuals whose income is 60% or less of the median gross income, adjusted for family size.

## Development Activities

### 1. Common Amenities (ALL Multifamily Applications §10.101(b)(5))

# of Units must qualify for  Points

Development will provide sufficient common amenities to qualify for the number of points indicated above, pursuant to §10.101(b)(5) of the Uniform Multifamily Rules. Applications for scattered site developments should refer to §10.101(b)(5)(B) of the Uniform Multifamily Rules.

### 2. Unit Requirements (ALL Multifamily Applications §10.101(b)(6)(A) and (B))

#### A. Unit Sizes

Development is New Construction or Reconstruction and will meet the minimum Unit Size requirements:

Bedroom Size	0	1	2	3	4
Square Footage	500	600	800	1,000	1,200

**OR;**

Development is proposing Rehabilitation (excluding Reconstruction) or Supportive Housing, and does not adhere to the size requirements above.

#### B. Unit Amenities (For Competitive HTC Applications, see Tab 19 for Unit and Development Features)

Application is a Tax Exempt Bond Development and will meet a minimum of seven (7) points as outlined in §10.101(b)(6)(B) of the Uniform Multifamily Rules.

Application is HOME only or other Department Direct Loan and will meet a minimum of four (4) points as outlined in §10.101(b)(6)(B) of the Uniform Multifamily Rules.

**\*\* Rehabilitation Developments will start with a base score of three (3) points and Supportive Housing Developments will start with a base score of five (5) points.\*\***

### 3. Tenant Supportive Services (For Competitive HTC Applications see Tab 19 for Tenant Services elections)

Application is a **Tax Exempt Bond Development** and will meet a minimum of eight (8) points as outlined in §10.101(b)(7) of the Uniform Multifamily Rules.

Application is **HOME only or other TDHCA Direct Loan** and will meet a minimum four (4) points as outlined in §10.101(b)(7) of the Uniform Multifamily Rules.

### 4. Development Accessibility Requirements (ALL Multifamily Applications §10.101(b)(8))

Development will meet all specifications and accessibility requirements reflected in the Certification of Development Owner form pursuant to §10.101(b)(8) of the Uniform Multifamily Rules.

# Development Activities (Continued)

[self score](#)

131

## 1. Size and Quality of Units (Competitive HTC Applications only)

Development is Rehabilitation and either Supportive Housing or USDA financed **OR** meets the minimum size requirements identified below: Points claimed:

Bedroom Size	0	1	2	3	4
Square Footage	550	650	850	1,050	1,250

Specific amenities and quality features will be provided in every Unit at no extra charge to the tenant; Development will maintain the points selected and associated with those amenities as outlined in §10.101(b)(6)(B) of the Uniform Multifamily Rules. Points claimed:

## 2. Income Levels of Tenants (Competitive HTC Applications only)

- Total Number of Units at 50% or less of AMGI
- Number of 30% Units used to score points under §11.9(c)(2)\*
- Number of 30% Units used under §11.4(c)(2)(D) regarding an Increase in Eligible Basis (30% boost)
- Number of Units at 50% or less of AMGI available to use for points under §11.9(c)(1)
- Percentage used for calculation of eligible points under §11.9(c)(1)

Mark **only one** box below:

Development is located within a Non-Rural Area of the Dallas, Fort Worth, Houston, San Antonio or Austin MSA; or

Developments proposed in all other areas.

*\* Applicants electing the 30% boost for additional 30% units are advised to ensure the units used to support the boost are not included in the units needed to achieve the Application's scoring elections.*

Points Claimed:

## 3. Rent Levels of Tenants (Competitive HTC Applications only)

Mark **only one** box below:

At least 20% (less Units used for eligibility for boost) of all low-income Units are restricted at 30% or less of AMGI; development is Supportive Housing and qualifies under the Nonprofit Set-Aside.

Development is urban and at least 10% (less Units used for eligibility for boost) of all low-income Units are restricted at 30% or less of AMGI; or

Development is located in a Rural Area and 7.5% (less Units used for eligibility for boost) of all low-income Units are restricted at 30% or less of AMGI; or

At least 5% of all low-income Units at 30% or less of AMGI

Points Claimed:

## 4. Tenant Services (Competitive HTC Applications only)

Development will provide a combination of supportive services as identified in §10.101(b)(7) and those services will be recorded in the Development's LURA.

Supportive Housing Development qualifying under the Nonprofit Set-Aside; or

All other Developments.

