

# **SUPPLEMENTAL**

## **BOARD MEETING OF JUNE 30, 2011**

**C. Kent Conine, Chair**



Tom Gann, Vice-Chair  
Leslie Bingham Escareño, Member  
Lowell Keig, Member  
Juan Muñoz, Member  
J. Paul Oxer, Member

Appeal of Termination for  
11035- E. Thurman Walker

**MULTIFAMILY FINANCE DIVISION  
BOARD ACTION REQUEST  
June 30, 2011**

**Requested Action**

Deny the Applicant's appeal of the termination of Application #11035, E. Thurman Walker Living Center.

**WHEREAS**, an application for tax credits was submitted for E. Thurman Walker Living Center on March 1, 2011; and

**WHEREAS**, the application reflects that 50.75% of the developer fee is deferred; and

**WHEREAS**, §49.4(b)(11) of the 2011 Qualified Allocation Plan considers an application ineligible if more than 50% of the developer fee is deferred; therefore,

**BE IT RESOLVED**, that the appeal of termination of Application #11035, E. Thurman Walker Living Center is hereby denied.

**Background**

E. Thurman Walker Living Center is a proposed new construction of 200 units of affordable housing targeted towards the elderly population in San Antonio, Texas.

The calculation of the deferred developer fee in the application exceeded the amount allowed pursuant to §49.4(b)(11) of the 2011 Qualified Allocation Plan by 0.75%; therefore, the application was deemed ineligible and subsequently terminated. The application, in addition to the FHA 221(d)(4) loan issued through Dougherty Mortgage, LLC, includes funding from the City of San Antonio Tax Increment Funding, City of San Antonio Grants Monitoring (HOME) as well as fee waivers from the San Antonio Water System.

The appeal submitted by the applicant stated that the City of San Antonio loan agreement for the Tax Increment Reinvestment Zone (TIRZ) funding reflects that 50% or more of the developer fee be deferred. The appeal further stated the City required this amount of deferred developer fee in order to keep a long-term interest by the general partner in the development. The appeal response further suggested a larger permanent loan could be offered by the lender and supported by the development and that such a change would be in keeping with the City of San Antonio Loan Agreement for the TIRZ funding. The appeal also suggests that by increasing the loan amount the QAP requirement pursuant to §49.4(b)(11) could be met by revising the percentage of deferred developer fee to exactly 50%.

As part of the application, a signed certification was submitted affirming the applicant read and understood the rules associated with the Housing Tax Credit program. The application could have been initially submitted as proposed; however, it is not clear that the proposal could satisfy the city's "at least 50% deferred developer fee" requirement and the Department's "not more than 50% deferred developer fee" requirement. Moreover, the current proposal was available to the Applicant but not the proposal included in the application, and, therefore, staff does not recommend approval of the appeal.

# MAUC Point East Housing I, LP

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2300 W. Commerce, Suite 200  
San Antonio, Texas 78207  
Phone: 210-978-0500 Fax: 210-978-0547

June 20, 2011

Michael Gerber, Executive Director  
*Thru Raquel Morales*  
Texas Department of Housing and Community Affairs  
221 E. 11<sup>th</sup> Street  
Austin, TX 78701-2410

Re: Appeal – TDHCA #11035  
E. Thurman Walker Living Center

Dear Mr. Gerber,

We received an appeal denial notice on May 23, 2011 for the E. Thurman Walker Living Center, TDHCA # 11035. At this time we wish to appeal to the Texas Department of Housing and Community Affairs Board.

The E. Thurman Walker Living Center is a 200-unit senior development in the City of San Antonio (“COSA”) TIRZ 11. The TIRZ 11 has included the development of an apartment community since its inception in the early 2000s. The Mexican American Unity Council (MAUC) is a not-for-profit, tax-exempt community development corporation, established in 1967 and is headquartered in San Antonio’s Westside. MAUC is committed to improving the quality of life in our community in areas of education, housing, community and economic development. MAUC has become an alliance of innovative, responsive programs that keep reaching further into the community, strengthening its role and strengthening the community I now serves, the Eastside area. MAUC has worked since 2004 on the plans for the senior apartment community and provided the easement to the Frank Bryant Clinic that sits directly in front of the proposed senior apartment community, which would greatly benefit our senior residents. The Eastside community, along with the area homeowners association and churches to include Antioch Missionary Baptist Church, has worked with the Mexican American Unity Council to see this project come to fruition.

The TIRZ 11 has awarded \$700,000 to see this senior development come about, with \$500,000 awarded through the COSA HOME funding round, and \$100,000 committed from the San Antonio Water System for the development of this much needed project.

Under HB 2608, Section 3.03 regarding the priority of scoring application, financial feasibility is the number one priority. Both the lender and the investor agree the application is feasible. In working with an application, numbers are revised in an

application up until the time the application is submitted, with the architects, studies, etc. jockeying unit sizes and types, all effecting costs. Additionally we negotiated with the City of San Antonio to reach an agreement on the TIRZ 11 funds and the City set a restriction that we defer 50% of the Developer Fee. In the final application submitted to the Department, the deferred Developer fee stood at 50.75%, less then 1% over the guidelines. It is hard to rationalize with the allocation of tax credits and conventional monies, that .75% (\$17,835) would eliminate this application from the program. It is harder to imagine that knowing the need of development in a designated TIRZ 11 area, along with the diligent work, cost, and the instability of the economy, the community would have to wait another year to submit the application.

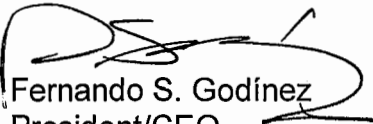
We understand in the Texas Department of Housing and Community Affairs QAP the 50% was included to deem the projects financially feasible. Proven by the commitment letters from the investor and lender, the project exceeds the 1.15 debt coverage and can pay the deferred developer fee within the Departments guidelines.

During underwriting, these projects go through considerable analysis. It has been our experience in our two (2) previous tax credit awards, the Department takes credits away, the numbers are reworked, and many times in the final product, the permanent loan ends up increased. In this case, all financial partners are involved and we could include a larger permanent loan with the lender that is already committed.

It is our observation of the TDHCA Board that the investors and lenders drive the Tax Credit program. In the case of the E. Thurman Walker Living Center, we have an investor that is dedicated to the project and an interim/permanent lender that has revised their letter to meet the program's requirement. They agree our project is financially feasible.

We are respectfully requesting the Texas Department of Housing and Community Affairs Board's consideration of this appeal to reinstate the E. Thurman Walker Living Center application, TDHCA #11035. The Eastside community of San Antonio is in great need of development, period, and a quality senior development would punctuate the City's TIRZ 11 commitment to that community.

Respectfully,

  
Fernando S. Godínez  
President/CEO

cc: David Marquez



**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

**2011 HOUSING TAX CREDIT APPEAL ELECTION FORM**

This form is to notify the Department that I am filing a formal appeal to the TDHCA Board for processing. My appeal documentation, which identifies my specific grounds for appeal, is attached.

**If my appeal is denied by the Executive Director, I: (check one)**

Do wish to appeal to the Board of Directors and request that my application be added to the ~~May 5, 2011~~ <sup>June 30, 2011</sup> Board of Directors meeting agenda. I understand that my Board appeal documentation must be submitted by 5:00 p.m. Monday, ~~April 25, 2011~~ <sup>June 20, 2011</sup> to be placed in the ~~May 5, 2011~~ <sup>June 30, 2011</sup> Board materials. If no further documentation is submitted, the appeal documentation to the Executive Director will be utilized.

Do not wish to appeal to the Board of Directors.

Development Name:	E. Thurman Walker Living Center
Development Address:	301 Spriggsdale Ave.
Signer's Name	Fernando S. Godinez
Signer's Title:	President/CEO
Date:	June 20, 2011

Signed:

# DOUGHERTY MORTGAGE LLC

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June 15, 2011

MAUC Point East Housing I, LP  
Mr. Fernando S. Godinez  
2300 W. Commerce, Suite 200  
San Antonio, TX 78207

Re: E. Thurman Walker Living Center  
200 Unit 221(d)(4)  
San Antonio, Texas

Dear Mr. Godinez:

The undersigned has made application or intends to make application to Dougherty Mortgage LLC for a loan to develop the captioned rental apartment project that will be inclusive of the construction stage for such project and the permanent financing aspect on a long-term amortizing basis based upon the following terms and conditions.

1. LENDER: Dougherty Mortgage LLC
2. PROPOSED BORROWER: MAUC Point East Housing I, LP, a Texas limited partnership
3. GUARANTOR OF LOAN: Secretary of Housing and Urban Development
4. PROPERTY: E. Thurman Walker Living Center  
San Antonio, Texas
5. TERM/AMORTIZATION OF LOAN: Up to 40 years, plus construction period  
(Currently Estimating 30 Years)
6. TOTAL LOAN AMOUNT: \$4,430,000 (First Lien-FHA 221d4)  
(Includes Construction and Permanent Loan)  
\$700,000 (Second Lien, subject to HUD approval)
7. ANTICIPATED INTEREST RATE: 

Note Rate	6.25% (Taxable)
MIP	<u>0.45%</u>
Total	6.70%
8. ANTICIPATED LOAN CONSTANT: 7.838606% (Including Non Amortizing MIP)



- |  |  |
|--|--|
| 9. DEBT COVERAGE RATIO:                    | Minimum of 1.15x on all non cash flow loans  |
| 10. MAXIMUM LOAN TO COST:                  | 87%  |
| 11. OPERATING EXPENSES:                    | \$727,604  |
| 12. NET OPERATING INCOME:                  | \$534,133  |
| 13. DEBT SERVICE:                          | \$347,250 (First Lien Only including MIP)  |
| 14. RESERVES REQUIRED:                     |  |
| OPERATING DEFICIT                          | \$181,901  |
| EST. WORKING CAPITAL                       | \$100,000  |
| EST. ON-GOING ANNUAL                       | \$50,000 (\$250/Unit)  |
| 15. INITIAL 1-15 YEAR DEBT COVERAGE RATIO: | Project maintains a minimum 1.15x ratio throughout Years 1-15 shown on the attached pro forma.   |
| 16. ASSESSMENT OF FEASIBILITY:             | Based on attached pro forma, the development is considered feasible for 15 years based on the definition of feasibility of a 1.15x debt coverage ratio throughout the period and an estimated remaining economic life of the project as constructed in excess of 30 years. Income growth rates utilized for the pro forma were 2% while expense growth rates are included at 3%. |
| 17. FINANCIAL APPROVAL                     | Based on information provided to and reviewed by lender, applicant meets the financial liquidity or net worth requirements as described in Attachment A. As a measure of liquidity, we have reviewed the borrower's mortgage debt with near or immediate balloon payments and determined that the borrower has sufficient capacity to support refinancing these positions.       |

Since the final loan amount, terms and borrower approval is to be determined by HUD as the maximum principal amount HUD will insure, the foregoing indications of loan amount, loan terms and borrower approval are subject to change.

MAUC Point East Housing I, LP a Texas limited partnership

6/15/2011

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Subject to Lender's obtaining from HUD a firm Commitment for Insurance of a Mortgage Loan, in an amount and reflecting such terms and conditions as are acceptable to Lender and to Proposed Borrower, and further subject to all terms, conditions and provisions stated herein, as executed below by Lender, this document evidences the agreement of the Lender to make a loan (the "Loan") to the Proposed Borrower, to be secured by a credit instrument and security instrument (the "Mortgage") covering real property with existing improvements thereon.

Although this document is subject to final underwriting of Dougherty Mortgage LLC and HUD, third party report verification of underwriting as well as receipt of an award of tax credits, it does represent the understanding of the parties as to the contemplated loan, and it is on the basis of this Term Letter as Proposed Lender, will proceed toward applying for a HUD commitment.

Unless otherwise agreed, there will be no personal liability for defaults in payment of interest and/or principal on the Loan.

Additional Provisions:

Documents are to be executed on such forms and are to contain such terms and provisions as Lender deems necessary or appropriate and as required by FHA.

This Term Letter and any related application or commitment issued by FHA are subject to current Regulations, policies and procedures of FHA and any changes thereto.

The Lender serves in no fiduciary capacity or relationship to Borrower and/or Mortgagor.

This term letter will expire on August 30, 2011.

MAUC Point East Housing I, LP a Texas limited partnership

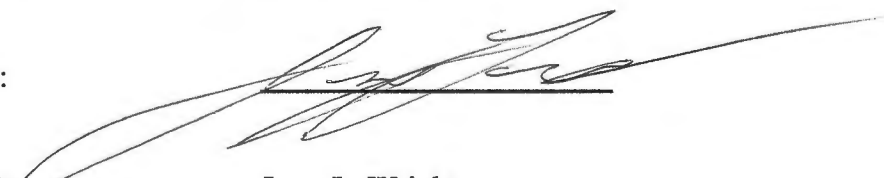
6/15/2011

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APPROVED AND ACCEPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2011.

DOUGHERTY MORTGAGE LLC

Signature:



Printed Name:

Jerry L. Wright

Title:

Senior Vice President

Date:

June 15, 2011

MAUC Point East Housing I, LP a Texas limited partnership, LP

Signature:

\_\_\_\_\_

Printed Name:

\_\_\_\_\_

Title:

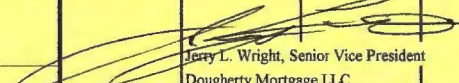
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Date:

\_\_\_\_\_

**Dougherty Mortgage LLC - 15 Year Proforma**

## *E. Thurman Walker Living Center*

<b>INCOME</b>	<b>LEASE-UP</b>	<b>YEAR 1</b>	<b>YEAR 2</b>	<b>YEAR 3</b>	<b>YEAR 4</b>	<b>YEAR 5</b>	<b>YEAR 10</b>	<b>YEAR 15</b>	<b>YEAR 20</b>	<b>YEAR 25</b>	<b>YEAR 30</b>
POTENTIAL GROSS ANNUAL RENTAL INCOME		\$1,328,040	\$1,354,601	\$1,381,693	\$1,409,327	\$1,437,513	\$1,587,131	\$1,752,321	\$1,934,704	\$2,136,069	\$2,358,393
Secondary Income		36,000	36,720	37,454	38,203	38,968	43,023	47,501	52,445	57,904	63,930
POTENTIAL GROSS ANNUAL INCOME	\$0	\$1,364,040	\$1,391,321	\$1,419,147	\$1,447,530	\$1,476,481	\$1,630,154	\$1,799,822	\$1,987,149	\$2,193,973	\$2,422,323
Provision for Vacancy & Collection Loss		102,303	104,349	106,436	108,565	110,736	122,262	134,987	149,036	164,548	181,674
Rental Concessions		0									
EFFECTIVE GROSS ANNUAL INCOME	\$0	\$1,261,737	\$1,286,972	\$1,312,711	\$1,338,965	\$1,365,745	\$1,507,893	\$1,664,835	\$1,838,113	\$2,029,425	\$2,240,649
<b>EXPENSES</b>											
General & Administrative Expenses		\$ 52,200.00	\$53,766	\$55,379	\$57,040	\$58,752	\$68,109	\$78,957	\$91,533	\$106,112	\$123,013
Management Fee		75,704	77,975	80,314	82,724	85,206	98,777	114,509	132,747	153,891	178,401
Payroll, Payroll Tax & Employee Benefits		196,000	201,880	207,936	214,174	220,600	255,736	296,468	343,687	398,428	461,887
Repairs & Maintenance		71,700	73,851	76,067	78,349	80,699	93,552	108,453	125,726	145,751	168,966
Electric & Gas Utilities		32,000	32,960	33,949	34,967	36,016	41,753	48,403	56,112	65,049	75,410
Water, Sewer & Trash Utilities		122,000	125,660	129,430	133,313	137,312	159,182	184,536	213,928	248,001	287,501
Annual Property Insurance Premiums		50,000	51,500	53,045	54,636	56,275	65,239	75,629	87,675	101,640	117,828
Property Tax		70,000	72,100	74,263	76,491	78,786	91,334	105,881	122,745	142,296	164,960
Reserve for Replacements		50,000	51,500	53,045	54,636	56,275	65,239	75,629	87,675	101,640	117,828
Other Expenses:		8,000	8,240	8,487	8,742	9,004	10,438	12,101	14,028	16,262	18,853
TOTAL ANNUAL EXPENSES	\$0	\$727,604	\$749,432	\$771,915	\$795,073	\$818,925	\$949,358	\$1,100,566	\$1,275,858	\$1,479,069	\$1,714,646
NET OPERATING INCOME	\$0	\$534,133	\$537,540	\$540,796	\$543,893	\$546,820	\$558,534	\$564,269	\$562,255	\$550,356	\$526,002
<b>DEBT SERVICE</b>											
		\$347,250	\$347,250	\$347,250	\$347,250	\$347,250	\$347,250	\$347,250	\$347,250	\$347,250	\$347,250
Second Deed of Trust Annual Loan Payment		40,103	40,103	40,103	40,103	40,103	40,103	40,103	40,103	40,103	40,103
Third Deed of Trust Annual Loan Payment		28,645	28,645	28,645	28,645	28,645	28,645	28,645	28,645	28,645	28,645
Other Annual Required Payment:											
Other Annual Required Payment:											
NET CASH FLOW	\$0	\$118,135	\$121,542	\$124,798	\$127,895	\$130,822	\$142,536	\$148,271	\$146,256	\$134,358	\$110,004
Debt Coverage Ratio	N/A	1.28	1.29	1.30	1.31	1.31	1.34	1.36	1.35	1.32	1.26
This pro forma substantially matches the assumptions used in the underwriting by Dougherty Mortgage LLC.											
		 Jerry L. Wright, Senior Vice President Dougherty Mortgage LLC				Date 6-15-2011					

## ATTACHMENT A

### SUMMARY OF REQUIREMENTS FOR BORROWER APPROVAL

#### 1. Mortgage Credit Analysis of Principals

- a. Existing published guidance, for example Handbook 4470.1 Chapters 1 & 3, and Handbook 4565.1 Chapter 6 paragraph 6-9, provide requirements of balance sheets and supporting schedules for the single asset entity mortgagor, plus its principals. Principals in this context are defined as those parties subject to Previous Participation Active Partners Performance System (APPS/2530) review, see 24 CFR 200.215.
- b. Mortgage credit review of a Limited Liability Company (LLC) follows a similar equity and control standard for principals in a Limited Partnership. Managing Members (analogous to a General Partner) and Members with an aggregate interest of 25 percent or greater are subject to mortgage credit review.
- c. Given the increased potential for principals to be in material adverse financial positions as potentially over-leveraged short term debt comes due in the next several years, the Lender's credit review is particularly important. Generally, the Lender and HUD have exercised discretion in the extent of mortgage credit review where the single asset mortgagor entity is fully funded. Because of concerns about the impact of volatile real estate fundamentals, and the lack of liquidity in the commercial real estate financing markets, this ML is emphasizing the need for mortgage credit review by the Lender on all principals and affiliates, whether or not the single asset mortgagor entity is fully funded. The Lender's mortgage credit review must include:
  - The balance sheets for all principals should, in addition to other relevant schedules, contain a Schedule of Real Estate Owned, and a Schedule of Mortgage Debt. Sample templates of these schedules are attached.
  - The Lender's mortgage credit review and Firm Commitment submission should address the creditworthiness of all principals, and contain a written analysis of the financial position and contingent liabilities, particularly all mortgage debt with near or intermediate term balloon payments (i.e. within the next 5 years).

MAP Lender gathers and analyzes borrower data for requirements but HUD has final underwriting authority and final approval or rejection of borrower for eligibility under the 221d4 program.

- The Lender's analysis of the various properties' net operating income, outstanding indebtedness, valuation estimates etc., with details supporting the Lender's assessment of the likelihood of successfully refinancing projects with maturing balloon debt, assuming current capital markets conditions and the current availability of alternative long term financing sources.
- The Lender's analysis should reconcile the data, and come to a conclusion as to the principals' and Borrower's creditworthiness. Particular attention should be given to principals with a history or anticipated incidence of adverse credit actions including (but not limited to) bankruptcies, foreclosures, or a pattern of renegotiating debt.
- A financing plan for any shortfall or anticipated lack of available credit should be provided. Both conventional financing and other FHA insured loans should be included in this analysis.

2. Concentration of Principal Risk.

Particular attention and additional scrutiny will be given in cases where principals have greater than \$250,000,000 of outstanding FHA insured debt. Based on their review of the principals' Schedule of Real Estate Owned, the lenders must identify principals that exceed this \$250,000,000 threshold. Lenders will need HUD pre-approval before such principals may apply for additional insurance commitments; further guidance will be issued separately to address the process for obtaining HUD approval.

MAP Lender gathers and analyzes borrower data for requirements but HUD has final underwriting authority and final approval or rejection of borrower for eligibility under the 221d4 program.

# WNC & ASSOCIATES, INC.

June 17, 2011

Fernando S. Godinez  
MAUC Point East Housing I, LP  
2300 W. Commerce, Suite 200  
San Antonio, TX 78207

Re: E. Thurman Walker Living Center  
San Antonio, Texas

Good Day Mr. Godinez:

I am in possession of the letter dated June 15, 2011 from Dougherty Mortgage LLC. WNC has reviewed the document and is comfortable with the updated debt amount and identified project assumptions.

WNC has concluded that this project remains financially feasible and we look forward to closing our equity into the development once you have received your award.

Please feel free to contact me at your convenience should you have any questions with respect to this letter.

Regards,



Darrick Metz  
Senior Vice President - Originations





## TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

[www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)

Rick Perry  
GOVERNOR

Michael Gerber  
EXECUTIVE DIRECTOR

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Tom H. Gann, *Vice Chair*  
Leslie Bingham Escarefio  
Lowell A. Keig  
Juan S. Muñoz, Ph.D.  
J. Paul Ozer

May 23, 2011

Mr. Fernando Godinez  
MAUC Point East Housing I, LP  
2300 W. Commerce, Suite 200  
San Antonio, TX 78207

Re: Application #11035, E. Thurman Walker Living Center

Dear Mr. Godinez:

### **Appeal Review**

I have carefully reviewed the appeal received May 17, 2011, wherein you appeal the termination of application #11035, E. Thurman Walker Living Center. The subject application was terminated because the application reflected that 50.75% of the developer fee is deferred based on the developer fee amounts indicated on the *Sources and Uses* and the *Development Cost Schedule*. As a result, the tax credit application was in violation of eligibility requirement §49.4(b)(11) of the 2011 Qualified Allocation Plan (QAP).

The appeal states that the City of San Antonio loan agreement for the Tax Increment Reinvestment Zone (TIRZ) funding reflects that 50% or more of the developer fee be deferred. This loan term is in direct conflict with the Department's QAP and eligibility for an application. Your appeal further states the City looks at such deferral so the general partner would keep a long-term interest in the development. The appeal response further suggested a larger permanent loan could be offered by the lender and supported by the development. Such a change would be in keeping with the City of San Antonio Loan Agreement for the TIRZ funding as well as the QAP requirement pursuant to §49.4(b)(11). As indicated in your appeal response the revised percentage of deferred developer fee would be reduced to exactly 50%.

While it is unfortunate the application was deemed ineligible and consequently terminated, the application included a signed certification affirming you read and understood the rules associated with the Housing Tax Credit program. As a result, staff believes the application could have been initially submitted with a deferred developer fee calculation that meets both the requirements of the QAP and the City of San Antonio TIRZ funding loan agreement.



**Appeal Determination**

After a careful review of all the facts, your appeal to revise the permanent loan amount in order to reduce the deferred developer fee in order to remain an eligible application in the competitive tax credit cycle is denied.

In accordance with §49.10(d) of the 2011 Qualified Allocation Plan, an appeals policy does exist for the Housing Tax Credit Program. If you wish to appeal to the Board and want to submit any further documentation for the Board appeal, the documentation **must** be received by 5:00 p.m. CST on **June 20, 2011** to be included with the June Board materials. If no additional documentation is submitted, the appeal documentation to the Executive Director will be utilized.

If you have any questions, please do not hesitate to contact Raquel Morales at 512-475-1676 or [raquel.morales@tdhca.state.tx.us](mailto:raquel.morales@tdhca.state.tx.us).

Sincerely,

A handwritten signature in black ink, appearing to read 'M Gerber', with a long horizontal flourish extending to the right.

Michael Gerber  
Executive Director

MFF/rbm

# MAUC Point East Housing I, LP

2300 W. Commerce, Suite 200  
San Antonio, Texas 78207  
Phone: 210-978-0500 Fax: 210-978-0547

May 17, 2011

Robbye G. Meyer, Director of Multifamily Finance  
Texas Department of Housing and Community Affairs  
221 E. 11<sup>th</sup> Street  
Austin, TX 78701-2410

Re: Appeal – TDHCA #11035  
E. Thurman Walker Living Center

Dear Ms. Meyer,

We received a termination notice on May 10, 2011 for the E. Thurman Walker Living Center, TDHCA # 11035; staff identified this application as ineligible due to the deferred developer fee exceeding the 50% rule. At this time we are requesting to appeal this termination.

The E. Thurman Walker Living Center is a 200-unit senior development in the City of San Antonio ("COSA") TIRZ 11. Through the TIRZ 11, \$700,000 has been committed, with \$500,000 applied for through the City of San Antonio HOME funding round, and \$100,000 committed from the San Antonio Water System.

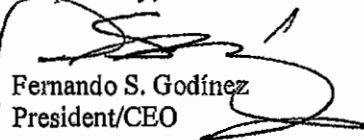
In the attached City of San Antonio loan agreement for the TIRZ funds, page 6, 8(ii), the City states 50% or more of the developer fee be deferred. The reason the City looks for the 50% deferred fee is so the general partner would keep a long-term interest in the project. In working to accomplish this, with the constant revising of numbers, the final amount of the deferred developer fee was \$17,835 over the 50% or *less than 1% over*. Our numbers and those from the *lender (Dougherty Mortgage LLC, Jerry Wright)* all show that with this deferment, this project still exceeds the required 1.15 debt coverage.

We understand in the Texas Department of Housing and Community Affairs ("TDHCA") QAP the 50% was included to deem the projects financially feasible. Proven by the commitment letters from the investor and lender, the project exceeds the 1.15 debt coverage and can pay the deferred developer fee within the Departments guidelines.

During underwriting, these projects go through considerable analysis; it has been our experience the Department takes credits away, thus adding a larger permanent loan. In this case, all financial partners are involved and we could include a larger permanent loan with the lender that is already committed, and would drop the deferred developer fee to a perfect 50%, thus satisfying TDHCA and the City of San Antonio.

We are respectfully requesting your consideration of this appeal to reinstate the E. Thurman Walker Living Center application, TDHCA #11035.

Respectfully,

  
Fernando S. Godínez  
President/CEO

cc: David Marquez

STATE OF TEXAS             §  
   §  
COUNTY OF BEXAR         §

**CHAPTER 380 ECONOMIC DEVELOPMENT  
PROGRAM GRANT AND LOAN AGREEMENT  
OF THE CITY OF SAN ANTONIO**

This Chapter 380 Economic Development Program Grant And Loan Agreement (hereafter referred to as this "Agreement") is made and entered into by the City of San Antonio, a municipal corporation of the State of Texas, hereafter referred to as "GRANTOR", by and through its City Manager or her designee, and MAUC Point East Housing, LP, a for-profit limited partnership incorporated in the State of Texas, hereafter referred to as "GRANTEE", acting by and through its general partner, MAUC Point East Development, L.L.C., a Texas limited liability company (collectively, the "Parties"), and pursuant to Article III, Section 52-a, of the Texas Constitution and Chapter 380 of the Texas Local Government Code, as amended.

**RECITALS**

**WHEREAS**, pursuant to Chapter 380 of the Texas Local Government Code, GRANTOR is authorized to loan and grant municipal funds to promote state or local economic development and to stimulate business and commercial activity in the municipality; and

**WHEREAS**, in accordance with City Ordinance No. 100684, GRANTOR created an economic development program for the purpose of making such loans and grants available; and

**WHEREAS**, GRANTEE is engaged in an economic development project that will be located within the city limits of San Antonio and will consist of the construction of a 200 unit Senior Multi-Family housing project (the "Project") at a vacant, abandoned property located at 301 Spriggsdale Road (the "Project Site"); and

**WHEREAS**, GRANTEE is seeking an economic development grant and loan from GRANTOR for the purpose of defraying costs associated with the construction of the Project, and

**WHEREAS**, once completed, the Project is expected to result in a \$21 million investment in real property improvements at the Project Site and is anticipated to result in the promotion of state or local economic development and to stimulate business and commercial activity in the municipality; and

**WHEREAS**, the Project is located within GRANTOR'S Inner City Reinvestment/Infill Policy Target Area as well as the Tax Increment Reinvestment Zone Number 11 (Inner City TIRZ) designated by City Council in December 2000 to support redevelopment and public infrastructure improvements within the area encompassing the Zone; and

**WHEREAS**, on November 16, 2010 the board of the Inner City TIRZ approved a term sheet outlining the terms and conditions under which GRANTEE could receive a loan and grant from GRANTOR using TIRZ funds not to exceed \$700,000.00 under the terms and conditions of this Agreement; and

**WHEREAS**, the City Council has authorized the City Manager or her designee to enter into this Agreement in accordance with City Ordinance No. 2010-0012-0016-1107, passed and approved on December 16, 2010, to provide funds to support the Project; **NOW THEREFORE**:

The Parties, by the execution of this Agreement, are bound to the mutual obligations set out herein and to the performance and accomplishment of the tasks hereafter described:

## **SECTION 1. PURPOSE**

The purpose of this agreement is to assist GRANTEE in defraying costs associated with the construction of the Project through the award of public funds in the form of an economic development grant and loan. Upon completion, the Project is expected to result in approximately \$21 million of added value to and investment in real property within the Inner City Reinvestment/Infill Policy Target Area. The Project is anticipated to promote local economic development and to stimulate business and commercial activity in the City of San Antonio. GRANTOR is supporting the Project through this Agreement to promote state or local economic development and to stimulate business and commercial activity in the municipality.

This Agreement may be part of a larger incentive package in accordance with GRANTOR's Inner City Reinvestment/Infill Policy (the "ICRIP").

## **SECTION 2. DEFINITIONS**

**RESERVED**

## **SECTION 3. TERM**

This Agreement shall commence upon its "Effective Date" as indicated herein and shall terminate as follows: 1) five (5) years following the date of issuance of a Certificate of Occupancy for the Project in accordance with Section 7(B)(8); or 2) fifteen (15) years following the date of issuance of a Certificate of Occupancy for the Project in accordance with Section 7(B)(4); or in accordance with Section 15 of this Agreement below.

## **SECTION 4. OBLIGATIONS OF GRANTEE**

### **A. The Project.**

1. GRANTEE shall expend approximately TWENTY-ONE MILLION DOLLARS (\$21,000,000.00) to construct the Project at the Project Site. A legal description of the Project Site is attached hereto as Attachment I and is made a part of this Agreement. GRANTEE shall retain and provide documentation to GRANTOR, upon GRANTOR's request, indicating Project related expenditures. The Project shall consist of: (1) a Senior Multi-family housing complex consisting of 200 units meeting the definition and thresholds of "low income" designation by the U.S. Department of Housing and Urban Development; and (2) associated streetscape and other public improvements coordinated with the GRANTOR and/or other interested parties. A list of potential public improvements is attached hereto as Attachment II and is made a part of this Agreement.

2. GRANTEE shall secure sufficient construction financing prior to October 31, 2011 to undertake and complete the Project. Should GRANTEE fail to secure such financing by October 31, 2011, GRANTOR may, in its sole discretion, extend the time for securing sufficient financing by no more than six (6) months.

3. GRANTEE shall commence construction of the housing units prior to October 31, 2011 but in no case later than April 01, 2012.

4. GRANTEE shall provide quarterly construction status updates and compliance reports to GRANTOR in a format acceptable to GRANTOR, starting no later than thirty (30) days following the

beginning of construction of the Project and continuing at least every third month thereafter for the duration of the construction of the Project, to include the construction progress, construction expenses and its compliance with all contractual requirements associated with the Project.

5. GRANTEE shall complete construction no later than April 1, 2013 but in no case later than October 1, 2013. Evidence of completion shall be the issuance of a Certificate of Occupancy for the Project by the City's Development Services Department.

**B. The Public Improvements.**

1. GRANTEE shall construct the Public Improvements described in Attachment II and within sixty (60) days of their "Completion" dedicate such Public Improvements to the GRANTOR. "Completion" shall mean constructed in accordance with the engineer's design and this Agreement. In order for a Public Improvement to have achieved a state of "Completion", the Public Improvement must:

i. for Public Improvements undertaken by the GRANTEE that initially required engineering plans only, be inspected by a design engineer and be the subject of a certification letter from the design engineer, sealed with the engineer's professional seal, certifying that the Public Improvements were designed in such a manner as to endure without need for maintenance, repair or replacement for FIVE (5) years, taking into consideration the site and traffic conditions, present and future, at or near the Public Improvements, and certifying that the Public Improvements were constructed according to the specifications required by the engineer's design for each Public Improvement; and

ii. be approved by the GRANTOR, if necessary, as evidenced by a letter of acceptance issued by an authorized official of the GRANTOR; and

2. Upon acceptance of a GRANTEE-constructed street, sidewalk or drainage improvement for maintenance by the GRANTOR, GRANTEE or its contractor shall deliver to the GRANTOR a one-year extended warranty bond, naming the GRANTOR as the obligee, in conformity with Chapter 35 of the City's Unified Development Code. The cost of repair, replacement and maintenance for defects discovered during the first year after Completion shall be paid by GRANTEE, its contractor or the bond company and shall not be paid out of funds received under this Agreement.

3. GRANTEE shall, at its own cost and expense, maintain or cause to be maintained all public improvements, until Completion and acceptance by the GRANTOR and for one (1) year thereafter.

4. GRANTEE shall establish and maintain a separate, dedicated fund and accounting for GRANTOR-funded constructed Public Improvements.

5. GRANTEE shall ensure that its contractors deliver original Tex. Govt. Code, Chapter 2253 Performance and Payment Bonds and GRANTEE shall provide a copy of the Bonds to GRANTOR prior to construction of the Public Improvements. GRANTEE agrees that Performance and Payment Bonds shall meet the minimum standards for these bonds set by the GRANTOR's Risk Management Division. Failure to meet the GRANTOR's minimum standards for these bonds prior to the commencement of construction will be considered a breach of contract. The bonds shall name both the GRANTOR and the GRANTEE as beneficiaries or obligees of the bonds. The payment and performance bonds for each phase shall be in an amount sufficient to cover the entire contract cost of the Public Improvements for that phase.

C. In constructing the Project, including the Public Improvements, GRANTEE shall comply with all applicable federal, state and local laws and regulations, and shall develop and operate the Project in accordance with the terms and conditions of this Agreement.

D. GRANTEE shall pay all levied real property ad valorem taxes assessed for the Project Site prior to the commencement of the Term, and for each year thereafter, by the date due in GRANTEE's invoice. However, nothing herein shall prohibit GRANTEE from exercising its right to protest appraisals of the Property Site, or any portion thereof.

#### **SECTION 5. BID, SBEDA AND WAGE REQUIREMENTS**

A. GRANTEE agrees that contracts or subcontracts for the construction of Public Improvements constructed by GRANTEE shall be competitively bid in compliance with Chapter 252 of the Local Government Code and be constructed in compliance with all applicable law.

B. With respect to the construction of Public Improvements, GRANTEE shall comply with City Ordinance No. 2007-04-12-0396 relating to the participation of business enterprises certified as Small, Minority-, or Women-owned Business Enterprises in subcontracting any of the construction work required to be performed on the Project.

C. If applicable to the Project, GRANTEE shall pay prevailing wages in compliance with Tex. Govt. Code, Chapter 2258 and City Ordinance No. 2008-11-20-1045.

#### **SECTION 6. RESERVED**

#### **SECTION 7. ECONOMIC DEVELOPMENT PROGRAM GRANT AND LOAN**

A. **Economic Development Program Grant.** In consideration of full and satisfactory performance of activities required by this Agreement, GRANTOR is making an Economic Development Program Grant available to GRANTEE in the amount of ONE HUNDRED FORTY SEVEN THOUSAND SIX HUNDRED AND EIGHTY-NINE DOLLARS AND FORTY-SEVEN CENTS (\$147,689.47) (the "Grant Funds"). The Grant Funds shall be available to GRANTEE no later than thirty (30) days following execution of this Agreement and shall be disbursed to GRANTEE upon GRANTEE's submission of invoices to GRANTOR for services directly related to predevelopment costs for the Project. Such predevelopment costs must be contracted for subsequent to the approval of this Agreement and may include architectural drawings/construction documents, ESA studies, Appraisals, Market Studies and other expenses as outlined in the Pro-Forma for the Project. GRANTOR shall not unreasonably withhold payment of a Grant Funds request for eligible costs submitted by GRANTEE in accordance with the terms of this Agreement.

- i. All construction related documents that are paid for with Grant Funds shall be jointly owned by GRANTEE and GRANTOR until Grantee's completion of all of its obligations under this Agreement. GRANTOR may retain copies of all work product submitted by GRANTEE.
- ii. GRANTOR shall make the Grant Funds available within thirty (30) days of GRANTEE's submission of a request for payment.

B. **Economic Development Program Loan.** In addition to the Grant Funds, GRANTOR has agreed to provide GRANTEE with an Economic Development Program Loan in the amount of FIVE HUNDRED AND FIFTY TWO THOUSAND THREE HUNDRED TEN DOLLARS AND FIFTY-THREE CENTS (\$552,310.53) (the "Loan Funds"). The Parties agree that the Loan Funds are to be used exclusively for the purpose of satisfying the obligations of GRANTEE as stated in the Mortgage Loan Agreement (the "Loan Agreement") (Attachment III) between GRANTEE and JP

BANK N.A. ("Bank"). The Parties acknowledge that GRANTEE has defaulted on the Loan Agreement and GRANTOR is providing the Loan Funds for the sole purpose of securing ownership and control of the Project Site and to halt foreclosure proceedings. GRANTEE agrees and understands that the Loan Funds are to be paid directly by GRANTOR to Bank in a negotiated Purchase and Assignment Agreement between GRANTOR and Bank (ATTACHMENT IV). By providing such funds, GRANTEE acknowledges that GRANTOR shall assume the role of Bank in the Mortgage Loan Agreement and shall acquire additional rights as stated through the Purchase and Assignment Agreement.

1. Mortgage Pledge. GRANTOR and GRANTEE agree that the Loan Funds shall be secured by a first priority lien on the Project Site as provided by the Purchase and Assignment Agreement. GRANTOR shall acquire all legal rights and remedies in accordance with the Purchase and Assignment Agreement to the Project Site and against GRANTEE should GRANTEE fail to meet the terms and conditions of this Agreement, including the right to foreclose on the Project Site, take possession and sale the property to satisfy repayment of the Loan Funds.

2. Prior Liens. GRANTEE, through River City Capital, has a prior lien on the Project Site for an amount equal to THREE HUNDRED AND FIFTY THOUSAND DOLLARS AND NO CENTS (\$350,000.00). GRANTEE and River City Capital agree to release any and all prior liens and to waive any and all claims against the Project Site. Such agreement is evidenced in Attachment V (the "Release of Claims Agreement").

3. InterCreditor Agreement. GRANTOR agrees to negotiate in good faith an InterCreditor Agreement with GRANTEE's construction loan lender. Should GRANTOR deem the terms and conditions of the InterCreditor Agreement are commercially reasonable it shall agree to subordinate it's first-priority lien position during the construction period to assist in the GRANTEE's ability to finance the costs of constructing the Project.

4. Repayment of Loan. GRANTEE shall be obligated to repay GRANTOR the Loan Funds, subject to SECTION 8 below, in annual installments of THIRTY FIVE THOUSAND THREE HUNDRED AND THIRTY-THREE DOLLARS AND THIRTY-THREE CENTS (\$35,333.33) plus Accrued Interest (as defined below) for a term of FIFTEEN (15) years beginning on the fifth (5<sup>th</sup>) year following the issuance of a Certificate of Occupancy for the Project.

5. Payment of Principal and Accrued Interest. In addition to the principal amount of the Loan Funds, GRANTEE shall also pay interest on the outstanding amount advanced beginning on the fifth (5<sup>th</sup>) year following the issuance of a Certificate of Occupancy for the Project ("Accrued Interest"). Accrued Interest on the outstanding Loan Funds shall be at a fixed-rate of four-percent (4%) per annum. Such fixed interest rate shall be in effect beginning on the fifth (5<sup>th</sup>) anniversary of the date of issuance of a Certificate of Occupancy for the Project. In no event shall any interest, including the Accrued Interest, accrue on the outstanding balance of the Loan Funds prior to fifth (5<sup>th</sup>) anniversary of the issuance of a Certificate of Occupancy for the Project. The amount of the Accrued Interest payment each year shall be referred to as an "Interest Payment")

6. Sufficient Amounts. Each payment made pursuant to SECTION 4 and 5 above shall be sufficient to pay the total amount of principal and Accrued Interest on the Loan Funds becoming due and payable upon that date.

7. Prepayment. Should GRANTEE repay the amount of the Loan Funds in whole, or in part, prior to the scheduled payment dates or the expiration of the dates specified in Section 7(B)(4) of this Agreement, any Accrued Interest for such payment period shall be applied to the principle.

**8. Conditional Obligation to Repay Loan Funds.** The obligations of GRANTEE to make the Loan Payments and Interest Payments required by SECTION 7(B)(4) and 7(B)(5) above shall be forgiven by GRANTOR upon a showing that GRANTEE has:

- (i) met all obligations stated in Section 4 of this Agreement; and
- (ii) deferred at least fifty-percent (50%) of its "developer fees" (as shown in the Pro-Forma, attached hereto as Attachment VI and made a part of this Agreement) for a period of five years commencing upon the Effective Date of this Agreement.

GRANTOR shall utilize GRANTEE's Pro Forma among other documents, to determine GRANTEE's compliance with this Section 7(B)(8).

B. The funds made available to GRANTEE through this Agreement are made solely from lawfully available funds that have been appropriated by GRANTOR. Under no circumstances shall GRANTOR's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Consequently, notwithstanding any other provision of this Agreement, GRANTOR shall have no obligation or liability to pay any Grants unless GRANTOR appropriates funds to make such payment during the budget year in which such Grant(s) is payable. Further, GRANTOR shall not be obligated to pay GRANTEE, any commercial bank, lender or similar institution for any loan or credit agreement made by GRANTEE, not a part of this Agreement.

#### **SECTION 8. RETENTION AND ACCESSIBILITY OF RECORDS**

A. GRANTEE shall maintain all fiscal records and supporting documentation for expenditures of disbursed funds associated with this Agreement. GRANTEE shall retain such records, and any supporting documentation, for the greater of: (1) Four [4] years from the end of the Agreement Term; or (2) the period required by other applicable laws and regulations.

B. GRANTEE shall, following reasonable advance written notice from the GRANTOR, give the GRANTOR, its designee, or any of their duly authorized representatives, access to and the right to examine all books, accounts, records, audit reports, reports, files, documents, written or photographic material, vidcotape and other papers, things, or property belonging to or in use by GRANTEE pertaining to this Economic Development Grant (the "Records"). The GRANTOR's access to GRANTEE's books and records will be limited to information needed to verify that GRANTEE is and has been complying with the terms of this Agreement and to verify payments made by the GRANTOR and re-payments made by GRANTEE and to verify that the proceeds of the Economic Development Grant are or were used in connection with the development and operation the Project. Should any good faith dispute or question arise as to the validity of the data provided, GRANTOR reserves the right to require GRANTEE to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of GRANTEE. GRANTEE agrees to maintain the Records in an accessible location and to provide reasonable access to the Records consistent with the Texas Public Information Act. Failure to provide reasonable access to the Records to authorized GRANTOR representatives shall give GRANTOR the right to suspend or terminate this Agreement as provided for in Section 14 below, or any portion thereof, for reason of default.

#### **SECTION 9. MONITORING**

GRANTOR reserves the right to confirm GRANTEE's compliance with the terms and conditions of this Agreement. GRANTOR will provide GRANTEE with a written report of the monitor's findings. If the monitoring report notes deficiencies in GRANTEE's performances under the terms of this Agreement, the monitoring report shall include a listing of requirements for the correction of such deficiencies by GRANTEE and a reasonable amount of time (but in no case less than thirty (30) days) in which to attain



compliance. Failure by GRANTEE to take action specified in the monitoring report may be cause for suspension or termination of this Agreement, in accordance with Section 14 herein.

#### **SECTION 10. INDEPENDENT CONTRACTOR**

It is expressly understood and agreed by the Parties hereto that GRANTEE is not an agent or representative of GRANTOR and that GRANTEE, its employees and subcontractors are not employees or contractors of the GRANTOR.

#### **SECTION 11. CONFLICT OF INTEREST**

A. GRANTEE shall ensure that no employee, officer, or agent of GRANTEE shall participate in the selection, award or administration of a subcontract supported by funds provided hereunder if a conflict of interest, real or apparent, would be involved. Such conflict of interest would arise when: (1) the employee, officer, or agent; (2) any member of his or her immediate family; (3) his or her partner; or, (4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract. GRANTEE shall comply with Chapter 171, Tex. Local Govt. Code as well as the City of San Antonio Code of Ethics.

B. Except for eligible administrative costs, no employee, agent, consultant, officer, or elected or appointed official, of either GRANTEE or of a subcontractor, who exercises or has exercised any functions or responsibilities or is in a position to participate in decision-making or gain inside information in regard to the activities involved in the Project, shall be permitted to have or obtain a financial interest in or benefit from the Project or any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties. This prohibition shall remain in effect for the duration of the prohibited relationship plus one calendar year thereafter.

#### **SECTION 12. NONDISCRIMINATION AND SECTARIAN ACTIVITY**

A. GRANTEE shall ensure that no person shall, on the ground of race, color, national origin, religion, sex, age or handicap, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied access to any program or activity funded in whole or in part with funds made available under this Agreement.

B. None of the performances rendered by GRANTEE under this Agreement shall involve, and no portion of the funds received by GRANTEE under this Agreement shall be used in support of, any sectarian or religious activity, nor shall any facility used in the performance of this Agreement be used for sectarian instruction or as a place of religious worship.

C. GRANTEE shall include the substance of this Section 12 in all subgrant or contractor agreements.

#### **SECTION 13. LEGAL AUTHORITY**

A. Each Party assures and guarantees to the other that they possesses the legal authority to enter into this Agreement, to receive/deliver the funds authorized by this Agreement, and to perform its obligations hereunder.

B. The person or persons signing and executing this Agreement on behalf of each Party or representing themselves as signing and executing this Agreement on behalf of a Party, do hereby guarantee that he, she or they have been duly authorized to execute this Agreement on behalf of that Party and to validly and legally bind that Party to all terms, performances and provisions herein set forth.

C. GRANTOR will have the right to suspend or terminate this Agreement in accordance with Section 14 herein if there is a dispute as to the legal authority, of either GRANTEE or the person signing this Agreement, to enter into this Agreement, any amendments hereto or failure to render performances hereunder. GRANTEE is liable to GRANTOR for any money it has received from GRANTOR for performance of the provisions of this Agreement if GRANTOR suspends or terminates this Agreement for reasons enumerated in this Section 13.