Points Claimed:

5. **Tenant Populations with Special Housing Needs (Competitive HTC Applications only)**

Applicant intends to elect 2 points under this scoring item

**Section 811 Eligibility**

Mark **any** of the following that apply (some fields will auto-populate):

- Application is a Qualified Elderly Development or Supportive Housing (as defined by 10 TAC §10.3)
- Development was originally constructed before 1978
- Development does not have units available that do not have other sources of project-based rental or long-term operating assistance.
- Development does not have units available that are not restricted for persons with disabilities
- Development is not located in a qualifying MSA
- Other disqualifying factor [\(please explain\)](#)

Attached behind this tab is the executed Certification for Section 811 Program Participation



Development qualifies to participate in 811:

Application does not qualify for participation in Section 811 Program but elects to set aside at least 5% of the Units for Persons with Special Needs as identified in §11.9(c)(7) of the QAP.

Development elects to set aside at least 5% of Units:

Points Claimed:

6. **Pre-Application Participation (Competitive HTC Applications only)**

Development is requesting Pre-Application Points

7. **Extended Affordability or Historic Preservation (Competitive HTC Applications only)**

Mark **only one** box below:

Development will maintain a 35 year Affordability Period **OR**

Application is proposing the use of historic (rehabilitation) tax credits, is requesting a tax credit amount of less than \$7,000 per unit, and has included a letter from the Texas Historical Commission behind this tab showing preliminary eligibility for at least one building.



Points Claimed:

8. **Right of First Refusal (Competitive HTC Applications only)**

Development Owner agrees to provide a Right of First Refusal to purchase the Development upon or following the end of the Compliance Period.

9. **Funding Request Amount (Competitive HTC Applications only)**

Application reflects funding request for no more than 100% of the amount available in the subregion or set-aside as of 12/1/2014.

# ACQUISITION AND REHABILITATION INFORMATION

## 1. At-Risk Set-Aside (*Competitive HTC Applications Only*)

Qualification: Must meet the requirements of an At-Risk Development in §11.5(3) of the Qualified Allocation Plan.

Documentation: Must be submitted behind this tab showing that the Development meets the requirements of §2306.6702(a)(5) of the Texas Government Code.

**Part A:** Documentation must show that the subsidy or benefit is from one of the following approved programs (mark all that apply):

- Sections 221(d)(3) and (5), National Housing Act (12 U.S.C. Section 1715I)
- Section 236, National Housing Act (12 U.S.C. Section 1715z-1)
- Section 202, Housing Act of 1959 (12 U.S.C. Section 1701q)
- Section 101, Housing and Urban Development Act of 1965 (12 U.S.C. Section 1701s)
- The Section 8 Additional Assistance Program for housing developments with HUD-Insured and HUD-Held Mortgages administered by the U.S. Department of Housing and Urban Development as specified in 24 CFR Part 886, Subpart A.
- The Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects administered by the U.S. Department of Housing and Urban Development as specified by 24 CFR Part 886, Subpart C.
- Sections 514, 515, and 516, Housing Act of 1949 (42 U.S.C. Sections 1484, 1485 and 1486)
- Section 42, of the Internal Revenue Code of 1986 (26 U.S.C. Section 42)
- Applicant proposes rehabilitation or reconstruction of housing units that:
  - are owned by a Public Housing Authority and received assistance under Section 9;
- OR**
- received assistance under Section 9 **and:**
  - are proposed to be demolished by the Public Housing Authority **OR**
  - have been demolished by the Public Housing Authority in the last 2 years.

**Part B:** Place an "X" by one of the following:

- The stipulation to maintain affordability in the contract granting the subsidy is nearing expiration (expiration will occur within two (2) calendar years of July 31, 2015). See §11.5(3)(E) and (F) of the 2014 QAP concerning At-Risk developments qualifying under Section 42 of the Internal Revenue Code.
- The subsidy marked above is a federally insured mortgage and is eligible for prepayment without penalty or is nearing the end of its mortgage term (the term will end within two (2) calendar years of July 31, 2015)

**Part C:** I certify that:

- the Development is at risk of losing affordability from the financial benefits available to the Development, and those financial benefits and affordability will be retained or renewed unless regulatory barriers necessitate elimination of a portion of that benefit, pursuant to §11.5(3)(D) of the Qualified Allocation Plan.

**Part D:** If proposing demolition of the existing Units which have received the financial benefits described in Part A:

- the redevelopment will include at least a portion of the same site.
- OR**
- relocation of the existing units is proposed, and the requirements of §11.5(3)(C)(i) through (iii) of the 2015 Qualified Allocation Plan will be met.



2. Existing Development Assistance On Housing Rehabilitation Activities<sup>1</sup>

Part A.