#### **SECTION 14. LITIGATION AND CLAIMS**

A. GRANTEE shall give GRANTOR immediate notice in writing of any action, including any proceeding before an administrative agency, filed against GRANTEE arising out of the performance of this Agreement or any related contract or subcontract. Except as otherwise directed by GRANTOR, GRANTEE shall furnish immediately to GRANTOR copies of all pertinent papers received by GRANTEE with respect to such action or claim. GRANTEE shall notify the GRANTOR immediately of any legal action filed against the GRANTEE or any subcontractor, or of any proceeding filed under the federal bankruptcy code. GRANTEE shall submit a copy of such notice to GRANTOR within fifteen (15) calendar days after receipt. No funds provided under this Agreement may be used in the payment of any costs incurred from violations or settlements of, or failure to comply with, federal and state regulations.

B. GRANTOR and GRANTEE acknowledge that GRANTOR is a political subdivision of the State of Texas and is subject to, and complies with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001 et. seq., and the remedies authorized therein regarding claims and causes of action that may be asserted by third parties for accident, injury or death.

C. This Contract shall be governed by the laws of the State of Texas. Venue and jurisdiction arising under or in connection with this Contract shall lie exclusively in Bexar County, Texas.

#### **SECTION 15. DEFAULT, TERMINATION AND RECAPTURE**

A. GRANTOR shall have the right to terminate this Agreement for non-compliance, in whole or in part, at any time before the date of termination should GRANTOR determine that GRANTEE has failed to comply with any material term of any agreement between GRANTEE and GRANTOR. GRANTOR will provide GRANTEE with written notification as to the nature of the non-compliance (the "Notice of Default"), and provide GRANTEE no less than a sixty (60) day period from the date of the GRANTOR's written notification to cure (the "Cure Period"), if possible, any issue of non-compliance under this Agreement. Should GRANTEE fail to cure any default within the period of time so provided, the GRANTOR may, upon issuance to GRANTEE of a written Notice of Termination, terminate this Agreement in whole or in part. Such notification shall include: (1) the reasons for such termination; (2) the effective date of such termination; and, (3) in the case of partial termination, the portion of the Agreement to be terminated.

B. In the case of default for causes beyond GRANTEE's reasonable control as defined in Section 25 of this Agreement, which cannot with due diligence be cured within such period, the GRANTOR may, in its sole discretion, extend the Cure Period provided that GRANTEE shall: (1) immediately upon receipt of Notice of Default advise GRANTOR of GRANTEE's intention to institute all steps necessary to cure such default and the associated time frame (the "Cure Plan"); and (2) institute and thereafter prosecute to completion, with reasonable and diligent dispatch, the Cure Plan. Should GRANTEE's Cure Plan fail to cure the default or should GRANTEE fail to institute the Cure Plan, then this Agreement shall be terminated without further action by GRANTOR.

C. Termination in the Event of Failure to Comply with Terms. Subject to the notice and cure provisions set forth herein, if GRANTEE fails to comply with any of the material terms of this Agreement, or if any of the GRANTEE principals fail to comply with any of the material terms of any other agreement with GRANTOR, for any reason, then GRANTOR shall have the right to terminate this Agreement. Upon said termination, GRANTEE shall immediately vacate the Project Site and GRANTOR, in accordance with the rights and remedies of the Loan Agreement and Purchase and Assignment Agreement, shall commence all necessary proceedings to foreclose and take possession of the Project Site.

D. Upon receipt of Notice of Termination for non-compliance under this Section 15, GRANTEE shall, to the extent possible under its other contractual obligations, cancel, withdraw or otherwise terminate any outstanding orders or subcontracts related to the performance of this Agreement or the part of this Agreement to be terminated and shall cease to incur costs thereunder. Any other work or materials obtained with funds disbursed under or as part of this Agreement shall be terminated and GRANTOR will not be liable to GRANTEE or to GRANTEE's creditors for any costs incurred subsequent to receipt of a Notice to Terminate.

E. Notwithstanding any exercise by GRANTOR of its right of termination pursuant to this Section 15, GRANTEE shall not be relieved of any liability to GRANTOR for damages due to GRANTOR by virtue of any breach by GRANTEE of any agreement with GRANTOR.

## **SECTION 16. SPECIAL CONDITIONS AND TERMS**

GRANTEE understands and agrees that if GRANTEE is a "business" and if the GRANTOR's contribution under this Agreement is a "public subsidy" as that term is defined in Chapter 2264 of Subtitle F, Title 10, Tex. Govt. Code, as amended, then in the event of GRANTEE'S conviction of knowingly employing an undocumented worker, GRANTEE shall return all funds that GRANTEE has received from GRANTOR through this Agreement, with repayment required within SIX (6) months of final conviction. Interest shall accrue at the rate of .5% per month until the time of such repayment from the date of final conviction.

## **SECTION 17. SUBCONTRACTS**

A. GRANTEE shall ensure that the performance rendered under all subcontracts complies with all terms and provisions of this Agreement as if such performance were rendered by GRANTEE. GRANTEE shall bear full responsibility for performance by all subcontractors.

B. GRANTEE, in subcontracting any of the performances hereunder, expressly understands that in entering into such subcontracts, GRANTOR is in no way liable to GRANTEE's subcontractors.

C. GRANTEE assures and shall obtain assurances from all of its subcontractors where applicable, that no person shall, on the grounds of race, creed, color, disability, national origin, sex or religion, be excluded from, be denied the benefit of, or be subjected to discrimination under any program or activity funded in whole or in part under this Agreement.

## **SECTION 18. INSURANCE**

A. GRANTEE will require that the Insurance requirements contained in this Section be included in all its contracts or agreements for Public Improvements where GRANTEE is seeking grant funds under this Agreement, unless specifically exempted in writing by the GRANTOR.

B. Prior to the commencement of any work under this Agreement, GRANTEE shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the GRANTOR's Center

City Development Office (CCDO), which shall be clearly labeled "E. Thurman Walker Living Sr. Center" in the description of operations block of the certificate. The original certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The GRANTOR will not accept a Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the GRANTOR at the address listed in Paragraph E of this Section 18. The GRANTOR shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the GRANTOR's CCDO. No officer or employee, other than the GRANTOR's Risk Manager, shall have authority to waive this requirement.

C. The GRANTOR reserves the right to review the Insurance requirements of this Section during the effective period of this Agreement and any extension or renewal hereof and to reasonably modify insurance coverages and their limits when deemed necessary and prudent by the GRANTOR's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will the GRANTOR allow modification whereupon the GRANTOR may incur increased risk.

D. The GRANTEE's financial integrity is of interest to the GRANTOR, therefore, subject to the GRANTEE's right to maintain reasonable deductibles in such amounts as are approved by the GRANTOR, the GRANTEE or the GRANTEE's contractor, shall obtain and maintain in full force and effect during the construction of all Public Improvements undertaken by the GRANTEE or GRANTEE's contractor and required by this Agreement, at the GRANTEE's or the GRANTEE's contractor's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed:

TYPE	AMOUNTS
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability f. Environmental Impairment/ Impact – sufficiently broad to cover disposal liability (if applicable).	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence

E. The GRANTOR shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the GRANTOR and may require the deletion, revision or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties thereto or the underwriter of any such policies). GRANTEE and/or GRANTEE's contractor shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to the GRANTOR at the addresses provided below within ten (10) days of the requested

change. GRANTEE and/or GRANTEE's contractor shall pay any costs incurred resulting from said changes:

City of San Antonio  
Center City Development Office  
P.O. Box 839966  
San Antonio, Texas 78283-3966

F. GRANTEE agrees that with respect to the above-required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- a. Name the GRANTOR and its respective officers, officials, employees, volunteers and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed pursuant to this Agreement, with the exception of the workers' compensation and professional liability policies;
- b. Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- c. Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the GRANTOR; and
- d. Provide thirty (30) calendar days advance written notice directly to GRANTOR at the same address listed in Paragraph E. of this Section regarding any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

G. Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, GRANTEE and/or GRANTEE's contractor shall provide a replacement Certificate of Insurance and applicable endorsements to the GRANTOR at the address listed in Paragraph E. of this Section 18. GRANTOR shall have the option to suspend GRANTEE's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

H. In addition to any other remedies the GRANTOR may have upon GRANTEE's and/or GRANTEE's contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the GRANTOR shall have the right to order GRANTEE to stop work hereunder, and/or withhold any payment(s) which become due to the GRANTEE hereunder until GRANTEE and/or GRANTEE's contractor demonstrates compliance with the requirements hereof.

I. Nothing herein contained shall be construed as limiting in any way the extent to which GRANTEE may be held responsible for payments of damages to persons or property resulting from GRANTEE's or its contractors' performance of the work associated with this Agreement.

J. It is agreed that GRANTEE's and/or GRANTEE's contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of San Antonio for liability arising out of operations associated with this Agreement.

K. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

L. GRANTEE agrees to obtain all insurance coverages with minimum limits of not less than those limits delineated in Paragraph D. of this Section 18 from each contractor to GRANTEE and provide a

Certificate of Insurance and Endorsement that names the GRANTEE and the GRANTOR as an additional insured.

#### **SECTION 19. INDEMNIFICATION**

The GRANTEE covenants and agrees that GRANTEE shall, and agrees to contractually require each of its contractors to, **FULLY INDEMNIFY and HOLD HARMLESS**, the GRANTOR (and the elected officials, employees, officers, directors, volunteers and representatives of the GRANTOR), individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, arising out of any act or omission of GRANTEE or any of GRANTEE's employees, agents, consultants, contractors, representatives, guests, or invitees and their respective officers, agents, employees, directors and representatives, including any damage to or loss of any property belonging to: (a) GRANTEE or GRANTEE's employees, agents, consultants, contractors, representatives, guests or invitees and their respective officers, agents, employees, directors and representatives; and (b) the GRANTOR and the elected officials, employees, officers, directors, volunteers and representatives of the GRANTOR.

The indemnity provided for in the foregoing paragraph shall not apply to any liability resulting from the sole negligence of GRANTOR, its officers or employees, in instances where such negligence causes personal injury, death, or property damage, except to the extent provided below.

**IN THE EVENT GRANTEE AND GRANTOR ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE GRANTOR UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS, FEDERAL OR INTERNATIONAL LAW.**

GRANTEE shall promptly advise GRANTOR in writing of any claim or demand against GRANTOR or GRANTEE known to GRANTEE related to or arising out of GRANTEE's or GRANTOR's activities under this Agreement. Further, GRANTEE shall see to the investigation and defense of any such claim or demand against GRANTEE or CITY at GRANTEE's sole cost until such time as GRANTOR is found to be negligent by a court of competent jurisdiction. GRANTOR shall have the right, at its option, to participate in such defense without relieving GRANTEE of any of its obligations under this paragraph.

The provisions of this INDEMNIFICATION are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

#### **SECTION 20. DEBARMENT**

By signing this Agreement, GRANTEE certifies that it will not award any funds provided under this Agreement to any party which is debarred, suspended or otherwise excluded from or ineligible for participation in assistance programs.

#### **SECTION 21. RIGHTS UPON DEFAULT**

It is expressly understood and agreed by the Parties hereto that any right or remedy provided for in this Agreement shall not preclude the exercise of any other right or remedy under any other agreement between GRANTEE and the GRANTOR or under any provision of law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies. Failure to exercise

any right or remedy hereunder shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

## **SECTION 22. ASSIGNMENT**

GRANTEE covenants and agrees that during the term of this Agreement, it shall notify GRANTOR in writing at least thirty (30) calendar days prior to any sale or transfer of its business or Project and/or Project location. In the event of a sale or transfer, GRANTEE may assign its rights and obligations under this Agreement to an assignee only with the consent of GRANTOR. Any purchaser or transferee requesting an assignment of this Agreement shall be bound by the terms hereof. Failure to provide the required notification of sale or transfer may subject GRANTEE to the termination provisions in Section 15 of this Agreement.

## **SECTION 23. CHANGES AND AMENDMENTS**

A. Except as specifically provided in Section 23(C) of this Agreement, any alterations, additions or deletions to the terms of this Agreement shall be by amendment hereto in writing and executed by both Parties to this Agreement upon GRANTOR approval and authorization of GRANTEE.

B. It is understood and agreed by the Parties hereto that performances under this Agreement shall be rendered in accordance with the laws and rules governing the Economic Development Program as set forth this date, and the terms and conditions of this Agreement.

C. Any alterations, additions, or deletions to the terms of this Agreement required by changes in state law or regulations are automatically incorporated into this Agreement without written amendment hereto, and shall become effective on the date designated by such law or regulation.

## **SECTION 24. ORAL AND WRITTEN AGREEMENTS**

All oral and written agreements between the Parties to this Agreement relating to the subject matter of this Agreement that were made prior to the execution of this Agreement have been reduced to writing and are contained in this Agreement.

## **SECTION 25. AUTHORIZED RELIEF FROM PERFORMANCE (Force Majeure)**

GRANTOR may grant relief from performance of the Agreement if the GRANTEE is prevented from compliance and performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributed to the fault or negligence of the GRANTEE, such relief not to be unreasonably withheld by GRANTOR. The burden of proof for the need for such relief shall rest upon the GRANTEE to the satisfaction of GRANTOR. To obtain release based upon *force majeure*, the GRANTEE must file a written request with the GRANTOR, subject to GRANTOR approval.

## **SECTION 26. SURVIVAL OF CERTAIN AGREEMENT PROVISIONS**

The following provisions of the Agreement, concerning GRANTEE's obligations, shall survive the termination of the Agreement after completion of the Project Term:

A. Section 7 (Records Retention and Accessibility of Records)

## **SECTION 27. INCORPORATION OF ATTACHMENTS**

Each of the Attachments listed below is an essential part of the Agreement, which governs the rights and duties of the parties.

Exhibit I: Legal Description of Project Site

Exhibit II: List of Public Improvements

Exhibit III: Loan Agreement between MAUC and BANK

Exhibit IV: Purchase and Assignment Agreement between GRANTOR and BANK

Exhibit V: Release of Claims by MAUC and River City Capital

Exhibit VI: GRANTEE's Pro-Forma for Project

## **SECTION 28. ENTIRE AGREEMENT**

This Agreement, together with its authorizing ordinance and its attachments constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same is in writing, dated subsequent to the date hereto and duly executed by the parties.

*[SIGNATURES APPEAR ON FOLLOWING PAGE]*




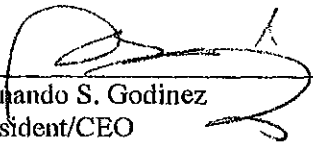
WITNESS OUR HANDS, EFFECTIVE as of January 7, <sup>2011</sup>2010:

Accepted and executed in three duplicate originals on behalf of the GRANTOR, City of San Antonio, pursuant to Ordinance Number 2010-12-16-1107, dated December 16, 2010, and GRANTEE, MAUC Point East Housing, LP, pursuant to the authority of its President/CEO.

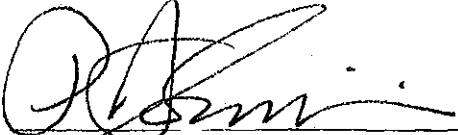
**MAUC POINT EAST HOUSING, LP,**  
a Texas Limited Partnership

**CITY OF SAN ANTONIO,**  
a Texas Municipal Corporation

By:   
MAUC Point East Development, L.L.C.,  
a Texas Limited Liability Company,  
Its General Partner

BY:   
Fernando S. Godinez  
President/CEO

Mexican American Unity Council, Inc.,  
A Texas Non-Profit Corporation,  
Its sole member

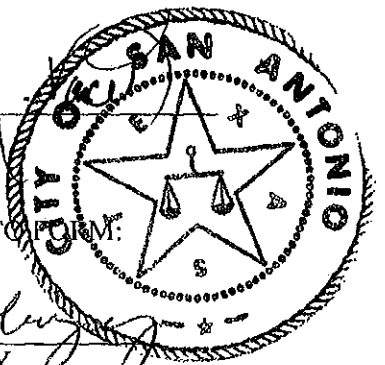
  
Pat DiGiovanni  
DEPUTY CITY MANAGER

ATTEST:  
\_\_\_\_\_

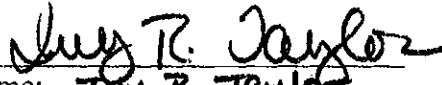
ATTEST:  
  
CITY CLERK

APPROVED AS TO FORM:

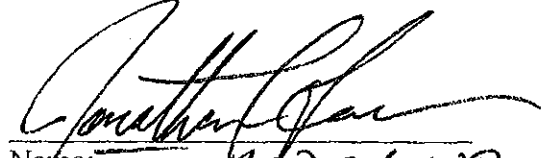
  
CITY ATTORNEY



**BOARD OF DIRECTORS**  
TIRZ #11 (Inner City TIRZ)

  
Name: IVY R. TAYLOR  
Presiding Officer, Board of Directors  
Date: 1/5/11

ATTEST/SEAL:

  
Name: WALTER D. LAND  
Secretary, Board of Directors, City of San Antonio  
Date: 1/20/11

Appeal of Termination for  
11086- La Belle Vie

**MULTIFAMILY FINANCE DIVISION  
BOARD ACTION REQUEST  
June 30, 2011**

**Requested Action**

Deny the Applicant's appeal of the termination of Application #11086, La Belle Vie.

**WHEREAS**, an application for tax credits was submitted for La Belle Vie on March 1, 2011; and

**WHEREAS**, §49.8(8)(B) of the 2011 Qualified Allocation Plan requires that if a proposed development is located in an area which does not have a zoning ordinance then a letter from the political subdivision stating that the Development is consistent with a local consolidated plan, comprehensive plan, or other local planning document that addresses affordable housing, or a statement that there is a need for affordable housing if no such planning document exists must be submitted; and

**WHEREAS**, a letter from the local political subdivision was submitted confirming there is no zoning ordinance and that the county has no planning document; however, the letter did not state there was a need for affordable housing in the area; therefore,

**BE IT RESOLVED**, that the appeal of termination of Application #11086, La Belle Vie is hereby denied.

**Background**

La Belle Vie is a proposed 80-unit, new construction senior development to be located outside the city limits of Lumberton, Texas and in an unincorporated area of Hardin County.

While a letter signed by the Hardin County Judge was provided confirming there is no zoning ordinance and that the county has no planning document other than a Floodplain Management and Control document, the letter did not state that there was a need for affordable housing in the area. The Applicant, through counsel, expressed that the County Judge did not want to make such a statement without having some research to support the statement.

The applicant's appeal alleged that the Department's zoning requirements are inconsistent in that areas that have no zoning ordinance are required to "prove up" the need for affordable housing, whereas areas with a zoning ordinance have no such requirement. It is true that if a local municipality or county has a zoning ordinance or other local planning document in place, the Department does not impose the additional

requirement from that locality to make a statement of the need for affordable housing because that locality already has the mechanisms in place to address that need. On the other hand, municipalities or counties that do not have such land use planning mechanisms such as a zoning ordinance or other local planning document in place must provide a statement of the need for affordable housing in order to provide the Department some evidence that the local municipality or county is aware of the proposed development and agrees that the need for such housing exists in the area proposed.

While the Applicant appeals that this particular requirement is not statutorily mandated and can be waived by the TDHCA Board for good cause. The Applicant has supplemented the Board appeal with letters from the State Representative and a local community group expressing the support for the transaction and recognizing the need for affordable housing in the area. Because the county has not, through its appropriate local official, gone on record to recognize the appropriateness of affordable housing in the proposed area, which, it should be noted, would be a “neutral” finding, not an expression of support or opposition, staff does not recommend granting the appeal.

# COATS | ROSE

*A Professional Corporation*

TAMEA A. DULA  
OF COUNSEL

tdula@coatsrose.com  
Direct Dial  
(713) 653-7322  
Direct Fax  
(713) 890-3918

June 22, 2011

By Email to [tim.irvine@tdhca.state.tx.us](mailto:tim.irvine@tdhca.state.tx.us)  
Mr. Tim Irvine, Acting Director  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, TX 78701-2410

RE: La Belle Vie, Lumberton, Hardin County, Texas (TDHCA #11086);  
**Appeal of Termination Due to Failure to State Need for Affordable Housing;  
Request for TDHCA Board Waiver – Supplement to June 7, 2011 Request.**

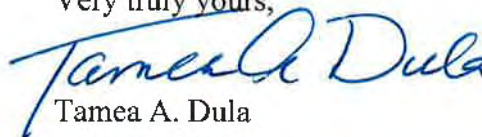
Dear Mr. Irvine:

This supplements my letter to Mike Gerber dated June, 7, 2011, appealing the termination of the La Belle Vie Apartments 9% Application because the “No Zoning” letter from the Hardin County Judge did not specifically state that there is a need for affordable housing in Hardin County. Mr. Donald R. Ball, Principal of the developer, has asked that I provide the following additional information for consideration by the TDHCA Board:

1. Letter from Mike Hamilton, State Representative, District 19, dated March 19, 2011, and specifically stating that there is a “**dire need for affordable housing in this part of Southeast Texas.**” [See Attachment #1]
2. Letter from Joan Absire, President of Birch Place One H.O.A. dated February 26, 2011, stating “**Affordable senior housing is needed within this community...**” [See Attachment #2]

Although the Hardin County Judge was reluctant to confirm the need for affordable housing in the county, the State Representative and other community leaders do see that need and are willing to so state. **The requirement that the “No Zoning” letter affirm the need for affordable housing is not mandated by the Texas Legislature and can be waived by the TDHCA Board.** We request that such a waiver be granted.

Very truly yours,

  
Tamea A. Dula

Texas Department of Housing and Community Affairs

June 22, 2011

Page 2

Enclosures

cc: Donald R. Ball  
K. T. (Ike) Akbari  
Chris Akbari

# ATTACHMENT 1

State of Texas  
House of Representatives



CAPITOL OFFICE:  
P.O. Box 2910  
AUSTIN, TEXAS 78768-2910  
512-463-0412  
FAX: 512-463-1913

DISTRICT OFFICE:  
10383 HWY. 12, SUITE A  
ORANGE, TEXAS 77632  
409-745-3844  
FAX: 409-745-9319  
TOLL FREE: 1-800-464-1645

Mike Hamilton

District 19

March 19, 2011

Mr. Michael Gerber, Executive Director  
Texas Department of Housing and Community Affairs  
P.O. Box 13941  
Austin, Texas 78711-3941

Dear Mr. Gerber:

Please consider this letter as a statement of support for Housing Tax Credits for the Lumberton LaBelle Vie Apartments (TDHCA #11086), a senior housing community that is being proposed for construction outside the City of Lumberton on Highway 69 near Shakespeare Road.

As I know you are aware, our area has been through two major hurricanes in the past five to six years which has left a dire need for affordable housing in this part of Southeast Texas. The above mentioned construction will address a viable solution on the behalf of our seniors, therefore, I am pleased to lend my support to the project and its application for Housing Tax Credits.

I am available for any additional information that will benefit this much needed construction and can be contacted in my Austin office at (512)463-0412. I appreciate you attention to this matter.

Sincerely,

Handwritten signature of Mike Hamilton in black ink.  
Mike Hamilton



# ATTACHMENT 2

# *River Birch Place*

*105 Winding Brook Dr.  
Lumberton, Texas 77657  
409-781-7000*

February, 26<sup>th</sup> 2011

Mr. Michael Gerber  
Executive Director  
Texas Department of Housing and Community Affairs  
221 E. 11<sup>th</sup> Street  
Austin, Texas 78701

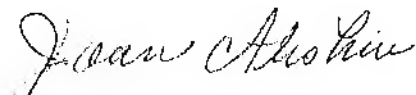
Re: Lumberton LaBelle Vie Apartments  
Senior Housing Lumberton, Texas

Dear Mr. Gerber,

It has come to my attention that Lumberton LaBelle Vie Developers, LLC has Placed an application for Housing Tax Credit Funds for LaBelle Vie Apartments Located in Lumberton, Hardin County, Texas. This property contains 80 units of affordable senior housing units. **Affordable senior housing is needed within this community and I support this Project.**

We appreciate your time and effort to assist our community. Should you have any questions or comments regarding this matter please feel free to contact me at (409-781-7000).

Sincerely yours,



Joan Abshire  
President of Birch Place One H.O.A.



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

[www.tdca.state.tx.us](http://www.tdca.state.tx.us)

Rick Perry  
GOVERNOR

BOARD MEMBERS  
C. Kent Conine, *Chair*  
Tom H. Gann, *Vice Chair*  
Leslie Bingham-Escareño  
Lowell A. Keig  
Juan S. Muñoz, Ph.D  
J. Paul Oxer

51.475.3296

[tim.irvine@tdca.state.tx.us](mailto:tim.irvine@tdca.state.tx.us)

June 21, 2011

Ms. Tamea Dula  
Coats Rose  
3 East Greenway Plaza, Suite 2000  
Houston, TX 77046-0307  
Email: [tdula@coatsrose.com](mailto:tdula@coatsrose.com)

Re: Application #11086, La Belle Vie

Dear Ms. Dula:

I have carefully reviewed the appeal received June 7, 2011, wherein you appeal the termination of application #11086, La Belle Vie. The subject application was terminated because the evidence of zoning provided was insufficient to meet the Department's threshold requirements pursuant to §49.8(8)(B) of the 2011 QAP.

Your appeal requests a waiver of the threshold requirement cited previously on the basis that the requirement is not statutorily mandated and that the QAP inconsistently applies the zoning requirements for areas where zoning exists versus areas where zoning does not exist. The application proposes an 80-unit, new construction senior development to be located outside the city limits of Lumberton, Texas and in an unincorporated area of Hardin County. While a letter signed by the Hardin County Judge was provided confirming there is no zoning ordinance and that the county has no planning document other than a Floodplain Management and Control document, the letter did not state that there was a need for affordable housing in the area.

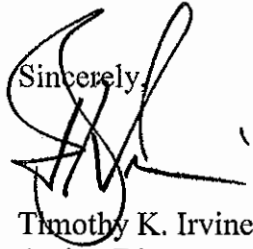
You appeal that the Department's zoning requirements are inconsistent in that areas that have no zoning ordinance are required to "prove up" the need for affordable housing, whereas areas with a zoning ordinance have no such requirement. The Department's rules with respect to evidence of zoning are consistently applied to all developments proposed. It is true that if a local municipality or county has a zoning ordinance or other local planning document in place, the Department does not impose the additional requirement from that locality to make a statement of the need for affordable housing because that locality already has the mechanisms in place to address that need. On the other hand, municipalities or counties that do not have such land use planning mechanisms such as a zoning ordinance or other local planning document in place must provide a statement of the need for affordable housing in order

to provide the Department some evidence that the local municipality or county is aware of the propose development and agrees that the need for such housing exists in the area proposed.

After a careful review of all the facts, your appeal is denied.

As requested your appeal will be included on the agenda for the TDHCA's Board June 30<sup>th</sup> meeting. If you wish to submit any further documentation for the Board appeal, the documentation **must** be received by 5:00 p.m. CST on **June 22, 2011** to be included with the June Board materials. If no additional documentation is submitted, the appeal documentation to the Executive Director will be utilized. If you are unable to submit information by June 22, 2011 to be included on the June 30, 2011 Board meeting, you must submit documentation by June 28, 2011 to be included on the July 18, 2011 Board meeting.

If you have any questions, please do not hesitate to contact Raquel Morales at 512-475-1676 or [raquel.morales@tdhca.state.tx.us](mailto:raquel.morales@tdhca.state.tx.us) .

Sincerely,  
  
Timothy K. Irvine  
Acting Director

rbm

# COATS | ROSE

*A Professional Corporation*

TAMEA A. DULA  
OF COUNSEL

tdula@coatsrose.com  
Direct Dial  
(713) 653-7322  
Direct Fax  
(713) 890-3918

June 7, 2011

By Email to [michael.gerber@tdhca.state.tx.us](mailto:michael.gerber@tdhca.state.tx.us)

Mr. Michael Gerber, Executive Director  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, TX 78701-2410

RE: La Belle Vie, Lumberton, Hardin County, Texas (TDHCA #11086);  
**Appeal of Termination Due to Failure to State Need for Affordable Housing;**  
**Request for TDHCA Board Waiver.**

Dear Mr. Gerber:

Lumberton La Belle Vie Developers, LLC, the developer of the proposed La Belle Vie Apartments (the "Project"), has requested that we write you to appeal the termination of the Project's 2011 Housing Tax Credit Application. This Region 5 Rural Application was terminated on June 2, 2011, because of inadequacies in the evidence of zoning required under §49.8(8)(B) of the 2011 Qualified Allocation Plan (the "QAP"). **Specifically, the zoning letter produced did not state that there is a need for affordable housing in Hardin County.**

The requirements of §49.8(8)(B) of the QAP are shown in Attachment 1. The statutory requirements of Section 2306.6705(5) of the Texas Government Code are shown in Attachment 2. The Application meets the statutory requirements. This appeal requests a waiver from the TDHCA Board.

**Project Site – Unincorporated and Without Zoning.**

The Project is an 80-unit new construction senior apartment development that is to be located outside the city limits of Lumberton, Texas, in an unincorporated area of Hardin County. Hardin County does not have zoning. A letter was submitted in the Application from the Hardin County Floodplain Administration, a local official with appropriate jurisdiction, indicating that Hardin County requires no zoning approval for residential or commercial structures in its unincorporated areas, unless within a Special Flood Hazard Area. (See Attachment 3).

The TDHCA staff requested another letter from the political subdivision stating either (i) that the Project is consistent with a local consolidated plan, comprehensive plan, or other local planning

3 East Greenway Plaza, Suite 2000 Houston, Texas 77046-0307  
Phone: 713-651-0111 Fax: 713-651-0220  
Web: [www.coatsrose.com](http://www.coatsrose.com)

HOUSTON | CLEAR LAKE | AUSTIN | DALLAS | SAN ANTONIO | NEW ORLEANS

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that addresses affordable housing or (ii) if no such planning document exists, that there is a need for affordable housing. This language is pursuant to §49.8(8)(B)(i) of the QAP.

The developer requested such a letter from the County Judge of Hardin County. The County Judge referred the request to the County's attorney, and based upon advice of counsel, provided the letter included as Attachment 4, which indicates that there is no zoning and no comprehensive plan for Rural Development except for Flood Plain Management and Control. When asked if the letter could include a statement that there is a need for affordable housing in Hardin County, the County Judge stated that Hardin County had done no investigation and had no evidence concerning the need for affordable housing in the County, and he did not wish to make a statement that was not supported by fact.

While the County Judge's desire to not make a potentially false statement is laudable, it creates a roadblock for the Project. We are requesting that the TDHCA Board waive the QAP requirement that the local official assert that there is a need for affordable housing in Hardin County.

**Not a Statutory Requirement – Can be Waived by TDHCA Board**

It is true that when there is no zoning ordinance and no local planning document addressing affordable housing exists, the QAP requires that a local official state that there is a need for affordable housing. This is not a statutory requirement, however, as shown in Section 2306.6705(5) of the Texas Government Code, a copy of which is shown in Attachment 2. The Texas Legislature only requires documentation of zoning compliance if there is zoning. There is no legislated application requirement if there is no zoning. This means that it is within the TDHCA Board's discretion to waive the requirement that the no zoning letter state that there is a need for affordable housing in Hardin County. We are respectfully requesting such a waiver for the Project.

**Zoning Requirements are Inconsistently Applied**

We point out that §49.8(8)(B) is inconsistent in its treatment of different types of developments and is drafted so that some types of projects cannot provide the evidence required:

- New Construction and Reconstruction developments must either be consistent with zoning, seek rezoning, or if there is no zoning they must provide a letter indicating that there is either a plan or an asserted need for affordable housing. If there is a plan, it is not required that the plan indicate a need for affordable housing.
- Rehabilitation projects require documentation of current zoning and, if applicable, non-conforming use restrictions. There is no provision for having a Rehabilitation project in an unzoned area.
- Adaptive Reuse developments appear to only be permitted in areas with no zoning.

3 East Greenway Plaza, Suite 2000 Houston, Texas 77046-0307

Phone: 713-651-0111 Fax: 713-651-0220

Web: [www.coatsrose.com](http://www.coatsrose.com)

This is clearly a situation where the QAP requirements have mutated over the years, and no longer reflect a considered and appropriate approach to confirming that proposed projects will meet local requirements. The clear intent of the Legislature is simply to make sure that a proposed development will comply with local zoning requirements. Since the Project is in an unzoned area, the statutory provision does not apply. The QAP has overlaid the statutory requirement with an additional directive that areas without zoning have to “prove up” the need for affordable housing, whereas areas with zoning have no such requirement. The mere fact that a development will be located in a zoned area and complies with zoning requirements does not ensure that such development meets affordable housing needs. Why should the requirement be more onerous for developments proposed for locations without zoning?

**Application Shows Need for Affordable Housing Exists**

Although the County Judge did not wish to assert the need for affordable housing without having evidence to back up such an assertion, other evidence of the need for affordable housing has been provided in the Application:

- Lumberton, the nearest city, has 0 HTC units in place.
- Hardin County is a 2011 Disaster Area, after having been previously hard hit by Hurricanes Rita, Gustav and Ike.
- The census tract in which the Project is located has a Poverty Population of 9.8%, as shown in the TDHCA Demographic Characteristics.
- The Market Study performed by The Gerald A. Teel Company indicates a Capture Rate of 1.2% for the 30% AMGI units (Page 90) and a Combined Overall Capture Rate of 5.0% for the Project (page 94). The maximum capture rate for a senior project is 10%, per the TDHCA’s 2011 Real Estate Analysis Rules and Guidelines.

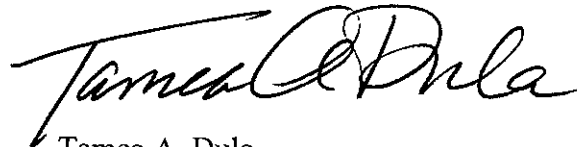
The Project is an 80-unit senior project located in Hardin County which has a 2010 population of 53,909, according to the TDHCA’s Demographic Characteristics. There are only 36 units of affordable housing for seniors shown on the TDHCA’s current inventory (a 1993 project located in Sour Lake, Texas). It is clear that the senior population is underserved within Hardin County.

**Summary**

The Application for the Project has been terminated because the local official in Hardin County did not state in the “No Zoning” letter that there is a need for affordable housing in the County. This requirement is not mandated by the Texas Legislature and can be waived by the TDHCA Board. We request that such a waiver be granted.

**Based upon the current TDHCA application scoring log, the Project is one of only two pending Rural applications in Region 5 and both can be funded with the Rural Allocation available to the Region. This means that in granting the requested waiver, the TDHCA Board will not be adversely affecting any other application in Region 5.**

Very truly yours,

A handwritten signature in black ink, appearing to read "Tamea A. Dula". The signature is fluid and cursive, with a large initial "T" and "D".

Tamea A. Dula

Enclosures

cc: Donald R. Ball  
K. T. (Ike) Akbari  
Chris Akbari



**ATTACHMENT 1**  
**QAP REQUIREMENT**  
**§49.8(8)(B)(i) of the 2011 QAP**

**[ SEE ATTACHED ]**

plus costs identified in subclause (II)(-b-) of this clause, or the "as-is" value conclusion evidenced by subclause (II)(-a-) of this clause. The resulting acquisition cost will be referred to as the "identity of interest adjusted acquisition cost."

- (B) **Zoning.** Evidence from the appropriate local municipal authority that satisfies one of clauses (i) - (iii) of this subparagraph. Documentation may be from more than one department of the municipal authority and must have been prepared and executed not more than six (6) months prior to the close of the Application Acceptance Period. (§2306.6705(5))



- (i) For New Construction, Adaptive Reuse or Reconstruction Developments, a letter from the chief executive officer of the Unit of General Local Government or another local official with appropriate jurisdiction stating that:
- (I) The Development is located within the boundaries of a Unit of General Local Government which does not have a zoning ordinance; and either subclause (II) or (III) of this clause;
  - (II) The letter must state that the Development is consistent with a local consolidated plan, comprehensive plan, or other local planning document that addresses affordable housing; or
  - (III) The letter must state that there is a need for affordable housing, if no such planning document exists;
- (ii) For New Construction or Reconstruction Developments, a letter from the chief executive officer of the Unit of General Local Government or another local official with appropriate jurisdiction stating that:
- (I) The Development is permitted under the provisions of the zoning ordinance that applies to the location of the Development; or
  - (II) The Applicant is in the process of seeking the appropriate zoning and has signed and provided to the Unit of General Local Government a release agreeing to hold the Unit of General Local Government and all other parties harmless in the event that the appropriate zoning is denied. (§2306.6705(5)(B)) Documentation of final approval of appropriate zoning must be submitted to the Department with the Commitment or Determination Notice. No extensions may be requested to the deadline for submitting evidence of final approval of appropriate zoning.
- (iii) For Rehabilitation Developments, documentation of current zoning is required. If the property is currently a non-conforming use as presently zoned, a letter from the chief executive officer of the Unit of General Local Government or another local official with appropriate jurisdiction which addresses the items in subclauses (I) - (IV) of this clause:
- (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.
- (C) **Financing Requirements.**
- (i) Evidence of interim and permanent financing sufficient to fund the proposed Total Housing Development Cost less any other funds requested from the Department and any other sources documented in the Application. Any local, state or federal financing identified in this section which restricts household incomes at any AMGI lower than restrictions required pursuant to this chapter must be identified in the "Rent Schedule" and the local, state or federal income restrictions must include corresponding rent levels that do not exceed 30% of the income limitation in accordance with §42(g) of the Code. The income and corresponding rent restrictions will be imposed by the Housing Tax Credit LURA and monitored throughout the extended use period. Such evidence must be consistent with the sources and uses of

## ATTACHMENT 2

### STATUTORY REQUIREMENT

#### Sec. 2306.6705(5) of the Texas Government Code

Sec. 2306.6705. GENERAL APPLICATION REQUIREMENTS. An application must contain at a minimum the following written, detailed information in a form prescribed by the board:

...

(5) if the development is located within the boundaries of a political subdivision with a zoning ordinance, evidence in the form of a letter from the chief executive officer of the political subdivision or from another local official with jurisdiction over zoning matters that states that:

(A) the development is permitted under the provisions of the ordinance that apply to the location of the development; or

(B) the applicant is in the process of seeking the appropriate zoning and has signed and provided to the political subdivision a release agreeing to hold the political subdivision and all other parties harmless in the event that the appropriate zoning is denied;

...

**ATTACHMENT 3**

**LETTER FROM HARDIN COUNTY FLOODPLAIN ADMINISTRATION**

**[ SEE ATTACHED ]**



**Hardin County Floodplain Administration**

Aaron Danos  
300 Monroe  
Kountze, TX 77625

(409) 246-5251 Fax (409) 246-5280

Website: [www.co.hardin.tx.us/ips/cms/](http://www.co.hardin.tx.us/ips/cms/)

January 25, 2011

RE: To Whom It May Concern

By this letter I certify that Hardin County requires no zoning approval for residential or commercial structures (except in Special Flood Hazard Areas) in its unincorporated areas. However, a permit *must be* acquired before the structure is placed or built in Hardin County and if said property lies within a subdivision, their restrictions apply. Your local Fire Marshal should also be consulted in regards to their restrictions. In addition, utility easements should be taken into consideration.

If you have any questions, please feel free to contact me at the above number.

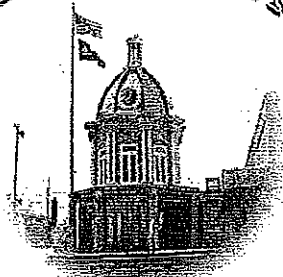
Sincerely,

*Aaron Danos*

Hardin County Floodplain

**ATTACHMENT 4**  
**LETTER FROM HARDIN COUNTY JUDGE**  
**[ SEE ATTACHED ]**

# HARDIN COUNTY



COURTHOUSE

**KOUNTZE, TEXAS**

**Billy Caraway**  
County Judge

300 Monroe St.  
Kountze, TX 77625  
(409) 246-5120  
billy.caraway@co.hardin.tx.us

May 18, 2011

Mr. Donald Ball  
1885 E. Farragut  
Orange, TX 77630

Dear Mr. Ball:

Please be advised that:

- (1) The property located at 350' SE of Shakespeare Ln, West Side of the N. LHS Dr., Hardin County, Texas, is located within the unincorporated area of Hardin County;
- (2) Hardin County does not have zoning; and
- (3) Hardin County has no comprehensive plan for Rural Development with the exception of Flood Plain Management and Control.

Sincerely,

Billy Caraway  
County Judge  
BC/Lk



## TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

*www.tdhca.state.tx.us*

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GOVERNOR

Michael Gerber  
EXECUTIVE DIRECTOR

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Leslie Bingham Escareño  
Lowell A. Keig  
Juan S. Muñoz, Ph.D.  
J. Paul Oxer

June 2, 2011

Mr. Donald R. Ball  
Lumberton La Belle Vie, LP  
1885 E. Farragut  
Orange, TX 77630  
Email: [dball1@gt.rr.com](mailto:dball1@gt.rr.com)

Re: Application #11086, La Belle Vie

Dear Mr. Ball:

The Department received your 2011 Housing Tax Credit application for the above referenced development on March 1, 2011. During the course of the Department's threshold review of your application, the Department issued an Administrative Deficiency dated May 11, 2011 wherein a letter from the political subdivision stating that the Development is consistent with a local consolidated plan, comprehensive plan, or other local planning document that addresses affordable housing, or a statement that there is a need for affordable housing if no such planning document exists was requested, pursuant to §49.8(8)(B) of the 2011 QAP. On or before the 5<sup>th</sup> business day following the date of the deficiency notice you provided a letter from the county judge confirming that the county has no zoning and that a planning document does not exist for the county. However, the letter does not include a statement that there is a need for affordable housing in the county. Unfortunately, this does not meet the Department's threshold requirements. As a result, the application is no longer eligible for consideration during the 2011 competitive cycle.

An Appeals Policy exists for the Housing Tax Credit Program. The restrictions and requirements relating to the filing of an appeal can be found in §49.10(d) of the 2011 QAP. If you choose to appeal this determination, you must first submit an appeal to the Executive Director no later than 5:00 pm on **June 9, 2011**. In the event an appeal is denied by the Executive Director, you may appeal directly in writing to the Board, provided that an appeal filed with the Board is received by **June 20, 2011**.

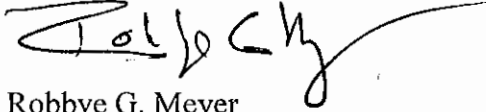


La Belle Vie, #11086

Page 2

If you have any questions, please do not hesitate to contact Raquel Morales at 512-475-1676 or [raquel.morales@tdhca.state.tx.us](mailto:raquel.morales@tdhca.state.tx.us).

Sincerely,

A handwritten signature in black ink, appearing to read "Robbye G. Meyer", with a long, sweeping flourish extending to the right.

Robbye G. Meyer  
Director of Multifamily Finance

MFF/rbm

cc: Tracy Ambridge  
Email: [tracy.ambridge@itexmgt.com](mailto:tracy.ambridge@itexmgt.com)

Appeal of Termination for  
11114- Green Haus on the  
Santa Fe Trail

**MULTIFAMILY FINANCE DIVISION  
BOARD ACTION REQUEST  
June 30, 2011**

**Requested Action**

Deny the Applicant's appeal of the termination of Application #11114, Green Haus on the Santa Fe Trail.

**WHEREAS**, an application for tax credits was submitted for Green Haus on the Santa Fe Trail on March 1, 2011; and

**WHEREAS**, the unit sizes as proposed in the application did not meet the minimum unit size requirements pursuant to §49.8(5)(B) of the 2011 Qualified Allocation Plan (QAP); and

**WHEREAS**, the proposed development, as originally submitted, did not include the use of Single Room Occupancy units which would provide an exemption to the minimum unit size restrictions; and

**WHEREAS**, the application, as submitted, appears based on a preliminary review, to have significant program issues and underwriting deficiencies and inconsistencies; and

**WHEREAS**, on June 28, 2011 each Board member of the Department received a packet of information directly from the Applicant in reference to the Green Haus application, violating §2306.1113 of the Texas Government Code, *ex parte* communication and rendering the application ineligible for consideration under §49.4(b) of the 2011 QAP; therefore

It is hereby:

**RESOLVED**, that the appeal of termination of Application #11114, Green Haus on the Santa Fe Trail is hereby denied.

**Background**

Green Haus on the Santa Fe Trail is a proposed new construction, supportive housing development consisting of 24 units targeted towards homeless families in Dallas, Texas. The development narrative provided in the application indicates that this development will offer 24 Single Room Occupancy/Efficiency units. However, review of the application reveals that the units proposed actually consist of one and two-bedroom units. The unit plans do not meet the minimum unit size requirements of the QAP.

The appeal was originally presented to the Board at its May 5, 2011 meeting. At that time, the Board tabled the appeal and instructed staff to engage in dialogue with the Applicant to try to find an amenable way to resolve the existing design issues in order to meet the QAP requirements, rather than adapting or waiving the rules to fit the design of the development. Staff held several conference calls with the Applicant to discuss the design of the development and the Applicant's vision and mission for the development. Several revisions to the design of the development have been proposed by the Applicant in order to design the development in accordance with program rules. Option D (architectural rendering is provided in the board materials) meets the unit size requirements. This option reflects a unit re-designed to meet the Department's current definition of a Single Room Occupancy unit. However, it should be noted, that while the Applicant has now offered a unit that meets the current definition of a SRO unit, the re-designed unit will still need to be appropriate for the intended residents. At the last board meeting and in the application, the Applicant's description of the proposed development indicated a very specific type of population, namely single parents or guardians with children. The re-designed unit provides no sleeping areas that are separate from the living and kitchen area.

On June 28, 2011, each Board member received a packet of information directly from the Applicant. This is a violation of §2306.1113 of the Texas Government Code (*ex parte communications*) which renders the application ineligible for consideration under §49.4(b)(5) of the 2011 Qualified Allocation Plan.

If the *ex parte* matters and the unit design issues are resolved there will still be issues regarding financial/underwriting issues and potential compliance issues because the entire concept diverges so significantly from the tax credit program as it has evolved.

Staff has tried to work with the Applicant to present an application that fits within the rules of the tax credit program; however, with the violation of the *ex parte* provision the recommendation by staff is to deny the appeal on the basis that it is an ineligible application.



June 3, 2011

SHARED HOUSING CENTER, INC.

Kent Bedell  
Multifamily Housing Specialist  
c/o [kent.bedell@tdhca.state.tx.us](mailto:kent.bedell@tdhca.state.tx.us)

RE: TDHCA #11114, Green Haus on the Santa Fe Trail  
Deficiency Response for letter dated May 26, 2011

Dear Kent:

This letter is to summarize what was sent via the FTP - Filezilla program. We submitted the following documents/forms at various times and portions. We apologize for this type of delivery, but we wanted to let you know that we have been working on this the second we received the letter.

**I Threshold**

1. Volume 3, Tab 3, Part A Site Information
2. Volume 1, Tab 8 Part A Relevant Development Information and Vol 3, Tab 1 Part B
3. ESA Letter addressing all of the details as stated in your letter.
4. Appraisal Letter responding to the request in your letter.

**II Selection**

1. Volume 4, Tab 3 (corrected by hand)
2. Volume 4, Tab 5 HOME letter from City (uploaded with this letter)
3. Volume 4, Tab 7 (uploaded with this letter)
4. Volume 4, Tab 23 (Form and certificate)
5. Volume 4, Tab 24 – corrected: letter of revitalization was sent with original application
6. Volume 4, Tab 26 – corrected and while the letter from TREC states \$75,000, we spent \$10,000 during the 2010 HTC Program process.

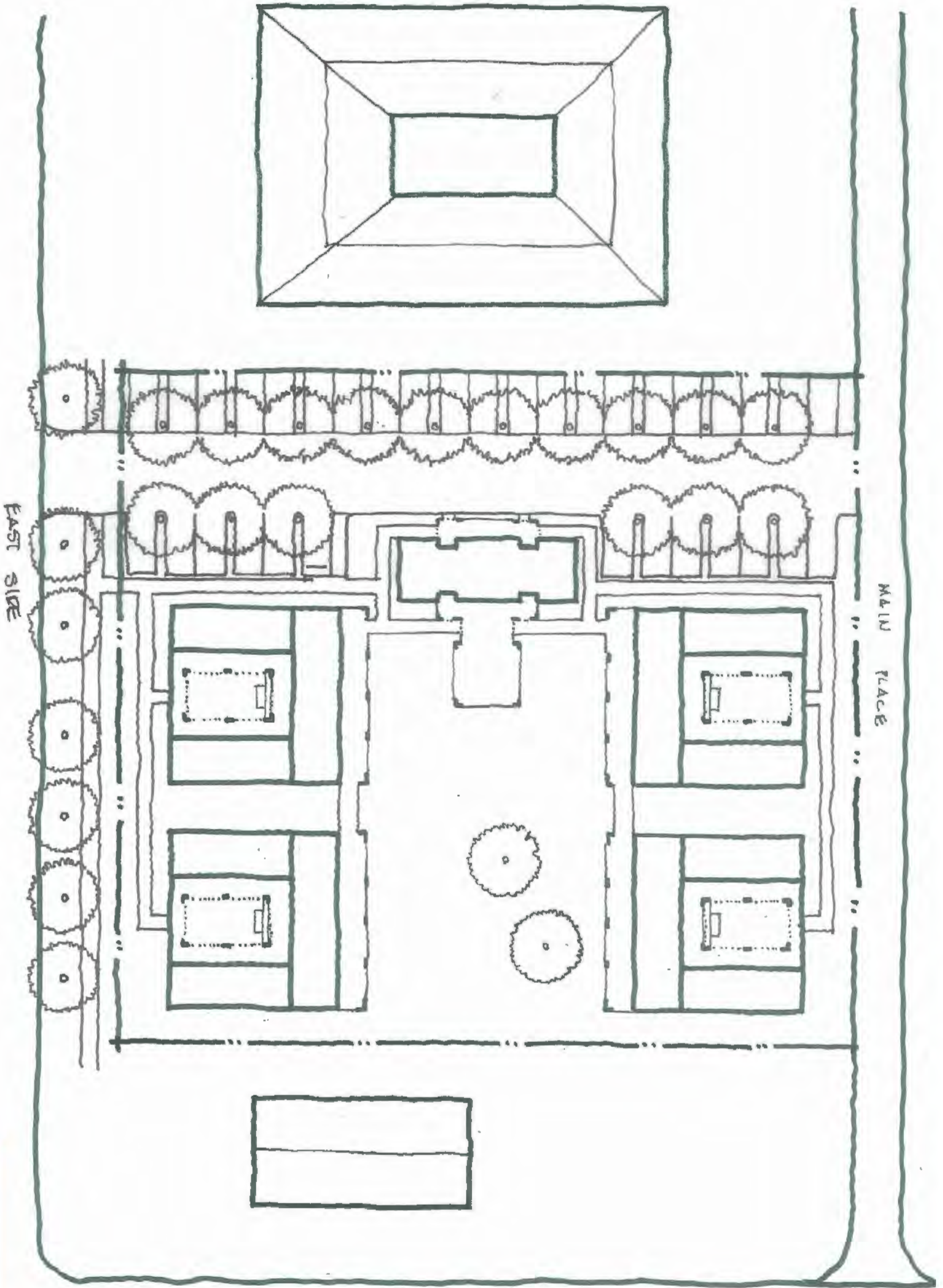
As stated briefly on the telephone today, we have been working with TDHCA staff to address several layers of concerns regarding our application.

We also worked on many revisions, but to best address the needs of our clients, we are committed to the SRO concept. Therefore, we have included revised floor-plans (C & D) in addition to the requested files.

Thank you for your attention and assistance during this week. And please pass along my thanks to Jason Burr – for helping me understand the “tech-stuff.”

Cordially,

Maria Machado  
Executive Director



0517

**GreenHaus at the Santa Fe Trail**

Shared Housing Center  
Dallas, Texas

**Site Plan Option C**



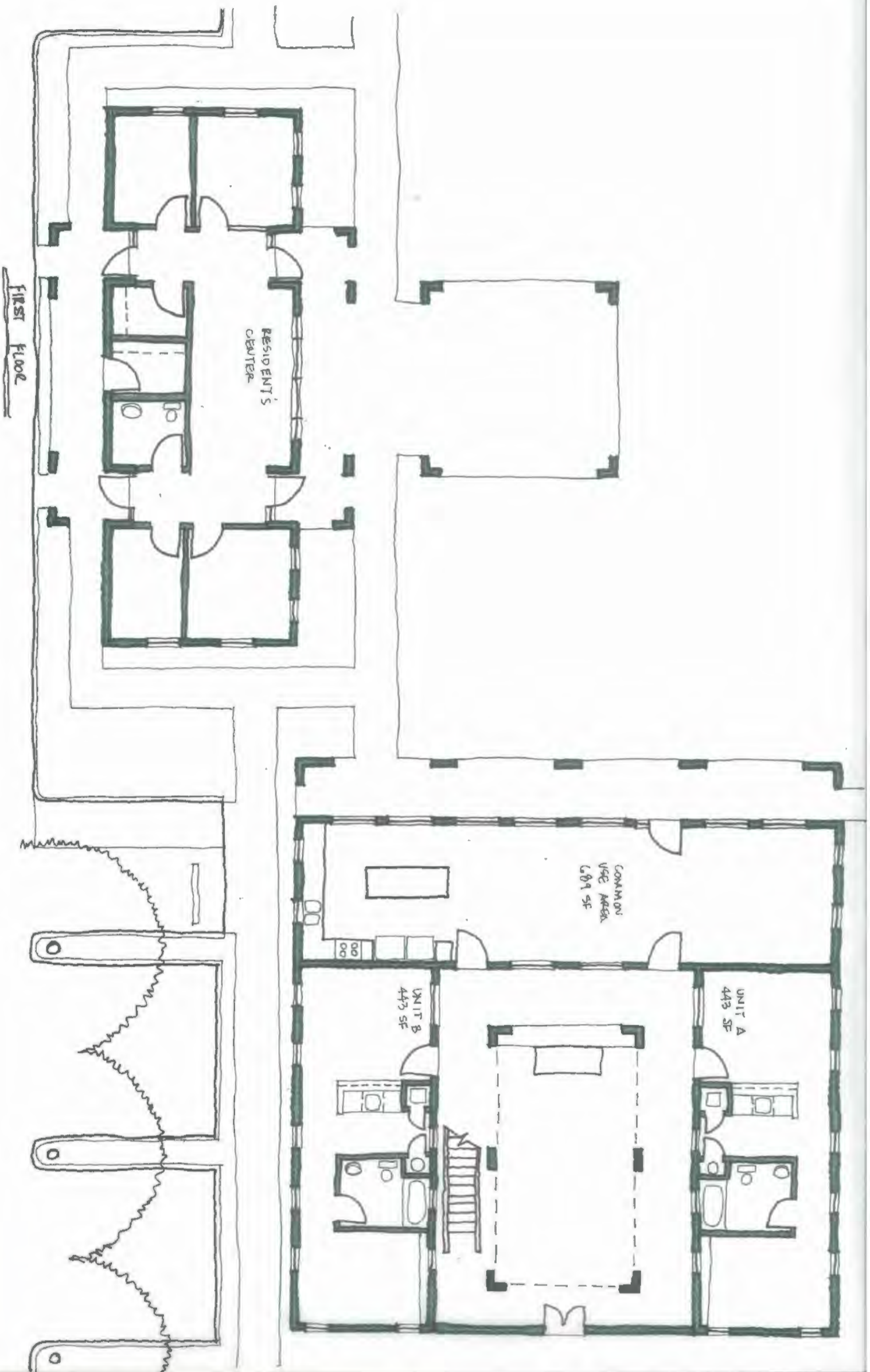
Date: May 31, 2011



**Good Fulton & Farrell Architects**

2808 Fairmount Street  
Suite 300  
Dallas, Texas 75201

214.303.1500/11  
214.303.1512/fax  
www.gff.com



GreenHaus at the Santa Fe Trail  
 Shared Housing Center  
 Dallas, Texas

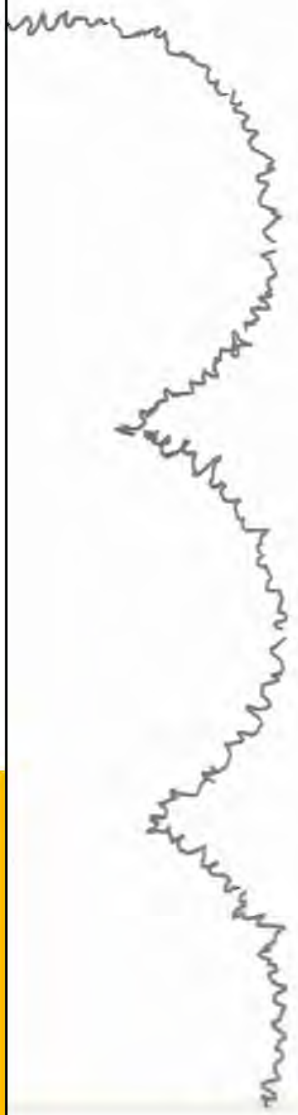
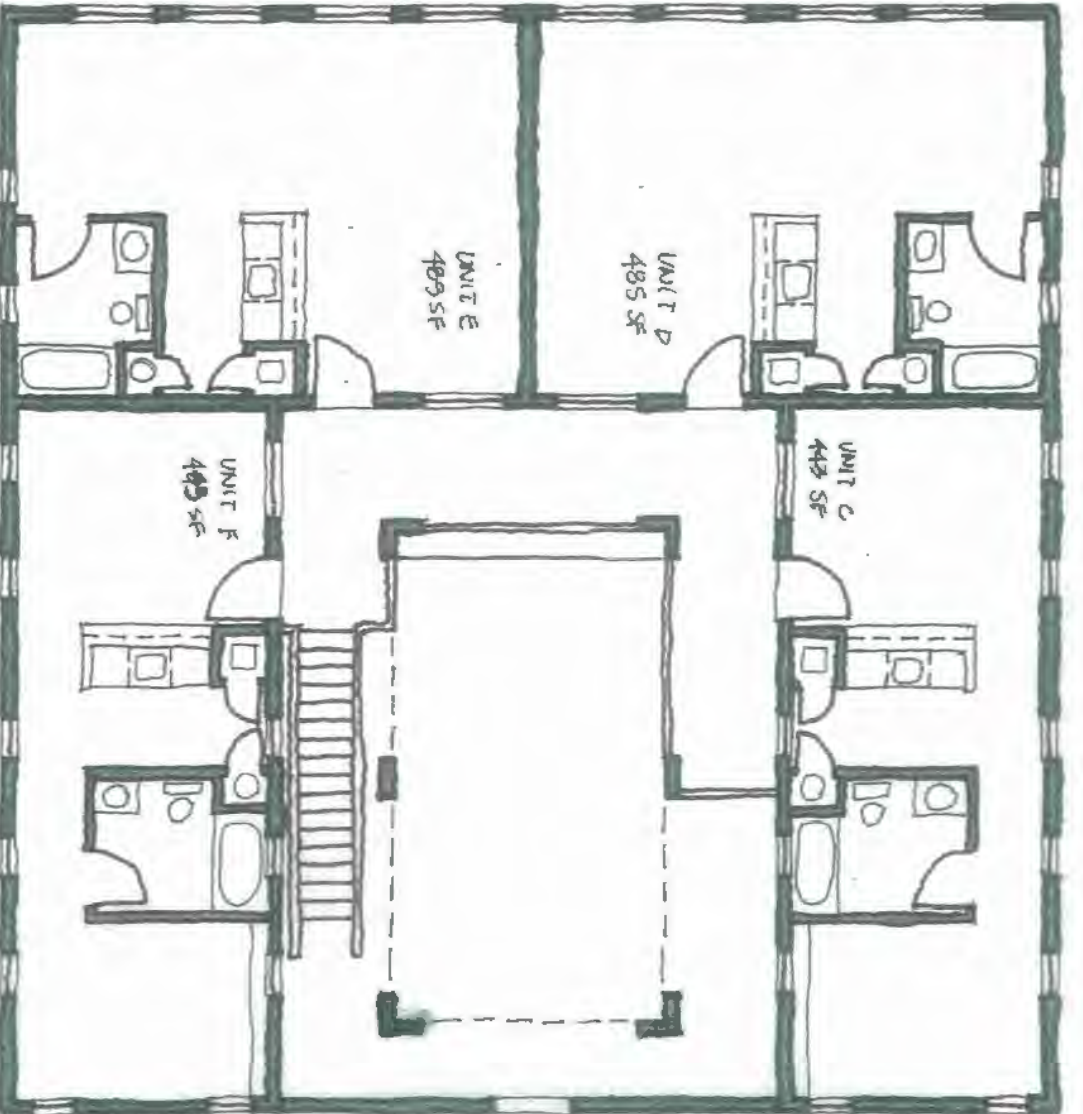
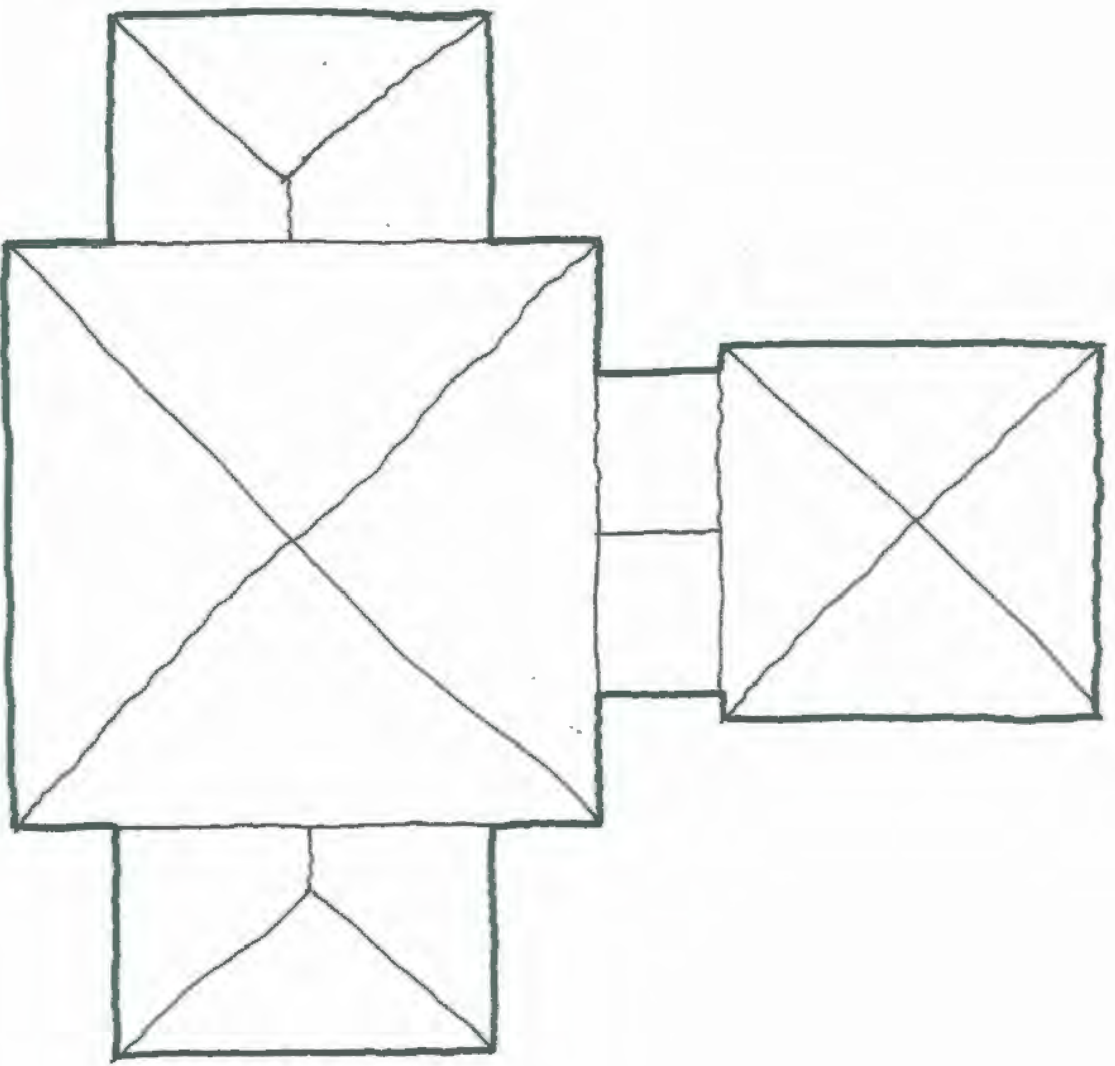
Residents Center & First Floor Unit Plan - Option C



Date: May 31, 2011



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 2808 Fairmount Street  
 Suite 300  
 Dallas, Texas 75201  
 214.303.1500/FA  
 214.303.1512/Fax  
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GreenHaus at the Santa Fe Trail  
 Shared Housing Center  
 Dallas, Texas

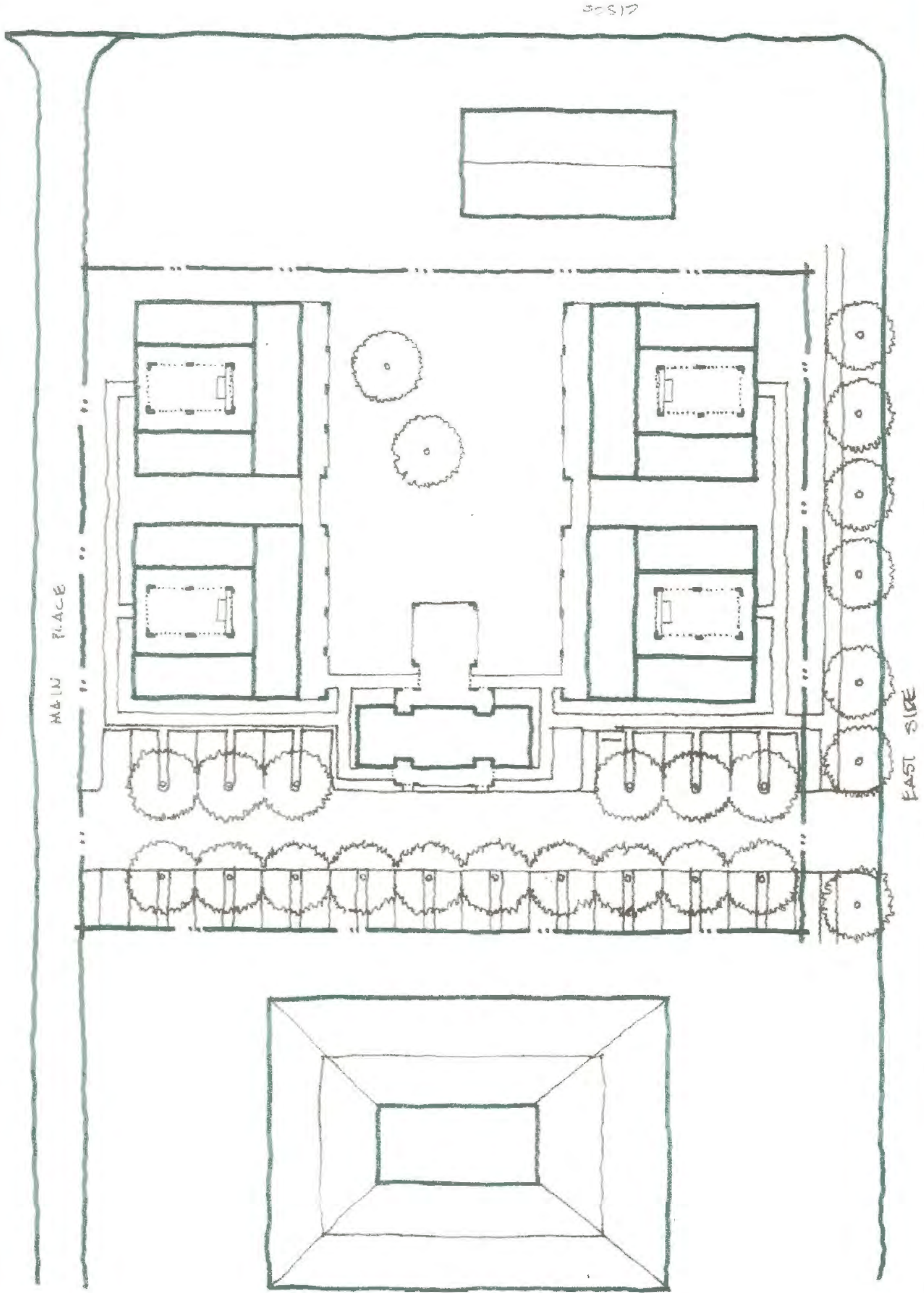
Second Floor Unit Plan - Option C



Date: May 31, 2011

**gff**  
**Good Fulton & Farrell Architects**  
 2808 Edmonson Street  
 Suite 300  
 Dallas, Texas 75201  
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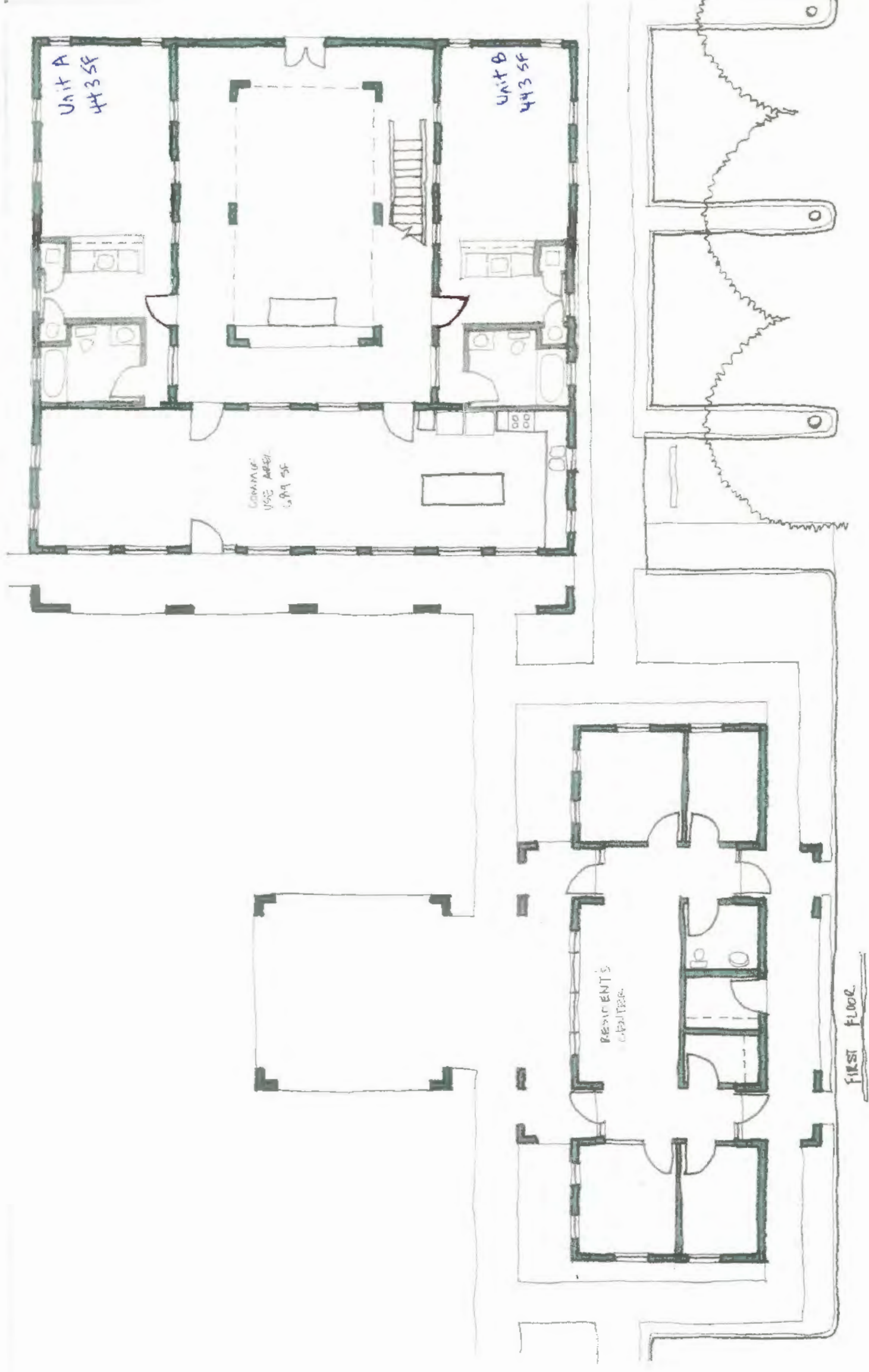


GreenHaus at the Santa Fe Trail

Shared Housing Center  
 Dallas, Texas

Site Plan Option D

Date: May 31, 2011



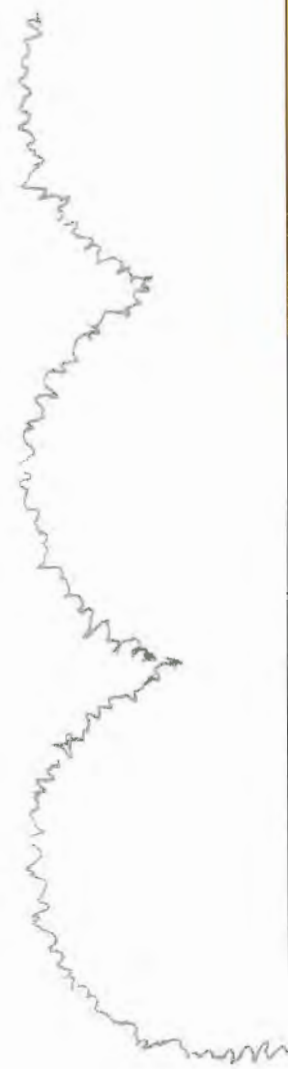
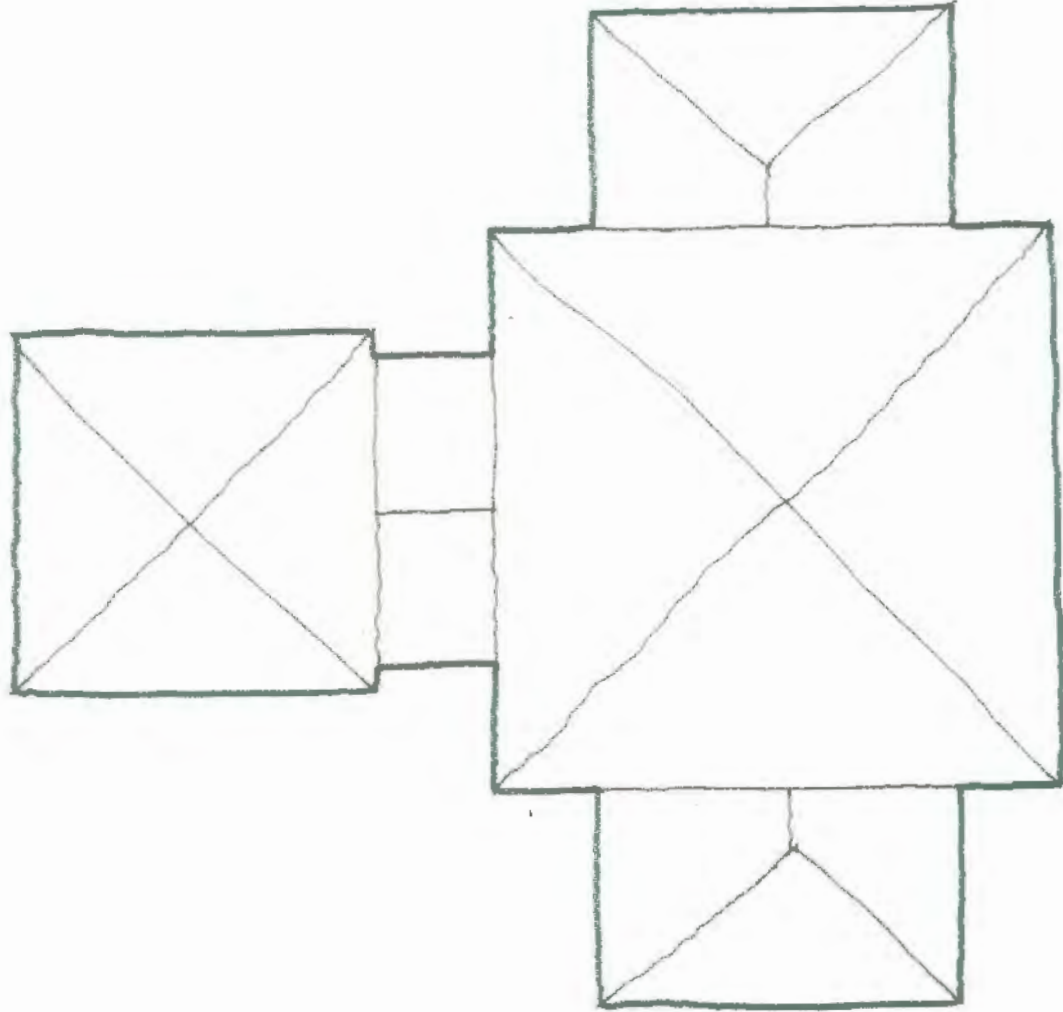
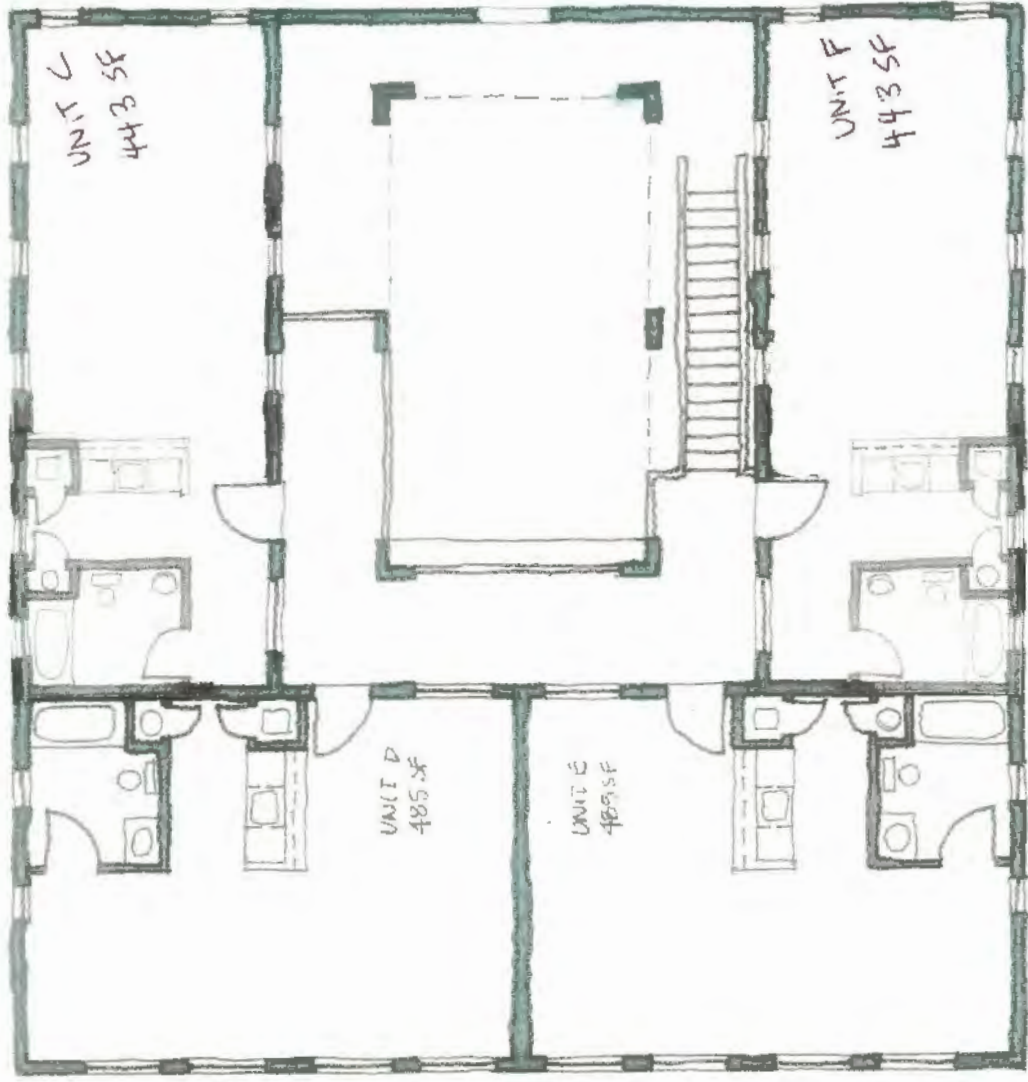
GreenHaus at the Santa Fe Trail  
 Shared Housing Center  
 Dallas, Texas

Residents Center & First Floor Unit Plan - Option D



**Good Fulton & Farrell Architects**  
 2008 Fairmount Street  
 Suite 300  
 Dallas, Texas 75201  
 214.303.1500/Tel  
 214.303.1512/Fax  
 www.gff.com

Date: May 31, 2011



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 Suite 300  
 Dallas, Texas 75201  
 214.303.1500/tx  
 214.303.1512/fax  
 www.gff.com



**GreenHaus at the Santa Fe Trail**  
 Shared Housing Center  
 Dallas, Texas

**Second Floor Unit Plan - Option D**

Date: May 31, 2011



## TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

[www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)

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Juan S. Muñoz, Ph.D.  
J. Paul Ozer

May 19, 2011

Maria Machado  
Green Haus  
402 North Good Latimer Expressway  
Dallas, Texas 75204

RE: Green Haus HTC Application Number: 11114

Dear Ms. Machado:

Thank you for allowing me to visit one of the Shared Housing homes and review the Program Manual Guide. In addition to resolving your unit size and configuration requirements, we have concerns regarding the ultimate eligibility of the Green Haus development as proposed. Based on my visit and limited review, there are some areas of concern as to how the Shared Housing model fits with the Housing Tax Credit program. If Green Haus were operated in the same or a substantially similar manner as the other facilities owned by Shared Housing, the Department would report the property out of compliance under the category "Project not available to the General Public." Please review the enclosed Private Letter Ruling 9814006.

Participation in services generally cannot be mandatory, as explained in the Private Letter Ruling 9814006. Shared Housing could offer services to the residents of Green Haus, but the lease generally cannot require residents to attend or participate. It appears that these services are an integral part of the Shared Housing vision and mission. If it is essential to your operating model to mandate use of services, a private letter ruling would likely need be obtained.

In addition, as Private Letter Ruling 9814006 states, there could not be lock downs of the facility and each tenant would need to have freedom to come and go as he/she wished. Green Haus could not have an effective "lock out" between the hours of 8:30 and 3:00 Monday through Friday.

Other concerns include Shared Housing's rules regarding drug testing, overnight stays away from the property, the guest policy, and the requirement to perform major chores on a monthly basis. Residents cannot be evicted for other than good cause. The Department raises the concern as to whether a court of competent jurisdiction would consider noncompliance with these requirements to be good cause.

Lastly, as the property in Private Letter Ruling 9814006 did, Green Haus would need to provide a determination from HUD that excluding men would not violate the Fair Housing Act.

TDHCA certainly commends your dedication to helping others become an active part of society. However, the requirements and conditions needed for your program to be successful do not appear to conform with the Housing Tax Credit Program. If you wish to continue pursuing an allocation of credit for Green Haus, please submit a Program Manual Guide specific to Green Haus describing how services will be offered/provided in a manner that does not violate Section 42. After review of the revised manual, TDHCA may require the applicant to obtain a Private Letter Ruling, or directly request guidance from the Internal Revenue Service or Treasury Department.

Thank you for your interest in the Housing Tax Credit Program. TDHCA offers compliance training on the Housing Tax Credit program through the Texas Apartment Association. The next training in your area is May 25, 2011. I encourage you to attend and learn more about compliance with the program. Registration and more information is available at [www.taa.org](http://www.taa.org). I can be reached at (512) 475-3140 or at [patricia.murphy@tdhca.state.tx.us](mailto:patricia.murphy@tdhca.state.tx.us) if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Patricia Murphy", with a stylized flourish at the end.

Patricia Murphy  
Chief of Compliance and Asset Oversight



# TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

*www.tdhca.state.tx.us*

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GOVERNOR

Michael Gerber  
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Lowell A. Keig  
Juan S. Muñoz, Ph.D.  
J. Paul Oser

April 28, 2011

Ms. Maria Machado  
SH Community, L.P.  
402 N. Good Latimer Expressway  
Dallas, TX 75204  
Email: [mmachado@sharedhousing.org](mailto:mmachado@sharedhousing.org)

Re: Application #11114, Green Haus on the Santa Fe Trail

Dear Ms. Machado:

## Appeal Review

I have carefully reviewed the appeal received April 25, 2011, wherein you appeal the termination of application #11114, Green Haus on the Santa Fe Trail and request reinstatement of the application. The proposal within the application for Green Haus on the Santa Fe Trail indicates that the development will offer a total of 24 Single Room Occupancy and/or Efficiency units; however, architectural drawings for the proposed development reflect units with distinguishable and separate bedrooms. Given that the units as currently designed do not meet the definitions of Single Room Occupancy or Efficiency Unit, the proposed unit sizes for all of the units do not meet the minimum required per §49.8(5)(B) of the 2011 Qualified Allocation Plan (QAP).

The currently proposed unit mix includes a total of 20 one-bedroom/one and a half bathroom units at 490 net rentable square feet, and 4 two-bedroom/two-bath units at 700 net rentable square feet. You appeal that the 20 one bedroom units do not have a separately enclosed bedroom. The floor plans for the one bedroom units reflect a two-story design wherein the first floor contains the living area, kitchenette area and a half bath. The second floor of this one-bedroom unit contains the bedroom and one full bath. Although the floor plans for this unit type do not reflect a door at the entrance of the second floor bedroom area, the lack of a door does not mean it is not separately enclosed. Furthermore, you appeal that the bedroom doors in the 4 two-bedroom units would result in no separately enclosed bedrooms and, thus, qualifying these units as Single Room Occupancy or Efficiency Units. The lack of doors in and of itself does not change the characteristic of this unit having a separately enclosed bedroom because walls exist between the rooms in this unit to distinguish them as separate rooms

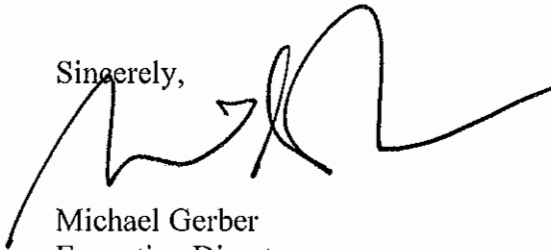
within the unit, therefore having no doors would not change this characteristic and would not qualify the unit as a SRO Unit.

**Appeal Determination**

After a careful review of all the facts, your appeal is denied.

If you have any questions, please do not hesitate to contact Raquel Morales at 512.475.1676 or [raquel.morales@tdhca.state.tx.us](mailto:raquel.morales@tdhca.state.tx.us) .

Sincerely,

A handwritten signature in black ink, appearing to read 'M Gerber', with a long horizontal flourish extending to the right.

Michael Gerber  
Executive Director

MFF/rbm



SHARED HOUSING CENTER, INC.

April 25, 2011

Mr. Mike Gerber  
Executive Director  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, TX 78711

RE: Formal Appeal

Dear Mr. Gerber:

This brief cover letter is to inform you that SH Community, L.P. (an affiliate of Shared Housing Center) is filing a formal appeal to you. Enclosed with this cover letter are the following documents:

- 1) SH Community, L.P. appeal letter
- 2) A copy of the architect plans as described in the above letter
- 3) 2011 Housing Tax Credit Appeal Election Form

Thank you for your time and attention.

Sincerely,

Maria Machado  
Executive Director

cc: Mike Sugrue; J. Chris Luna; J. Killingsworth; B. Mitchell  
C. Palmer; SHC Officers





**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

**2011 HOUSING TAX CREDIT APPEAL ELECTION FORM**

This form is to notify the Department that I am filing a formal appeal to the Executive Director for processing. My appeal documentation, which identifies my specific grounds for appeal, is attached.

**If my appeal is denied by the Executive Director, I: (check one)**

Do wish to appeal to the Board of Directors and request that my application be added to the May 5, 2011 Board of Directors meeting agenda. I understand that my Board appeal documentation must be submitted by 5:00 p.m. Monday, April 26, 2011 to be placed in the May 5, 2011 Board materials. If no further documentation is submitted, the appeal documentation to the Executive Director will be utilized.

Do not wish to appeal to the Board of Directors.

Development Name:	SH Community, L.P.
Development Address:	402 N. GOOD Latimer Expwy Dallas TX 75204
Signer's Name	MARIA Machado
Signer's Title:	Executive Director
Date:	04-25-2011

Signed: Maria Machado



SHARED HOUSING CENTER, INC.

April 25, 2011

*VIA EMAIL AND FEDERAL EXPRESS*

Michael Gerber  
Executive Director  
Texas Department of Housing and Community Affairs  
P.O. Box 13941  
Austin, TX 78711-3941

RE: Application #11114, Green Haus on the Santa Fe Trail, Dallas, TX (the "Project")

Dear Mr. Gerber:

SH Community, L.P. (the "Owner") was informed by letter dated April 19, 2011 (the "Letter") that our 2011 Housing Tax Credit Application was terminated on the grounds of nonconforming unit sizes as required by §49.8(5)(B) of the 2011 Qualified Allocation Plan ("QAP"). In accordance with Section 49.10(d) of the QAP of the Texas Department of Housing and Community Affairs ("TDHCA"), this letter is to formally appeal the termination of the above-referenced application from the 2011 Housing Tax Credit Application Cycle.

The Letter states that the Project includes "twenty 1-bedroom, 1 ½ bath units and four 2-bedroom, 2-bath units, all with a separately enclosed bedroom." This statement is inaccurate. The plans for the Project do include twenty, one bedroom units (the "Twenty Units"), but none of the Twenty Units include separately enclosed bedrooms. The four other units (the "Four Disability Units") do include a door on the first level of these units that would serve to enclose the lower floor as a bedroom, but that was an error in the plans on the Owner's part, and Owner will remove these doors from the plans and from the ultimate built Project. Without the doors included in the Four Disability Units, these units would also not include a separately enclosed bedroom. We respectfully request that TDHCA reconsider the plans to permit Owner to remove the four (4) doors that would otherwise enclose the downstairs area in the Four Disability Units, and also reconsider the conclusion that the Twenty Units include a separately enclosed bedroom. Should such considerations be adopted into the TDHCA's application review process for the Project, it necessarily follows that the Project is in fact offering SRO units, and is therefore "eligible for an exception to the minimum unit sizes that are available to developments proposing Rehabilitation or Single Room Occupancy" (statement taken from the Letter).

#### **Shared Housing Center Background**

The Owner of the Project is an affiliate of Shared Housing Center, Inc. ("Shared Housing") a 501(C)(3) non-profit that has provided housing, education and supportive services to the homeless community in Dallas, Texas for twenty-seven years. The mission of Shared Housing is all about sharing ~ which includes both the living environment and our clients' lives. For more than twenty years, we have successfully operated group homes with a very similar footprint and design as proposed in our application for tax credits. During our existence, we have assisted over 17,000 homeless single parent families and older adults. The basic premise of our design and key to our success has been a "shared housing" environment in which each single parent with small children has their own private living space with bath, but the residents share common kitchen and living area. This design teaches our residents to learn the value of inter-dependent relationships (rather than co-dependency) and the value of sharing and negotiating.

## 2011 Tax Credit Application

In general terms, the plans for the Project include a twenty-four (24) unit development, designed to provide transitional housing to homeless women and their children and adult seniors. In furtherance of our mission, we believe it is important to provide not only housing but a sense of community to our clientele. Rather than simply construct a multi-family apartment complex and provide housing, we have developed a model which provides for community living and dining. In the proposed Project, you will see that we have four buildings. Each building contains 6 units for occupancy and a separate large common room for dining, school work and socializing.

In the Letter we received from TDHCA, it is stated that our application was terminated for not meeting the definition of Single Room Occupancy ("SRO"), which is described in the letter as "an efficiency unit which must not contain a separately enclosed bedroom". The plans submitted with our application and attached to this letter, include twenty (20) units that contain 405 net square feet on two levels. The upper level may be considered a "separate room", but it is not "enclosed" since it does not have a door. The lower level has an efficiency type kitchenette for keeping cold beverages and warming food, but not for cooking full meals. These amenities were included so that we could comply with QAP requirements. There are four units with a larger floor plan and full bath on the lower level. This is necessary to accommodate disabled tenants. The goal is to have the tenants using the common area as their primary living space. There is no reason (other than the fact the plans included a door enclosing the downstairs) to characterize these units as anything other than SRO units, which we have previously addressed in second paragraph of this letter

### Further Discussion of What Constitute and SRO Unit

Nowhere in the QAP is an SRO unit defined as having only one room. The only requirement is that an SRO based application comply with Section 42(i)(3)(B)(iii) and (IV) of the IRS Code:

(iii) Transitional housing for homeless. For purposes of clause (i), a unit shall be considered to be used other than on a transient basis if the unit contains sleeping accommodations and kitchen and bathroom facilities and is located in a building--

(I) which is used exclusively to facilitate the transition of homeless individuals (within the meaning of section 103 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11302), as in effect on the date of the enactment of this clause) to independent living within 24 months, and

(II) in which a governmental entity or qualified nonprofit organization (as defined in subsection (h)(5)) provides such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing.

(iv) Single-room occupancy units. For purposes of clause (i), a single-room occupancy unit shall not be treated as used on a transient basis merely because it is rented on a month-by-month basis.

The Project that we have proposed does meet those criteria. In many definitions (including the primary definition in Wikipedia which is taken from the definition used by many Housing Authorities) SRO is actually defined as "single resident occupancy" and the most common definition of SRO is as follows:

A single room occupancy (more commonly SRO, sometimes called single resident occupancy) is a multiple tenant building that houses one or two people in individual rooms (sometimes two rooms, or two rooms with a bathroom or half bathroom), or to the single room dwelling itself. SRO tenants typically share bathrooms and / or kitchens, while some SRO rooms may include kitchenettes,

bathrooms, or half-baths. Although many are former hotels, SROs are primarily rented as a permanent residence.