The existing Property is expected to have or continue the following benefit: Operating Subsidy

Provide a brief description of the restrictions or subsidies the existing Property will have or continue in the space below:

The property will contain 38 dedicated public housing units (25% of total) supported by an Operating Subsidy from the Laredo Housing Authority.

[x] A copy of the contract or agreement securing the funds identified above is provided behind this form.

The source of funds is: Operating Subsidy from Laredo Housing Authority

The annual amount of funds is: varies - subject to HUD review

The number of units receiving assistance: 38

The term of the contract or agreement is (date): 40 years from PIC

The expiration of the contract or agreement is (date): 40 years from PIC

Part B. Acquisition Of Existing Buildings (applicable only to HTC applications with Acquisition credits requested)

Date of the most recent sale or transfer of the building(s): Not Applicable

In the last ten years, did the previous owner perform rehabilitation work greater than 25% of the building's adjusted basis? [ ]

Was the building occupied at any time during the last ten years? [ ]

Was the building occupied or suitable for occupancy at the time of purchase? [ ]

Will the acquisition meet the requirements of §42(d)(2)(B)(ii) relating to the 10-year placed in service rule? [ ]

If "Yes", provide a copy of a title commitment that the Development meets the requirements of §42(d)(2)(B)(ii) as to the 10 year period.



If "No", does the property qualify for a waiver under §42(d)(6)? [ ]

If "Yes", provide the waiver and/or other documentation.

How many buildings will be acquired for the Development? [ ]

Are all the buildings currently under control by the Development Owner? [ ]

If "No", how many buildings are under control by the Development Owner? [ ]

When will the remaining buildings be under control? [ ]

<sup>1</sup>Per §2306.008, TDHCA shall support the preservation of affordable housing for individuals with special needs and individuals and families of low income at any location considered necessary by TDHCA.

**From:** Raquel Favela [mailto:RFavela@ndconline.org]  
**Sent:** Wednesday, October 05, 2016 4:33 PM  
**To:** Raquel Morales; Tom Gouris; Marni Holloway; Beau Eccles  
**Cc:** Rod Solomon; Doak Brown; Jose Ceballos; Melissa Ortiz; Doug Poneck; Stephanie Dugan  
**Subject:** Re: Casa Verde

Good afternoon all,

For your review and inclusion in the board packet is our team's response to staff's position memo.

Thank you,  
Raquel

**\*PLEASE UPDATE YOUR RECORDS; MY NEW EMAIL ADDRESS IS [rfavela@ndconline.org](mailto:rfavela@ndconline.org)**  
**\*OUR NEW WEBSITE IS [www.ndconline.org](http://www.ndconline.org)**

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**From:** Raquel Favela [<mailto:RFavela@ndconline.org>]  
**Sent:** Monday, October 03, 2016 1:01 PM  
**To:** Tom Gouris; Marni Holloway; Raquel Morales; Beau Eccles; Colton Sanders  
**Cc:** Rod Solomon; Doak Brown; Jose Ceballos; Melissa Ortiz; Doug Poneck  
**Subject:** Casa Verde

Tom, Marni, Raquel, Beau, and Colton,

HUD approved Casa Verde proceeding to the RAD closing stage on September 29, less than two months after its August 5 RAD awards to the Laredo Housing Authority (LHA). We want to pursue every possibility for allowing this development to move forward. That necessitates retention of the 9% tax credits. Retention of the 9% tax credits also may be required for RAD to proceed at Russell Terrace, because HUD awarded RAD for Russell Terrace (162 units) and Casa Verde (38 units) based on a priority category for developments "in imminent danger of losing financing if they are not provided a CHAP (e.g., as evidenced by a 9% tax credit award)." If HUD were to rescind RAD for Russell Terrace because Casa Verde is not going forward, that would undermine the Russell Terrace rehabilitation.

We request that you consider whether the following could change the staff's negative recommendation to the Board.

First, neither the Texas statute nor the QAP define "demolition." HUD defines "demolition" in its demolition/disposition regulations, at 24 CFR 970.5, in the following manner:

"Demolition means the removal by razing or other means, in whole or in part, of one or more permanent buildings of a public housing development. A demolition involves any four or more of the following:

- (1) Envelope removal (roof, windows, exterior walls);
- (2) Kitchen removal;
- (3) Bathroom removal;
- (4) Electrical system removal (unit service panels and distribution circuits); or
- (5) Plumbing system removal (e.g., either the hot water heater or distribution piping in the unit, or both)."