#### **Previous Discussions with TDHCA Staff**

In January 2011, Owner's developer called the TDHCA and spoke with the Deputy Executive Director for Housing Programs. The developer explained the reason for the call and where we stood with the current product design, how it might fit into the tax credit program, and to get TDHCA's thoughts on the application. To our understanding, thus type of design had not been proposed before.

After discussing the design plans, the Deputy Executive Director shared that this product design should work as SRO or supportive housing since Shared Housing was going to provide services to prospective tenants. While he did not commit that the design product was approved, he did give us reason to feel that we could proceed due to the supportive services and the tenants to be served. At no time did he object to the product design or express any concerns or reservations. Had there been any negative feedback, we would not have submitted it the way that we did. It would be unfair to now penalize Shared Housing.

#### **Relief Requested**

For the reasons stated in this letter, it is our firm belief that the Project should be considered a SRO based application, eligible for further consideration under the application process. As such, we respectfully request that our 2011 Tax Credit application be re-instated as submitted, with the one change for the removal of the bedroom doors on the Four Disability Units..

#### **Conclusion**

We also request that you review the application file to see the board based civic, community, and governmental support for the Project.

We understand that this Project may not be a typical tax credit project. It is, however, innovative and designed to meet the needs of a particular tenant population. It is definitely filling a need not met by other developments. We are a small non-profit attempting to serve a fast growing population using very limited resources. The receipt of a tax credit allocation is the only way we can build this type of housing and fill this ever growing need.

We thank you for your time and consideration.

Sincerely,



Maria Machado  
Executive Director



TYPICAL BUILDING & UNIT PLAN - FIRST FLOOR

GreenHaus at the Santa Fe Trail

Shared Housing Center  
Dallas, Texas

First Floor Plan

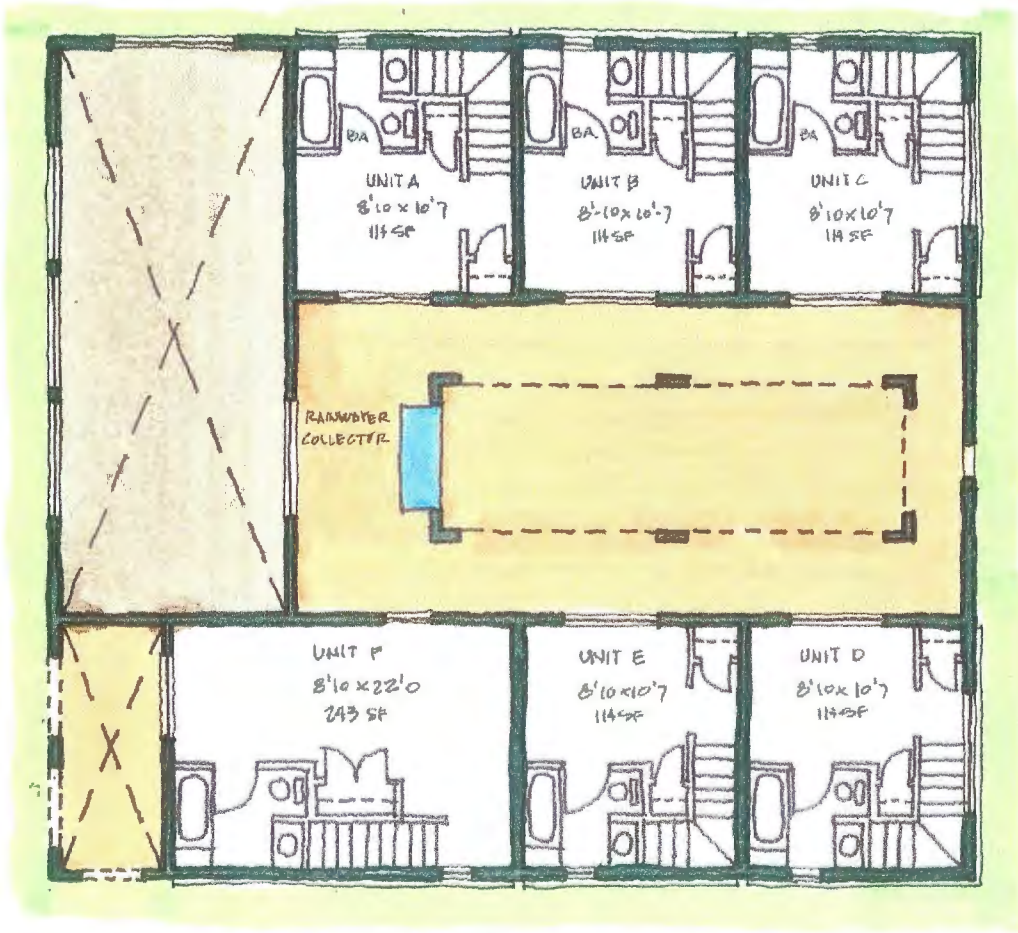


Good Fulton & Farrell Architects

2808 Fairmount Street  
Suite 300  
Dallas, Texas 75201

214.303.1900/td  
214.303.1512/fax  
www.gff.com

Date: February 28, 2011



TYPICAL BUILDING UNIT PLAN - SECOND FLOOR

GreenHaus at the Santa Fe Trail  
 Shared Housing Center  
 Dallas, Texas

Second Floor Plan



Date: February 25, 2011

**gff** Good Fulton & Farrell Architects  
 2808 Fairmount Street  
 Suite 300  
 Dallas, Texas 75201  
 214.303.1500/td  
 214.303.1512/fax  
 www.gff.com



## TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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J. Paul Oxer

April 19, 2011

Ms. Maria Machado  
SH Community, L.P.  
402 N. Good Latimer Expressway  
Dallas, TX 75204  
Email: [mmachado@sharedhousing.org](mailto:mmachado@sharedhousing.org)

Re: Application #11114, Green Haus on the Santa Fe Trail

Dear Ms. Machado:

The Texas Department of Housing and Community Affairs (the "Department") appreciates your participation in the 2011 Housing Tax Credit program. Staff reviews every application thoroughly to ensure eligibility and compliance with Department and program rules. During the course of the Department's review of your application it was identified that the proposed development includes non-conforming unit sizes as required by §49.8(5)(B) of the 2011 Qualified Allocation Plan (QAP).

While not identified as a Supportive Housing development, certain portions of the application describe a plan to offer Single Room Occupancy (SRO)/efficiency units to families transitioning from homelessness. By definition, Single Room Occupancy is an efficiency unit which must not contain a separately enclosed bedroom. Further review of the unit floor plans provided in your application confirm that you have twenty 1-bedroom, 1½-bath units and four 2-bedroom, 2-bath units, all with a separately enclosed bedroom. Given that this development is not offering SRO units, it is not eligible for an exception to the minimum unit sizes that are available to developments proposing Rehabilitation or Single Room Occupancy. Additionally, it is worth noting that a brief review of the selection portion of your application reveals your assumption of qualifying as an SRO in requesting points for specific items.

As a result, the application for Green Haus on the Santa Fe Trail is no longer eligible for consideration for the 2011 Housing Tax Credit Application Cycle.

An Appeals Policy exists for the Housing Tax Credit Program. The restrictions and requirements relating to the filing of an appeal can be found in §49.10(d) of the 2011 QAP. If you choose to appeal this determination, you must first submit an appeal to the Executive Director no later than 5:00 pm on **April 26, 2011**. In the event an appeal is denied by the Executive Director, you may appeal directly in writing to the Board, provided that an appeal filed with the Board is received by **April 26, 2011**.

If you have any questions, please do not hesitate to contact Raquel Morales at 512-475-1676 or [raquel.morales@tdhca.state.tx.us](mailto:raquel.morales@tdhca.state.tx.us).

Sincerely,



Robbye G. Meyer  
Director of Multifamily Finance

MFF/rbm

cc: Mike Sugrue  
Email: [msugrue@hotmail.com](mailto:msugrue@hotmail.com)



**Appeal of Termination for  
11136- Sphinx at Lawnview**

**MULTIFAMILY FINANCE DIVISION  
BOARD ACTION REQUEST  
June 30, 2011**

**Requested Action**

Deny the Applicant's appeal of the termination of Application #11136, Sphinx at Lawnview.

**WHEREAS**, an application for tax credits was submitted for Sphinx at Lawnview on March 1, 2011; and

**WHEREAS**, §49.8(14)(D) of the 2011 Qualified Allocation Plan (QAP) requires an appraisal report for all identity of interest transactions in cases where the original acquisition cost of the development site to the owner is less than the acquisition cost claimed in the Application; and

**WHEREAS**, the documentation submitted in response to staff's request was not sufficient to support the acquisition cost claimed in the application and an appraisal report was not submitted; therefore,

**BE IT RESOLVED**, that the appeal of termination of Application #11136, Sphinx at Lawnview is hereby denied.

**Background**

Sphinx at Lawnview is a proposed 120-unit, new construction senior development to be located in Dallas, Texas. Pursuant to the 2011 QAP an appraisal must be submitted for an identity of interest transaction where the original acquisition cost of the development site to the owner is less than the acquisition cost claimed in the application. Through the review process staff requested additional documentation of the original acquisition cost of the site, plus any other verifiable costs of owning, holding or improving the property in accordance with §49.8(8)(A)(iv) of the 2011 QAP. The documentation submitted in response to staff's request was not sufficient to support the acquisition cost claimed in the application.

Specifically, the total acquisition cost claimed in the application was \$675K. The documentation provided only supported \$365K which consists of the original amount paid for the subject development site. The appeal submitted by the applicant indicated that the Environmental Site Assessment provided at that time of application submission includes a geotechnical report that establishes the magnitude of the concrete on the site that must be removed. The \$310K that is included in the development cost schedule as part of the total acquisition is the cost to remove the concrete from the site. However, in order to be able to claim this cost as a verifiable cost of owning, holding or improving the property, the cost must have already been incurred. Documentation was submitted that

indicated the \$310K cost is an estimate for work that has yet to be done to the site. The appeal further indicates that the purchase price originally paid by the Applicant for this site (\$365K) would be unreasonably low for a 13.8 acre site in the middle of the City of Dallas. Additionally, it was indicated that the reason for this price is the encumbrance placed on the site by the concrete that must be removed, and therefore the Applicant believes that the cost of removing the concrete is a justified part of the value of the land. The cost of removing the concrete could have been included in the acquisition cost with documentation of such cost if an appraisal justified the higher sales price or could have been included as an ineligible development cost outside of the purchase contract, but again with adequate documentation of such cost. An appraisal has not been submitted to date to support the Applicant's claim of either the intended acquisition cost or the claim of an unreasonably low purchase price for the site. Moreover, adequate documentation of the cost of the removal of the concrete in any case has not been provided or established. Staff does not recommend granting this appeal.



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J. Paul Oxer

June 2, 2011

Mr. Jay O. Oji  
SDC Lawnview Villas, LP  
3030 LBJ Freeway, Suite 880  
Dallas, TX 75234  
Email: [jay@sdcus.com](mailto:jay@sdcus.com)

Re: Application #11136, Sphinx at Lawnview

Dear Mr. Oji:

### **Appeal Review**

I have carefully reviewed the appeal received on May 20, 2011 wherein you appeal the termination and request reinstatement of Sphinx at Lawnview, #11136. Sphinx at Lawnview was terminated because the Department identified that the acquisition of the development site is an identity of interest transaction which requires an appraisal to be provided for the subject site on or before March 1<sup>st</sup>. An appraisal was not provided and as of the date of this letter you have not provided any other verifiable costs of owning, holding or improving the property in accordance with §49.8(8)(A)(iv) of the 2011 Qualified Allocation Plan (QAP).

You appeal that the Environmental Site Assessment provided at that time of application submission includes a geotechnical report that establishes the magnitude of the concrete on the site that must be removed. The \$310K that is included in your development cost schedule as part of the total acquisition is the cost to remove the concrete from the site. However, in order to be able to claim this cost as a verifiable cost of owning, holding or improving the property, the cost must have already been incurred. As is evidenced by the letter provided with your appeal, the \$310K cost is an estimate for work that has yet to be done to the site. Therefore, it cannot be considered as part of the acquisition cost currently. You further appeal that the purchase price originally paid by the Applicant for this site (\$365K) would be unreasonably low for a 13.8 acre site in the middle of the City of Dallas. Additionally, you indicate the reason for this unreasonably low price is the encumbrance placed on the site by the concrete that must be removed, and therefore believe that the cost of removing the concrete is a justified part of the value of the land. However, you have provided no appraisal to date to support this statement.

**Appeal Determination**

After a careful review of all the facts, your appeal is denied.

If you choose to continue this appeal to the Board of Directors, in accordance with §49.10(d) of the 2011 QAP, your appeal documentation to the Board must be received by June 7, 2011 in order to be reviewed and included in the Board materials.

If you have any questions, please do not hesitate to contact Raquel Morales at 512.475.1676 or [raquel.morales@tdhca.state.tx.us](mailto:raquel.morales@tdhca.state.tx.us) .

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Gerber", with a long horizontal flourish extending to the right.

Michael Gerber  
Executive Director

MFF/rbm



May 20, 2011

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

**Re: *Sphinx at Lawnview; Application #11136***

Dear Mr. Gerber:

The purpose of this letter is to ask you to set aside the termination letter of May 18, 2011 and reinstate SDC Lawnview Villas, LP ("Applicant") of the Application #11136 (the "Application") for the 2011 application round.

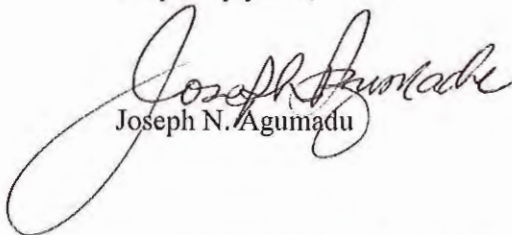
Pursuant to the letter from Robbye Meyer dated May 18, 2011, the Application was terminated under Section 49.8(14)(D) of the 2011 Qualified Action Plan and Rules (the "QAP") due to a failure to provide the Department with an appraisal for the land due to the identity of interest. However, section 49.8(iv)(11)(b-) states "*Any other verified cost of owning, holding, or improving the Property that, when added to the value justifies the applicant's acquisition amount*". The environmental report enclosed with the application included a geotechnical report which established the magnitude of the concrete on the site. The additional \$310,000 is the cost of the removal of the concrete which is a major encumbrance placed on the land, *(quote for the removal enclosed)*

It is worth noting that the purchase price of \$365,000 would be unreasonably low for a 13.8 Acre multifamily site in the middle of the City of Dallas. The reason is the encumbrance placed on the site by the 18 feet concrete material dump that must to be removed. To remove it from cost of the land would be unreasonably understating the land cost. We feel that adding the cost to removing the material is justified part of the value of the land costs since the concrete is an encumbrance on the site. We had so indicated in the cost schedule at the request of a TDHCA staff two weeks ago..

**We ask that you reinstate this application.** The Proposed Sphinx at Lawnview Seniors is targeted to the elderly population based on need in line with the Sphinx Development Corporation's demonstrated commitment to planning, development and maintenance of strong viable communities – especially in the southern sector of Dallas. We have proposed 120 units on 13.6 Acres on land which will comprise all one story single family style which has proven to be a winner for the neighborhood and the greater City.

Please confirm Applicant's request to be reinstated for the 2011 application round. Thank you for your assistance in this matter.

Very truly yours,

  
Joseph N. Agumadu

cc: John C. Shackelford, Esq. *(via e-mail)*



**DIRT TRUCKING COMPANY, INC.**  
**EXCAVATING & HAULING**

May 3, 2011

SDC Construction  
Attn: Jay Millum

Property: 4120 Lawn wood, Dallas TX  
Property approx 13.789 acres

Bid on the following for your consideration:

1. Excavate approx 10% of property haul off as required.
2. Regrade to slope for drainage.

Exclusions: Testing, layout & engineering, backfilling, permits.

Total Bid: \$310,000.00

Fill dirt for backfill \$8.50 cubic yd furnish & place

Thanks,

Brad Thompson





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J. Paul Oxer

May 18, 2011

Mr. Jay O. Oji  
SDC Lawnview Villas, LP  
3030 LBJ Freeway, Suite 880  
Dallas, TX 75234  
Email: [jay@sdcus.com](mailto:jay@sdcus.com)

Re: Application #11136, Sphinx at Lawnview

Dear Mr. Oji:

The Department received your 2011 Housing Tax Credit application for the above referenced development on March 1, 2011. During the course of the Department's review of your application, the Department identified that the acquisition of the development site is an identity of interest transaction. In accordance with §49.8(14)(D) of the 2011 Qualified Allocation Plan (QAP), an appraisal report prepared by a qualified Third Party is required of all identity of interest transactions in cases where the original acquisition cost of the development site to the owner is less than the acquisition cost claimed in the Application. Department staff contacted you to get additional documentation of the original acquisition cost of the site, plus any other verifiable costs of owning, holding or improving the property in accordance with §49.8(8)(A)(iv) of the 2011 QAP. Unfortunately, the documentation submitted in response to staff's request was not sufficient to support the acquisition cost claimed in your application.

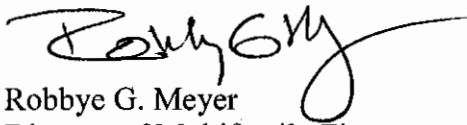
Specifically, the total acquisition cost claimed in your application is \$675K. The documentation provided has only supported \$365K which consists of the original amount paid for the subject development site. The documentation provided for the additional \$310K is not sufficient because this cost has not yet been incurred. Therefore, given the fact that the documentation submitted does not support the acquisition cost claimed in your cost schedule and that an appraisal has not been submitted, the application for Sphinx at Lawnview is no longer eligible for consideration in the 2011 Housing Tax Credit Application Cycle.



An Appeals Policy exists for the Housing Tax Credit Program. The restrictions and requirements relating to the filing of an appeal can be found in §49.10(d) of the 2011 QAP. If you choose to appeal this determination, you must first submit an appeal to the Executive Director no later than 5:00 pm on **May 20, 2011**. In the event an appeal is denied by the Executive Director, you may appeal directly in writing to the Board, provided that an appeal filed with the Board is received by **June 1, 2011**.

If you have any questions, please do not hesitate to contact Raquel Morales at 512-475-1676 or [raquel.morales@tdhca.state.tx.us](mailto:raquel.morales@tdhca.state.tx.us).

Sincerely,

A handwritten signature in black ink, appearing to read "Robbye G. Meyer", with a long horizontal flourish extending to the right.

Robbye G. Meyer  
Director of Multifamily Finance

MFF/rbm

cc: Joseph Agumadu

Appeal of Scoring for  
11127- 1400 Belleview

**MULTIFAMILY FINANCE DIVISION  
BOARD ACTION REQUEST  
June 30, 2011**

**Requested Action**

Deny the Applicant's appeal to reinstate four points to the final score for Application #11127, 1400 Belleview.

**WHEREAS**, an application for tax credits was submitted for 1400 Belleview on March 1, 2011; and

**WHEREAS**, the Applicant was not awarded four points for Developments in Census Tracts With No Other Existing Same Type Developments Supported by Housing Tax Credits pursuant to §49.96(a)(18) of the 2011 QAP because at the time the Application Acceptance Period began a forward commitment was located in the same census tract; therefore

**BE IT RESOLVED**, that the appeal of #11127, 1400 Belleview is hereby denied.

**Background**

1400 Belleview is a proposed 164 unit new construction multifamily development targeting the general population in Dallas, Texas. The application was not awarded four points requested for §49.9(a)(18) because a forward commitment was awarded to a development in the same census tract as of the beginning of the Application Acceptance Period.

The Applicant appeals the point loss on two different points. The first is that the 2010 forward commitment has since been rescinded by the Department with no appeal pursued by the development owner before the Board. As a result, no other development supported by tax credits exists as of this date. The second point of appeal is that the forward commitment issued was for a development that proposed a Supportive Housing plan targeted to formerly homeless individuals. The proposal for the subject application, however, is a development targeted towards families. The Applicant appeals that since the two developments were not serving the same type of population, 1400 Belleview should be allowed the four points requested under this item.

While the Department recognizes the fact that the forward commitment issued for the 2010 application for Evergreen Residences was rescinded after the March 1<sup>st</sup> application submission deadline, the Department evaluates all applications utilizing the same data published in the 2011 HTC Site Demographics Report, which is published at the beginning of the application acceptance period and for which all applicants competing under the 2011 competitive cycle must use. Beyond this, the HTC Site Demographics Report currently does not differentiate developments on the basis of being a Supportive Housing development or not. The only differentiation made with respect to this point item is between elderly and family populations. Given that the population targeted for both the subject application and the forward commitment

is the general population, the subject application did not qualify for the points requested at the time the application was submitted. Accordingly, staff recommends that the appeal be denied.

# COATS | ROSE

*A Professional Corporation*

TAMRA A. DULA  
OF COUNSEL

tdula@coatsrose.com  
Direct Dial  
(713) 653-7322  
Direct Fax  
(713) 890-3918

June 21, 2011

Email to [tim.irvine@tdhca.state.tx.us](mailto:tim.irvine@tdhca.state.tx.us)

Mr. Tim Irvine, Acting Director  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, TX 78701-2410

RE: 1400 Belleview (TDHCA # 11127) ("Belleview");  
Appeal of Denial of Four Points under Volume 4, Tab 18.

Dear Mr. Irvine:

This is to request an appeal to the TDHCA Board at its meeting on **June 30, 2011**, of the denial of four (4) points requested by Belleview. The points were for Developments in Census Tracts with No Other Existing Same Type Development Supported by Tax Credits (Volume 4, Tab 18 of the 2011 9% Housing Tax Credit Application). Staff found that Evergreen Residences | 3800 Willow (TDHCA # 11013) ("Willow") had been granted a 2011 Forward Commitment in the same Census Tract. **After reviewing the documentation, we believe that the points were erroneously denied because the two developments serve very different populations, and additionally because the Willow Forward Commitment was subsequently terminated, so that now there is NO other tax credit development in the same Census Tract.** We accordingly request that the four (4) points be awarded to Belleview.

Section 49.9(a)(18) of the 2011 Qualified Allocation Plan ("QAP") states:

**Developments in Census Tracts with No Other Existing Same Type Developments Supported by Tax Credits.** (§2306.6725(b)(2)) Applications may receive 4 points if the proposed Development is located in a census tract in which there are no other existing Developments supported by Housing Tax Credits that serve the same type of household, regardless of whether the Development serves the general or elderly populations. Evidence of the census tract in which the Development is located must be submitted. These census tracts are outlined in the 2011 Housing Tax Credit Site Demographic Characteristics Report.

3 East Greenway Plaza, Suite 2000 | Houston, Texas 77046-0307  
Phone: 713-651-0111 | Fax: 713-651-0220  
Web: [www.coatsrose.com](http://www.coatsrose.com)

HOUSTON | CLEAR LAKE | AUSTIN | DALLAS | SAN ANTONIO | NEW ORLEANS

**Willow Forward Commitment was Terminated – No Reason to Deny Belleview an Award**

In the 2011 very competitive 9% Round, the loss of four points is effectively the loss of an award – especially in Region 3 where most of the credits were forward-committed. The Belleview Applicant was aware that Willow lacked the support of the City of Dallas, and through an open records request to TDHCA, information was obtained indicating that the termination of the Forward Commitment had been underway since February 18, 2011 – prior to the submission of the Belleview Application [See Attachment #1]. The Willow appeal of termination was denied by the Executive Director on March 10, 2011 [See Attachment #2] and the applicant elected not to appeal to the TDHCA Board’s May meeting. The appellate period has now expired.

The reason to provide four (4) points for a Application that is in a Census Tract with no other tax credit developments serving the same population is to spread the tax credits around and not concentrate them in specific Census Tracts – particularly not in Census Tracts with high poverty levels. Here we have a Census Tract that currently has no other tax credit project – and no prospects for one, now that Willow has been terminated. There are no “existing Developments supported by Housing Tax Credits that serve the same type of household” in the relevant Census Tract – simply because there are no tax credit projects there at all – whether on the ground or only proposed. Belleview has proposed a tax credit development for families in that Census Tract and has the support of the City of Dallas. We urge you to award the requested points to the Belleview Application.

**Only Two Developments in Census Tract Differ in Populations Served**

Belleview’s application included documentation at Volume 4, Tab 18, showing that although a Forward Commitment had been granted to Willow in the same Census Tract, Belleview and Willow did not serve the same type of household. Belleview is designed with 1, 2 and 3-bedroom units and elected to serve the “General” population – i.e., families, as shown on the first page of the application form. Willow’s application elected to serve the “Supportive Housing” population. In 2010, when the Willow application was filed, the Application form forced you to select one of General, Elderly, Intergenerational Housing or Supportive Housing – you could not select both. In 2011, when the Belleview application was filed, the choice was only General, Elderly or Supportive Housing.

In the Project Narrative for Willows [See Attachment #3], it specifically stated that the project was designed for individuals, which is a classic Supportive Housing population. Supportive Housing for individuals is a different tenant population than is General, which encompasses both families and individuals. Just like the Elderly population selection, Supportive Housing is only a subgroup of the General population. Distinguishing Elderly populations from General populations indicates that Supportive Housing populations should be likewise distinguished – and the 2010 Application Form did distinguish them both by requiring that a single choice be made. [See Attachment #4]

**Design Differences Dictate Different Populations**

In support of the differentiation between Supportive Housing populations and General populations, we point out that the Willow typical unit design consisted 350 square feet efficiency

June 22, 2011

Page 3

apartments without complete kitchens; making the Willow appropriate for individuals in single room occupancy circumstances (the project included six shared kitchens). In contrast, Belleview has 1, 2 and 3-bedroom units ranging from 700 – 1,055 square feet, and all have complete kitchens; making these units appropriate in design for family use.

**2011 Demographic Characteristics Report Failed to Differentiate Among All Populations**

The 2011 Housing Tax Credit Site Demographic Characteristics Report fails to differentiate among the General and the Elderly populations and the Supportive Housing population. The Supportive Housing populations are all treated as General – even though you could certainly have a development restricted to senior persons receiving Supportive Housing. This error on the part of the Demographic Characteristics Report should not penalize a viable and worthy Application that can clearly show the differences between its selected population and others which could have been selected.

In summary, the Belleview project is the only tax credit-supported development in its Census Tract, as a result of the termination of the Willow Forward Commitment. Belleview differs from the Willow application in that it will serve the General population, primarily families, and not individuals seeking Supportive Housing. The purpose of section 49.9(a)(18) is clearly to foster the disbursement of tax credits into Census Tracts that do not already have the same population being served with tax credit developments. Now, with the termination of the Willow Forward Commitment, there are NO other tax credit developments in the Belleview Census Tract. We respectfully request that the TDHCA Board acknowledge this fact and award the four (4) points requested by Belleview.

Very truly yours,



Tamea A. Dula

Enclosures

cc: Tom Gouris  
Robbye Meyer  
Raquel Morales

# ATTACHMENT 1





## TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

[www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)

Rick Perry  
GOVERNOR

Michael Gerber  
EXECUTIVE DIRECTOR

BOARD MEMBERS  
C. Kent Cnuine, *Chair*  
Gloria Ray, *Vice Chair*  
Leslie Bingham Escareño  
Tom H. Gann  
Lowell A. Keig  
Juan S. Muñoz, Ph.D.

February 18, 2011

Graham Greene LP  
EVERgreen Residential, Ltd.  
1925 San Jacinto, Suite 300  
Dallas, TX 75201

Re: Application #10232 Evergreen Residences- 3800 Willow

Dear Mr. Greene:

The Texas Department of Housing and Community Affairs' Board approved a Forward Commitment of 2011 Housing Tax Credits for Evergreen Residences - 3800 Willow at its September 2010 Board meeting, subject to your full compliance with the Department's Qualified Allocation Plan and Rules as well as a complete underwriting evaluation. A notice of Conditional Forward Commitment, dated October 29, 2010, was issued for the application with several conditions required to be resolved by November 8, 2010.

Among the conditions to be resolved was receipt of a firm commitment of funding from the City of Dallas for the proposed development. A letter from the City of Dallas, dated November 5, 2010, was provided. However, the letter references a conditional commitment of funding from the City of Dallas. A letter from you, dated November 5, 2010, was included in the commitment notice package indicating that the firm commitment required by the City of Dallas could not be obtained within the timeframe required by the Department. Your letter further states that the proposed development lacked the neighborhood support required to score the number of points associated with neighborhood support. Therefore, your application was not forwarded to the Dallas City Council along with the other 2010 applicants.

In order for this development to move forward through the City's process, the proposal must obtain neighborhood support in order to be presented to and reviewed by the Housing Committee and subsequently approved by the City Council. To date, you have not been able to obtain the required neighborhood support required to garner City Council approval. On February 11, 2011 you provided a Neighborhood and City Support Plan whereby you ask, the Department, for continued extension of the requirement to provide a firm commitment from the City of Dallas for the local funding in order to allow you the opportunity to rerun the neighborhood support process. The plan suggests that the earliest you can provide evidence of support from both the neighborhood and the City of Dallas would be by the May 2011 Board meeting.

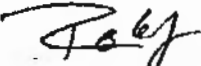
Staff appreciates your continued efforts in getting the funding in place to proceed with the proposed development. However, the fact remains that your testimony at our Board's September 2010 meeting indicated this development was ready to move forward with the funding from the City in place subject to a forward allocation of tax credits. Clearly, that was not the case and this development's financial viability, subject to the City's support and funding commitment, remains questionable at this time.

Therefore, pursuant to §50.13(c) of the 2010 QAP and your inability to provide the documentation required of the commitment notice for Evergreen Residences-3800 Willow, the Department is formally rescinding the Notice of Conditional Forward Commitment for this development.

You have a right to appeal this termination to the Executive Director. If you choose to file an appeal to the Executive Director, your appeal must be received by the Department no later than **5:00 p.m. on February 25, 2011.**

If you have any questions, please do not hesitate to contact Raquel Morales at 512-475-1676 or [raquel.morales@tdhca.state.tx.us](mailto:raquel.morales@tdhca.state.tx.us).

Sincerely,



Robbye Meyer  
Director of Multifamily Finance

# EXECUTIVE DIRECTOR'S

## ACTION ITEM

**Date:** February 16, 2011      **Deadline for Signature:** \_\_\_\_\_  
**Staff to Contact:** Raquel Morales      **Staff Phone #:** 5-1676  
**Back Up Staff Contact:** Robbye Meyer      **B/U Staff Phone #:** 5-2213

Legal Routing #  
*(please highlight if applicable)*  
**RUSH**

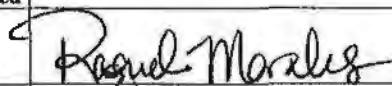
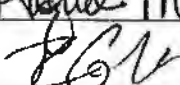
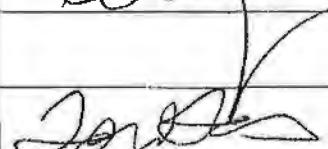
**ITEM:** Rescission of Forward Housing Tax Credit Commitment Notice for Evergreen Residences-3800 Willow, #10232

**BACKGROUND:** Evergreen Residences-3800 Willow received a forward commitment of 2011 HTC at the September 2010 Board meeting, subject to meeting all QAP requirements and a full underwriting evaluation. A Conditional Forward Commitment Notice went out to the Owner on October 29, 2010, and conditions of the Commitment Notice were due back to the Department by November 8, 2010. Among the conditions the owner was to provide was evidence of a firm commitment from the City of Dallas for the local city funding, amounting to \$3.2M. A letter from the city indicated only a conditional commitment, and the Owner requested an extension for meeting this specific condition. To date, a firm commitment has not been obtained by the owner from the City of Dallas, and the Owner is now seeking continued extension in order to re-start and go through the neighborhood support process again so that he may get the neighborhood's support in order to get City Council approval. Staff recommends rescinding the credit commitment due to the length of time already given to produce a firm commitment from the City.


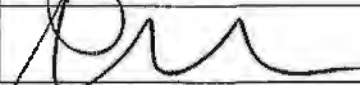
**ACTION REQUESTED:** Review and approve the rescission letter

**ATTACHMENTS:** (List all attachments. Be sure sufficient background documentation is provided)  
 Transcript from Sept. 2010 Board Meeting - testimony re: Evergreen Residences request for a forward commitment  
 Copy of Conditional Commitment Notice for 10232, Evergreen Residences-3800 Willow  
 Feb. 11, 2011 email from Graham Greene of proposed plan to obtain neighborhood support

**DIVISION MANAGER AND/OR DIRECTOR APPROVAL MUST BE OBTAINED FIRST.**

APPROVED BY:	Check if required	SIGNATURE:	DATE IN:	DATE OUT:	COMMENTS:
INITIATING DIVISION MANAGER <i>(If applicable)</i>	<input checked="" type="checkbox"/>			2/16/2011	
INITIATING DIVISION DIRECTOR	<input checked="" type="checkbox"/>			2/16/11	
DIRECTOR - DPPA <i>(If applicable)</i>	<input type="checkbox"/>				
DED HOUSING PROGRAMS	<input checked="" type="checkbox"/>			2/17	
CHIEF OF AGENCY ADMINISTRATION <i>(If applicable)</i>	<input type="checkbox"/>				
NOTARY	<input type="checkbox"/>				
OTHER:	<input type="checkbox"/>				
OTHER:	<input type="checkbox"/>				

**Must Follow This Final Order! ALL lines must be completed.**

APPROVED BY:	Check if required	SIGNATURE	DATE IN:	DATE OUT:	COMMENTS:
CHIEF OF STAFF/GENERAL COUNSEL	<input checked="" type="checkbox"/>		2/18	2/18/11	
EXECUTIVE DIRECTOR	<input checked="" type="checkbox"/>		2/18	2/16/11	

# ATTACHMENT 2



## TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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Rick Perry  
GOVERNOR

Michael Gerber  
EXECUTIVE DIRECTOR

BOARD MEMBERS  
C. Kent Conine, *Chair*  
Gloria Ray, *Vice Chair*  
Leslie Bingham Escareño  
Tom H. Gann  
Lowell A. Keig  
Juan S. Muñoz, Ph.D.

March 10, 2011

John C. Shackelford, Esq.  
Shackelford Melton Mekinley  
3333 Lee Parkway, Tenth Floor  
Dallas, Texas 75219  
Email: [jshack@shacklaw.net](mailto:jshack@shacklaw.net)

Re: Appeal of the Recission of Tax Credit Forward Commitment Notice for #10232, Evergreen Residences- 3800 Willow

Dear Mr. Shackelford:

### Appeal Review

I have carefully reviewed the appeal received on February 25, 2011 regarding your request to reinstate the Tax Credit Forward Commitment Notice for Evergreen Residences- 3800 Willow and to modify the deadline within the Notice to provide evidence of a firm funding commitment from the City of Dallas to May 5, 2011.

Your appeal states that because the credits were awarded as a forward commitment, the normal timeframes for the issuance of commitments and satisfying its terms are not applicable. You further appeal that another developer who received a forward commitment at the same time that Evergreen Residences received approval for a forward commitment has not received a Commitment Notice. Finally your appeal states that if the Commitment Notice issued to this development is reinstated and further extension of the deadlines to meet the requirements of the Notice is granted, that the Applicant will have resolved the neighborhood opposition issues that have prevented receipt of a firm commitment of funding from the City of Dallas in the first place.

The Department's Qualified Allocation Plan (QAP) does not provide additional timeframes for satisfying the terms of a commitment notice that is issued to a development awarded a forward commitment. Further, the Applicant for this development led staff and the TDHCA Board to believe that this development was ready to proceed and move forward, and that support for the development as well as City of Dallas funding was already in place subject to the Department awarding tax credits. There was no indication to staff at that time or thereafter before the Commitment Notice was issued that this was not the case and that the development would face any obstacle in being able to meet the conditions of the Commitment Notice.

Based on the latest correspondence from the Applicant in February 2011, it appears that the Applicant is asking not only for reinstatement of the Commitment Notice but additional time beyond what the Applicant has already received to gather support for the development and ultimately receive a firm commitment for \$3.2M from the City of Dallas. It is the Department's understanding that at this point in time, Evergreen Residences' approval by Dallas City Council will have to be heard at the same time as all other 2011 applications being considered by the City for funding during this year's competitive round.

**Appeal Determination**

After careful consideration and a thorough review of all the facts, your appeal is denied. Per your request your appeal to the Board will be placed on the May 5, 2011 Board meeting agenda.

Sincerely,

A handwritten signature in black ink, appearing to read 'M Gerber', with a long horizontal flourish extending to the right.

Michael Gerber  
Executive Director

cc: Graham Greene  
Jeff Spicer

# ATTACHMENT 3

## EVERgreen Residences | 3800 Willow - SRO / Residential Hotel

### Development Summary

EVERgreen Residences | 3800 Willow - SRO / Residential Hotel, proposed to be located in the Deep Ellum neighborhood of Dallas, Texas (PD269) will provide permanent supportive housing for formerly homeless individuals. This facility will house approximately 100 persons who have neither the personal resources or opportunity within our community to fulfill their housing need.

This type of unique, at least here in Dallas, housing has been in continuous service in many other large cities and for over a decade at two other locations within the City of Dallas. It has proven to be both a safe, cost effective and sustainable solution to the housing needs of the least fortunate in our urban culture and beneficial to the neighborhoods they have become a part of. Local development of these residential hotels / SRO's were completed in the early 1990's and financed with LIHTC's and City of Dallas housing funds. We are now making progress to take this kind of permanent supportive housing forward and provide additional residences to a similar population.

EVERgreen Residences | 3800 Willow will incorporate enriched services for the residents, provided by its ownership, which is structured to include a qualified nonprofit, FPC Housing, LLC, an affiliate of the First Presbyterian Church located in downtown Dallas. They will provide these supportive services to the residents from another location which is accessible to the residents from a DART light rail station located within walking distance at Fair Park.

The residences are planned to be 350sf and will contain private living space, sitting areas and bathrooms furnished with bed, desk, storage and seating. Shared kitchens, lounges and laundry facilities will be dispersed throughout the building, each serving approximately 16 units. The building area breakdown is as follows:

Units – 100 @ 350 sf	35,000 sf
Kitchens – 6 @ 500 sf	3,000 sf
Laundry – 6 @ 167 sf	1,000 sf
Distributed Community Space	6,000 sf
Ground Level Community Space / Retail	10,000 sf
Lobby	2,000 sf
Admin / Management	3,000 sf
Circulation	10,000 sf
Total	70,000 sf

The ground level will include visitor lobby, onsite management office and community spaces. An onsite outdoor recreation area will be contained by the exterior building mass. Floors 2 & 3 will accommodate the residences along with the support spaces listed above. Parking spaces will be provided per code (PD 269) at 24 spaces.

The project is planned to pursue LEED 'Platinum' Certification. The intent is to construct a sustainable project that will minimize maintenance expense and operate at a high level of efficiency for decades to come. It is also the intention of the ownership that the design of the new building(s) retain or incorporate the existing machine shop structures (historic fabric) into the additional new construction.

The financial structure would utilize a 2010 LIHTC allocation from the TDHCA in combination with a City of Dallas subsidy of \$4,000,000 (\$40,000/unit) to partially fund the development of the property so it will serve the Dallas homeless population and be sustainable for many decades to come.



# ATTACHMENT 4



**2010 MULTIFAMILY UNIFORM APPLICATION**  
 Texas Department of Housing and Community Affairs  
 Mailing Address: P.O. Box 13941, Austin, TX 78711-3941  
 Physical Address: 221 East 11th Street, Austin, TX 78701

The undersigned hereby makes Application to TDHCA for financial assistance. The Applicant has read and understands the Application instructions, has read and understands §509(c), Adherence to Obligations, of the 2010 Qualified Allocation Plan and Rules, and certifies that all information herein is true and correct to the best of their knowledge and belief. By signing this document, Applicant is affirming that all statements and representations made in this document are true and correct under penalty of Chapter 37 of the Texas Penal Code titled Perjury and Other Falsification and subject to criminal penalties as defined by the State of Texas. TEX. PENAL CODE ANN. §§37.01 et seq. (VERNON 2003 & SUPP. 2007).

Submitted Application must be signed by a representative with authority to execute documents on the Applicant's behalf

*Graham Greene*  
 Applicant's Authorized Representative's Signature

Graham Greene, Authorized I  
 Representative's Printed Name Title

02/25/10  
 Date

**Volume 1, Tab 1**  
**PART A. ACTIVITY OVERVIEW**

**1. Multifamily Rental Development Name and Location**

Development Name:	<u>EVERgreen Residences - 3800 Willow</u>	Region:	<u>3</u>
Address:	<u>3800 Willow</u>		
City:	<u>Dallas</u>	County:	<u>TX</u>
		ZIP:	<u>75226-1757</u>
If a Pre-Application was submitted, enter TDHCA assigned Development number:			<u>10232</u>

**2. Target Population (Select by Placing a "x"):**

- General
- Elderly
- Intergenerational Housing
- Supportive Housing

**3. Construction Type (Select Only One by Placing a "x"):**

- New Construction
- Acquisition/Rehabilitation (includes Reconstruction)
- Acquisition/Rehabilitation (excludes Reconstruction)
- Adaptive Reuse
- Single Room Occupancy



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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Leslie Bingham-Escareño  
Lowell A. Keig  
Juan S. Muñoz, Ph.D  
J. Paul Oxeer

June 21, 2011

(512) 475-1676

Email: [raquel.morales@tdhca.state.tx.us](mailto:raquel.morales@tdhca.state.tx.us)

Mr. Kristian Teleki  
Senior Vice President  
1400 Belleview, L.P.  
1660 South Stemmons Freeway, Suite 100  
Lewisville, TX 75067

RE: Appeal of Scoring Notice for #11127, 1400 Belleview

Dear Mr. Teleki:

I have carefully reviewed the appeal received on June 6, 2011, by the Texas Department of Housing and Community Affairs (the "Department"), regarding your request to reinstate 4 points to the final scoring for the application referenced above for Developments in Census Tracts with No Other Existing Same Type Developments Supported by Tax Credits pursuant to §49.9(a)(18) of the 2011 Qualified Allocation Plan and Rules (QAP).

The points were deducted because a 2010 forward commitment for 3800 Willow-Evergreen Residences was awarded and located within the same census tract as the subject application. The first basis for your appeal is that the 2010 forward commitment has since been rescinded by the Department with no appeal pursued by the development owner before the Board. As a result, no other development supported by tax credits exists as of this date. You further appeal on the basis that the previously awarded (and since rescinded) 2010 forward commitment was for a development that proposed a Supportive Housing plan targeted to formerly homeless individuals. The application for 1400 Belleview, on the other hand, is a development targeted towards families. You indicate that since the two developments were not serving the same type of population, 1400 Belleview should be allowed the four points requested under this item.

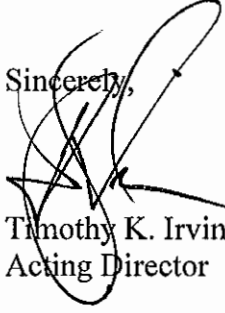
While the Department recognizes the fact that the forward commitment issued for the 2010 application for Evergreen Residences was rescinded after the March 1<sup>st</sup> application submission deadline, the Department evaluates all applications utilizing the data published in the 2011 HTC Site Demographics Report, which is published at the beginning of the application acceptance period and for which all applicants competing under the 2011 competitive cycle must use. Furthermore, the HTC Site Demographics Report currently does not differentiate developments on the basis of being a Supportive Housing development or not. The only differentiation made with respect to this point item is between elderly and family populations. Given that the population targeted for both the subject application and

the forward commitment is the general population, the subject application does not qualify for the points requested under this item.

Based on the information presented, your appeal requesting reinstatement of 4 points for Developments in Census Tracts with No Other Existing Same Type Developments Supported by Tax Credits is denied.

Pursuant to your request your appeal will be placed on the agenda for the July 18<sup>th</sup> Board meeting. If you wish to submit additional documentation for the Board appeal, please submit that information to the Department no later than 5:00 p.m. on June 28, 2011. If you have any questions, please do not hesitate to contact Raquel Morales at 512-475-1676 or [raquel.morales@tdhca.state.tx.us](mailto:raquel.morales@tdhca.state.tx.us).

Sincerely,



Timothy K. Irvine  
Acting Director

rbm

cc: Linda Brown  
Sara Reidy

# 1400 BELLEVIEW, L.P.

June 6, 2011

Ms. Robbye Meyer  
Director of Multifamily Finance  
Texas Department of Housing and Community Affairs  
211 East 11<sup>th</sup> Street  
Austin, TX 78701

**RE: APPEAL: APPLICATION #11127 – 1400 BELLEVIEW**

Dear Ms. Meyer:

This letter is a formal appeal to reinstate the four points deducted from original points requested by 1400 Belleview, LP ("Applicant") – 11127, and points awarded pursuant to scoring notice dated 06-01-11. Per the scoring notice, the applicant requested points under 49.9(a)(18) for developments in census tracts with no other existing same type developments supported by tax credits. Per TDHCA, a 2010 forward commitment was awarded to 3800 Willow – 10232 and therefore makes applicant ineligible for points under this section.

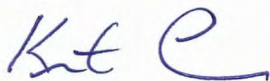
The basis for our appeal is: 1.) On February 18, 2011 TDHCA rescinded the Notice of Conditional Forward Commitment for 3800 Willow, the purported same type development in the applicant's census tract 2.) 3800 Willow applicant appealed their rescission to the Executive Director on February 25, 2011. 3.) On March 10, 2011, the Executive Director denied the appeal. 4.) 3800 Willow applicant requested to appeal the Executive Director's decision at the 05-05-11 TDHCA Board Meeting. 5.) 3800 Willow applicant withdrew their request to appeal and the 2010 forward commitment was formally terminated. Therefore there are no other developments supported by tax credits in census tract #48113003300. Please see attached supporting documentation.

In addition to the above, we requested points under 49.9(a)(18) because 3800 Willow - 10232 was not the same type development. Per the attached development narrative, 3800 Willow was proposed as an SRO/Residential Hotel providing permanent supportive housing for formerly homeless individuals. The unit plan for 3800 Willow outlines 350 square foot single rooms with one bathroom and refrigerator. There is not a bedroom or a kitchen depicted in the unit plan for 3800 Willow. In contrast, 1400 Belleview – 11127 unit plans include 1, 2 and 3 bedroom units ranging from 700 to 1055 square feet and will serve families. A family would not qualify to live as a resident in a 350 square foot room with no kitchen. Therefore, 3800 Willow – 10232 was not the same type development nor did it serve the same population as 1400 Belleview – 11127. Please see attached supporting documentation.

For these reasons, we request the four points be reinstated to the score of 1400 Belleview – 11127 as a project meeting the requirements per 49.9(a)(18).

If you should have any questions please do not hesitate to contact Sara Reidy at 214-941-0089 or sreidy@ess-email.com.