The LHA expects that the rehabilitation of at least 138 units at Russell Terrace, through disposition, use of 4% tax credits, other available financing and RAD, will meet HUD's definition for "demolition"; the units will become uninhabitable for a period as a result. With that assurance, can the staff withdraw its recommendation and provide a positive recommendation regarding the proposed amendment to substitute RAD for public housing subsidy for 38 units at Casa Verde? At minimum, can the staff recommend a waiver of the QAP definition of "Reconstruction" based in part on this additional representation?

Second, LHA offers the following if a further rationale for retention of the 9% tax credits is needed. If LHA were willing as permitted under RAD to demolish and not rehabilitate at least 1 building to allow the 9% tax credit award to remain in place, or possibly up to 38 units if that rather than 1 building is essential to the decision, could the staff recommend the necessary action so that the 9% tax credits can be retained based in part on this additional representation?

Thanks for considering these possibilities. Given the October 5 deadline for submitting materials for the Board package, we would appreciate a response as soon as possible. We are available to discuss this at your convenience.

**\*PLEASE UPDATE YOUR RECORDS; MY NEW EMAIL ADDRESS IS [rfavela@ndconline.org](mailto:rfavela@ndconline.org)**

**\*OUR NEW WEBSITE IS [www.ndconline.org](http://www.ndconline.org)**

**Raquel F. Favela**

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Laredo Housing Authority (LHA) support of proposed non-material amendment of Housing Tax Credit (HTC) Application for Casa Verde (HTC #15251) and opposition to rescission of HTCs

Board Meeting of October 13, 2016

On behalf of applicant BAH Casa Verde Apartments, LP and itself, the LHA requests that the Board approve its proposed amendment and strongly opposes the staff’s recommendation that these HTCs be rescinded. Rescission of these tax credits would be a devastating and wholly unnecessary blow to affordable housing in the under-served Laredo area. Such action would render Casa Verde infeasible and as explained below, also could undermine the reconstruction of 162 low-income units at the Russell Terrace public housing development.

The proposed non-material amendment

The proposed amendment changes in only one respect the Casa Verde development where the HTC will be utilized. The proposed amendment would substitute 38 Rental Assistance Demonstration (RAD)-subsidized units for 38 public housing units. TDHCA has approved the substitution of RAD for public housing units for another 2015 HTC project.

	<b>Original Application</b>		<b>Non-material Amendment</b>	
<b>Casa Verde</b>	138 LIHTC Units (38 PH units and 100 LIHTC only)	14 market rate units	138 LIHTC Units (38 RAD units and 100 LIHTC only)	14 market rate units
<b>Russell Terrace</b>	Demolition of 200 units		Disposition to a for-profit entity; rehabilitation of 162 RAD units through 4% LIHTC (also qualifies as demolition and reconstruction)	

Need for amendment and HUD response

HUD did not approve LHA’s application for demolition of Russell Terrace because HUD determined that Russell Terrace did not meet the minimum thresholds for obsolescence. Once this occurred, LHA no longer had a statutory basis to commit public housing units to Casa Verde. After consulting with TDHCA staff regarding alternative justifications to demolition for meeting the at-risk set-aside requirements, LHA sought RAD approval for 38 units at Casa Verde and 162 units at Russell Terrace under a priority category for developments in imminent danger of losing financing such as 9% tax credits. HUD promptly approved RAD on August 5, expedited processing in recognition of Casa Verde’s placed-in-service deadline of the end of 2017, and on October 3 issued a RAD Conversion Commitment authorizing Casa Verde to proceed to the RAD closing stage.

### Legal basis for amendment

The public housing-related provisions of the at-risk set-aside with which the amendment must comply are an independent, free-standing section of the definition of “At-risk development,” Texas Govt. Code 2306.6702(a)(5)(B), added by 2013 House Bill 1888 and effective September 1, 2013. The Legislature added further authorization for the qualification of RAD units as at-risk in 2015. The pertinent provisions, quoted in the staff report, apply to a development that proposes to rehabilitate or reconstruct housing units that (i) are owned by a public housing authority (PHA) and receive assistance under Section 9, U.S. Housing Act; or (ii) received assistance under Section 9 and are proposed to be disposed of or demolished by the PHA; or (iii) receive or will receive RAD. Russell Terrace meets all three of these possible qualifiers, including disposition or demolition as discussed below under (ii); under the law, it must meet only one of them.