Sincerely,



Kristian Teleki  
Senior Vice President

Cc: Raquel Morales, 9% Housing Tax Credit Administrator

1660 South Stemmons Freeway, Suite 100  
Lewisville, TX 75067



**MULTIFAMILY FINANCE PRODUCTION DIVISION**  
**Housing Tax Credit Program - 2011 Application Round**  
**Scoring Notice - Competitive Housing Tax Credit Application**

**Appeal Election Form: 11127, 1400 Belleview**

I am in receipt of my 2011 scoring notice and am filing a formal appeal to the Executive Director on or before Wednesday, June 8, 2011.

**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.

Note: If you do not wish to appeal this notice, you do not need to submit this form.

Signed                     *Kurt C*                      
Title                     *SVP*                      
Date                     *6/6/11*                    

Please fax or email to the attention of Raquel Morales:  
Fax: (512) 475-0764 or (512) 475-1895  
Email: <mailto:raquel.morales@tdhca.state.tx.us>



**MULTIFAMILY FINANCE PRODUCTION DIVISION**  
**Housing Tax Credit Program - 2011 Application Round**  
**Scoring Notice - Competitive Housing Tax Credit Application**

1400 Belleview, L.P.  
 Kristian Teleki  
 1660 S. Stemmons Freeway, Suite 100  
 Lewisville, TX 75067  
 Phone #: (972) 221-1199  
 Fax #: (972) 221-1217  
 Email: [kteleki@matthewssouthwest.com](mailto:kteleki@matthewssouthwest.com)

Date Issued: June 01, 2011

**THIS NOTICE WILL ONLY BE  
 TRANSMITTED VIA EMAIL**

Second Email: [sreidy@ess-email.com](mailto:sreidy@ess-email.com)

**RE: 2011 Competitive Housing Tax Credit (HTC) Application for 1400 Belleview, TDHCA Number: 11127**

Attention: Kristian Teleki

The Texas Department of Housing and Community Affairs (the "Department") has completed its Eligibility and Selection Criteria Review of the Application referenced above as further described in the 2011 Qualified Allocation Plan ("QAP"). Below, a summary is provided of the score requested, as calculated by the Applicant, followed by the score requested, as calculated by the Department. The two numbers differ if the Applicant's calculation was incorrect. The next score shown is the score awarded to the Application by the Department, followed by the difference between the score requested (as calculated by the Department) and the score awarded. An explanation of the reason(s) for any differences, including points denied, is provided at the top of the second page of this notice. The next scoring items show the number of points awarded for each of the three categories for which points could not be requested by the applicant: §49.9(a)(2) Quantifiable Community Participation (QCP); §49.9(a)(6) Level of Community Support from State Representative or State Senator; §49.9(a)(11) Demonstration of Community Input other than QCP. This is followed, in bold, by the final cumulative number of points awarded by the Department to the Application.

Please note that if you were awarded points under §49.9(a)(5), or (26) of the 2011 QAP this notice only provides an explanation of any point deductions for those items. In addition, note that should this application receive an award of tax credits, at the time the executed Commitment Notice is required to be submitted, the Applicant or Development Owner must provide evidence of a commitment approved by the governing body of a local political subdivision for the sufficient local funding and a commitment approved by a qualifying private, state, or federal source to the Department. Qualifying sources other than those submitted in the Application may be submitted to the Department at the time the executed Commitment Notice is required to be submitted pursuant to §49.9(a)(5) and (26) of the 2011 QAP.

To the extent that a threshold review is not yet completed for this application the final score may still change, in which case you will be notified.

Allocation: Urban

Set Asides:  USDA  Non Profit  At Risk

Score Requested by Applicant (Does not include points for §§49.9(a)(2), (6) or (11) of the 2011 QAP):	172
Score Requested as Calculated by Department (Does not include points for §§49.9(a)(2), (6) or (11) of the 2011 QAP):	172
Score Awarded by Department (Does not include points for §§49.9(a)(2), (6) or (11) of the 2011 QAP):	168
Difference between Requested and Awarded (Does not include points for §§49.9(a)(2), (6) or (11) of the 2011 QAP):	4
Points Awarded for §49.9(a)(2), Quantifiable Community Participation:	24
Points Awarded for §49.9(a)(6), Input from State Senator or Representative:	14
Points Awarded for §49.9(a)(11), Community Input Other than QCP:	0
<b>Final Score Awarded to Application by Department:</b>	<b>206</b>



**MULTIFAMILY FINANCE PRODUCTION DIVISION**  
**Housing Tax Credit Program - 2011 Application Round**  
**Scoring Notice - Competitive Housing Tax Credit Application**

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**Page 2 of Final Scoring Notice: 11127, 1400 Belleview**

**Explanation for Difference between Points Requested and Points Awarded by the Department (explanation does not include points for §§49.9(a)(2), (6) and (11)):**

§49.9(a)(18) - Clean Census Tracts (4 pts): Applicant requested points for having their development built in a census tract that has had no other tax credit development in it serving the same population. A forward commitment is located in the same census tract, therefore, this application is ineligible for the points requested.

A formal appeals policy exists for the Competitive HTC Program. If you wish to appeal this scoring notice (including Set-Aside eligibility), you must file your appeal with the Department no later than 5:00 p.m. (CST), Wednesday, June 8, 2011. 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 and Set-Asides 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 form requests 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 Raquel Morales by facsimile at (512) 475-0764 or by email at [raquel.morales@tdhca.state.tx.us](mailto:raquel.morales@tdhca.state.tx.us).

Sincerely,

*Robbye Meyer*

Robbye Meyer  
Director of Multifamily Finance



Appeal of Scoring for  
Briarcrest Ridge Property  
Owners Association on behalf  
of 11214- Cobblestone Village  
and  
11094- Mariposa at Hwy 6

**MULTIFAMILY FINANCE DIVISION  
BOARD ACTION REQUEST  
June 30, 2011**

**Requested Action**

Deny the appeal of the Qualification of the Briarcrest Ridge Property Owners Association for 24 maximum points associated with Quantifiable Community Participation (QCP) for Applications #11214, Cobblestone Village and 11094, Mariposa at Highway 6.

**WHEREAS**, a letter for QCP was received on March 1, 2011; and

**WHEREAS**, the dates of the notice of meeting, formation of association, and meeting to vote on support of the Applications referenced above were all on February 25, 2011; and

**WHEREAS**, the Neighborhood Organization did not take reasonable measures to provide notice to persons eligible to join or participate in the affairs of the organization in accordance with §49.9(a)(2)(vi) of the 2011 Qualified Allocation Plan; therefore

**BE IT RESOLVED**, that the appeal of the Qualification of the Briarcrest Ridge Property Owners Association is hereby denied as presented in this meeting.

**Background**

Quantifiable Community Participation is the second highest scoring item in the Competitive Housing Tax Credit program which provides up to a maximum of twenty-four points. This organization submitted letters for two separate applications. The main contact for the organization is the land owner and seller of the property under contract with both applications that would benefit from the points should the organization be deemed qualified, however, the land owner's involvement itself is not a violation of the QAP.

In accordance with §49.9(a)(2)(vi) of the 2011 Qualified Allocation Plan, "A Neighborhood Organization must take reasonable measures to provide notice to persons eligible to join or participate in the affairs of the organization of that right." The Briarcrest Ridge Property Owners Association ("Briarcrest") published a notice of a meeting on February 25, 2011. They held a meeting, at the office of the land owner, on February 25, 2011 at which there were two attendees. The organization was formed and they voted to support the two applications #11214, Cobblestone Village and #11094, Mariposa at Highway 6. The Texas Department of Housing and Community Affairs' "form" letter was completed on February 28, 2011 and sent to the Department.

During the staff review, it was determined that the organization did not "take reasonable measures to provide notice to persons eligible to join or participate" and the letter was

disqualified from consideration for the purpose of points for QCP. Even if, *arguendo*, technical requirements were followed, what took place was not, in staff's view, community participation at any substantive level.

Staff recommends the Board deny the appeal for Qualification of the Briarcrest Ridge Property Owners Association.

**BRIARCREST RIDGE PROPERTY OWNERS ASSOCIATION**  
**2721 Osler Boulevard**  
**Bryan, TX 77802**

May 4, 2011

**Via Email [Michael.Gerber@tdhca.state.tx.us](mailto:Michael.Gerber@tdhca.state.tx.us)**

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

Attn: Michael Gerber – Executive Director  
Re: Briarcrest Ridge Property Owners Association  
**Cobblestone Village Development – TDHCA 11214**

Dear Mr. Gerber:

I am writing this letter to Appeal the decision regarding scoring of the Quantifiable Community Participation (QCP) points which we received by letter dated April 29, 2011. The letter states that "During the review of the documentation, staff determined that the organization did not take reasonable measures to provide notice for persons to join or participate in the affairs of the organization. **This was identified by the notification date; formation date and meeting date all being the same date. Therefore in accordance with §49.9(a)(2)(A)(vi) of the Qualified Allocation Plan, the letter is disqualified and ineligible for the purposes of scoring for the QCP.**"

For weeks prior to the formal creation of the POA and the posting of public notice I personally contacted many of the residents in the geographic are of the POA. I found those residents to be supportive of the work of the POA and interested in participating in the organization. During discussions with residents in the community it was determined that it would be best to post the notice for additional members when the POA was officially formed and the boundaries determined in order for interested parties to be aware of the intended area. The notice was posted for a full month to ensure that area residents would have the opportunity to learn of the POA, but our efforts were not limited to the public posting.


The POA reached out to the residents by means of phone calls in order to advise the residents of the opportunities for participation in the POA. I personally spoke to Jason Nutt, Doug Pederson, Vivian Zamora and John Zamora and each person expressed a significant interest in participating in the affairs of the POA. I fully expect that on a go forward basis we will enjoy the participation of a significant number of property owners in the affairs of the POA.

The POA is respectfully requesting that the TDHCA reconsider the conclusions set forth in its April 29, 2011, letter. It is the understanding of the POA that the failure to assign scoring points to the POA may be a limiting factor on the TDHCA support of residential development that will enhance the POA neighborhood.

In support of this request the POA believes that it took reasonable efforts to provide notice to persons eligible to join or participate in the affairs of the organization. That reasonable effort was not limited to the posting of notice that is referenced on the attached exhibit, but the POA made personal contact with residents in the geographic area of the POA for weeks prior to the creation of the POA and the posting of public notice. The final formation documentation and formal posting was the culmination of significant work on the part of the POA to make sure that eligible persons were apprised of their opportunity to join or participate in the affairs of the POA.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Harrison', written over a horizontal line.

Sam Harrison

cc: With Enclosures

Robbye Meyer  
Director of Multifamily Finance  
**Via Email [Robbye.Meyer@tdhca.state.tx.us](mailto:Robbye.Meyer@tdhca.state.tx.us)**

Raquel Morales  
Program Administrator  
**Via Email [Raquel.Morales@tdhca.state.tx.us](mailto:Raquel.Morales@tdhca.state.tx.us)**

**BRIARCREST RIDGE PROPERTY OWNERS ASSOCIATION**  
**2721 Osler Boulevard**  
**Bryan, TX 77802**

May 4, 2011

**Via Email [Michael.Gerber@tdhca.state.tx.us](mailto:Michael.Gerber@tdhca.state.tx.us)**

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

Attn: Michael Gerber – Executive Director  
Re: Briarcrest Ridge Property Owners Association  
**Mariposa at Highway 6 Development; TDHCA No. 11094**

Dear Mr. Gerber:

I am writing this letter to Appeal the decision regarding scoring of the Quantifiable Community Participation (QCP) points which we received by letter dated April 29, 2011. The letter states that "During the review of the documentation, staff determined that the organization did not take reasonable measures to provide notice for persons to join or participate in the affairs of the organization. **This was identified by the notification date; formation date and meeting date all being the same date. Therefore in accordance with §49.9(a)(2)(A)(vi) of the Qualified Allocation Plan, the letter is disqualified and ineligible for the purposes of scoring for the QCP.**"

For weeks prior to the formal creation of the POA and the posting of public notice I personally contacted many of the residents in the geographic are of the POA. I found those residents to be supportive of the work of the POA and interested in participating in the organization. During discussions with residents in the community it was determined that it would be best to post the notice for additional members when the POA was officially formed and the boundaries determined in order for interested parties to be aware of the intended area. The notice was posted for a full month to ensure that area residents would have the opportunity to learn of the POA, but our efforts were not limited to the public posting.

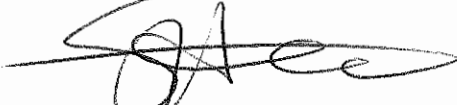
The POA reached out to the residents by means of phone calls in order to advise the residents of the opportunities for participation in the POA. I personally spoke to Jason Nutt, Doug Pederson, Vivian Zamora and John Zamora and each person expressed a significant interest in participating in the affairs of the POA. I fully expect that on a go forward basis we will enjoy the participation of a significant number of property owners in the affairs of the POA.

The POA is respectfully requesting that the TDHCA reconsider the conclusions set forth in its April 29, 2011, letter. It is the understanding of the POA that the failure to assign scoring points to the POA may be a limiting factor on the TDHCA support of residential development that will enhance the POA neighborhood.

In support of this request the POA believes that it took reasonable efforts to provide notice to persons eligible to join or participate in the affairs of the organization. That reasonable effort was not limited to the posting of notice that is referenced on the attached exhibit, but the POA made personal contact with residents in the geographic area of the POA for weeks prior to the creation of the POA and the posting of public notice. The final formation documentation and formal posting was the culmination of significant work on the part of the POA to make sure that eligible persons were apprised of their opportunity to join or participate in the affairs of the POA.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Harrison', written over a horizontal line.

Sam Harrison

cc: With Enclosures

Robbye Meyer  
Director of Multifamily Finance  
***Via Email [Robbye.Meyer@tdhca.state.tx.us](mailto:Robbye.Meyer@tdhca.state.tx.us)***

Raquel Morales  
Program Administrator  
***Via Email [Raquel.Morales@tdhca.state.tx.us](mailto:Raquel.Morales@tdhca.state.tx.us)***

Appeal of Scoring for  
South Royall Property Owners  
Association on behalf of  
11221-Stonebridge Place



**MULTIFAMILY FINANCE DIVISION  
BOARD ACTION REQUEST  
June 30, 2011**

**Requested Action**

Deny the appeal of the Qualification of the South Royal Property Owners Association for points associated with Quantifiable Community Participation (QCP) for Applications #11221, Stonebridge Place.

**WHEREAS**, a letter for QCP was received on February 7, 2011; and

**WHEREAS**, the date of the meeting was January 31, 2011 and the notice to participate was published on February 3, 2011; and

**WHEREAS**, the Neighborhood Organization did not take reasonable measures to provide notice to persons eligible to join or participate in the affairs of the organization in accordance with §49.9(a)(2)(vi) of the 2011 Qualified Allocation Plan; therefore

**BE IT RESOLVED**, that the appeal of the Qualification of the South Royal Property Owners Association is hereby denied as presented in this meeting.

**Background**

Quantifiable Community Participation is the second highest scoring item in the Competitive Housing Tax Credit which relates up to a maximum of twenty-four points. This organization submitted letters for two separate applications.

In accordance with §49.9(a)(2)(vi) of the 2011 Qualified Allocation Plan, “A Neighborhood Organization must take reasonable measures to provide notice to persons eligible to join or participate in the affairs of the organization of that right.” A meeting was held on January 31, 2011 at which there were two attendees. The organization was formed and they voted to support application #11221, Stonebridge Place. The South Royal Property Owners Association (“South Royal”) then published a notice with the county clerk on February 3, 2011 inviting participation of any other individuals. However, the vote to support the development had already been taken.

During the staff review, it was determined that the organization did not “take reasonable measures to provide notice to persons eligible to join or participate” and the letter was disqualified from consideration for the purpose of points for QCP.

Staff recommends the Board deny the appeal for Qualification of the South Royal Property Owners Association.

SOUTH ROYALL PROPERTY OWNERS ASSOCIATION  
408 Lakeshore Drive  
Palestine, Texas 75801 77802

Via Facsimile (512) 475-0764

May 31, 2011

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

Attn: Mr. Kent Conine, Board Chair  
Re: South Royall Property Owners Association  
Appeal of Scoring Notice for #11221, Stonebridge Place

Dear Mr. Conine:

I am writing this letter to Appeal to the Board of Directors, the decision of May 23, 2011, by Michael Gerber, Executive Director, to deny the request to reconsider eligibility of the South Royall Property Owners Association as a qualified Neighborhood Organization for the purposes of scoring Quantifiable Community Participation points.

This Property Owners Association originally received a letter from TDHCA dated April 29, 2011, stating that "During the review of the documentation, staff determined that the organization did not take reasonable measures to provide notice for persons to join or participate in the affairs of the organization. The meeting notification was February 3, 2011; however the organization held the meeting where it took action for the QCP on January 31, 2011. Therefore, in accordance with §49.9(a)(2)(A)(vi) of the Qualified Allocation Plan, the letter is disqualified and ineligible for the purposes of scoring for the QCP."

In reading §49.9(a)(2)(A)(vi) of the QAP it states that the organization must **take reasonable measures** to provide notice to persons eligible to join or participate in the affairs of the organization. We do feel like we took reasonable measures to provide notice to persons eligible to join in the affairs of the organization by phone and by personal contact to residents of the area, even though only two persons attended the first meeting. Additionally, no mention was identified in §49.9(a)(2)(A)(vi) of the QAP of dates that needed to be adhered to for eligibility. We feel that the decision above is an interpretation which was made by staff, and not an actual requirement of the QAP which we reviewed carefully prior to our submission. We can find nothing in the QAP requiring a meeting to be held **before** the organization is formed. It is not out of the ordinary for one person to take the initiative to form the organization and get the paperwork part done, and then for the organization to have a meeting to get itself started.

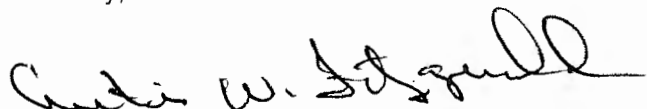
In the letter dated May 23, 2011 from Michael Gerber (copy attached), in which he denied our appeal to the Executive Director, he states that "Additionally, no evidence has been provided with your appeal to demonstrate that the many residents who supported the work of the organization and were contacted prior to the formal creation of the organization have since joined the organization." In our letter to you dated May 4, 2011 we listed a couple of residents who were contacted prior to the formal creation of the organization and expressed an interest in participating in the affairs of the POA, being Barrett Brayles and Sunny Brayles.

In addition to the above residents, additional residents who had been contacted concerning the POA and who actually have joined the POA, their addresses and phone numbers are on the attached listing.

We would respectfully appeal to the Board of Directors to grant the appeal of the eligibility of the South Royall Property Owners Association as a qualified Neighborhood Organization for the purposes of Quantifiable Community Participation for purposes of scoring points under §49.9(a)(2) of the QAP.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Curtis W. Fitzgerald". The signature is fluid and cursive, with the first name being the most prominent.

Curtis W. Fitzgerald  
President

Enclosures

Cc: Robbye Meyer – Director of Multifamily Programs  
Via Email [robbye.meyer@tdhca.state.tx.us](mailto:robbye.meyer@tdhca.state.tx.us)

Raquel Morales – Program Administrator  
Via Email [raquel.morales@tdhca.state.tx.us](mailto:raquel.morales@tdhca.state.tx.us)

# ***South Royall Property Owners Association***

## **New Members**

**1. Bill and Sara Nell Bible**

203 Redbud  
Palestine, TX 75801  
903.729.5871

**2. Ben and Shirley Campbell**

114 Settlers Ct.  
Palestine, TX 75801  
903.723.0583

**3. Michlyn Erban**

114 E. Brazos  
Palestine, TX 75801  
903.480.4669

**4. Jane Matthews**

1104 E. Angelina  
Palestine, TX 75801  
903.729.8043

**5. Mary Miles**

21 Sandy Lane  
Palestine, TX 75801  
903.723.7423

**6. Harry Toole**

133 Briarwood  
Palestine, TX 75801  
903.729.4141

# ***South Royall Property Owners Association***

## **New Members**

### **7. J.B and Frances Woodard**

1225 E. Neches

Palestine, TX 75801

903.729.2372



## TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

[www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)

Rick Perry  
GOVERNOR

Michael Gerber  
EXECUTIVE DIRECTOR

BOARD MEMBERS  
C. Kent Conine, *Chair*  
Tom H. Gann, *Vice Chair*  
Leslie Bingham Escareño  
Lowell A. Keig  
Juan S. Muñoz, Ph.D.  
J. Paul Oxer

May 23, 2011

Mr. Curtis W. Fitzgerald  
South Royall Property Owners Association  
408 Lakeshore Drive  
Palestine, Texas 75801

Re: Appeal of Scoring Notice for #11221, Stonebridge Place

Dear Mr. Fitzgerald:

### Appeal Review

I have carefully reviewed the appeal received on May 6, 2011, by the Texas Department of Housing and Community Affairs (the "Department"), regarding your request to reconsider the eligibility of the South Royall Property Owners Association (South Royall) as a qualified Neighborhood Organization for the purposes of Quantifiable Community Participation from Neighborhood Organizations under §49.9(a)(2) of the Qualified Allocation Plan (QAP).

A Quantifiable Community Participation (QCP) packet was submitted by the South Royall for the purposes of scoring points under §49.9(a)(2) of the QAP. During the review of the documentation submitted by South Royall, the Department determined that the organization was not eligible because the organization did not take reasonable measures to provide notice for persons to join or participate in the affairs of the organization. The clearest indication of this was that the meeting at which support for the development was made occurred on January 31<sup>st</sup> three days before notice of the meeting.

The Appeal states that you discussed creating an organization with various neighbors of the area prior to the creation of the organization. The organization then prepared and signed organizational documents and made decisions regarding the name and the boundaries of the organization in order to determine who would be eligible to join or participate in the affairs of the organization. At that point, the organization determined it would be best to post the notice for additional members to join. The public notice was published on February 3, 2011. Your appeal states that reasonable effort was not limited to the publication of the notice, but the organization made personal contact with residents in the geographic area for weeks prior to the creation of the

organization. Therefore, the organization believes the final formation and formal publication was the culmination of significant work on part of the organization to make sure that eligible persons were apprised of their opportunity to join or participate in the affairs of the organization.

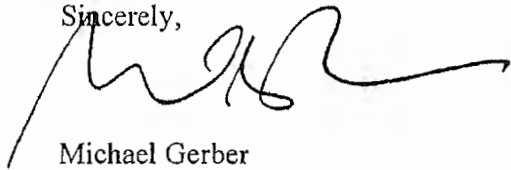
Staff determined that this organization was not eligible to score the points for Quantifiable Community Participation because it was apparent that reasonable measures were not taken to provide notice for persons to join or participate in the affairs of the organization, primarily its formal creation meeting where the decision to support the application for which the points are being denied was made. Additionally, no evidence has been provided with your appeal to demonstrate that the many residents who supported the work of the organization and were contacted prior to the formal creation of the organization have since joined the organization.

**Appeal Determination**

After a careful review of all of the facts, your appeal is denied.

In the event an appeal is denied by the Executive Director, you may appeal directly in writing to the Board, provided that an appeal filed with the Board is received by **June 1, 2011**. If you have any questions, please do not hesitate to contact Raquel Morales at 512.475.1676 or [raquel.morales@tdhca.state.tx.us](mailto:raquel.morales@tdhca.state.tx.us).

Sincerely,



Michael Gerber  
Executive Director

MFF/rbm

*SOUTH ROYALL PROPERTY OWNERS ASSOCIATION*  
408 Lakeshore Drive  
Palestine, TX 75801

May 4, 2011

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

Attn: Michael Gerber – Executive Director  
Re: South Royall Property Owners Association  
Stonebridge Place Development – TDHCA 11221

Dear Mr. Gerber:

I am writing this letter to Appeal the decision regarding scoring of the Quantifiable Community Participation (QCP) points which we received on April 29, 2011. Your letter states that "During the review of the documentation, staff determined that the organization did not take reasonable measures to provide notice for persons to join or participate in the affairs of the organization. **The meeting notification was February 3, 2011; however, the organization held the meeting where it took action for the QCP on January 31, 2011. Therefore in accordance with §49.9(a)(2)(A)(vi) of the Qualified Allocation Plan, the letter is disqualified and ineligible for the purposes of scoring for the QCP.**"

South Royall Property Owners Association had been discussing the formation of the property owner's organization for weeks with various neighbors of the area, prior to the actual creation of the POA and the posting of the notice. The POA reached out to the residents by means of phone calls in order to advise residents of the opportunities for participation in the POA, then the organizational documents were actually prepared and signed, making the decisions of the name of the organization and determining the boundaries of the organization in order to determine who would be eligible to join or participate in the affairs of the organization.

The organization determined it would be best to post the notice for additional members soon after the organization was officially formed and the boundaries determined in order for interested parties to determine if they would be qualified to join, and the response to the posting notice (copy attached) which was posted in the at the Anderson County Clerk's Office from February 3, 2011 until March 1, 2011 was positive. There have been two (2) individuals who have requested additional information requested information about the organization; however they lived outside of the boundaries of the organization, also there have been two (2) additional members of the organization since the posting on February 3, 2011. Those additional members are Barrett and Sunny Brayles, 1010 Woodland Drive, Palestine, TX 75801 and phone number (903) 521-7622. We expect that going forward the participation will improve as more neighbors become aware of the involvement of the POA.

In reading §49.9(a)(2)(A)(vi) of the QAP it states that the organization must **take reasonable measures** to provide notice to persons eligible to join or participate in the affairs of the organization. Reasonable measures would be giving notice (posting notice) and contact in person and by phone. In support of this request, the POA believes that the organization complied with the reasonable measures, as no mention of deadline dates were listed in the section of the QAP. Reasonable effort was not limited to the posting of the notice which is



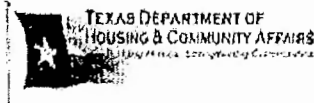
referenced on the exhibits, the POA made personal contact with residents in the geographic area of the POA for weeks prior to the creation of the POA. The formal formation of the POA and the formal posting was the culmination of significant work on the part of the POA to make sure that eligible persons were informed of their opportunity to join or participate in the affairs of the POA. Therefore we believe we made a reasonable measures to provide notice to persons eligible to join in the affairs of the organization, and we appeal the decision made by the Department to consider our letter for scoring.

Sincerely,

Curtis W. Fitzgerald  
President

Enclosures

Cc: Robbye Meyer – Director Multifamily Finance  
Raquel Morales – Program Administrator



Texas Department of Housing and Community Affairs  
Multifamily Finance Division  
2011 Quantifiable Community Participation

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April 29, 2011

Primary Contact:

Contact Name: Curtis W. Fitzgerald,  
Contact Phone: 903-723-8645  
Contact Fax: (903) 723-1712  
Contact E-Mail: [monafitz@earthlink.net](mailto:monafitz@earthlink.net)

Second Contact:

Second Contact: Jane Powell Sussdorf  
Second Phone: (903) 221-0303  
Second Fax: (903) 723-1712  
2nd E-Mail: [powelljane@yahoo.com](mailto:powelljane@yahoo.com)

Re: Neighborhood Organization for Quantifiable Community Participation  
TDHCA# 11221

Dear Curtis W. Fitzgerald:

The Texas Department of Housing and Community Affairs (the "Department") received the letter you submitted for the purpose of scoring Quantifiable Community Participation (QCP) points, in accordance with §49.9(a)(2) of the Qualified Allocation Plan and Rules, for the above referenced application.

The Department has reviewed the letter and all documentation that was submitted and compared it to the requirements of the 2011 Qualified Allocation Plan (QAP) that governs the Housing Tax Credit Program.

During the review of the documentation, staff determined that the organization did not take reasonable measures to provide notice for persons to join or participate in the affairs of the organization. The meeting notification was February 3, 2011; however, the organization held the meeting where it took action for the QCP on January 31, 2011. Therefore, in accordance with §49.9(a)(2)(A)(vi) of the Qualified Allocation Plan, the letter is disqualified and ineligible for the purposes of scoring for QCP.

Unfortunately, your organization's letter will not be considered further for scoring. However, the Department values all public comment and while the Department will be unable to assign points to your letter, the Department will include your comment in the Application's file and provide the Department's Governing Board with a summary of your comment for their information when considering a final decision with regard to the award of funding.

The Department appreciates your participation in the public comment process. If you have any questions relating to the score awarded, please to not hesitate to contact Raquel Morales at 512.475.1676 or by email at <mailto:raquel.morales@tdhca.state.tx.us>

Sincerely,

*Robbye Meyer*

Robbye Meyer  
Director of Multifamily Finance



FORM FOR QUALIFIED NEIGHBORHOOD ORGANIZATIONS TO SUBMIT TO TDHCA FOR QUANTIFIABLE COMMUNITY PARTICIPATION

Texas Department of Housing and Community Affairs

Certify to each requirement by checking each box as required and accurately filling in all blanks. All attachments must be included in QCP submission package.

1.  This organization is submitting this form and attachments regarding the following proposed application:

Development Name: Stonebridge Place TDHCA #: 11221  
 Development Location: South Royall near the intersection of Pershing  
 Development City: Palestine, TX Development County: Anderson

2.  The persons signing this form have the authority to sign on behalf of this organization.

Organization Name: South Royall Property Owners Association  
 1st Contact Name and Title: Curtis W. Fitzgerald  
 1st Contact Mailing Address: 408 Lakeshore Drive  
 1st Contact City: Palestine 1st Contact Zip Code: 75801  
 1st Contact Day Phone: 903-723-8645 1st Contact Fax: 903-723-1712  
 1st Contact Evening Phone: 903-922-1383 1st Contact E-Mail: monafitz@earthlink.net

3.  This organization is also providing the following additional contact and information for our organization:

2nd Contact Name: Jane Powell Susdorf  
 2nd Contact Mailing Address: 405 Maverick Drive  
 2nd Contact City: Palestine 2nd Contact Zip Code: 75801  
 2nd Contact Day Phone: 903-221-0303 2nd Contact Fax: 903-723-1712  
 2nd Contact Evening Phone: 903-221-0303 2nd Contact E-Mail: powelljane@yahoo.com

4. **Boundary Description and Map:** Provide a written description of the geographical boundaries of the neighborhood organization. (Example: North boundary is Main St, East boundary is a railroad track, South boundary is First St and West boundary is Jones Ave) Submit a boundary map. The boundary map should be legible, clearly marked with the geographical boundaries of the neighborhood organization, and indicate the location of the proposed development. The written description and boundary map should have the same geographical boundaries.

Written Boundary Description:

The boundaries of this organization as of January 31, 2011 are, the North boundary is starting at the corner of W. Park and S. Sycamore, and going all the way down E. Park/Highway 84 to the corner of Loop 256. The East boundary is starting at the corner of Loop 256 and E. Park/Highway 84 and going all the way South to the corner of Highway 287, then down Highway 287 East to Memory Lane. The South boundary is starting at the corner of Memory Lane and Highway 287, and going South West on Memory Lane until it dead ends at Old Elkhart, then following the southern border of the city limits of the City of Palestine over westward to Range, then all the way up Range to the intersection of Loop 256, then West on Loop 256 to the corner of S. Sycamore.

JW CF  
 Initials of Signer

The West boundary is from the corner of S. Sycamore and Loop 256 all the way North to the corner of S. Sycamore and W. Park (the beginning point).

5.  This organization certifies that the boundaries of this organization include the proposed Development site in its entirety. This organization acknowledges that annexations after March 1, 2011 are not considered eligible boundaries and a site that is only partially within the boundaries will not satisfy the requirement that the boundaries contain the proposed Development site.
6.  This organization certifies that it meets the definition of "Neighborhood Organization"; defined as an organization of persons living near one another within the organization's defined boundaries that contain the proposed Development Site and that has a primary purpose of working to maintain or improve the general welfare of the neighborhood. This organization further certifies that it is a (must check on of the following boxes):

Homeowners Association

Property Owners Association

Resident Council and our members occupy the existing development

Other (Explain \_\_\_\_\_)

7. **Certification of Record:** Choose one box. Registration with the county or with the Secretary of State both requires proof of registration. All 3 selections require evidence of the organization's existence (ex. bylaws, newsletter, minutes, etc.) and the process to provide notice to persons living within the boundaries to join or participate in the affairs of the organization (ex: letter, posting notice, etc.).

This organization certifies that it was:

On record, as of March 1, 2011, with the county in which the development is proposed to be located. (Attach documentation from the county of registration and required documentation)

On record, as of March 1, 2011, with The Secretary of State as an incorporated entity in good standing. (Attach documentation from the Secretary of State of registration and required documentation)

Requesting to be on record, as of March 1, 2011, with The Texas Department of Housing and Community Affairs (the "Department"). (Attach required documentation)

8. **Statement of Support/Opposition:** (Choose only one box and clearly and concisely state at least one or more reason(s) for the organization's support/opposition; use additional sheets, as needed.)

This organization certifies that we:

**Support** the application for Competitive Housing Tax Credits referenced above for the following reasons: We live within the boundaries of the proposed development Stonebridge Place and are familiar with another Tax Credit development in the vicinity called Treehouse Apartments. That property has been an asset to the City of Palestine, and Stonebridge Place would be a well deserved and safe property for the seniors of Palestine to reside in, and needed to assist the elderly population of Palestine so that they can have safe and modern housing in a landscaped and maintained area.

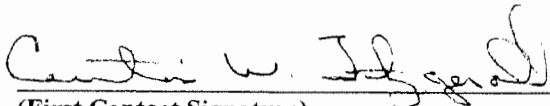
**Oppose** the application for Competitive Housing Tax Credits referenced above for the following reasons:

*Jmo Lisa*

Initials of Signer

9. Certify the following:

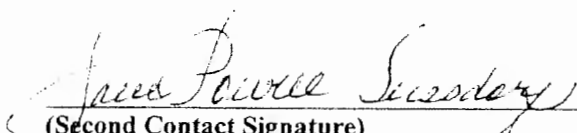
- This organization acknowledges that this form and attachments must be submitted **no later than March 1, 2011**
  
- This organization certifies that it was not formed by any Applicant, Developer or any employee or agent of any Applicant in the 2011 Competitive Housing Tax Credit Application Round; the organization, and any members, did not accept money or a gift to cause the neighborhood organization to take its position of support or opposition; the Applicant, Developer or any employee or agent of any Applicant has not provided any assistance, other than education and information sharing, to the neighborhood organization for any application in the Application Round (i.e. hosting a public meeting, providing the "TDHCA Information Packet for Neighborhoods" to the neighborhood organization, or referring the neighborhood organization to TDHCA staff for guidance are acceptable forms of assistance); and that the Applicant, Developer or any employee or agent of any Applicant has not provided any "production" assistance for any application in the Application Round (i.e. use of fax machines owned by the Applicant, use of legal counsel related to the Applicant, delivery of form or assistance drafting a form).
  
- This organization acknowledges that this completed form and required attachments must be submitted to Texas Department of Housing and Community Affairs, Attention: Director of Multifamily Finance, Neighborhood Input, P.O. Box 13941 (MC 332-10), Austin TX 78711-3941. For overnight or courier delivery use the following physical address: 221 East 11<sup>th</sup> Street, Austin TX 78701-2410. **Do not use P.O. Box address for overnight or courier delivery.** Form and Attachments may also be faxed to (512) 475-1895 or toll free at (800) 733-5120.
  
- This organization certifies that all certifications contained herein are true and accurate. **(First and Second Contacts must sign below):**

  
(First Contact Signature)

2/2/2011  
(Date)

Curtis W. Fitzgerald  
(Printed Name)

President  
(Title)

  
(Second Contact Signature)

2/2/2011  
(Date)

Jane Powell Sussdorf  
(Printed Name)

Secretary  
(Title)

PUBLIC NOTICE

SOUTH ROYALL PROPERTY OWNERS ASSOCIATION

ANY PERSON WHO IS 18 YEARS OF AGE AND WHO RESIDES IN THE BOUNDARIES (AS DRAWN OUT ON THE ATTACHED MAP), AND IS INTERESTED IN JOINING A PROPERTY OWNERS ASSOCIATION FOR THIS SPECIFIC AREA SHOULD WRITE A SHORT LETTER AND MAIL IT TO:

MR. CURTIS W. FITZGERALD, 408 LAKESHORE DRIVE,  
PALESTINE, TEXAS 75801.

THIS ORGANIZATION MEETS PERIODICALLY TO WORK TO MAINTAIN OR IMPROVE THE GENERAL WELFARE OF THE NEIGHBORHOOD WHOSE BOUNDARIES ARE MARKED ON THE ATTACHED MAP.

RECEIPT OF POSTING

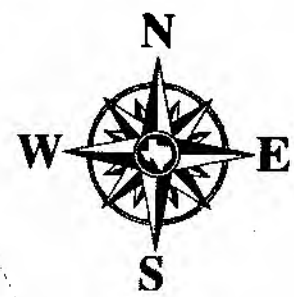
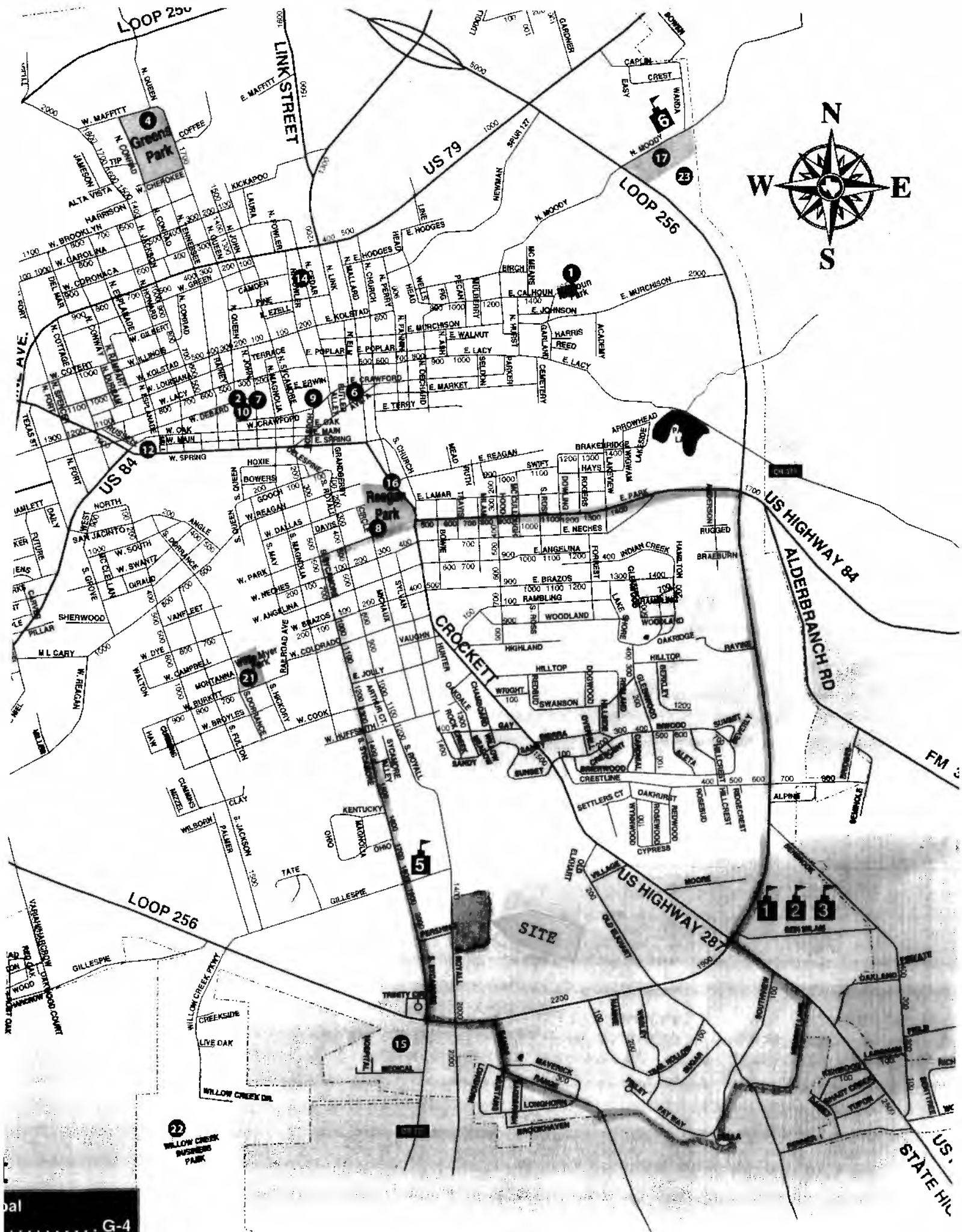
The Public Notice form for the South Royall Property Owners Association will be posted in our office from February 3, 2011 to March 1, 2011, as witnessed by our signature below:

Anderson County Clerks office  
Name of Organization or Entity

Kirstie Quinn  
Signature of Individual

Kirstie Quinn  
Printed name of Individual who signed form

2-3-11  
Date of Posting





MINUTES OF THE FIRST MEETING OF  
THE ORGANIZERS OF THE  
SOUTH ROYALL PROPERTY OWNERS ASSOCIATION

**1. AUTHORITY**

On the 31st day of January, 2011, the organizational meeting of the members of the South Royall Property Owners Association was held, the meeting was held at the request of Curtis W. Fitzgerald.

The following business matters were discussed at the meeting:

**2. MINUTES OF THE MEETING**

This meeting is first meeting, and is being held to form the South Royall Property Owners Association to be comprised of owners and residents of an area within the City of Palestine, and within the boundaries of a certain area to be decided upon, to include in the boundaries of the association.

**2. ORGANIZATIONS MEMBERS**

The initial members of the organization are Curtis W. Fitzgerald and Jane Powell Sussdorf. The members shall always consist of persons who are over the age of 18 years and reside in and/or own real estate within the boundaries of the organization. Persons living within the boundaries of the organization are welcome to participate in the meetings and affairs of the organization.

**3. ORGANIZATIONS MINUTES**

It was decided that the organization shall maintain a minute book containing the minutes of this meeting, and of all other meetings of the organization, and such other documents as the organization shall determine.

**4. ORGANIZATIONS BOUNDARIES**

It was discussed and agreed that the boundaries of the organization would be the following:

The North boundary is starting at the corner of W. Park and S. Sycamore, and going all the way down E. Park to the corner of Loop 256.

The East boundary is starting at the corner of Loop 256 and E. Park/Highway 84 and going all the way South to the corner of Highway 287, then down Highway 287 East to Memory Lane.

The South boundary is starting at the corner of Memory Lane and Highway 287, and going South West on Memory Lane until it ends and Old Elkhart, then following the southern border of the city limits of the City of Palestine over westward to Range,

then all the way up Range to the intersection of Loop 256, then West on Loop 256 to the corner of S. Sycamore.

The West boundary is from the corner of S. Sycamore and Loop 256 all the way North to the corner of S. Sycamore and W. Park (the beginning point).

#### **5. ORGANIZATIONS PURPOSE**

The purpose of the organization is to promote more residential type development in the area. The organization would also like to show support for Stonebridge Place, an application to the Texas Department of Housing and Community Affairs, for a development for the elderly in Palestine. There is currently one multifamily development in the area, and the organization would like to support or promote additional multifamily development for seniors, such as Stonebridge Place, to developers and encourage growth in the area.

#### **6. WAIVER OF MEETING**

The members, by their signatures affixed to these minutes of this meeting of the South Royall Property Owners Association, hereby waive notice of the date and time of this meeting, and approve the contents of the minutes of this meeting, and direct that the minutes of this meeting be retained in the minute book.

#### **7. CHECKING ACCOUNT**

A discussion was held among the organizers concerning a bank account, and it was determined that an account is not needed at this time.

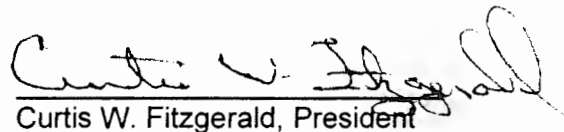
#### **8. OFFICE OF THE ORGANIZATION**

It was agreed that the principal office of the organization would be maintained at 408 Lakeshore Drive, Palestine, Texas 75801 until the time that the members elect to change the address of the principal office.

#### **9. ADJOURNMENT**

There being no further business to discuss at the first meeting of the organizers, the meeting was adjourned.

DATED: January 31, 2011

  
Curtis W. Fitzgerald, President

WITNESS:

  
Jane Powell Susdorf, Secretary

# Agenda Item 5d

## Challenges

Date Challenge Received	TDHCA ID#	Development Name	Challenger	Nature and Basis of Challenge	Status
6/14/2011	11045	Lexington Villa	Gilbert M. Piette	<p>The challenge is regarding points under §49.9(a)(5), Commitment of Funding by Governmental Instrumentality. The challenger questions the support of a local government instrumentality because the City of Corpus Christi has not supported these applications with any funds. The City Council passed a resolution supporting the Palms at Leopard, #11166, on February 22, 2011. The Challenger has submitted minutes from the April 16, 2011, Corpus Christi City Council meeting at which the Palms at Leopard was recommended for funding in the amount of \$865,000. In the meeting minutes it was noted that initially both Dolphin's Landing and Palms at Leopard were recommended equally. However, the minutes state that staff has "checked with the Department and it was determined that the City essentially needs to support one project so the project may receive the points for the tax credits." The Challenger added that none of the other applications have obtained consent as evidenced by an Inter-Local Agreement.</p> <p>The Challenger further asserts that the applications for Dolphin's Landing, #11227, Lexington Vista, #11045, Palm Gardens, #11050, and 11115, Castle Manor have included the HOME funds as part of their financial feasibility and that without the commitment of The City of Corpus Christi funding, the applications are not financially feasible.</p>	<b>Pending:</b> Challenge being processed pursuant to §49.10(e) of the 2011 QAP.

Date Challenge Received	TDHCA ID#	Development Name	Challenger	Nature and Basis of Challenge	Status
6/14/2011	11050	Palm Gardens	Gilbert M. Piette	<p>The challenge is regarding points under §49.9(a)(5), Commitment of Funding by Governmental Instrumentality. The challenger questions the support of a local government instrumentality because the City of Corpus Christi has not supported these applications with any funds. The City Council passed a resolution supporting the Palms at Leopard, #11166, on February 22, 2011. The Challenger has submitted minutes from the April 16, 2011, Corpus Christi City Council meeting at which the Palms at Leopard was recommended for funding in the amount of \$865,000. In the meeting minutes it was noted that initially both Dolphin's Landing and Palms at Leopard were recommended equally. However, the minutes state that staff has "checked with the Department and it was determined that the City essentially needs to support one project so the project may receive the points for the tax credits." The Challenger added that none of the other applications have obtained consent as evidenced by an Inter-Local Agreement.</p>	<b>Pending:</b> Challenge being processed pursuant to §49.10(e) of the 2011 QAP.

The Challenger further asserts that the applications for Dolphin's Landing, #11227, Lexington Vista, #11045, Palm Gardens, #11050, and 11115, Castle Manor have included the HOME funds as part of their financial feasibility and that without the commitment of The City of Corpus Christi funding, the applications are not financially feasible.



Date Challenge Received	TDHCA ID#	Development Name	Challenger	Nature and Basis of Challenge	Status
6/14/2011	11051	Sweetwater Bend	W. Barry Kahn	The challenge is regarding points under §49.9(a)(8), Cost per Square Foot. The Challenger contends that the Applicant is not eligible for the points for three reasons: costs of \$90.76 exceed the \$87 psf allowed for First Tier counties; not all bldgs are 4-stories as required; and the Applicant erroneously included common area square footage in calculation of Net Rentable Area(which is not allowed).	<b>Pending:</b> Challenge being processed pursuant to §49.10(e) of the 2011 QAP.
6/14/2011	11051	Sweetwater Bend	W. Barry Kahn	The challenge is regarding points under §49.9(a)(13), Community Revitalization Plan. The basis of the challenge brings into question whether the 3-year consolidated plan for the City of Galveston meets the definition of Community Revitalization Plan. The Challenger contends that if the Plan could be deemed appropriate to serve as a plan, it does not meet the intended purpose because the Galveston plan is intended for disaster recovery and not revitalization. Additionally, the plan specifically references the word "revitalization" of non-housing community development activities. Finally, if the plan could be deemed to target specific areas, they would be CDBG Target Areas which serve areas with 51% or more low-to moderate-income residents. The proposed development is located in an area that is 151% of MSA median family income.	<b>Pending:</b> Challenge being processed pursuant to §49.10(e) of the 2011 QAP.

Date Challenge Received	TDHCA ID#	Development Name	Challenger	Nature and Basis of Challenge	Status
6/14/2011	11051	Sweetwater Bend	W. Barry Kahn	<p>The challenge is regarding §49.4(b)(11), Application Ineligibility. The basis for the challenge is that there is more than 50% of the developer fee being deferred. Challenger contends that the one year loan from Strategic Housing Finance Corporation (included on the permanent side of the sources and uses exhibit) will be paid from developer fee and that this loan should be included in the calculation of deferred developer fee. By including that loan in the calculation it will increase developer fee from \$108,847 to \$736,752 or more than 50% of total, thus making application ineligible for consideration.</p>	<p><b>Pending:</b> Challenge being processed pursuant to §49.10(e) of the 2011 QAP.</p>
6/14/2011	11051	Sweetwater Bend	W. Barry Kahn	<p>The challenge is regarding omissions under §49.7(a)(2), Administrative Deficiencies. The basis of the challenge is the Applicant omitted two exhibits from the Application including the required financing narrative and debt service for the 2nd mortgage amount from Strategic Site Partners. The commitment from Strategic Site Partners calls for an eighteen year term and 30-year amortization; this implies a loan that will be repaid over 18 years. This would cause DCR to fall below TDHCA 1.15 minimum DCR.</p>	<p><b>Pending:</b> Challenge being processed pursuant to §49.10(e) of the 2011 QAP.</p>

Date Challenge Received	TDHCA ID#	Development Name	Challenger	Nature and Basis of Challenge	Status
6/14/2011	11057	The Mercer	Cynthia Bast on behalf of Colby Denison	<p>The challenge is regarding points under §49.9(a)(2), Quantifiable Community Participation. The Challenger questions the award of QCP points to the Booneville Town Center Neighborhood Association because no person/residents live within the association's boundaries; therefore, the organization should not qualify for points. The organization identified 3 residential properties within the boundaries; however, none of the individuals identified in the submission live within the boundaries. The Challenger contends that participation is restricted by residential owners actually having to file an instrument in the real property records of the county. The Challenger contends this is an extraordinary burden for single family homeowners and none of the 3 residential owners identified by association have made such a filing in real property records, thus none of the residential owners participated in the decision to support the application.</p>	<p><b>Pending:</b> Challenge being processed pursuant to §49.10(e) of the 2011 QAP.</p>



Date Challenge Received	TDHCA ID#	Development Name	Challenger	Nature and Basis of Challenge	Status
6/14/2011	11057	The Mercer	Thomas F. Vettters	<p>The challenge is regarding §49.9(a)(2), Quantifiable Community Participation (QCP). The basis for the challenge is questioning the qualification of the organization and the support letter submitted by the Neighborhood Organization. Mr. Vettters states that he recently became aware of the newly formed neighborhood association and that the property he owns at 2430 Boonville Road is included within its boundaries. He would like to clarify that he does not live at 2430 Boonville Road and Ms. Barbara Coker does not live at her property located at 2416 Boonville Road. Further, Dr. Donald Coker is deceased and the property at 2422 Boonville Road is owned by Ms. Barbara Coker. Mr. Vettters noted that he is not aware of any residents that actually live within the Association's boundaries. Mr. Vettters states that both he and Ms. Coker strongly oppose the project.</p>	<p><b>Pending:</b> Challenge being processed pursuant to §49.10(e) of the 2011 QAP.</p>

Date Challenge Received	TDHCA ID#	Development Name	Challenger	Nature and Basis of Challenge	Status
6/14/2011	11073	Cypress Run	Cynthia Bast on behalf of Granger MacDonald	The challenge is regarding §49.8(8), Site Control. The basis for the challenge is discrepancies throughout application regarding amount of acreage to be purchased. This is critical for determining the purchase price for TDHCA underwriting purposes.	<b>Pending:</b> Challenge being processed pursuant to §49.10(e) of the 2011 QAP.
6/14/2011	11073	Cypress Run	Cynthia Bast on behalf of Granger MacDonald	The challenge is regarding §49.8(8), Site Control. The basis of the challenge is that the Applicant did not include accurate information related to all sellers of property for 36 months prior to first day of Application Acceptance; therefore, the Applicant did not meet the threshold, as required by §49.8(8).	<b>Pending:</b> Challenge being processed pursuant to §49.10(e) of the 2011 QAP.
6/14/2011	11073	Cypress Run	Cynthia Bast on behalf of Granger MacDonald	The challenge is regarding points under §49.9(a)(1), Financial Feasibility. The basis for the challenge is the assertion that the construction and permanent lender are related parties to the Developer and Applicant and are providing loans for development. The Challenge contends while there is not a prohibition for related parties to lend monies to development, the award of the additional eight points for lender's review of Applicant's financial position is a conflict of interest and is inconsistent with the intent of this rule. Additionally, the conflict of interest concern exists because Pedcor Bancorp, the parent company of International City Bank (ICB) is under a Consent Order from the Office of Comptroller of the Currency. The Challenger noted that a Consent Order orders the bank to reduce its direct and indirect investments and restricts the bank's ability to pay money or extend credit to its affiliates.	<b>Pending:</b> Challenge being processed pursuant to §49.10(e) of the 2011 QAP.

Date Challenge Received	TDHCA ID#	Development Name	Challenger	Nature and Basis of Challenge	Status
6/14/2011	11073	Cypress Run	Cynthia Bast on behalf of Granger MacDonald	The challenge relates to points under §49.9(a)(13), Community Revitalization. The basis of the challenge questions the utilization of the city's zoning ordinance to qualify as Community Revitalization Plan. If a zoning ordinance is allowed to qualify as a Community Revitalization Plan then every application in a zoned municipality would qualify for these points.	<b>Pending:</b> Challenge being processed pursuant to §49.10(e) of the 2011 QAP.
6/14/2011	11073	Cypress Run	Cynthia Bast on behalf of Granger MacDonald	The challenge relates to points under §49.9(a)(23). Sponsor Characteristics. Challenger contends that the original application submission did not include the HUB certificate and that there was no evidence that the HUB will materially participate in the development. No points should have been awarded.	<b>Pending:</b> Challenge being processed pursuant to §49.10(e) of the 2011 QAP.
6/14/2011	11073	Cypress Run	Cynthia Bast on behalf of Granger MacDonald	The challenge relates to points under §49.9(a)(27), 3rd Party Funding Outside QCT. The basis of the challenge is that the Application Manual indicates funding can't come from a commercial lender. The Challenger contends that the commitment is from Michael F. Petrie, who is a Certified Mortgage Banker and co-founder of P/R Investment & Mortgage Corp. in Carmel, Indiana; therefore, the points should not be awarded.	<b>Pending:</b> Challenge being processed pursuant to §49.10(e) of the 2011 QAP.

Date Challenge Received	TDHCA ID#	Development Name	Challenger	Nature and Basis of Challenge	Status
6/15/2011	11074	The Villas of Tuscany	John Shackelford on behalf of client	<p>The challenge relates to points under §49.9(a)(13), Community Revitalization Plan. The basis for the challenge questions whether the Lubbock Consolidated Plan qualifies as a Community Revitalization Plan. The Challenger contends that the Consolidated Plan does not implement its objectives, nor does it specifically target areas for revitalization. The Challenger states if a city's broadly written, HUD mandated consolidated plan qualified as a CRP, then every development located in a city with a consolidated plan would automatically qualify for these points. The clear intent is to reward only those developments located in areas specifically targeted to be revitalized under a plan specifically addressing housing. Further, if the consolidated plan does qualify, the only targeted areas are CDBG Target Areas and the proposed development is not located within one of these areas. The Lubbock Consolidated plan, together with the Action Plan, constitute a Community Revitalization Plan. The Action Plan specifies both where funds go and the areas targeted for revitalization. The proposed development is not located in either the current target areas or the eligible areas set forth in the Action Plan either.</p> <p>Finally, there is no evidence that the Plan utilized for this point request was adopted by the local Governing Body by ordinance, resolution or specific vote. This constitutes an omission not curable by deficiency and points should not be awarded for this item.</p>	<b>Pending:</b> Challenge being processed pursuant to §49.10(e) of the 2011 QAP.

Date Challenge Received	TDHCA ID#	Development Name	Challenger	Nature and Basis of Challenge	Status
5/16/2011	11077	Main Street Commons	Robert H. Voelker, Munsch, Hardt, Kopf, & Harr	The challenge is regarding points under §49.9(a)(13), Community Revitalization. The basis of the challenge as reflected in the documentation is that the Applicant submitted only a city comprehensive plan and not a community revitalization plan. The Challenger contends that a Revitalization Plan is a “distinct plan that is adopted by a municipality that specifically describes in detail a community’s intention for revitalization and redevelopment.” The Challenger also contends that the Applicant did not provide evidence that shows the plan was adopted by the local Governing Body by ordinance, resolution or specific vote. Challenger does not believe points should be awarded for 49.9(a)(13).	<p data-bbox="1461 199 1990 706">Analysis: Pursuant to §49.9(a)(13) of the QAP, 3 points may be awarded to an application proposing New Construction in an area that is part of a Community Revitalization Plan. The documentation submitted in the application includes a letter from the City of Taylor indicating that the City's Comprehensive Plan acts as its Community Revitalization Plan. Additionally, the letter and the Comprehensive Plan itself identifies the geographical planning area to include the city limits of Taylor and the one-mile ETJ. Therefore, the proposed development is located within the targeted area identified in the City of Taylor's Comprehensive Plan.</p> <p data-bbox="1461 792 1990 922">Resolution: The Department has evaluated the challenge pursuant to the methodology outlined in the §49.9(a)(13) of the 2011 QAP and has determined that no action is required.</p>

Date Challenge Received	TDHCA ID#	Development Name	Challenger	Nature and Basis of Challenge	Status
5/16/2011	11077	Main Street Commons	Robert H. Voelker, Munsch, Hardt, Kopf, & Harr	The challenge is regarding points under §49.9(a)(26), Leveraging of Private, State, and Federal Resources. The basis of the challenge reflected in the challenge documentation regarding is: points should not be awarded because the only evidence presented was a brief letter addressed to TDHCA and not a legally binding contract between the Applicant and the provider of the funds.	<p data-bbox="1461 199 1990 602">Analysis: Pursuant to §49.9(a)(26) of the QAP, 1 point may be awarded for providing evidence of funding from a private, state, or federal resource. Acceptable evidence may include “a commitment of funds or a copy of the application to the funding entity and a letter from the funding entity indicating that the application was received.” Staff has reviewed the documentation provided by the Applicant and has determined that the Applicant met the requirements of the QAP for the purpose of these points.</p> <p data-bbox="1461 662 1990 784">Resolution: The Department has evaluated the challenge pursuant to the methodology outlined in the §49.9(a)(26) of the 2011 QAP and has determined that no action is required.</p>

Date Challenge Received	TDHCA ID#	Development Name	Challenger	Nature and Basis of Challenge	Status
5/16/2011	11077	Main Street Commons	Robert H. Voelker, Munsch, Hardt, Kopf, & Harr	The challenge is regarding points under §49.9(a)(27), Third Party Funding Outside of Qualified Census Tracts. The basis of the challenge reflected in the challenge documentation is: points should not be awarded because the letter submitted does not amount to a commitment of funds and is not addressed to the Applicant.	<p data-bbox="1461 199 1990 638">Analysis: Pursuant to §49.9(a)(27) of the QAP, 1 point may be awarded for providing evidence of a firm commitment of funds and the Development must be located outside of a Qualified Census Tract. The documentation submitted with the application clearly states that a formal commitment of funds is in place and outlines the terms of the loan to meet the requirements of the QAP. Staff has reviewed the documentation provided the Applicant and has determined that the Applicant met the requirements of the QAP for the purposes of these points.</p> <p data-bbox="1461 699 1990 824">Resolution: The Department has evaluated the challenge pursuant to the methodology outlined in the §49.9(a)(27) of the 2011 QAP and has determined that no action is required.</p>

Date Challenge Received	TDHCA ID#	Development Name	Challenger	Nature and Basis of Challenge	Status
5/16/2011	11077	Main Street Commons	Robert H. Voelker, Munsch, Hardt, Kopf, & Harr	The challenge relates to 10 TAC §53.80, HOME Match Funds Requirement. The basis of the challenge presented is: the party offering the matching funds is a consultant for the Applicant and will financially benefit from the development. The Challenger contends that the HOME rules specify that the match must originate from a source other than the development owner, developer, consultant, or building contractor.	<p>Analysis: Pursuant to the HOME Program Rule at 10 TAC §53.80, Match equal to 2% of the HOME award must be provided. The HOME Program guidelines state that professional services can be donated and counted as Match if those services were not part of a contract. Staff has not completed the review of the HOME portion of the application. The Applicant would be allowed to substitute or correct the provider through the Department's Administrative Deficiency process.</p> <p>Resolution: The Department has evaluated the challenge pursuant to the methodology outlined in the §49.10(e) of the 2011 QAP and has determined that no action is required, <u>at this time</u>.</p>



Date Challenge Received	TDHCA ID#	Development Name	Challenger	Nature and Basis of Challenge	Status
5/16/2011	11077	Main Street Commons (continued)	Robert H. Voelker, Munsch, Hardt, Kopf, & Harr	The challenge is regarding the Development Cost Schedule exhibit submitted in the application. The basis of the challenge regarding bond fees as presented in the documentation is: the Development Cost Schedule indicates that the project fund uses include "Credit Enhancement Fees" and a "Bond Premium" but that it is not a bond transaction. The Challenger asserts these costs are associated with tax-exempt bond developments and result in an overstatement of eligible basis for the development. Therefore, the request for credits should be reduced which will render the development financially infeasible.	<p data-bbox="1461 199 1990 740">Analysis: The Applicant has responded by stating that the "Credit Enhancement Fee" included in the Development Cost Schedule is a fee that Herman &amp; Kittle (a member of the Applicant) collects from the LP/taxpayer for providing payment, performance, completion, and repayment guaranty to the construction lender. The Applicant also states that the "Bond Premium Fee" included in the Development Cost Schedule is the projected cost of having to bond the AIA construction contract. Staff has not completed a Threshold or Real Estate Analysis, at this time. The Applicant will have the opportunity to explain the cost associated with the development with the REA staff to determine the financial feasibility.</p> <p data-bbox="1461 846 1990 1003">Response: The Department has evaluated the challenge pursuant to the methodology outlined in the §49.10(e) of the 2011 QAP and has determined that no action is required, <u>at this time</u>.</p>

Date Challenge Received	TDHCA ID#	Development Name	Challenger	Nature and Basis of Challenge	Status
5/16/2011	11077	Main Street Commons	Robert H. Voelker, Munsch, Hardt, Kopf, & Harr	The challenge is regarding Threshold criteria in §49.8(C)(IV)(iii). The basis of the challenge is the Applicant failed to meet the Threshold requirement. The Challenger states a commitment from the syndicator was not provided in the application. The Challenger contends that the letter or commitment from the syndicator is a mandatory requirement pursuant to §49.8(C)(IV)(iii) of the 2011 QAP. The Challenger further asserts that per the 2011 QAP §49.7(a)(2) , “if exhibits and other information required under §49.8 of this chapter (relating to Threshold criteria) are not originally submitted in the Application then staff will recommend termination of the Application.”	<p data-bbox="1461 199 1990 773">Analysis: Pursuant to §49.8(C)(IV)(iii) a term sheet or letter of commitment from a syndicator is required. The Applicant’s response to the challenge is that the omission of the syndicator letter does not constitute a Material Deficiency as defined in the 2011 QAP because the “information related to the financing commitment as a whole was submitted” and that “enough information related to the financing commitment was submitted.” Staff has reviewed the documentation included in the challenge as well as the Applicant’s response and determined that the issue would be addressed via the Administrative Deficiency process during the Threshold review. A Threshold review has not been conducted at this time.</p> <p data-bbox="1461 857 1990 1021">Response: The Department has evaluated the challenge pursuant to the methodology outlined in the §49.10(e) of the 2011 QAP and has determined that no action is required, <u>at this time</u>.</p>

Date Challenge Received	TDHCA ID#	Development Name	Challenger	Nature and Basis of Challenge	Status
5/16/2011	11077	Main Street Commons (continued)	Robert H. Voelker, Munsch, Hardt, Kopf, & Harr	The challenge is regarding points under §49.9(a)(2), Quantifiable Community Participation (QCP). The basis of the challenge as reflected in the challenge documentation is that points should not be awarded because the neighborhood organization was formed solely for purposes of receiving points for QCP. The Challenger asserts that the neighborhood organization was formed on February 9, 2011, at a meeting, after which the developer had made a presentation about the proposed development. The Challenger further contends that the only evidence of the existence of the organization was the minutes of the February 9 meeting.	<p data-bbox="1461 199 1990 878">Analysis: Pursuant to §49.9(a)(2) of the 2011 QAP, 24 points may be awarded for written statements of support received by March 1, 2011 from Neighborhood Organizations on record with the state or county in which the Development is to be located and whose boundaries contain the proposed Development site. There was a meeting held on February 9, 2011 for the purpose of forming the neighborhood organization and providing a letter of support for the development. A member of the development team was present to discuss the proposed development with the community members that were present. Staff reviewed the submission of this QCP and determined, although it is not the intent of QCP to form an organization for the sole purpose as to garner points for the application, the QAP does not prohibit the action either. Therefore, the points were awarded.</p> <p data-bbox="1461 971 1990 1099">Resolution: The Department has evaluated the challenge pursuant to the methodology outlined in the §49.9(a)(2) of the 2011 QAP and has determined that no action is required.</p>

Date Challenge Received	TDHCA ID#	Development Name	Challenger	Nature and Basis of Challenge	Status
6/15/2011	11080	Hidden Valley Estates	Randall Ackerman on behalf of client	The challenge relates to points under §49.9(a)(13), Community Revitalization. The challenge questions whether the development is located in an area covered by the plan provided. The City of Houston Consolidated Plan directs their housing efforts to Low to Moderate Income Areas. The Challenger asserts the development is not located within the LMI area as claimed.	<b>Pending:</b> Challenge being processed pursuant to §49.10(e) of the 2011 QAP.
6/15/2011	11080	Hidden Valley Estates	Randall Ackerman on behalf of client	The challenge relates to points under §49.9(a)(23), Sponsor Characteristics. The challenge questions the two points awarded for having a HUB as 51% owner of GP. The Challenger contends that the HUB ownership structure has an expired certificate and, upon further review on Comptroller's website, the HUB is inactive. Finally, the application should not receive points for the item.	<b>Pending:</b> Challenge being processed pursuant to §49.10(e) of the 2011 QAP.

Date Challenge Received	TDHCA ID#	Development Name	Challenger	Nature and Basis of Challenge	Status
6/15/2011	11087	Tidwell Lakes Ranch	Randall Ackerman on behalf of client	<p>The challenge relates to points under §49.9(a)(13), Community Revitalization. The challenge questions whether being consistent with the goals of a Consolidated Plan is the same as being consistent with the goals of a Community Revitalization Plan. Additionally, the site is not located in one of Harris County's Consolidated Plan Target Areas or the specific Revitalization Area. The Challenger submitted pages of the Harris County Consolidated Plan Neighborhood Revitalization Strategies to illustrate that the only area indicated in the Plan for revitalization is the Airline Improvement District. The proposed site is not located within the boundaries of this area. The Challenger added that the Applicant states that the site lies within a state enterprise zone but does not provide evidence that the Governing Body has "lawfully assigned responsibility for oversight of communication or activities to a body created or sponsored by that Governing Body."</p>	<b>Pending:</b> Challenge being processed pursuant to §49.10(e) of the 2011 QAP.

Date Challenge Received	TDHCA ID#	Development Name	Challenger	Nature and Basis of Challenge	Status
6/14/2011	11115	Castle Manor	Gilbert M. Piette	<p>The challenge relates to points under §49.9(a)(5), Commitment of Funding by by Governmental Instrumentality. The Challenger questions the support of a local government instrumentality because The City of Corpus Christi has not supported this application with any funds. The City Council passed a resolution supporting the Palms at Leopard, #11166, on February 22, 2011. The Challenger has submitted minutes from the April 16, 2011 Corpus Christi City Council meeting at which the Palms at Leopard was recommended for funding in the amount of \$865,000. In the meeting minutes it was noted that initially both Dolphin's Landing and Palms at Leopard were recommended equally. However, the minutes state that staff has "checked with the Department and it was determined that the City essentially needs to support one project so the project may receive the points for the tax credits." The Challenger added that none of the other applications has obtained consent as evidenced by an Inter-Local Agreement.</p> <p>The Challenger further asserts that the applications for Dolphin's Landing, #11227, Lexington Vista, #11045, Palm Gardens, #11050, and 11115, Castle Manor have included the HOME funds as part of their financial feasibility and that without the commitment of The City of Corpus Christi funding, the applications are not financially feasible.</p>	<b>Pending:</b> Challenge being processed pursuant to §49.10(e) of the 2011 QAP.

Date Challenge Received	TDHCA ID#	Development Name	Challenger	Nature and Basis of Challenge	Status
5/18/2011	11124	People's El Shaddai	A.C. Gonzalez, Assistant City Manager, City of Dallas	The challenge is related to points under §49.9(a)(5), Commitment of Development Funding by Governmental Instrumentality. The basis of the challenge as reflected in the challenge documentation is: the Dallas City Council voted not to support the project. The Challenger contends that the Applicant has requested funds from Capital Area Housing Finance Corporation and that the corporation's by-laws require the consent of the applicable Local Political Subdivision as evidenced by an executed Interlocal Agreement. The Challenger contends that the City of Dallas does not intend to execute such an Interlocal Agreement.	<p data-bbox="1461 199 1990 914">Analysis: Pursuant to §49.9(a)(5) of the 2011 QAP, up to 18 points may be awarded for the commitment of development funding by a Governmental Instrumentality. In accordance with this section of the QAP, if not already provided, at the time the executed (TDHCA) Commitment is required to be submitted, the Applicant must provide evidence of a commitment approval by the Governing Body of the Unit of General Local Government, or its designee or agent, for the Development Funding to the Department. Due to the many variables associated with the financing of tax credit developments, Applicants are allowed to substitute funding sources for this particular scoring item after an application is submitted to the Department, without the request of staff. The Applicant has requested to substitute the source of funds with a Development Based Rental Subsidy submitted with the application in response to the challenge.</p> <p data-bbox="1461 967 1990 1092">Staff has concerns whether this is, in fact, constitutes local support as contemplated by this provision; however, the source does not need to be confirmed until Commitment.</p> <p data-bbox="1461 1138 1990 1265">Resolution: The Department has evaluated the challenge pursuant to the methodology outlined in the §49.9(a)(5) of the 2011 QAP and has determined no action is required, <u>at this time</u>.</p>

Date Challenge Received	TDHCA ID#	Development Name	Challenger	Nature and Basis of Challenge	Status
6/13/2011	11124	People's El Shaddai	State Representative Barbara Mallory Caraway	The challenge is related to points under §49.9(a)(5), Commitment of Funding by by Governmental Instrumentality. The basis for the challenge questions the support of the project by a local governmental instrumentality because the City of Dallas voted to deny the project and does not intend to execute the Interlocal Agreement required by Capital Area Housing Corporation.	<b>Pending:</b> Challenge being processed pursuant to §49.10(e) of the 2011 QAP.
<hr/>					
6/15/2011	11136	Sphinx at Lawnview	Kristian Teleki	The challenge relates to points under §49.9(a)(16), Development Location. The basis for the challenge questions whether the development qualifies as a high opportunity area. The building elevations and site plan indicate the development is one story and does not include detached garage spaces. Additionally, the Area Median Gross lincome (AMGI) for the census tract is not greater than the AMGI for the area, and the project's census tract does not have greater than 10% poverty population.	<b>Pending:</b> Challenge being processed pursuant to §49.10(e) of the 2011 QAP.
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Date Challenge Received	TDHCA ID#	Development Name	Challenger	Nature and Basis of Challenge	Status
5/16/2011	11140	Villas of Giddings	Robert H. Voelker, Munsch, Hardt, Kopf, & Harr	The challenge relates to points under §49.9(a)(18), Developments in Census Tracts with No Other Existing Same Type Developments Supported By Tax Credits. The basis to the challenge as reflected in the documentation submitted is that the Applicant requested points for being in a census tract where no other existing same type developments are located. The Challenger contends that the Reference Manual indicates that a development of the same type does exist within the census tract and that points should not be awarded.	<p data-bbox="1461 199 1990 776">Analysis: Pursuant to §49.9(a)(18) of the QAP, 4 points may be awarded if the proposed Development is located in a census tract in which no other existing Developments are supported by Housing Tax Credits. The census tracts are outlined in the 2011 Housing Tax Credit Demographic Characteristics Report. The Applicant submitted an explanation that while there is another Development within the census tract serving the general population the proposed Development will “provide single-family housing units for larger families.” Staff has reviewed the documentation included in the challenge as well as the Applicant’s response and has determined that the census tract for the Development is not eligible if the application proposes to serve the general population.</p> <p data-bbox="1461 857 1990 1091">Resolution: The Department has evaluated the challenge pursuant to the methodology outlined in the §49.9(a)(18) of the 2011 QAP and has determined that the Application is not eligible for points under §49.9(a)(18), Developments in Census Tracts with no Other Existing Same Type Developments Supported By Tax Credits.</p>

Date Challenge Received	TDHCA ID#	Development Name	Challenger	Nature and Basis of Challenge	Status
6/15/2011	11140	Villas of Giddings	Robert Voelker on behalf of client	The challenge relates to 10 TAC §53.80, HOME Funds Match Requirement. The basis for the challenge questions whether the application will receive HOME funds because the source of the match was not identified and there is not a commitment for the matching funds included in the application. The challenger asserts that the source of the match is probably ineligible.	<b>Pending:</b> Challenge being processed pursuant to §49.10(e) of the 2011 QAP.



Date Challenge Received	TDHCA ID#	Development Name	Challenger	Nature and Basis of Challenge	Status
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6/15/2011	11163	The Grove at Elm Park	John Shackelford on behalf of client	<p>The challenge relates to points under §49.9(a)(13), Community Revitalization Plan. The basis of the challenge questions the Lubbock Consolidated Plan qualifying as a Community Revitalization Plan. The Consolidated Plan does not implement its objectives nor does it specifically target areas for revitalization. If a city's broadly written HUD mandated consolidated plan qualified as a CRP, then every development located in a city with a consolidated plan would automatically qualify for these points when clear intent is to reward only those developments located in areas specifically targeted to be revitalized. Further, if consolidated plan is eligible, the only targeted areas are CDBG Target Areas and the proposed development is not located within one of these areas. The Lubbock Consolidated plan, together with the Action Plan, constitute a Community Revitalization Plan. The Action Plan specifies both where funds go and the areas targeted for revitalization. The proposed development is not located in either the current target areas or the eligible areas set forth in the Action Plan either.</p>	<b>Pending:</b> Challenge being processed pursuant to §49.10(e) of the 2011 QAP.
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Finally, there is no evidence that the Plan utilized for this point request was adopted by the local Governing Body by ordinance, resolution or specific vote. This constitutes an omission not curable by deficiency and points should not be awarded for this item.



Date Challenge Received	TDHCA ID#	Development Name	Challenger	Nature and Basis of Challenge	Status
6/15/2011	11169	Merritt Bryan Station Senior Development	Mark Musemeche	<p>The challenge relates to points under §49.9(a)(2), Quantifiable Community Participation. The basis of the challenge questions whether the neighborhood organization was formed by an agent of the Applicant. Managing Members of the entity that is the seller of the site for the project, and the broker representing the seller, appear to serve as a Registered Agent , Director, and Secretary of Old Reliance Neighborhood Association. The October 16, 2010 edition of the Austin American Statesman includes an article titled, "Investors form neighborhood groups to help get public financing for housing." Several of the persons stated as being involved in the Old Reliance Neighborhood Organization were indicated as being organizers of four neighborhood associations in order to get QCP participation support for the proposed projects.</p>	<p><b>Pending:</b> Challenge being processed pursuant to §49.10(e) of the 2011 QAP.</p>
6/14/2011	11217	The Overlook at Plum Creek	Kenneth Lewis	<p>The challenge relates to points under §49.(a)(13), Community Revitalization. The basis of the challenge questions the use of the City of Kyle's Comprehensive Plan as a Community Revitalization Plan. Although the letter from the City of Kyle verifies that the site is within the area covered by the Comprehensive Plan, the site is not located within the target area of revitalization. The area of revitalization includes downtown Kyle but the site is located in the North Ranch District. The North Ranch District is in a new development district and there is no indication in the Plan of revitalization in that area. The Challenger further contends that Comprehensive plans are general and are intended to "cover visionary planning and growth objectives" while a Revitalization Plan "targets specific areas for revitalization and redevelopment."</p>	<p><b>Pending:</b> Challenge being processed pursuant to §49.10(e) of the 2011 QAP.</p>

Date Challenge Received	TDHCA ID#	Development Name	Challenger	Nature and Basis of Challenge	Status
6/15/2011	11227	Dolphin's Landing	Paul Patierno	<p>The challenges relate to points under §49.9(a)26), Leveraging of Private, State, and Federal Resources and §49.9(a)(27), Third Party Funding Outside of Qualified Census Tracts. The basis for the challenges question whether a Principal of the source of the funds has a direct relationship to the General Partner and Developer of the Applicant. The Challenger contends that Tom McVay is President of Arlington Capital Corporation, the funding source. A Dun and Bradstreet report was submitted to illustrate that Tom McVay is an officer and owner of Arlington Capital Corporation. The Challenger asserts that Mr. Richard Whaley, a Board Member/Trustee of Atlantic Housing Foundation, Inc., a member of the Applicant ownership structure, is listed as an officer of the funding source in the Dun and Bradstreet report. Further, the Challenger submitted a Dun and Bradstreet report that lists Tom McVay and Richard Whaley as officers for MAS Apartment Corporation, dba MAS properties. The Challenger believes the points should not be awarded.</p>	<p><b>Pending:</b> Challenge being processed pursuant to §49.10(e) of the 2011 QAP.</p>

Date Challenge Received	TDHCA ID#	Development Name	Challenger	Nature and Basis of Challenge	Status
6/15/2011	11227	Dolphin's Landing	Gilbert M. Piette	<p>The challenge relates to points under §49.9(a)(5), Commitment of Funding by by Governmental Instrumentality. The Challenger questions the support of a local government instrumentality because The City of Corpus Christi has not supported this application with any funds. The City Council passed a resolution supporting the Palms at Leopard, #11166, on February 22, 2011. The Challenger has submitted minutes from the April 16, 2011 Corpus Christi City Council meeting at which the Palms at Leopard was recommended for funding in the amount of \$865,000. In the meeting minutes it was noted that initially both Dolphin's Landing and Palms at Leopard were recommended equally. However, the minutes state that staff has "checked with the Department and it was determined that the City essentially needs to support one project so the project may receive the points for the tax credits." The Challenger added that none of the other applications has obtained consent as evidenced by an Inter-Local Agreement.</p> <p>The Challenger further asserts that the applications for Dolphin's Landing, #11227, Lexington Vista, #11045, Palm Gardens, #11050, and 11115 Castle Manor have included the HOME funds as part of their financial feasibility and that without the commitment of The City of Corpus Christi funding, the applications are not financially feasible.</p>	<b>Pending:</b> Challenge being processed pursuant to §49.10(e) of the 2011 QAP.

Date Challenge Received	TDHCA ID#	Development Name	Challenger	Nature and Basis of Challenge	Status
6/3/2011	11237	Summer Crest Senior Development	Robert Salas	The challenge relates to points under §49.9(a)(13), Community Revitalization. The basis of the challenge as reflected in the challenge documentation is that points should not be awarded for Community Revitalization because the Development is not located within the boundaries of an area designated by the city as a community revitalization zone.	<b>Pending:</b> Challenge being processed pursuant to §49.10(e) of the 2011 QAP.
6/14/2011	11241	Park Hudson	Cynthia Bast on behalf of Colby Dension	<p>The challenge relates to points under §49.9(a)(2), Quantifiable Community Participation (QCP). The Challenger questions whether the organization qualifies as a Neighborhood Organization for the purposes of points. The sole purpose of the Association is to enforce the Restrictive Covenants. There were not reasonable measures taken to allow participation because only the board of directors has operational authority and is not elected by its members. Additionally, the Association did not notify its members of the intent to support the Development until after the letter of support was submitted. The Challenger contends that there are inconsistencies for the true boundaries of the Association and with the information submitted to the Department. Evidence should be submitted that the site is located within the area described in the covenants or evidence that the covenant has expanded and there is additional acreage should be present.</p> <p>Additionally, the Park Hudson Restrictive Covenants do not permit single family residences. The Challenger asserts that the Association should not qualify as a true Neighborhood Organization since single family housing is not permitted</p>	<b>Pending:</b> Challenge being processed pursuant to §49.10(e) of the 2011 QAP.

Date Challenge Received	TDHCA ID#	Development Name	Challenger	Nature and Basis of Challenge	Status
6/14/2011	11245	Bar T Apartments		<p>The challenge relates to a potential violation of the §49.5(b), \$2 Million Cap Limit: Challenge is regarding the existence of related parties between the principals of applications for 11245, 11246, and 11248 and the violation of the \$2 million credit limit cap. The basis of the challenge is: the principals of the referenced applications operate as one development company, Pinnacle Housing Group, LLC, and as such are related parties that should be subject to the \$2 million cap. The principals did not disclose that they are related parties and changed the names of the managing GPs in each application to remove any reference to Pinnacle Housing Group, LLC.</p>	<p><b>Pending:</b> Challenge being processed pursuant to §49.10(e) of the 2011 QAP.</p>
	11246	Tylor Grand			
	11248	Singing Oaks			



Date Challenge Received	TDHCA ID#	Development Name	Challenger	Nature and Basis of Challenge	Status
5/18/2011	11258	Brook Village Apartments	A.C. Gonzalez, Assistant City Manager, City of Dallas	The challenge relates to points under §49.9(a)(5), Commitment of Development Funding by Governmental Instrumentality. The basis of the challenge as reflected in the challenge documentation is: the Dallas City Council voted not to support the project. The Challenger contends that the Applicant has requested funds from Capital Area Housing Finance Corporation and that the corporation's by-laws require the consent of the applicable Local Political Subdivision as evidenced by an executed Interlocal Agreement. The Challenger contends that the City of Dallas does not intend to execute such an Interlocal Agreement.	Analysis: Pursuant to §49.9(a)(5) of the 2011 QAP, up to 18 points may be awarded for the commitment of development funding by a Governmental Instrumentality. In accordance with this section of the QAP, if not already provided, at the time the executed (TDHCA) Commitment is required to be submitted, the Applicant must provide evidence of a commitment approval by the Governing Body of the Unit of General Local Government, or its designee or agent, for the Development Funding to the Department. Due to the many variables associated with the financing of tax credit developments, Applicants are allowed to substitute funding sources for this particular scoring item after an application is submitted to the Department, without the request of staff. The Applicant's response refers to §49.9(a)(5)(ix) and states there is time to "continue working with the neighborhood, City Council, and City staff to garner support for the application."

Date Challenge Received	TDHCA ID#	Development Name	Challenger	Nature and Basis of Challenge	Status
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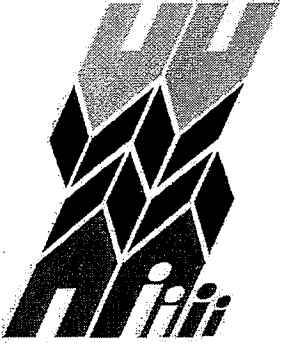
Staff has reviewed the documentation included in the challenge as well as the Applicant's response and has determined that the Applicant submitted the appropriate documentation at the time of application and because the QAP allows for a substitution, the Applicant has until the time of Commitment to provide an appropriate substitution of funds.

Resolution: The Department has evaluated the challenge pursuant to the methodology outlined in the §49.9(a)(5) of the 2011 QAP and has determined that no action is required, at this time.



Date Challenge Received	TDHCA ID#	Development Name	Challenger	Nature and Basis of Challenge	Status
6/15/2011	11258	Brook Village Apartments	Kristian Teleki	<p>The challenge relates to points under §49.9(a)(16), Development Location. The basis of the challenge is that points should not be awarded because the Development does not meet the requirements of an urban core. The zoning information provided does not show adjacent block groups zoned to accommodate a mix of medium high density residential and commercial uses. The Challenger submitted census tract and aerial photographs as evidence that the project is located in Census Tract 78.18, which is 100% 1,2, and 3 story multifamily. The surrounding census tracts are as follows: Census tract 78.19 is zoned commercial and currently has one-story retail and parking lots, Census Tract 78.15 is primarily a middle school, and Census Tract 78.16 is entirely 1, 2, and 3 story multifamily. The Downtown Dallas 360 Plan was submitted as evidence that high density areas are considered developments with 10 or more stories and 100 or more units per acre. The Challenger asserts that the Development does not qualify for the points.</p>	<b>Pending:</b> Challenge being processed pursuant to §49.10(e) of the 2011 QAP.

# **Housing and Community Services, Inc.**



8610 North New Braunfels, Suite 500  
San Antonio, Texas 78217-6397

Phone 210.821.4300  
Fax 210.821.4303 • Toll Free 888.732.3394  
Email: gilp@hcscorp.org

Gilbert M. Piette  
*Executive Director  
and CEO*

**Board of Directors**

John Longoria  
*President*

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*Vice President*

George H. Rodriguez  
*Secretary*

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BJ Burns  
Joan Cortinas  
Perry Deckard  
Gloria Flores  
Carl Forinash  
Diamantina Garcia  
Nancy Hard  
Adolph D. Jacobson  
Lucy Martinez  
Anthony Nanes  
Rafael Torres  
Ernestine Trujillo

June 14, 2011

Robbye Meyer  
Director of Multifamily Finance  
Texas Department of Housing and Community Affairs  
P.O. Box 13941  
Austin, Texas 78711-3941

Re: Low Income Housing Tax Credit Applications:  
11227 Dolphin's Landing Apartments  
11115 Castle Manor Apartments  
11045 Lexington Vista  
11050 Palm Gardens  
Clarification QAP -- 49.9(a)(5) Commitment of Development Funding  
by Units of General Local Government Clarification of economic  
viability

Dear Ms. Meyer:

The purpose of this letter is to request clarification and justification for the points awarded to the above noted applications under 49.9(a)(5) and to inquire how these applications are economically viable without an award of Corpus Christi HOME funds. Region 10 of the 2011 Texas Qualified Allocation Plan incorporates the City of Corpus Christi where six of the project applications are located.

First and foremost, the City of Corpus Christi has not supported the above four referenced applications with any funds. On February 22, 2011 the City Council of Corpus Christi passed a resolution supporting tax credit application 11166, The Palms at Leopard (see Exhibit 1). Further emphasizing this project as a priority for the City, on April 26, 2011 the Corpus Christi City Council awarded all of its 2011 funding for housing (HOME funds) to tax credit application 11166, The Palms at Leopard as it meets multiple housing priorities for the City (see Exhibit 2), including but not limited to, building a new project in an area targeted for redevelopment, transferring residents from an obsolete property which in turn will be torn down, and transferring the project based

section 8 subsidy to the new location. Consequently, none of the above four referenced applications have local funding nor are they a priority for the City.

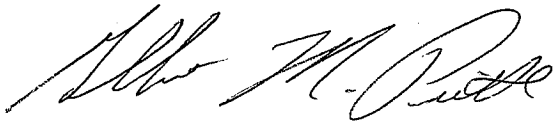
Second, none of the four referenced applications have obtained consent from the applicable Unit of General Local Government as evidenced by an executed Inter-local Agreement. The City of Corpus has not executed an Inter-local Agreement and does not intend to execute one that would allow another application to circumvent the 2011 top priority established by the Corpus Christi City Council at its meeting on February 22, 2011.

In addition, please verify the financial feasibility of applications 11227, 11045 and 11050 each of which included funding from the City of Corpus Christi as part of their financial feasibility. It appears that without funding from the City of Corpus Christi these applications are not financially feasible.

We respectfully request that you deduct the 18 points for the commitment of development funding by units of general local government as the local Governing Body (City of Corpus Christi) where the four referenced projects are located has not provided 2011 general local government support. If these points are deducted from these applications then tax credit application 11166 The Palms at Leopard, which the City of Corpus Christi has designated as its highest priority, would be the top application in Region 10 and would qualify for tax credit funding.

Your earliest consideration of this matter would be greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Gilbert M. Piette". The signature is fluid and cursive, with the first name being the most prominent.

Gilbert M. Piette  
Executive Director

Attachments: Exhibits 1 and 2

**EXHIBIT 1**

**City of Corpus Christi  
Council Resolution**

**RESOLUTION**

**DECLARING THE CITY OF CORPUS CHRISTI'S SUPPORT OF THE DEVELOPMENT OF THE PALMS AT LEOPARD STREET**

**WHEREAS**, The Palms at Leopard Street, Ltd. Has proposed a development for affordable rental housing on a tract of land on Palm Avenue between Lipan Street and Leopard Street named The Palms at Leopard Street in the City of Corpus Christi, Texas; and,

**WHEREAS**, The Palms at Leopard Street, Ltd. Intends to submit an application to the Texas Department of Housing and Community Affairs (TDHCA) for 2011 Housing Tax Credits funds; and,

**WHEREAS**, The Palms at Leopard Street is intended to serve as a replacement site for the units at the existing Northside Manor Apartments which is in dire need of demolition and relocation of families due to substandard living conditions and deterioration of the neighborhood; and,

**WHEREAS**, the development of The Palms at Leopard Street will bring much needed reinvestment to a major Urban Core area of the City marked by a medium and high density residential and commercial uses;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CORPUS CHRISTI, TEXAS THAT:**

**Section 1.** The City of Corpus Christi supports the development of The Palms at Leopard Street as its first priority application in the Region 10-Urban area designated by the State of Texas that includes the City.

DULY adopted at a regular meeting of the City Council of the City on the 22<sup>nd</sup> day of February, 2011.

**ATTEST:**

**CITY OF CORPUS CHRISTI**

By: Armando Chapa  
Armando Chapa  
City Secretary

By: Joe Adame  
Joe Adame, Mayor

028973

**APPROVED AS TO LEGAL FORM:**

FEBRUARY 17, 2011

By:

Carlos Valdez

Carlos Valdez, City Attorney



Corpus Christi, Texas

22<sup>nd</sup> day of February, 2011

The above Resolution was passed by the following vote:

Joe Adame	<u>Aye</u>
Chris N. Adler	<u>Aye</u>
Larry R. Elizondo, Sr.	<u>Aye</u>
Kevin Kieschnick	<u>Aye</u>
Priscilla Leal	<u>Aye</u>
John E. Marez	<u>Aye</u>
Nelda Martinez	<u>Aye</u>
Mark Scott	<u>Absent</u>
Linda Strong	<u>Aye</u>

028973

## **EXHIBIT 2**

**Excerpts from Corpus Christi City Council  
Meeting – 4/26/2011  
Award of HOME Funds to The Palms at  
Leopard**

MINUTES

CITY OF CORPUS CHRISTI, TEXAS  
Regular Council Meeting  
April 26, 2011 - 12:00 p.m.

PRESENT

Mayor Joe Adame  
Mayor Pro Tem Nelda Martinez

Council Members:

Chris Adler  
Larry Elizondo, Sr.\*\*  
Kevin Kieschnick  
John Marez  
Mark Scott  
Linda Strong\*

City Staff:

Interim City Manager Margie C. Rose  
City Attorney Carlos Valdez  
City Secretary Armando Chapa

ABSENT

Priscilla Leal

\*Arrived at 12:32 p.m.

\*\*Arrived at 1:38 p.m.

Mayor Adame called the meeting to order in the Council Chambers of City Hall.

The invocation was delivered by Council Member Martinez and the Pledge of Allegiance to the United States flag was led by Council Member Marez.

City Secretary Chapa called the roll and verified that the necessary quorum of the Council and the required charter officers were present to conduct the meeting.

Mayor Adame called for approval of the minutes of the Workshop meeting of April 12, 2011 and the regular Council meeting of April 19, 2011. A motion was made and passed to approve the minutes as presented.

\*\*\*\*\*

Mayor Adame called for consideration of the consent agenda (Items 2 - 18). There were no comments from the public. Council members requested that Items 4, 5, 7, 8, 12 and 15 be pulled for individual consideration. City Secretary Chapa polled the Council for their votes as follows:

2. MOTION NO. 2011-096

Motion approving a supply agreement with Ferguson Enterprises, Corpus Christi, Texas for approximately 3,755 non-shear flexible couplings ranging in size from 3" to 10", in accordance with Bid Invitation No. BI-0030-11, based on low bid, for an estimated annual expenditure of \$76,069.52 of which \$19,017.38 is budgeted for FY10-11. The term of the contract is for twelve months with options to extend for up to two additional twelve-month periods, subject to the approval of the contractor and the City Manager, or designee. These items are purchased into the Warehouse Inventory and charged out to the Wastewater Department.

The foregoing motion was passed and approved with the following vote: Adame, Adler, Kieschnick, Marez, Martinez, and Scott, voting "Aye"; Elizondo, Leal, and Strong were absent.

Minutes – Regular Council Meeting  
April 26, 2011 – Page 11

owners were not informed by the City that there were problems with the property at 1414 Leopard and so the property owners concentrated their efforts to demolish the property at 1420 Leopard.

The following topics pertaining to this item were discussed: the date of the last inspection; the anticipated costs to restructure the property; whether the owner has received bids that include a structural analysis; the proposed use for the property; when the property owner would begin improvements to the property if an appeal is granted; concern with the deterioration of the property; and notification to the property owner for 1414 Leopard.

Mayor Adame called for comments from the audience. Abel Alonzo, 1701 Thames, stated that it is not easy to demolish someone's property however based on the presentation by staff the City has no choice but to deny the appeal.

Mr. Kieschnick made a motion to deny the appeal. The motion was seconded by Ms. Martinez. City Secretary Chapa polled the Council for their votes as follows:

23. MOTION NO. 2011-104

Motion to deny an appeal by Mr. Manuel N. Cantu, Jr., of the Building Standards Board's decision to require demolition of a structure(s) located at Lot 4, Block 1, West End, commonly known as 1414 Leopard Street.