Also at issue is the non-statutory Qualified Allocation Plan (QAP) definition of “Reconstruction”: “The demolition of one or more residential buildings in an Existing Residential Development and the construction of an equal or less number of units on the Development Site...” TDHCA found the original application for Casa Verde to qualify under this definition. In addition, the term “Rehabilitation” is defined at Tex. Govt. Code 2306.004 (26-a) to include the demolition of an existing residential development and the reconstruction of any development units. Importantly, the definition of “Reconstruction” and a definition of “Rehabilitation” including the law’s definition were contained in the 2013 Uniform Multifamily Rules, prior to the enactment of the public housing-related at-risk set-aside provisions, and have not been updated to address those provisions specifically.

### Issues regarding TDHCA staff position

The TDHCA staff’s principal argument is that the Casa Verde units do not meet the QAP definition of “Reconstruction”, because units at Russell Terrace are no longer being “demolished.” But the statute provides for eligibility based on any one of the three categories outlined above (i.e., owned by a PHA and receiving public housing subsidy, disposition or demolition, or RAD).

Apart from demolition, the staff appears to be disputing only whether Russell Terrace is being “disposed of.” While the TDHCA staff may be contending that the disposition of 162 units at Russell Terrace to a for-profit entity that would use equity from 4% tax credits and other sources to rehabilitate the property is not a “disposition” under this law, neither the law nor the QAP define “disposition.” HUD considers this type of transfer a disposition requiring approval under the federal demolition/disposition<sup>i</sup> or RAD statute.

In any event, after the staff posting, LHA clarified that the level of work to be performed at Russell Terrace under RAD will meet HUD’s definition of “demolition” in its demolition/disposition regulations, at 24 CFR 970.5.<sup>ii</sup> The QAP does not define “demolition” and thus TDHCA should use HUD’s definition as a sound reference point. This, in turn, allows the Russell Terrace/Casa Verde transaction to meet the current QAP definition of “Reconstruction.” LHA also offered the possibility of demolishing and not rebuilding units up to the number left without subsidy at Russell Terrace if essential to a favorable TDHCA decision.



The staff apparently considers a PHA's successful voluntary pursuit of a HUD demolition approval the only action that puts public housing units sufficiently at risk to qualify, but as discussed above the statute is much broader and provides several other alternatives for qualifying and pursuing creative ways of preserving and constructing affordable housing. Through the RAD awards, LHA will be able to demolish the units at Russell Terrace in a manner consistent with HUD's definition of rehabilitation, rehabilitate units and replace units at Casa Verde.

#### Case for QAP waiver or further interpretation if necessary

If the staff does not accept the above arguments why Casa Verde remains eligible for HTC, TDHCA should waive or further interpret the QAP definition of "Reconstruction" to make retention of the HTC possible. This is not a request for a statutory waiver, but for recognition that the QAP has not been altered specifically to address the statutory public housing at-risk category since its enactment. The QAP provisions simply are not fully applicable to the public housing situation, in particular public housing disposition that in most cases would make on-site demolition and reconstruction impossible. Those facts make this an appropriate situation for a waiver or further interpretation.

In short, rescission of the HTC would render Casa Verde infeasible. In addition, retention of the HTC may be required for RAD to proceed at Russell Terrace, because HUD made the RAD awards under the priority category for developments in imminent danger of losing financing such as 9% tax credits. If HUD were to rescind the RAD awards because Casa Verde will not proceed, the rehabilitation of 162 Russell Terrace units would be undermined.

#### Conclusion

As has been true from the outset, Casa Verde will provide much-needed affordable housing in a favorable location in Laredo. Rehabilitation of Russell Terrace, which may depend on TDHCA's favorable decision, also will preserve and improve Laredo's affordable housing. For all of the reasons discussed above and consistent with its mission, TDHCA should approve the amendment and allow Casa Verde and with it the rehabilitation of Russell Terrace to proceed.

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<sup>i</sup> Section 18 of the U.S. Housing Act of 1937, "Demolition and Disposition of Public Housing", at Sec. 18(a)(2) covers "disposition by sale or other transfer of a public housing project or other real property...". HUD's demolition/disposition procedures have a disposition category for public housing mixed-finance, which involves similar transfers.

<sup>ii</sup> HUD defines "demolition" in its demolition/disposition regulations, at 24 CFR 970.5, in the following manner:

"Demolition means the removal by razing or other means, in whole or in part, of one or more permanent buildings of a public housing development. A demolition involves any four or more of the following:

- (1) Envelope removal (roof, windows, exterior walls);
- (2) Kitchen removal;
- (3) Bathroom removal;
- (4) Electrical system removal (unit service panels and distribution circuits); or
- (5) Plumbing system removal (e.g., either the hot water heater or distribution piping in the unit, or both)."