The foregoing motion was passed and approved with the following vote: Adame, Adler, Elizondo, Kieschnick, Marez, Martinez, Scott, and Strong, voting "Aye"; Leal was absent.

Mayor Adame opened discussion on Item 25 regarding the Downtown Street (Chaparral) project. Director of Engineering Services Pete Anaya introduced the presentation team including Raymond Gignac with Gignac & Associates and Carl Crull with HDR Engineering. Mr. Anaya explained that this item is for the design of the project and allows the City to go out for bids on Chaparral Street. Mr. Anaya reported that the project would be bid two ways including a complete closure and a partial closure. Mr. Anaya also stated that the City is going to resubmit the U.S. Department Economic Development Administration (EDA) grant in the amount of \$3.7 million. Mr. Gignac referred to a powerpoint presentation including the proposed design for the crosswalks, intersections parking and travel lanes; sidewalk paving; an aerial view; a realistic view of intersection; example of catenary lighting; and the proposed schedule.

The following topics pertaining to this item were discussed: the EDA grant funding; status of the kiosks at the Bayfront Park; start of construction date; and landscaping.

Council Member Martinez requested a future agenda item on the kiosks at the Bayfront Park. There were no comments from the audience. City Secretary Chapa polled the Council for their votes as follows:

25. MOTION NO. 2011-103

Motion authorizing the City Manager or designee to execute Amendment No. 2 to the Contract for Professional Services with Gignac Architects of Corpus Christi, Texas, in the amount of \$407,503, for a total re-stated fee of \$757,883 for the Downtown Street (Chaparral) project. (BOND ISSUE 2008)

The foregoing motion was passed and approved with the following vote: Adame, Adler, Elizondo, Kieschnick, Marez, Martinez, Scott, and Strong, voting "Aye"; Leal was absent.

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April 26, 2011 – Page 12

Mayor Adame opened discussion on Item 24 regarding the adoption of the FY2011-2012 Consolidated Annual Action Plan. Director of Neighborhood Services Eddie Ortega reported that the City has received the further estimates from the U.S. Department of Housing and Urban Development with a reduction of 16 ½ % and highlighted the following changes: an additional reduction for CDBG- Program Administration in the amount of \$30,315 for a total funding level of \$401,309; a reduction of CDBG-Code Enforcement Program in the amount of \$25,000; a reduction of \$25,000 for the CDBG- Comprehensive Planning Assistance Program; funding of \$100,000 for the CDBG-Ethel Eyerly Senior Center by eliminating funding from the CDBG-Neighborhood Initiative Program & Model Block Revitalization Program in the amount of \$100,000 (working on the assumption that have available funding from previous years to support this year); reduction of \$25,000 for CDBG-Rehabilitation Services; funding for CDBG-Amistad Community Health Center in the amount of \$31,024; reduction from CDBG-Coastal Bend Alcohol & Drug Rehabilitation Center d/b/a Charlie's Place in the amount of \$31,024; and a reduction of \$5,766 to all of the agencies recommended for funding with the exception of CDBG-Boys and Girls Club which was reduced in the amount of \$5,756.

Mr. Ortega announced that the Emergency Shelter Grant (ESG) program received an additional \$56,424 and each ESG program received an additional \$5,936 with the exception of the ESG-Administrative Costs which received an additional \$2,811. Mr. Ortega announced that the HOME program received an additional \$4,174 and highlighted the following changes: HOME Administration/Technical Assistance receiving an additional \$7,745 for a total of \$156,662; HOME-Major Rehabilitation program receiving a total of \$764,965; HOME-Nueces County Community Action Agency receiving a total of \$300,000; and The Palms at Leopard will be recommended for funding in the amount of \$865,000. Mr. Ortega reported that after the last meeting, staff recommended funding Dolphin's Landing and The Palms at Leopard equally, however, after checking with the Texas Department of Housing and Community Affairs, it was determined that the City essentially needs to support one project so that the project can receive the 16 points for tax credits.

Mayor Adame called for comments from the audience. Abel Alonzo, 1701 Thames, stated that MHMR is extremely grateful for the funding that was provided. Eric Martinez, Association Coordinator for the World Changers Projects, thanked Mr. Ortega and Neighborhood Services employees Diana Garza and Tony Recio for their support of the World Changers Project and the CDBG-Neighborhood Initiative Program & Model Block Revitalization Project. Mr. Martinez asked the Council to continue to support the use of anticipated funds available for the Model Block Program. Therese Perez, Corpus Christi Hope House, expressed gratitude for the funding provided for the shelter. Michael Wynn, Atlantic Housing, spoke on behalf of Dolphin's Landing and thanked the Council for listening to concerns during the April 12<sup>th</sup> meeting. Council Member Martinez reiterated that staff was not supporting funding for Dolphin's Landing. Jaime Nodarse, Amistad Community Health Center, thanked the Council for their reconsideration for funding CDBG-Amistad Community Health Center. Mark Lechner, Lexington Vista and Palm Gardens, stated that it was hard to argue with staff's recommendation for their support to one HOME project to receive tax credits. Mr. Lechner provided information on both proposed projects and requested that Council consider a mechanism to transfer HOME funds to the project that gets awarded by TDHCA. Jose Mascorro, Housing and Community Services, spoke regarding The Palms at Leopard Project and thanked staff for their hard work on this project and the importance of the City supporting the project 100% to ensure tax funding does come to the City of Corpus Christi.

Mr. Scott made a motion to amend the Consolidated Annual Action Plan to include changes as recommended by staff in today's handout. The motion was seconded by Mr. Elizondo.

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April 26, 2011 – Page 13

The foregoing motion was passed and approved with the following vote: Adame, Adler, Elizondo, Kieschnick, Marez, Martinez, Scott, and Strong, voting "Aye"; Leal was absent.

City Secretary Chapa polled the Council for their votes as follows:

24. RESOLUTION NO. 029047

Resolution adopting the Fiscal Year 2011-12 Consolidated Annual Action Plan ("CAAP") which includes the Community Development Block Grant (CDBG), Emergency Shelter Grant (ESG), and Home Programs (HOME); authorizing the City Manager or designee to submit the Fiscal Year 2011-12 CAAP to the U. S. Department of Housing and Urban Development ("HUD"); and authorizing the City Manager or designee to execute all necessary documents to make changes in the Fiscal Year 2011-12 CAAP if required by HUD.

The foregoing resolution was passed and approved as amended with the following vote: Adame, Adler, Elizondo, Kieschnick, Marez, Martinez, Scott, and Strong, voting "Aye"; Leal was absent.

\*\*\*\*\*

Mayor Adame returned to discussion on Item 8 regarding the acceptance of an anonymous donation for the decorative lighting of the Harbor Bridge project. City Secretary Chapa polled the Council for their votes as follows:

8.a. RESOLUTION NO. 029036

Resolution authorizing the City Manager or designee to accept an anonymous donation in the amount of \$300,000 for support of the decorative lighting of the Harbor Bridge project.

The foregoing resolution was passed and approved with the following vote: Adame, Adler, Elizondo, Marez, Martinez, Scott, and Strong, voting "Aye"; Kieschnick voting "No"; Leal was absent.

8.b. ORDINANCE NO. 029037

Ordinance appropriating \$300,000 from an anonymous donation into the No. 1020 General Fund for support of the decorative lighting of the Harbor Bridge project; changing the FY 2010-2011 Operating Budget adopted by Ordinance No. 028683 to increase revenues and appropriations by \$300,000 each.

An emergency was declared, and the foregoing ordinance was passed and approved with the following vote: Adame, Adler, Elizondo, Marez, Martinez, Scott, and Strong, voting "Aye"; Kieschnick voting "No"; Leal was absent.

Mayor Adame opened discussion on Item 12 regarding the Memorial Coliseum Demolition Project. Director of Engineering Services Pete Anaya provided a project budget showing the construction liquidated damages in the amount of \$70,000 and the \$28,000 for Amendment No. 1 to the contract with R.H. Shackelford, Inc. In response to Council Member Scott, the net savings on the project is approximately \$42,000. City Secretary Chapa polled the Council for their votes as follows:

# Locke Lord Bissell & Liddell<sup>LLP</sup>

Attorneys & Counselors

Cynthia L. Bast  
Direct Telephone: 512-305-4707  
Direct Fax: 512-391-4707  
cbast@lockelord.com

June 14, 2011

## VIA HAND DELIVERY

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

Re: Sweetwater Bend, TDHCA No. 11051 (the "Application")

Dear Raquel:

We represent the housing tax credit applicant for Tidwell Lakes Ranch, TDHCA No. 11087 in Urban Region 6 (the "Client"). Contact information for the Client is as follows:

W. Barry Kahn  
5325 Katy Freeway  
Suite One  
Houston, Texas 77007-2257  
(713) 871-1916 fax  
bkahn@hettig-kahn.com

On behalf of the Client, and in accordance with Section 49.10(e) of the Qualified Allocation Plan, we present the following questions or concerns about the Application referenced above. Capitalized terms used but not defined in this letter will have the meanings given them in the Qualified Allocation Plan.

- (1) The first question is with regard to the request for points under 49.9(a)(8), **The Cost of the Development by Square Foot**. The total direct construction costs listed in the Application are \$7,304,360 and the rentable square footage is 80,476, for costs per square foot of \$90.76. The QAP only allows \$87 per square foot for a family development in a First Tier County. Thus the request for points fails under this section.

We recognize that if a building has four or more stories with interior corridors that are enclosed, heated and/or cooled and otherwise finished, the interior corridor space can be included for purposes of this calculation. However, in Volume 1 Tab 2, the Applicant did not identify any such interior corridor space. Moreover, in Volume 1, Tab 8 and Volume 3, Tab 1, the Applicant identified the maximum number of stories as 3. This is consistent with the elevation drawings, which show the buildings to either be two or three story buildings. While there is an indication there may be some sort of ground floor

elevation, it is not clear as to how high, if any, the buildings are elevated and whether such amount equates to the height of a story. The narrative does not describe the buildings as being elevated. Two of the buildings only have two floors and thus would not qualify as four story buildings under any circumstance. Further if the remaining two buildings were elevated buildings, guard rails (like on the upper floors) would be needed at the first floor stairs and patios. And stairs would be needed on the side entry door shown on the side elevation. Otherwise this apparent maintenance room would be left hanging.

Further, based on the drawings, the corridors are open on the remaining two 3 floor buildings. This is proven on the plan elevations which show no building entry doors (see crosshatching on patio doors and doors shown on side elevation drawings), no windows for upper floor corridor ventilation, stairs that are shown to be visible, open and unprotected, and no enclosure with door for access below the first floor. Thus the exception for four story buildings with enclosed corridors is not met (see Exhibit "A").

It appears that the error made by this Applicant was including the common area in the square footage for the calculation. If the common area identified on Volume 1, Tab 2 is included, the cost per square foot is less than \$87. However, common area is not considered "Net Rentable Area" for purposes of this scoring item. **The ten points should be disallowed.**

- (2) The next question with regard to points is under 49.9(a)(13)(D), **Community Revitalization**. This section awards points for a Development located in an area identified in a published and adopted Community Revitalization Plan. A Community Revitalization Plan is defined as a document that targets specific geographic areas for revitalization and residential development.

The Applicant included the 3-Year Consolidated Plan for the entire City of Galveston for the CDBG and HOME programs in its application (the "Plan"). It is questionable whether the Plan constitutes a Community Revitalization Plan under the definition of the QAP. The Plan is mandated by HUD as part of the City's receipt of CDBG and HOME funds. It is not a document that is intended to target specific geographic areas for revitalization. The applicant tried to equate the disaster recovery efforts outlined in the Plan to revitalization, by making handwritten notations throughout the Plan. Disaster recovery and revitalization are two different things. Moreover, the word "revitalization" is only used in the Plan with reference to non-housing community development activities (see pages 20, 134, and 146) and public housing (see pages 90 and 140).

If the Plan could be deemed to target specific geographic areas, those would be the "CDBG Target Areas" described in the Plan. On page 22 of the Plan, it states the mission of the housing department is to "take the city, especially the CDBG Target Areas and low- to moderate-income residents, beyond pre-Ike conditions. A CDBG Target Area is described as having 51% or more low- and moderate-income residents. Sweetwater Bend is located in census tract 48167726000 which is deemed an upper income tract with a median income of \$98,444 (see Exhibit "B") which is 151% of the MSA/MD Median Family Income. This is not a CDBG Target Area, and new



development in an upper income neighborhood by its nature is not part of a community revitalization plan.

For all these reasons, we believe the Consolidated Plan delivered to HUD is not a Community Revitalization Plan. But even if it is, the Plan identifies CDBG Target Areas to be benefitted, and Sweetwater Bend is not located in a CDBG Target Area. **The three points should be disallowed.**

- (3) The referenced application appears to be an Ineligible Application under 49.4(b)(11) as **more than 50% of the Developer Fee will have to be deferred.** On Applicant's sources and uses and on the syndicator's listing of financing sources, both attached hereto as Exhibit "C", it is noted that part of the permanent financing is a one year loan from Strategic Housing Finance Corporation. Funding that otherwise would be used for Developer Fee will need to be used to repay this one-year loan in the amount of \$627,905. Thus the deferred developer fee will be increased from \$108,847 to \$736,752 (see Exhibit "C1"). With a total Developer Fee of \$1,270,000, the revised deferred amount would exceed 50% of the Developer Fee and would thus would make the Application **ineligible.**
- (4) The Applicant did not include a required financing narrative, as required for Volume 1, Tab 4, Part B. The Applicant included a syndicator letter, which has a section describing anticipated debt sources and uses, and copies of the commitment letters for those sources, but these items do not constitute a financing narrative.

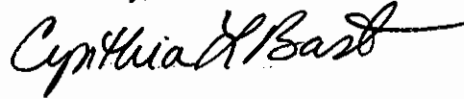
Moreover, the Applicant did not include the debt service of the second mortgage in the 30 year proforma on Volume 1, Tab 2. The commitment for the loan from Strategic Site Partners calls for an 18 year term with a 30 year amortization. This implies that the loan will be repaid in regular installments over 18 years, with a final balloon payment to cover the remainder of the principal. If this additional debt service is added to Volume 1, Tab 2, the DSC in Year 1 is reduced to 1.148, below the Department minimum requirement (see Exhibit "D"), further **disqualifying** the application.

Please note this is a nonconforming third party loan providing 18 year financing at AFR with a 30 year amortization as a second mortgage. If this below market loan does not occur and it would have to be replaced in the open market, the interest rate would be higher, and the DSC will be further reduced.

If the Applicant tries to cure item 3 above by reducing deferred Developer Fee by increasing the debt, then item 4 is more of a problem with an even lower debt service coverage. Vice versa, if the Applicant tries to cure item 4 by decreasing the debt, then the deferred Developer Fee in item 3 would be even higher, and it is already beyond 50%.

In summary, we trust the Department will reduce the points on the referenced Application for the flaws identified in paragraphs (1) and (2) above and, more importantly, terminate the Application for failure to meet threshold requirements if appropriate because of the flaws described in paragraphs (3) and (4) above.

Sincerely,



Cynthia L. Bast

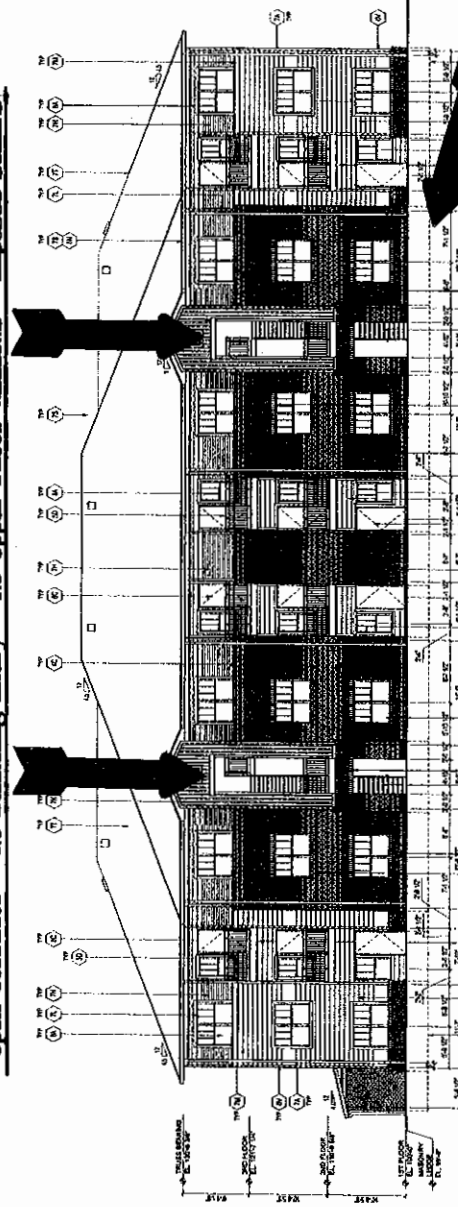
cc: Robbye Meyer  
W. Barry Kahn

Exhibit A -- Building elevations and construction  
Exhibit B -- Census tract and Consolidated Plan  
Exhibit C -- Sources and uses  
Exhibit C1 -- Deferred developer fee  
Exhibit D -- Debt service

# EXHIBIT "A"

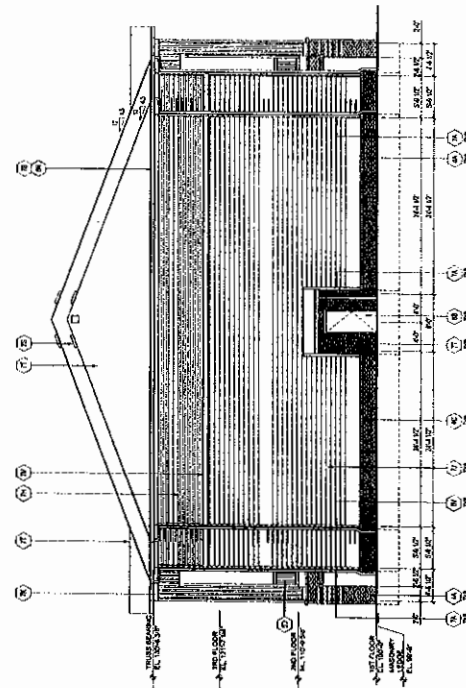
EXHIBIT "A"

Open Corridor - No Building Entry - No Upper Floor Windows - Exposed Stairs

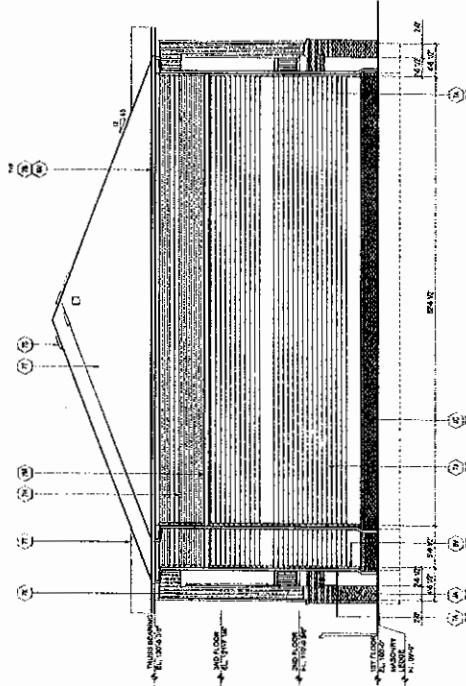


No elevation shown to indicate any raised area which would then makethis a three-story building.

ALSO SEE FRONT EXTERIOR ELEVATION (BACK O.H.)  
SCALE 1/8" = 1'-0"



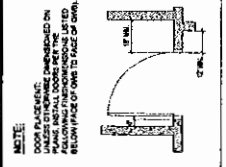
ALSO SEE FRONT EXTERIOR ELEVATION (BACK O.H.)  
SCALE 1/8" = 1'-0"



ALSO SEE FRONT EXTERIOR ELEVATION (BACK O.H.)  
SCALE 1/8" = 1'-0"

KEY NOTES:

1. CONCRETE SHALL BE 4000 PSI.
2. ALL CONCRETE SHALL BE CAST IN PLACE.
3. ALL CONCRETE SHALL BE CURED FOR A MINIMUM OF 7 DAYS.
4. ALL CONCRETE SHALL BE PROTECTED FROM DAMAGE DURING CURING.
5. ALL CONCRETE SHALL BE PROTECTED FROM DAMAGE DURING TRANSPORT.
6. ALL CONCRETE SHALL BE PROTECTED FROM DAMAGE DURING STORAGE.
7. ALL CONCRETE SHALL BE PROTECTED FROM DAMAGE DURING HANDLING.
8. ALL CONCRETE SHALL BE PROTECTED FROM DAMAGE DURING UNLOADING.
9. ALL CONCRETE SHALL BE PROTECTED FROM DAMAGE DURING PLACING.
10. ALL CONCRETE SHALL BE PROTECTED FROM DAMAGE DURING FINISHING.
11. ALL CONCRETE SHALL BE PROTECTED FROM DAMAGE DURING CURE.
12. ALL CONCRETE SHALL BE PROTECTED FROM DAMAGE DURING DEMOLITION.
13. ALL CONCRETE SHALL BE PROTECTED FROM DAMAGE DURING REPAIR.
14. ALL CONCRETE SHALL BE PROTECTED FROM DAMAGE DURING RECONSTRUCTION.
15. ALL CONCRETE SHALL BE PROTECTED FROM DAMAGE DURING REFINISHING.
16. ALL CONCRETE SHALL BE PROTECTED FROM DAMAGE DURING REPAIR AND RECONSTRUCTION.
17. ALL CONCRETE SHALL BE PROTECTED FROM DAMAGE DURING REFINISHING AND REPAIR.
18. ALL CONCRETE SHALL BE PROTECTED FROM DAMAGE DURING REPAIR AND RECONSTRUCTION AND REFINISHING.
19. ALL CONCRETE SHALL BE PROTECTED FROM DAMAGE DURING REPAIR AND RECONSTRUCTION AND REFINISHING AND REPAIR.
20. ALL CONCRETE SHALL BE PROTECTED FROM DAMAGE DURING REPAIR AND RECONSTRUCTION AND REFINISHING AND REPAIR AND RECONSTRUCTION.



NOTE: 1. FINISHES TO BE SHOWN ON THIS DRAWING SHALL BE THE SAME AS SHOWN ON THE FACE OF THE DRAWING. 2. ALL FINISHES TO BE SHOWN ON THIS DRAWING SHALL BE THE SAME AS SHOWN ON THE FACE OF THE DRAWING. 3. ALL FINISHES TO BE SHOWN ON THIS DRAWING SHALL BE THE SAME AS SHOWN ON THE FACE OF THE DRAWING.

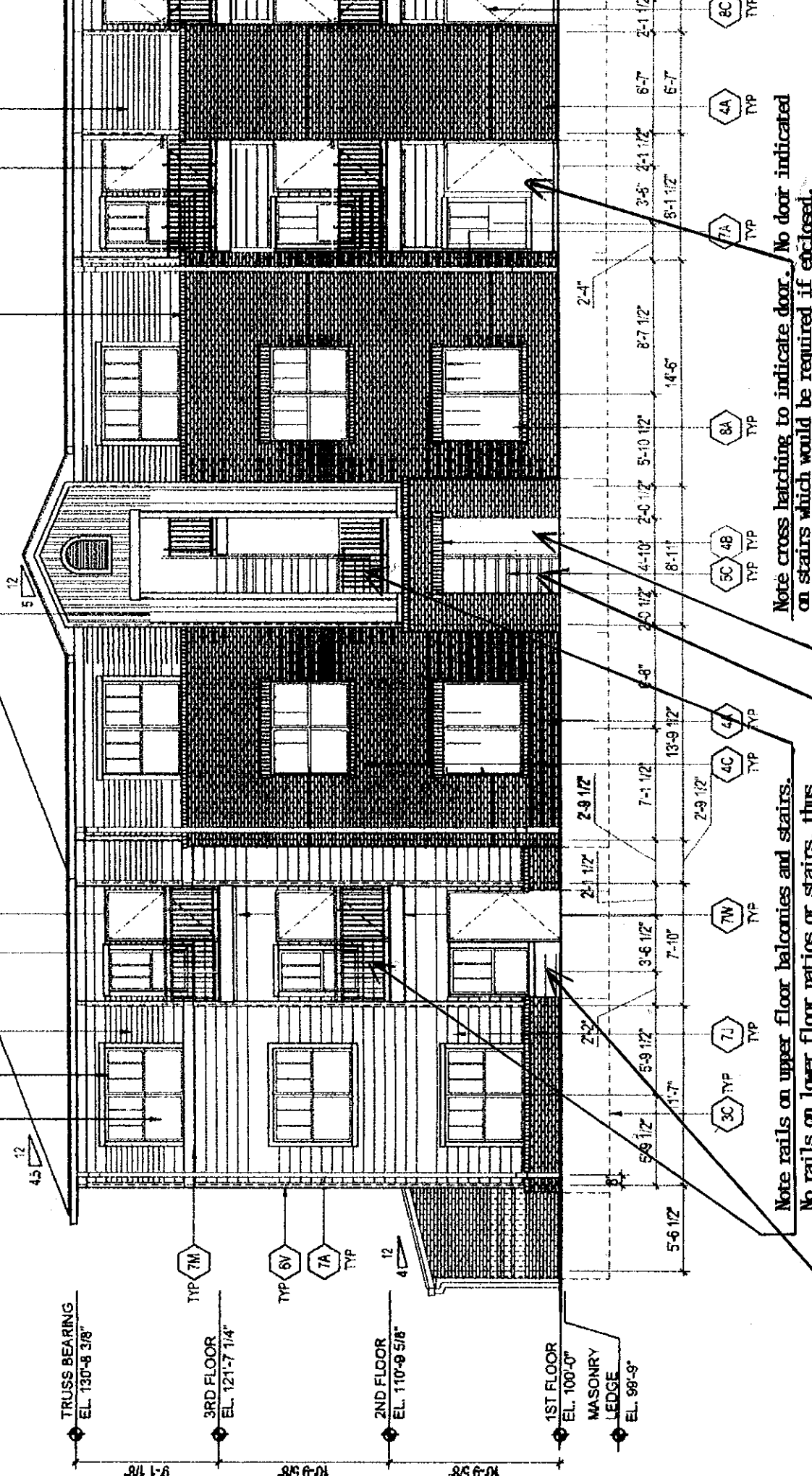
PROJECT: **Sweetwater Cove Apartments**  
 ARCHITECT: **Kashyok Architects**  
 PROJECT NO.: **11-11666**  
 SHEET NO.: **A2.01**  
 DATE: **02.25.2011**  
 NOT FOR CONSTRUCTION

EXHIBIT "A-2"

5D

4.5

12



Note cross hatching to indicate door. No door indicated on stairs which would be required if enclosed.

Note rails on upper floor balconies and stairs. No rails on lower floor patios or stairs, thus indicators such is the ground floor.

TRUSS BEARING  
EL. 130'-8 3/8"

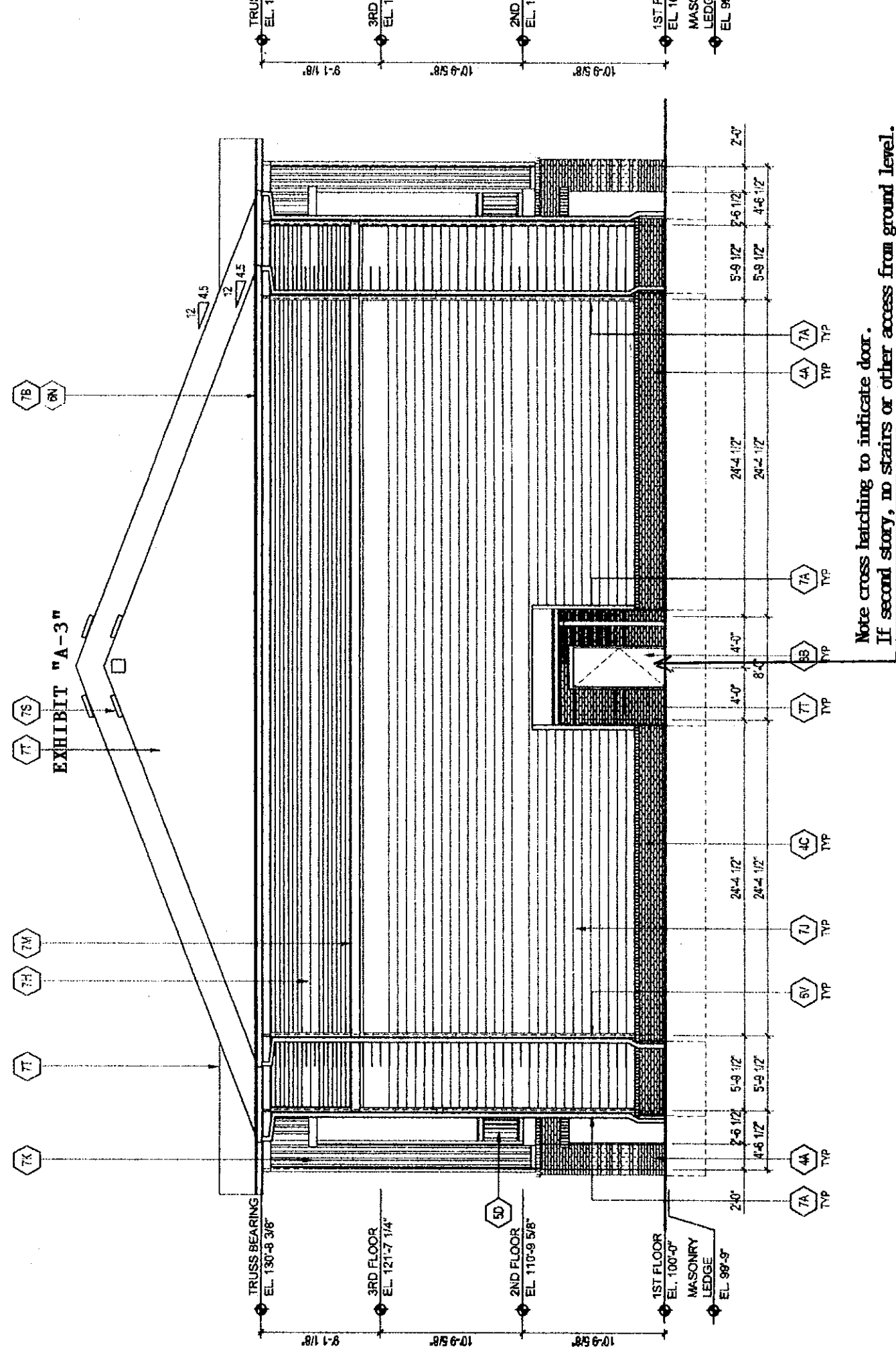
3RD FLOOR  
EL. 121'-7 1/4"

2ND FLOOR  
EL. 110'-9 5/8"

1ST FLOOR  
MASONRY  
LEDGE  
EL. 99'-9"

BLDG TYPE #1  
**FRONT EXTERIOR ELEVATION (BACK O.H.)**  
SCALE: 1/8" = 1'-0"





**BLDG TYPE #1  
LEFT EXTERIOR ELEVATION  
SCALE: 1/8" = 1'-0"**



Note cross hatching to indicate door.  
If second story, no stairs or other access from ground level.

PART B. SPECIFICATIONS AND AMENITIES

SITE ATTRIBUTES (mark with a "x")

Total Acquisition Acreage: 9.24 Development Site Acreage: 9.24 # Units per Acre: 8.225  
 Single Site  Contiguous Multiple Sites (#       )  Scattered Sites (# Sites       )\*

\* Note: If Scattered Site, submit evidence of scattered site pursuant to ASPM behind this tab.

DEVELOPMENT ATTRIBUTES Selections must be consistent with submitted architectural plans

# of Residential Buildings: 4 Maximum # of Floors: 3 # of Non-Residential Buildings: 1

Configuration:

Duplex  Fourplex  Townhome  Transitional (per §42(i)(3)(B))

>4 units per building  Scattered Site  Single family construction  SRO (per §42(i)(3)(B))

Fire Sprinkler in all residential areas # of Passenger Elevators:        Wt. Capacity:       

EXTERIOR Selections must be consistent with submitted architectural plans

Subfloor

Wood  
 Concrete Slab  
 Other       

Walls

       % Plywood/Hardboard  
       % Vinyl or Aluminum Siding  
5 % Masonry Veneer  
95 % Fiber Cement Siding  
       % Stucco  
       % Other (Describe)

Parking

       #Shed or Flat Roof Carport Spaces  
       #Detached Garage Spaces  
       #Attached Garage Spaces  
       #Uncovered Spaces  
167 #Parking Garage Spaces

Roofs

Built-Up Tar and Gravel  
 Comp. Shingle  
 Comp. Roll  
 Elastomeric  
 Wood Shake  
 Other (Describe)

INTERIOR Selections must be consistent with submitted architectural plans

Flooring

60 % Carpet  
40 % Resilient Covering  
       % Ceramic Tile  
       % Light Concrete  
       % Other (Describe)

Air System

Forced Air  
 Furnace  
 Hot Water  
 Warm and Cooled Air  
 Heat Pump, packaged  
 Wall Units  
 Other (Describe)

Walls

Drywall  
 Plaster  
 8 Foot Ceilings

Other

Washer and Dryers onsite (#       )  
 Fireplace included in all Units  
 Fireplace onsite (#       )  
 Other (Describe)

**PART A. RELEVANT DEVELOPMENT INFORMATION FORM**

This form, Parts 1 and 2 must be completed by the Applicant in its entirety.

The information will be utilized by the Department to notify officials required under §49.17(a) of the QAP. Note: The Department is not responsible for notifying Applicants if information contained herein is inaccurate. It is the Applicants' sole responsibility to ensure all information contained in this form is accurate and that any errors identified are corrected and proper re-notifications are made.

**NOTE: IF A PRE-APPLICATION WAS SUBMITTED, AND THERE HAS BEEN A CHANGE FROM PRE-APPLICATION TO APPLICATION THAT RESULTED IN A TOTAL UNIT INCREASE OF GREATER THAN 10% AND INCREASE OF GREATER THAN 10% FOR ANY GIVEN LEVEL OF AMGL, OR A CHANGE IN POPULATION SERVED (FAMILY, ELDERLY OR INTERGENERATIONAL) THE APPLICANT MUST RE-NOTIFY AS REQUIRED BY §49.8(9)(A).**

Development Name: Sweetwater Bend Development City: Galveston

Building/Unit Configuration (place "x" by appropriate boxes):

- Duplex
- >4 units per building
- Scattered Site Development
- Townhome
- Transitional (per §42(i)(3)(B))
- SRO (per §42(i)(3)(B))

Maximum # Floors: 3 # Res. Buildings: 4 # Non-Res. Buildings: 1  
 Elevator Served: No Total Site Acreage: 9.24 # Units per Acre: 8.2  
 Total Units: 76 Total Market Rate Units: 0 Total LI Units: 76

**Tenant Supportive Services:**

- joint use library center, as evidenced by a written agreement w/local school district
- GED preparation classes
- organized team sports or youth programs
- annual income tax preparation services
- weekday after school program
- English as a second language classes
- scholastic tutoring
- monthly transport to community/social events
- daily transportation
- quarterly financial planning courses
- notary public during regular business hours
- monthly on-site social events
- counseling services (supportive housing only)
- annual health fair
- weekly exercise classes
- caseworker services for seniors & disabled (must be specific & pre-approved- please specify which services will be provided below)
- food pantry/common household items (supportive housing only)
- quarterly health & nutrition courses
- monthly arts & crafts
- home chore services for seniors & disabled
- Any other program described under Title IV-A of the Social Security Act (42 U.S.C. §§601 et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage, prevents and reduced the incidence of out-of-wedlock pregnancies; and encourages the formation and maintenance of two-parent families

Other *If "Other" please describe OR specify which caseworker services for seniors & disabled will be provided:*

**Complete all rent information as applicable to this Application:**

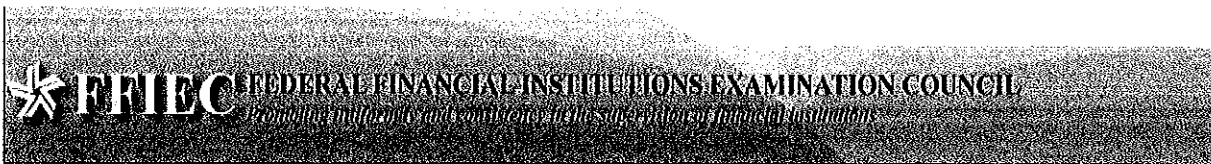
Average Rent for a 1 bedroom LI Unit:	\$ <u>476.00</u>	Average Rent for a 1 bedroom MR ur	\$ _____
Average Rent for a 2 bedroom LI Unit:	\$ <u>563.00</u>	Average Rent for a 2 bedroom MR ur	\$ _____
Average Rent for a 3 bedroom LI Unit:	\$ <u>613.00</u>	Average Rent for a 3 bedroom MR ur	\$ _____
Average Rent for a 4 bedroom LI Unit:	\$ _____	Average Rent for a 4 bedroom MR ur	\$ _____





# EXHIBIT “B”

## EXHIBIT "B"



[GET STREET MAP](#)
[Help on Data](#)
[Back to Geocode](#)
[Search](#)
[Contact Us](#)
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## Geocoding System

MSA Code: <b>26420</b>	State Code: <b>48</b>	County Code: <b>167</b>	Tract Code: <b>7260.00</b>
------------------------	-----------------------	-------------------------	----------------------------

## Census Income Information

Tract Income Level	Upper	Tract Median Family Income %	151.22
2004 MSA/MD/statewide non-MSA/MD Median Family Income	\$51,431	2000 Tract Median Family Income	\$77,773
2010 HUD Estimated MSA/MD/non-MSA/MD Median Family Income	\$65,100	2010 Estimated Tract Median Family Income	\$98,444
% below Poverty Line	3.97	2000 Tract Median Household Income	\$67,386

[CENSUS DATA](#) | 
 [INCOME DATA](#) | 
 [POPULATION DATA](#) | 
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### Geocoding System

<b>MSA Code: 26420</b>	<b>State Code: 48</b>	<b>County Code: 167</b>	<b>Tract Code: 7260.00</b>
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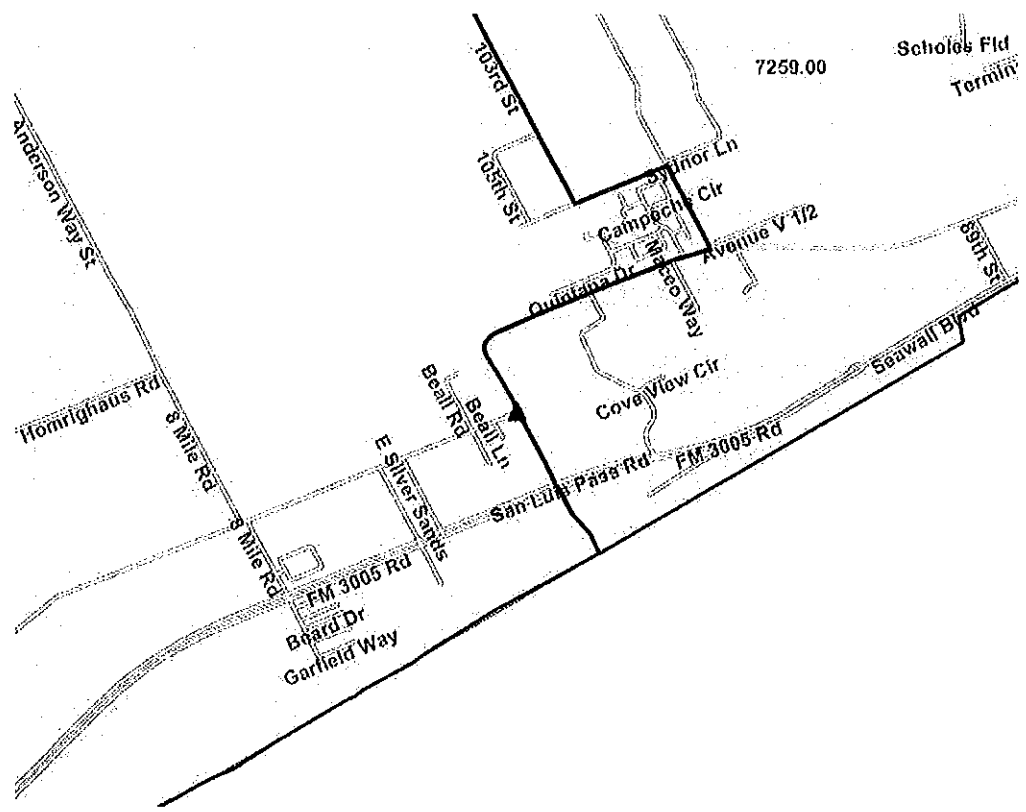
#### Summary Census Demographic Information

<b>Tract Income Level</b>	Upper	<b>Tract Population</b>	1690
<b>Underserved or Distressed Tract</b>	No	<b>Tract Minority %</b>	15.98
<b>2010 HUD Estimated MSA/MD/non-MSA/MD Median Family Income</b>	\$65,100	<b>Minority Population</b>	270
<b>2010 Est. Tract Median Family Income</b>	\$98,444	<b>Owner-Occupied Units</b>	554
<b>2000 Tract Median Family Income</b>	\$77,773	<b>1- to 4-Family Units</b>	905
<b>Tract Median Family Income %</b>	151.22		

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2010 Information	
Street Address	STEWART RD & 7 MILE RD
City Name	GALVESTON
State Abbr	TX
Zip Code	77554
MSA/MD Code	26420
State Code	48
County Code	167
Tract Code	7260.00

Legend

- Highway
- Tract
- Street

# CITY OF GALVESTON, TEXAS



## 3 Year Strategic Plan

**This document includes Narrative Responses to specific questions that grantees of the Community Development Block Grant, HOME Investment Partnership, Housing Opportunities for People with AIDS and Emergency Shelter Grants Programs must respond to in order to be compliant with the Consolidated Planning Regulations.**

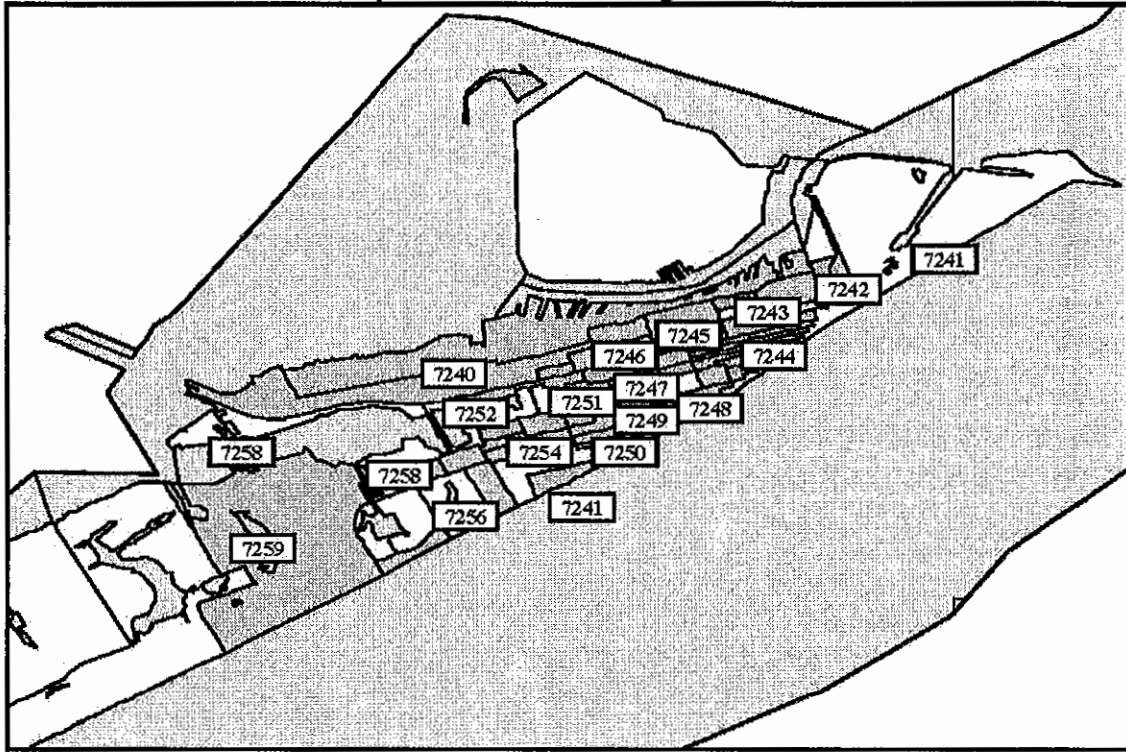
### GENERAL

#### Executive Summary

**The Executive Summary is required. Include the objectives and outcomes identified in the plan and an evaluation of past performance.**

The City of Galveston, Texas receives funding from the U. S. Department of Housing and Urban Development (HUD) for improving the City's housing, services and community development, particularly for the low- to moderate-income residents. HUD requires the City to complete a multi-year plan outlining the needs and how the City plans to address the needs with HUD funds. The City has developed a 3-Year Plan to begin June 1, 2010 and continue through May 31, 2013. The mission of the City during the next three years is to take the city, especially the CDBG Target Areas and low- to moderate-income residents, beyond pre-Ike conditions. It is to complete the recovery from Hurricane Ike but to then move the city forward to be a more livable environment than it was before the devastation of Ike. Low- to moderate-income households are defined as those with a household income of 80% or less of the area's median income. For HUD-funded services to individuals or households, the beneficiary (ies) must live in Galveston and be of low- or moderate-income. For HUD-funded neighborhood or area-wide improvements, the area served must be a CDBG Target Area, having 51% or more low- to moderate-income households. The following map below shows the location of the CDBG Low-Moderate Income (LMI) Target Areas.

Map 1 - CDBG LMI Target Areas



### Priorities and Objectives

To accomplish this mission, the City's Grants and Housing Department has prioritized the needs and developed a number of objectives to address the needs and implement rehabilitation, reconstruction and improvements to reclaim the Island and prevent the level of destruction caused by Ike from occurring again. Eligible HUD Projects and Assigned Priorities for Funding table (on the following pages) show the HUD-eligible projects and the City's rating of High (H), Medium (M) or Low (L) for funding improvements. The priority ratings are based on a number of factors, including:

- Availability of funding
- Quantitative, documented measures of need
- Concurrence with the existing Comprehensive Plan, Galveston Housing Authority's plans and the Long Term Recovery Plan
- Input from other public and nonprofit agencies
- Results of public comments at public hearings and other public forums
- Results of the resident survey

The City of Galveston's major housing and community development objectives to meet the High and Medium priorities include the following:

- Conserving and improving the housing stock;
- Expanding housing development and housing opportunities;
- Providing mechanisms to assist low- and moderate-income renters in buying their first home;
- Providing economic development and anti-poverty assistance;
- Providing essential infrastructure improvements;
- Providing public facility improvements;
- Enhancing the neighborhoods through code enforcement efforts;

regulatory compliance in accordance with HUD Regulations. Staff has the responsibility to ensure that each subrecipient or City department is adhering to their approved scope of service, budget and schedule of service. Each subrecipient or City department must also abide by the regulatory guidelines set forth by HUD in providing benefits to low-moderate income persons and/or eliminating a slum or blighted condition and/or addressing an urgent need that meets HUD's definition and approval. The monitoring process is an on-going process of planning, funding, implementation, communication and follow-up.

**Lead-Based Paint**

No post-Ike data are available by housing type and age of housing, therefore 2000 Census data are used for the table below.

**Table 2 – Estimated Number of Galveston Houses with LBP and LBP Hazards (Prior to Hurricane Ike)**

Housing Type	Built '78-'98		Built '60-'77		Built '46-'59		Built '45 & earlier*	
	LBP	LBP Hazard	LBP	LBP Hazard	LBP	LBP Hazard	LBP	LBP Hazard
Single Family	56	56	562	315	1,591	314	4,910	688
Multi-Family	217	110	558	558	460	132	1,840	1,034

*\*Note: Pre-1940 units with LBP and LBP hazards were estimated based on assuming 100% contain LBP and applying the same Hazard/Paint ratio to pre-1940 from the Westat's report and sample data entitled National Survey of Lead and Allergens in Housing.*

Based on the table above, prior to Hurricane Ike there are approximately 10,194 occupied units with lead-based paint and 3,208 with lead-based paint hazards, defined as deteriorated paint. It is estimated that of these units, 1,727 units were substantially or totally destroyed by Hurricane Ike. Virtually all were built before 1978, with at least half having lead-based paint and 10% having lead-based paint hazards. This brings the estimate housing post-Ike with lead-based paint to 9,330 and those with lead-based paint hazards to 3,035.

The Grants & Housing Department addresses LBP hazards on rehabilitation jobs that they undertake. A risk assessment is conducted on each project, and all LBP hazards are addressed in accordance with HUD's LBP Guidelines. After the rehabilitation work is completed, a clearance exam is performed to ensure the unit has been cleaned properly.

**Housing Needs**

The condition and availability of housing are important to the livability and quality of life for community residents. The need for affordable sound housing is most critical for the extremely/very low- (<= 30% of area median), low- (31-50% of area median) and moderate-income (51-80% of area median) residents. Galveston has a much lower rate of homeownership than the rest of Texas, coupled with a higher rate of housing with one or more problems. In addition, Hurricane Ike left a large number of housing units uninhabitable or seriously damaged, with the older housing in poorer condition and in lower-income neighborhoods being the hardest hit.



# EXHIBIT “C”

**EXHIBIT "C"**

**Volume I, Tab 4, Funding Request**

**PART A. Summary of Sources and Uses of Funds**

Describe all sources of funds and total uses of funds. Information must be consistent with the information provided throughout the Application (i.e. Financing Narrative, Commitment Letters and Development Cost Schedule). Where funds such as tax credits, loan guarantees, bonds are used, only the proceeds going into the development should be identified so that "sources" match "uses."

Development Name: Sweetwater Bend

Development City: Galveston

Funding Description	Construction Period		Permanent Period				Financing Participants
	Loan/Equity Amount	Interest Rate (%)	Loan/Equity Amount	Interest Rate (%)	Amort	Term	
<b>DEBT</b>							
Conventional Loan	\$6,640,345	5.00%	\$1,986,000	7.000%	30	15	Sterling Bank
Private Loan	\$250,000	AFR	\$250,000	AFR	30	18	Strategic Site Partners, LLC
Private Loan *	\$627,905	AFR	\$627,905			1	SHFC *
Other (Please Describe)							
Other (Please Describe)							
<b>Third Party Equity</b>							
HTC Syndication Proceeds	\$9,061,318		\$9,061,318				First Sterling Financial, Inc.
Other (Please Describe)							
Grant							
Other (Please Describe)							
Deferred Developer Fee	\$108,847		\$108,847				MBL DerbyCity Development, LLC **
Deferred Developer Fee **							
Other (Please Describe)							
Other							
Please Describe							
Please Describe							
Please Describe							
Please Describe							
<b>TOTAL SOURCES OF FUNDS</b>	<b>\$ 16,688,415</b>		<b>\$ 12,034,070</b>				
<b>TOTAL USES OF FUNDS</b>			<b>\$ 12,034,070</b>				

\* This is short-term financing and payment of such will result in developer fee being increased by said \$627,905.  
 \*\* Deferred Developer Fee needs to be modified to \$736,752.

Exhibit "C1"

Sweetwater Bend  
Revised Deferred Developer Fee Calculation

Total Development Costs	\$12,034,070
Less Equity	-\$9,061,318
Less Permanent Loan	-\$1,986,000
Less Private Second Mortgage	-\$250,000
Less Short term private loan	<u>-\$627,905</u>
Deferred developer fee per Applicant	\$108,847
Additional deferred developer fees needed to repay short term loan as no other development sources available	<u>\$627,905</u>
Recalculated Deferred Developer Fee	\$736,752
Total developer fees	\$1,270,000
Percentage recalculated deferred developer fee	58.01%

# EXHIBIT “D”

**Volume 1, Tab 2 ACTIVITY OVERVIEW**

**Part E. 30 Year Rental Housing Operating Proforma**

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 rental income and expenses), and principal and interest debt service. The Department currently considers an annual growth rate of 2% for income and 3% for expenses to be reasonably conservative estimates. 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. While the 30-year proforma projects 30 years of data, the Department's standard for financial feasibility is 15 years.

Development Name:	City: Galveston															
	LEASER-UP	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 10	YEAR 15	YEAR 20	YEAR 25	YEAR 30					
<b>INCOME</b>																
POTENTIAL GROSS ANNUAL RENTAL INCOME	\$300,168	\$600,336	\$612,343	\$624,590	\$637,081	\$649,823	\$717,457	\$792,131	\$874,576	\$965,603	\$1,066,103					
Secondary Income	3,180	6,360	6,487	6,617	6,749	6,884	7,601	8,392	9,265	10,230	11,294					
POTENTIAL GROSS ANNUAL INCOME	\$303,348	\$606,696	\$618,830	\$631,207	\$643,831	\$656,707	\$725,058	\$800,522	\$883,842	\$975,832	\$1,077,398					
Provision for Vacancy & Collection Loss	22,751	45,502	46,412	47,340	48,287	49,253	54,379	60,039	66,288	73,187	80,805					
Rental Concessions	0	0														
<b>EFFECTIVE GROSS ANNUAL INCOME</b>	<b>\$326,099</b>	<b>\$561,194</b>	<b>\$572,418</b>	<b>\$583,866</b>	<b>\$595,543</b>	<b>\$607,454</b>	<b>\$670,679</b>	<b>\$740,483</b>	<b>\$817,553</b>	<b>\$902,645</b>	<b>\$996,593</b>					
<b>EXPENSES</b>																
General & Administrative Expenses	\$12,008	\$ 24,016.00	\$24,736	\$25,479	\$26,243	\$27,030	\$31,335	\$36,326	\$42,112	\$48,820	\$56,595					
Management Fee	11,191	22,381	23,052	23,744	24,456	25,190	29,202	33,853	39,245	45,496	52,742					
Payroll, Payroll Tax & Employee Benefits	38,000	76,000	78,280	80,628	83,047	85,539	99,163	114,957	133,266	154,492	179,099					
Repairs & Maintenance	26,030	52,060	53,622	55,230	56,887	58,594	67,926	78,745	91,288	105,827	122,683					
Electric & Gas Utilities	10,700	21,400	22,042	22,705	23,384	24,086	27,922	32,369	37,525	43,502	50,431					
Water, Sewer & Trash Utilities	12,832	25,664	26,434	27,227	28,044	28,885	33,486	38,819	45,002	52,170	60,479					
Annual Property Insurance Premiums	30,400	60,800	62,624	64,503	66,438	68,431	79,330	91,965	106,613	123,594	143,279					
Property Tax	24,700	49,400	50,882	52,408	53,981	55,600	64,456	74,722	86,623	100,420	116,414					
Reserve for Replacements	9,500	19,000	19,570	20,157	20,762	21,385	24,791	28,739	33,317	38,623	44,775					
Other Expenses:	5,320	10,640	10,959	11,288	11,627	11,975	13,883	16,094	18,657	21,629	25,074					
<b>TOTAL ANNUAL EXPENSES</b>	<b>\$180,681</b>	<b>\$361,361</b>	<b>\$372,202</b>	<b>\$383,368</b>	<b>\$394,869</b>	<b>\$406,715</b>	<b>\$471,494</b>	<b>\$546,591</b>	<b>\$633,649</b>	<b>\$734,573</b>	<b>\$851,571</b>					
<b>NET OPERATING INCOME</b>	<b>\$145,419</b>	<b>\$199,833</b>	<b>\$200,216</b>	<b>\$200,498</b>	<b>\$200,674</b>	<b>\$200,739</b>	<b>\$199,184</b>	<b>\$193,892</b>	<b>\$183,905</b>	<b>\$168,073</b>	<b>\$145,022</b>					
<b>DEBT SERVICE</b>																
Second Deed of Trust Annual Loan Payment	\$79,896	\$159,792	\$159,792	\$159,792	\$159,792	\$159,792	\$159,792	\$159,792	\$159,792	\$159,792	\$159,792					
Third Deed of Trust Annual Loan Payment																
Other Annual Required Payment:																
Other Annual Required Payment:																
<b>NET CASH FLOW</b>	<b>\$65,523</b>	<b>\$40,041</b>	<b>\$40,424</b>	<b>\$40,706</b>	<b>\$40,882</b>	<b>\$40,947</b>	<b>\$39,392</b>	<b>\$34,100</b>	<b>\$24,113</b>	<b>\$8,281</b>	<b>(\$14,770)</b>					
Debt Coverage Ratio	1.82	1.25	1.25	1.25	1.26	1.26	1.25	1.21	1.15	1.09	0.91					

Second Deed of Trust Annual Loan Payment	\$79,896	\$159,792	\$159,792	\$159,792	\$159,792	\$159,792	\$159,792	\$159,792	\$159,792	\$159,792	\$159,792					
Third Deed of Trust Annual Loan Payment																
Other Annual Required Payment:																
Other Annual Required Payment:																
<b>NET CASH FLOW</b>	<b>\$65,523</b>	<b>\$25,822</b>	<b>\$26,205</b>	<b>\$26,487</b>	<b>\$26,663</b>	<b>\$26,728</b>	<b>\$25,173</b>	<b>\$19,881</b>	<b>\$9,894</b>	<b>(\$5,938)</b>	<b>(\$28,989)</b>					
Debt Coverage Ratio	1.82	1.48	1.51	1.52	1.53	1.54	1.45	1.14	1.07	0.96	0.83					

\* Added 2nd Lien Debt Service per loan terms provided in the application

\*\* Revised Net Cash Flow based on addition of 2nd Lien Debt Service

\*\*\* Revised DSCR based on addition of 2nd Lien Debt Service



## Strategic Site Partners, LLC

February 22, 2011

Audrey Martin  
TDHCA  
PO BOX 13941  
Austin, TX 78701

**RE: Private Funding Commitment, TDHCA APPLICATION (Sweetwater Bend Apartments)**

Dear Ms. Martin:

Per the 2011 QAP please consider this to be a formal commitment of private funds to the above referenced application to be located in Galveston, TX. The commitment amount is \$250,000 or approximately 2 percent of the total development cost of the project contingent upon final allocation of tax credits.

Terms and Conditions:

Financing will be an AFR interest rate at 18 year term and a 30 year amortization. Anticipated closing will occur at closing of transaction with TDHCA.

Please note that I am not the Applicant, the Developer, Consultant, Related Party, or any individual acting on behalf of the proposed Application and that none of funds that I have committed were first provided to me by the applicant, the Developer, Consultant, Related party, or any individual or entity acting on behalf of the proposed Application.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Haas", with a long horizontal flourish extending to the right.

Michael Haas  
Managing Department

836 Euclid Avenue, 3<sup>rd</sup> Floor Lexington, KY 40502  
859-335-6333

**First Sterling Financial, Inc.**



February 24, 2011

Mr. Mark Lechner  
1900 Rolling Hills Trail  
Fishersville, KY 40023

Re: **Sweetwater Bend Apartments  
Galveston, Texas**

Dear Mr. Lechner:

We at First Sterling Financial, Inc. ("First Sterling") are pleased to propose the following business terms set forth in this letter of intent (the "LOI") pursuant to which First Sterling will provide equity capital for the purchase of a limited partner interest in Stewart Crossing, L.P., a Texas limited partnership (the "Partnership"). First Sterling or an assignee (the "Investor Partner") will acquire a 99.98% limited partner interest, and Sterling Corporate Services, Inc. (the "Special Investor Partner"), will retain a 0.01% special limited partner interest in the Partnership. The basic business terms outlined herein will be incorporated into an amended and restated limited partnership agreement (the "Partnership Agreement").

1. **Apartment Development Information and Parties Involved.**

- (a) Sweetwater Bend Apartments (the "Apartment Development") will consist of the new construction of a 76 unit affordable multi-family housing development for family occupancy. The property will include four residential buildings and one clubhouse located at the northwest corner of the intersection of Stewart Road and 7 Mile Road in Galveston, Galveston County, Texas. All of the units will be occupied in compliance with the federal low-income housing tax credit requirements of Section 42 of the Internal Revenue Code.
- (b) The parties involved with the Apartment Development are as follows:
- (i) **Partnership:** Stewart Crossing, L.P., a Texas limited partnership.
  - (ii) **General Partner:** Stewart Crossing GP, LLC, a Texas limited liability company.
  - (iii) **Developer:** MBL Derby City Development, LLC
  - (iv) **Guarantor:** Mark Lechner, subject to First Sterling's review and approval of financial statements.

2. **Debt and Other Sources.** As a condition to First Sterling funding its equity capital contributions, the General Partner will deliver the loan commitments and/or financing sources described in (a)-(d) below. The terms of these loans are subject to First Sterling's consent and all loans will be made from the lender(s) to the Partnership.

(a) Construction Loan:

Loan Type: Conventional  
Lender: To Be Determined  
Amount: \$6,640,345 (proposed)  
Term: 24 months  
Interest Rate: Variable rate 5.0% (estimated)  
Collateral: First mortgage lien  
Type: Non-recourse

(b) Permanent First Mortgage Loan:

Loan Type: Conventional  
Lender: To Be Determined  
Proposed Amount: \$1,986,000  
Term: 30 years  
Interest Rate: 7.0%, fixed (estimated)  
Amortization: 30 years  
Collateral: First mortgage lien  
Type: Non-recourse

(c) Second Mortgage Loan:

Loan Type: Conventional  
Lender: To Be Determined  
Proposed Amount: \$250,000  
Term: 30 years  
Interest Rate: 3.940% fixed, deferred interest  
Amortization: None; principal due at maturity  
Collateral: Second mortgage lien  
Type: Non-recourse

(d) Third Mortgage Loan:

Loan Type: 5% political subdivision loan  
Lender: To Be Determined  
Proposed Amount: \$627,905  
Term: 1 year  
Interest Rate: 3.940% fixed, deferred interest  
Amortization: None; principal due at maturity  
Collateral: Third mortgage lien  
Type: Non-recourse





100 Congress, Suite 300  
Austin, TX 78701  
Telephone: 512-305-4700  
Fax: 512-305-4800  
www.lockelord.com

Cynthia L. Bast  
Direct Telephone: 512-305-4707  
Direct Fax: 512-391-4707  
cbast@lockelord.com

June 14, 2011

**VIA EMAIL**

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

Re: The Mercer, TDHCA No. 11057 (the "Application")

Dear Raquel:

We represent the housing tax credit applicant for Merritt Bryan Station Senior Village, TDHCA No. 11169 in Urban Region 8 (the "Client"). Contact information for the Client is as follows:

Colby Denison  
3701 North Lamar  
Suite 206  
Austin, TX 78705  
(512) 732-1276 (fax)  
colby@denisondevelopment.com

On behalf of the Client, and in accordance with Section 49.10(e) of the Qualified Allocation Plan, we present the following questions or concerns about the scoring for Quantifiable Community Participation in the Application referenced above. Capitalized terms used but not defined in this letter will have the meanings given them in the Qualified Allocation Plan.

Maximum points were awarded for a letter of support from the Booneville Town Center Neighborhood Association (the "Association"). Our Client questions that award, given the following:

1. Not a Neighborhood Organization. The Association was formed by a commercial property owner, as evidenced by its Bylaws. When asked about residents living within the boundaries of the Association, the Association's representative identified three residential properties – one owned by Barbara Coker, one owned by Donald Coker, and one owned by Thomas Vettters. However, per a letter from Mr. Vettters, attached as Exhibit A, none of those

individuals actually reside within the boundaries of the Association. The QAP defines a Neighborhood Organization as:

an organization of persons living near one another within the organization's defined boundaries that contain the proposed Development Site and that has a primary purpose of working to maintain or improve the general welfare of the neighborhood.

and

"[P]ersons living near one another" means two (2) or more separate residential households.

With no evidence that anyone resides within the boundaries of the Association, it cannot be deemed a Neighborhood Organization.

2. No Participation by Residential Owners. In order to become a member of the Association, a property owner must actually file an instrument in the real property records of the county, electing to accept membership. That is an extraordinary burden for a single family homeowner and atypical of the way membership is usually structured for a homeowners association. None of the three homeowners identified within the boundaries of the Association have made such a filing in the real property records, and it is unlikely they would incur the trouble and expense to do so. Thus, none of the residential owners participated in the decision to support the Application.

We appreciate the opportunity to present this information and trust that TDHCA will consider it as appropriate in the allocation process.

Sincerely,



Cynthia L. Bast

cc: Robbye Meyer  
Colby Denison

Exhibit A -- Letter from Property Owner

June 9, 2011

Robbye G. Meyer  
Director of Multifamily Finance  
Texas Department of Housing and Community Affairs  
221 E. 11th Street  
Austin, TX 78701

RE: The Mercer Project in Bryan, Texas

Dear Ms. Meyer,

I have recently become aware of a newly formed neighborhood association named the Boonville Town Center Neighborhood Association and this Association's support letter for the Mercer project in Bryan, Texas. I have also become aware that a property I own located at 2430 Boonville Road is included in the Association's boundaries. Apparently, this Association has submitted a support letter on behalf of the property owners located inside the boundaries of this Association.

I would like to make clear a number of facts that seem to be omitted from this Associations' letter.

1. I do not live at the property (2430 Boonville Rd.) located within the boundaries of this Association.
2. Ms. Barbara Coker does not live at her property (2416 Boonville Rd.) located within the boundaries this Association.
3. Dr. Donald Coker is deceased, and his 2.7 acres (2422 Boonville Rd.) is now owned by his wife Ms. Barbara Coker.
4. I am not aware of any residents that actually live within this Association boundary.
5. Ms. Coker and I **strongly** oppose the Mercer project because we feel it will have negative impact on our property values and increase the crime rate in our neighborhood.

Thank you for your attention to this matter and please let me know if I can provide any additional information to prevent this misleading support letter from being considered. Please let me know that you received this e-mail/letter.

Sincerely,



Thomas F. Vettters, Realtor, Broker, Owner  
Aggieland Realty  
4600 S. Texas Avenue  
Bryan, TX 77802  
979-846-8857 Office  
979-820-3858 Cell  
979-846-2946 Residence  
tomvettters1@hotmail.com

# 110517

June 9, 2011

Robbye G. Meyer  
Director of Multifamily Finance  
Texas Department of Housing and Community Affairs  
221 E. 11th Street  
Austin, TX 78701

06-14-11 A08:41 RCMD

RE: The Mercer Project in Bryan, Texas

Dear Ms. Meyer,

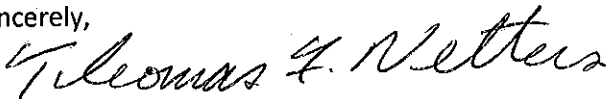
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3. Dr. Donald Coker is deceased, and his 2.7 acres (2422 Boonville Rd.) is now owned by his wife Ms. Barbara Coker.
4. I am not aware of any residents that actually live within this Association boundary.
5. Ms. Coker and I **strongly** oppose the Mercer project because we feel it will have negative impact on our property values and increase the crime rate in our neighborhood.

Thank you for your attention to this matter and please let me know if I can provide any additional information to prevent this misleading support letter from being considered. Please let me know that you received this e-mail/letter.

Sincerely,



Thomas F. Vettters, Realtor, Broker, Owner  
Aggieland Realty  
4600 S. Texas Avenue  
Bryan, TX 77802  
979-846-8857 Office  
979-820-3858 Cell  
979-846-2946 Residence  
tomvettters1@hotmail.com



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Cynthia L. Bast  
Direct Telephone: 512-305-4707  
Direct Fax: 512-391-4707  
cbast@lockelord.com

June 14, 2011

**VIA EMAIL**

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

Re: Cypress Run, TDHCA No. 11073 (the "Application")

Dear Raquel:

We represent the housing tax credit applicant for Walnut Springs, TDHCA No. 11026 in Rural Region 9. Contact information for the applicant is as follows:

G. Granger MacDonald  
2951 Fall Creek Road  
Kerrville, Texas 78028  
830-257-3168 (fax)  
gmacdonald@macdonald-companies.com

On behalf of our client, and in accordance with Section 49.10(e) of the Qualified Allocation Plan, we present the following questions or concerns about the Application referenced above. Capitalized terms used but not defined in this letter will have the meanings given them in the Qualified Allocation Plan.

Site Control. There are discrepancies throughout the Application with regard to the amount of acreage for the Development and the purchase price for the land. Specifically:

Volume 1, Tab 1, Part D	Refers to 6.95 acres
Volume 1, Tab 8	Refers to 6.95 acres
Volume 2, Tab 1, Part C	Refers to 6.95 acres
Volume 3, Tab 3	Refers to 6 acres (purchase and sale agreement)

This is critical because the purchase and sale agreement refers to approximately 6 acres. The Applicant should have the contractual right to purchase all the land needed for the Development.

Ms. Raquel Morales  
 June 14, 2011  
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Volume 1, Tab 3, Part A	Refers to acquisition cost of \$750,000
Volume 3, Tab 3	Refers to acquisition cost of \$110,000 per acre (purchase and sale agreement)
Volume 3, Tab 3	Refers to acquisition cost of \$660,000 (title commitment)
Volume 4, Tab 5	Refers to acquisition cost of \$764,500

The contractual purchase price is \$110,000 per acre. If the Applicant is buying 6 acres, as set forth in the purchase and sale agreement, the purchase price would be \$660,000. If the Applicant is buying 6.95 acres, the purchase price would be \$764,500. It is critical for TDHCA to have the correct amount for underwriting purposes.

Volume 3, Tab 3. This Tab requires the Applicant to submit information about all of the sellers of the proposed property for the 36 months prior to the first day of the Application Acceptance Period. The Applicant responded that "Frank Barron and/or his estate have been in control of the site for the last 36 months." This statement contradicts the information provided from the Bexar Appraisal District, also contained in Volume 3, Tab 3. Specifically, the deed history shows that the property transferred from Austex Inc. to Frank Barron on May 23, 2008. That date is within three years prior to December 20, 2010, which is the first day of the Application Acceptance Period. If Austex Inc. did own the property on May 23, 2008, it seems information with regard to Austex Inc. as a prior owner should have been included by the applicant, as a threshold requirement.

Volume 4, Tab 1. The construction and permanent lender for this Application is related to the Developer and Development Owner. While related party loans are permitted by TDHCA, we believe awarding the eight (8) additional points for having the lender review the Applicant's financial position and credit worthiness is inconsistent with the intent of those points. There is an inherent conflict of interest when a lender is underwriting a borrower that is a related party. The intent of these eight (8) points is to show that an independent financial institution has undertaken additional effort to analyze the financial feasibility of a Development and assure the proposed project is "bankable." When the bank is actually an affiliate of the borrower, it provides TDHCA no additional comfort to know that a related party deems the project feasible. TDHCA regularly monitors identity of interest transactions in other contexts. Similar identity of interest standards should be employed here to ensure that the points are awarded for a meaningful feasibility review.

Additionally, this conflict of interest concern has been expressed by the federal regulators who oversee the various Pedcor financial institutions. Pedcor Bancorp, which has provided the loan commitment letter for this Application, is the parent of International City Bank ("ICB"). ICB is under a Consent Order from the Office of the Comptroller of the Currency (the "OCC"), a tool that is used when the OCC finds a bank has violated banking regulations or engaged in unsound practices. In the Consent Order, attached as Exhibit A, the OCC orders the bank to reduce its direct and indirect investments in Community Development projects. It also restricts the bank's ability to pay money or extend credit to its affiliates.

Similarly, Pedcor Financial, LLC, of which Messrs. Cordingley and Pedigo are Principals, is under a Supervisory Agreement with the Office of Thrift Supervision (the "OTS"), attached as Exhibit B. A Supervisory Agreement is similar to a Consent Order in that it is used when there

Ms. Raquel Morales

June 14, 2011

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are concerns about compliance with banking regulations or financial soundness. In the Supervisory Agreement, the OTS finds that this institution has engaged in unsafe or unsound practices and specifically mandates that it implement a conflicts of interest policy. United Fidelity Bank, F.S.B., which is in the family tree of Pedcor Financial, LLC, is also under a Supervisory Agreement with the OTS, attached as Exhibit C. This Supervisory Agreement also restricts the bank's actions with regard to affiliate transactions.

The consistent theme for these institutions is a concern by the regulators with regard to affiliate situations and the overall financial health of the banks. Federal banking regulations are strict and complex, and we are not claiming that Pedcor Bancorp is committing to make an improper loan. We are simply using these materials to point out that related party loans are fraught with issues that are not present in an arms-length transaction. This begs the question of whether TDHCA should award eight (8) points for a lender's feasibility analysis when that lender has an inherent conflict of interest and publicly recognized concerns about its financial status and financial soundness.

Moreover, we recognize that, after the financial collapse a few years ago, many major financial institutions are subject to supervision by the federal regulators. Other Applicants may have loan commitments from lenders who are subject to regulatory supervision. However, the difference here is that those other financial institutions are not related to the Applicant.

Volume 4, Tab 13. The Applicant requested three (3) points for new construction located in an area that is part of a Community Revitalization Plan. This request is supported by a letter from the City's Development Services Director, indicating that the site is located within a revitalization area. However, the letter never refers to a Community Revitalization Plan or anything similar. Rather, it simply says that the City uses targeted zoning to promote development in areas that need revitalization. The Qualified Allocation Plan defines a Community Revitalization Plan as:

A published **document** under any name, approved and adopted by the local Governing Body . . . by ordinance, resolution, or vote that **targets specific geographic areas for revitalization** and development of residential developments. (emphasis added)

The letter from the City does not attach or refer to a document. It simply indicates that the zoning ordinance is the City's official plan for land use and redevelopment. If a zoning ordinance were the equivalent of a Community Revitalization Plan, every application in every city in the State of Texas that has zoning would be able to qualify for these points. By providing points for a development that fulfills a Community Revitalization Plan, we believe TDHCA was seeking something more – a concerted effort by a city to target and assist impoverished or deteriorated areas in its jurisdiction. Numerous cities across Texas have expended the time and effort to establish a Community Revitalization Plan, utilizing their time and resources to do so. A city that has undertaken this additional effort, and an applicant that strives to locate a development consistently with that effort, is deserving of points in the housing tax credit application process.

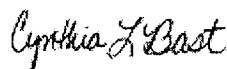
Ms. Raquel Morales  
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Volume 4, Tab 23. The online copy of the Application does not contain a HUB certificate. Also, there is no evidence in the Application that the HUB will materially participate in the Development Owner.

Volume 4, Tab 27. The instructions for this Tab indicate that "[t]he funding source can not be a commercial lender." It should be noted that Mr. Petrie is a Certified Mortgage Banker and a co-founder of P/R Investment & Mortgage Corporation in Carmel, Indiana.

We appreciate the opportunity to present this information and trust that TDHCA will consider it as appropriate in the allocation process.

Sincerely,



Cynthia L. Bast

cc: Robbye Meyer  
Granger MacDonald

Exhibit A – Consent Order, International City Bank  
Exhibit B – Supervisory Agreement, Pedcor Financial  
Exhibit C – Supervisory Agreement, United Fidelity Bank



EXHIBIT A

**#2009-011**

**UNITED STATES OF AMERICA  
DEPARTMENT OF THE TREASURY  
COMPTROLLER OF THE CURRENCY**

<b>In the Matter of:</b> International City Bank Long Beach, California		AA-WE-08-74
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**CONSENT ORDER**

The Comptroller of the Currency of the United States of America (“Comptroller”), through his National Bank Examiner, has supervisory authority over International City Bank, Long Beach, California (“Bank”).

The Bank, by and through its duly elected and acting Board of Directors (“Board”), has executed a “Stipulation and Consent to the Issuance of a Consent Order,” dated January 26, 2009, that is accepted by the Comptroller. By this Stipulation and Consent, which is incorporated by reference, the Bank has consented to the issuance of this Consent Order (“Order”) by the Comptroller.

Pursuant to the authority vested in it by the Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818, the Comptroller hereby orders that:

Article I

COMPLIANCE COMMITTEE

(1) Within ten (10) days of this Order, the Board shall appoint a Compliance Committee of at least three (3) directors of which at least two (2) must not be an employee of the Bank or any of its affiliates (as the term “affiliate” is defined in 12 U.S.C. § 371c(b)(1)), or a family member of any such person. Upon appointment, the names of the members of the

Compliance Committee and, in the event of a change of the membership, the name of any new member shall be submitted in writing to the Assistant Deputy Comptroller.

(2) The Compliance Committee shall be responsible for monitoring and coordinating the Bank's adherence to the provisions of this Order and shall meet at least monthly.

(3) By no later than February 27, 2009, and by the end of every calendar month thereafter, the Compliance Committee shall submit a written progress report to the Board setting forth in detail:

- (a) a description of the action needed to achieve full compliance with each Article of this Order;
- (b) actions taken to comply with each Article of this Order; and
- (c) the results and status of those actions.

(4) The Board shall provide a summary report of the progress reached in attaining compliance with each Article of this Order to the Assistant Deputy Comptroller within ten (10) days of the end of each calendar quarter.

(5) All reports or plans which the Bank or Board has agreed to submit to the Assistant Deputy Comptroller pursuant to this Order shall be forwarded to the:

Assistant Deputy Comptroller  
Southern California – South Field Office  
1925 Palomar Oaks Way, Suite 202  
Carlsbad, California 92008

## Article II

### CAPITAL AND STRATEGIC PLAN

(1) Effective as of the date of this Order, the Bank shall at all times maintain the following minimum capital ratios:

- (a) Tier 1 capital at least equal to nine percent (9%) of adjusted total assets;  
and
- (b) total risk-based capital at least equal to twelve percent (12%) of risk-weighted assets.

(2) For purposes of this Article, “Tier 1 capital,” “total risk-based capital,” “adjusted total assets,” and “risk-weighted assets” are as defined in 12 C.F.R. Part 3.

(3) The requirement in this Order to meet and maintain a specific capital level means that the Bank is not to be deemed to be “well capitalized” for purposes of 12 U.S.C. § 1831o and 12 C.F.R. Part 6 pursuant to 12 C.F.R. § 6.4(b)(1)(iv).

(4) Effective as of the date of this Order, the Bank shall only declare dividends:

- (a) when the Bank is in compliance with the Bank’s Three-Year Plan as described below;
- (b) when the Bank is in compliance with 12 U.S.C. §§ 56 and 60; and
- (c) with the prior written approval from the Assistant Deputy Comptroller, which shall be granted or denied within thirty (30) days of the receipt of a dividend request from the Bank.

(5) Effective as of the date of this Order, the Bank shall not increase its total loans above the amount shown in its amended June 30, 2008 Consolidated Report of Condition (“Call Report”), schedule RC4b, until the Bank corrects the deficiencies in Asset Quality described in the Report of Examination conducted as of June 30, 2008 (the “ROE”), returns the Bank to a satisfactory condition, and the Bank receives a prior written determination of no supervisory objection from the Assistant Deputy Comptroller. For purposes of this paragraph, the compliance determination shall be made as of each Call Report filing.

(6) Within ninety (90) days of this Order, the Board shall develop a written strategic plan for the Bank covering at least the next three years (hereafter the "Bank's Three-Year Plan"), complete with specific time frames that incorporate the strategic and other requirements of this Article. A copy of the Bank's Three-Year Plan shall be forwarded to the Assistant Deputy Comptroller for a prior written determination of no supervisory objection.

(7) The Bank's Three-Year Plan shall establish objectives and projections for the Bank's overall risk profile, earnings performance, growth expectations, balance sheet mix, off-balance sheet activities, liability structure, capital and liquidity adequacy, product line development and market segments that the Bank intends to promote or develop, together with specific strategies to achieve those objectives, that are specific, measurable, verifiable, and, at a minimum, address or include:

- (a) an assessment of the Bank's present and future operating environment;
- (b) the development of strategic goals and quantifiable measures with specific implementation dates to ensure the Bank attains sustained earnings to support capital and liquidity;
- (c) an evaluation of the Bank's internal operations, staffing requirements, Board and management information systems and policies and procedures for their adequacy and contribution to the accomplishment of the goals and objectives developed pursuant to this Article;
- (d) specific plans to establish responsibilities and accountability for the strategic planning process, new products, proposed changes in the Bank's operating environment, reduction of problem assets, and maintenance of adequate liquidity;

- (e) control systems to identify and reduce risk to earnings, capital, and liquidity, and risks associated with any proposed changes in the Bank's operating environment;
- (f) growth limitations designed to comply with Paragraph (5) of this Article and actions to monitor, control and reduce, where appropriate, significant concentrations of credit;
- (g) specific plans for the maintenance of adequate capital that may in no event be less than the requirements specified in Paragraph (1) of this Article;
- (h) specific plans for the maintenance of adequate liquidity in accordance with the requirements of Article III;
- (i) a dividend policy that only permits the declaration of a dividend in accordance with Paragraph (4) of this Article;
- (j) projections for capital and liquidity requirements based upon a detailed analysis of the Bank's assets, liabilities, earnings, fixed assets, and off-balance sheet activities;
- (k) a financial forecast to include projections for major balance sheet and income statement accounts and desired financial ratios over the next three years that shall address or include consideration of the requirements of this Article; and
- (l) systems to monitor the Bank's progress in meeting the plan's goals and objectives.

(8) Upon receiving a written determination of no supervisory objection from the Assistant Deputy Comptroller, the Board shall immediately implement and thereafter ensure adherence to the Bank's Three-Year Plan.

### Article III

#### LIQUIDITY MANAGEMENT

(1) Within sixty (60) days of this Order, the Board shall develop and submit for a prior written determination of no supervisory objection, a written liquidity program to ensure the Bank maintains liquidity at a level that is sufficient to sustain the Bank's current operations and to withstand any anticipated or extraordinary demand against its funding base, to include at a minimum:

- (a) measures to increase and maintain sufficient on-balance sheet liquidity;
- (b) a significant reduction in reliance upon non-core funding sources, including brokered deposits, credit-sensitive wholesale borrowings and uninsured deposits;
- (c) the establishment of additional back-up funding sources;
- (d) policies and procedures to ensure the implementation of adequate liquidity planning tools, to include:
  - (i) a review of administrative policies and procedures to ensure they are consistent with the Board's guidance and risk tolerances;
  - (ii) specific balance sheet liquidity targets that are consistent with the tools used to measure performance;
  - (iii) reasonable risk limits to control the level of liquidity risk that incorporate forward-looking risk measurements and liability

concentration limits such as limits on the amount of funds that may be sourced from any individual customer or groups of customers, or liability concentration limits by instrument; and

- (e) a contingency funding plan that ensures the Bank can remain liquidity solvent through stressed environments and that includes, at a minimum:
  - (i) management's best estimate of balance sheet changes that may result from a liquidity or credit event;
  - (ii) specific terms or events that trigger enactment of the plan;
  - (iii) necessary management information systems and reporting criteria for use in crises situations;
  - (iv) management responsibilities for enacting the plan and for taking specific actions once enacted; and
  - (v) prioritization of all sources of funding for the various scenarios including asset side funding, liability side funding, and off-balance sheet funding.

(2) After the OCC has advised the Bank that it does not take supervisory objection to the liquidity program required by this Article, the Board shall immediately implement, and shall thereafter ensure adherence to its terms.

#### Article IV

##### COMMUNITY DEVELOPMENT INVESTMENTS

(1) Within sixty (60) days of this Order, the Board shall prepare and submit for a prior written determination, a plan to reduce and maintain the Bank's direct and indirect investments in Community Development projects (as recorded using Generally Accepted



Accounting Principles "GAAP") to no more than fifteen percent (15%) of the Bank's capital and surplus as defined in 12 C.F.R. § 24.2(b). The plan shall require definitive annual reductions that correlate to the Bank's capital and surplus and shall not extend beyond five years from the date of this Order.

(2) Upon receiving a written determination of no supervisory objection from the Assistant Deputy Comptroller, the Board shall immediately implement and thereafter ensure adherence to the plan required by Paragraph (1) of this Article.

#### Article V

#### COMMERCIAL REAL ESTATE RISK MANAGEMENT

(1) Within sixty (60) days of this Order, the Board shall prepare and submit to the Assistant Deputy Comptroller for a prior written determination of no supervisory objection, a written program (including appropriate revisions to policies and procedures) designed to manage the risk in the Bank's commercial real estate ("CRE") loan portfolio in accordance with the guidelines in OCC Bulletin 2006-46, Concentration in Commercial Real Estate Lending, Sound Risk Management Practices (dated December 6, 2006) and the Commercial Real Estate and Construction Lending, A-CRE, of the *Comptroller's Handbook*. The written CRE program shall, at a minimum, include:

- (a) the establishment of an overall CRE reduction strategy that includes CRE concentration limits stratified by type, locality and other meaningful measures supported by written analysis;
- (b) monthly monitoring of concentration reports that stratify the CRE portfolio by product type, locality and other meaningful measures;

- (c) strategies and procedures to manage and reduce CRE concentrations to conform with established limits set in Subparagraph (a) of this Article;
- (d) portfolio-level multi-factor stress testing and/or sensitivity analysis to quantify the impact of changing economic conditions on asset quality, earnings, and capital;
- (e) significant individual loan stress testing and/or sensitivity analysis to quantify the impact of changing economic conditions on asset quality, earnings, and capital;
- (f) the establishment of Loan Policy CRE underwriting standards by CRE type that include specific requirements relating to:
  - (i) maximum loan amount and maturity by type of property;
  - (ii) approval authorizations;
  - (iii) minimum file documentation and analysis;
  - (iv) minimum requirements for initial investment and maintenance of hard equity;
  - (v) minimum standards for borrower net worth, property cash flow/debt service, collateral coverage, and guarantor support;
  - (vi) the performance of global cash flow analysis to evaluate the repayment ability of borrowers with multiple projects;
  - (vii) standards for ensuring a complete and accurate assessment of guarantor support;
  - (viii) standards for ensuring that CRE loans have appropriate minimum loan covenants;

- (ix) minimum standards for the acceptability for using, and defined limits for soft cost and/or interest reserve financing;
  - (x) maximum amortization periods and minimum principal curtailment for CRE and construction projects that are not meeting original projections; and
  - (xi) procedures for loan closing and disbursement processes, including the supervised disbursement of construction loan proceeds;
- (g) requirements to ensure participations purchased are consistent with sound banking practices, guidelines set forth in Banking Circular 181 (Revised), dated August 2, 1984, and the requirements of 12 C.F.R. Part 34;
- (h) maintenance of proper collateral margins in loans made for the purpose of constructing or developing real estate, including but not limited to, procedures for ensuring that:
- (i) periodic, meaningful, well-documented, inspections are performed on all construction projects;
  - (ii) draw requests are advanced in accordance with construction progress and budget;
  - (iii) documentation is maintained of project completion versus amount advanced;
  - (iv) lien waivers are obtained from contractors and sub-contractors; and
  - (v) borrower's hard equity is tracked by project;

- (i) requirements for periodic reviews of borrowers and loans not to exceed one year that include credit reviews and analysis of operating statements, rent rolls, and guarantor financial condition as applicable;
- (j) standards for when CRE loan policy exceptions are appropriate, what factors should exist to mitigate exceptions, and how the level and trend of exceptions should be documented, tracked and reported to the Board;
- (k) standards for appraisal ordering and review processes in accordance with Article VI; and
- (l) standards to ensure CRE loans are appropriately risk rated in accordance with Article VII.

(2) Upon receiving a written determination of no supervisory objection from the Assistant Deputy Comptroller, the Board shall immediately implement and thereafter ensure adherence to the program, policies and procedures required by this Article.

#### Article VI

##### APPRAISAL AND EVALUATION PROCESS

(1) Within sixty (60) days of this Order, the Board shall revise, adopt, implement and thereafter ensure Bank adherence to a written policy designed to ensure the Bank obtains real estate appraisals and evaluations in compliance with USPAP, 12 C.F.R. Part 34, Advisory Letter 2003-9, and OCC Bulletin 2005-6, to include at a minimum:

- (a) the required use of a standard appraisal form for ordering all appraisals;
- (b) the ordering of appraisals, independent of the lending function;
- (c) the use of Board approved appraisers only;

- (d) the establishment and implementation of a policy requiring a meaningful review, independent of the lender, of all appraisals to include analysis commensurate with the type, size and complexity of the property being appraised; and
- (e) the establishment of a tickler system for tracking appraisals ordered, received, returned, and reviewed.

(2) A copy of the policy developed pursuant to this Article shall be forwarded to the Assistant Deputy Comptroller within five (5) days of its adoption by the Board.

#### Article VII

##### CREDIT RISK RATINGS AND NONACCRUAL RECOGNITION

- (1) Within sixty (60) days of this Order, the Board shall develop, implement, and thereafter ensure adherence to a program designed to identify and record the Bank's loan portfolio risk, to include, at a minimum, provisions requiring that:
- (a) the Bank's loans and other assets are appropriately and timely risk rated and charged off by the lending officers using a loan grading system that is based upon current facts, existing repayment terms and that is consistent with the guidelines set forth in Rating Credit Risk, A-RCR, of the *Comptroller's Handbook*;
  - (b) the Bank's loans and other assets are timely placed on nonaccrual by the lending officers in accordance with the guidelines set forth in the Call Report;
  - (c) loan officers appropriately and timely risk rate and/or place loans on nonaccrual; and

(d) loan officer failure to properly risk rate and/or place loans on nonaccrual is considered in periodic performance reviews and compensation.

(2) A copy of the program developed pursuant to this Article shall be forwarded to the Assistant Deputy Comptroller within five (5) days of its adoption by the Board.

#### Article VIII

##### EXTERNAL LOAN REVIEW

(1) The Board shall employ a qualified consultant to perform independent reviews of the Bank's loan portfolio at least semi-annually to assure the timely identification and categorization of problem credits.

(2) The scope of the engagement with the loan review consultant shall provide for a written report to be filed with the Board after each review and shall use a loan and lease grading system consistent with the guidelines set forth in Rating Credit Risk, A-RCR, of the Comptroller's Handbook.

#### Article IX

##### PROBLEM LOAN MANAGEMENT

(1) Effective as of the date of this Order, the Board shall take immediate and continuing action to protect its interest in those assets criticized in the ROE, in any subsequent Report of Examination, by internal or external loan review, or in any list provided to management by the National Bank Examiners during any examination.

(2) Within sixty (60) days of this Order, the Board shall prepare and submit to the Assistant Deputy Comptroller for a prior written determination of no supervisory objection, a written program (including appropriate revisions to policies and procedures) designed to eliminate the basis for criticism of the Bank's criticized assets, to include at a minimum:

- (a) the designation or retention of appropriate staff to assume loan workout responsibilities;
- (b) standards to distinguish assets that should be managed by loan workout staff from assets that should be managed by the originating loan officer;
- (c) measures to ensure assets assigned to lending officers are managed to the standards expected of loan workout personnel;
- (d) the monthly submission and review of problem asset reports for all criticized credit relationships totaling \$250,000 or above, that require, at a minimum, analysis and documentation of the following:
  - (i) an identification of the expected sources of repayment and an analysis of their adequacy;
  - (ii) the appraised value of supporting collateral and the position of the Bank's lien on such collateral where applicable as well as other necessary documentation to support the collateral valuation;
  - (iii) an analysis of current and satisfactory credit information, including cash flow analysis where loans are to be repaid from operations;
  - (iv) the proposed action to eliminate the basis of criticism and the time frame for its accomplishment;
  - (v) trigger dates for positive borrower actions or for loan officers to reassess the strategy and enact collection plans;
  - (vi) a determination of whether the loan is impaired and the amount of the impairment, consistent with FASB Statement of Financial

Accounting Standards No. 114, Accounting by Creditors for Impairment of a Loan; and

(vii) for criticized relationships of \$250,000 or above that were made for the purpose of constructing or developing CRE, the reports shall also include:

- (A) the initial scheduled maturity date of the loan, number of extensions and/or renewals, and current maturity date;
- (B) project development status;
- (C) a comparison of development costs to the budgeted amount;
- (D) a comparison of sales activity to the original sales projections;
- (E) amount of initial interest reserve and the amount of any subsequent additions to the reserve;
- (F) an assessment of the borrower's global cash flow;
- (G) an assessment of any guarantor's global cash flow; and
- (H) any other significant information relating to the project.

(3) Effective as of the date of this Order, the Bank may not extend credit, directly or indirectly, including renewals, extensions or capitalization of accrued interest, to a borrower whose loans or other extensions of credit are criticized in the ROE, in any subsequent Report of Examination, in any internal or external loan review, or in any list provided to management by the National Bank Examiners during any examination and whose aggregate loans or other extensions exceed \$250,000, unless each of the following conditions is met:



- (a) the Board or a designated committee thereof finds that the extension of additional credit is necessary to promote the best interests of the Bank and that prior to renewing, extending or capitalizing any additional credit, a majority of the Board or a designated committee thereof approves the credit extension and documents in writing, the reasons that such extension is necessary to promote the best interests of the Bank; and
- (b) the Board's formal plan to collect or strengthen the criticized asset will not be compromised by the extension of credit.

(4) Upon receiving a written determination of no supervisory objection from the Assistant Deputy Comptroller, the Board shall immediately implement and thereafter ensure adherence to the program, policies and procedures required by this Article.

#### Article X

##### ALLOWANCE FOR LOAN AND LEASE LOSSES

(1) Within sixty (60) days of this Order, the Board shall adopt, implement, and thereafter ensure adherence to written policies and procedures for maintaining an adequate Allowance for Loan and Lease Losses ("Allowance") in accordance with Generally Accepted Accounting Principles ("GAAP"). The Allowance policies and procedures shall be consistent with the guidance set forth in the Federal Financial Institutions Examination Council's "Interagency Policy Statement on the Allowance for Loan and Lease Losses" dated December 13, 2006 (OCC Bulletin 2006-47), and July 20, 2001 (OCC Bulletin 2001-37), and shall at a minimum include:

- (a) procedures for determining whether a loan is impaired and measuring the amount of impairment, consistent with Statement of Financial Accounting Standards No. 114, Accounting by Creditors for Impairment of a Loan;
- (b) procedures for segmenting the loan portfolio and estimating loss on groups of loans, consistent with Statement of Financial Accounting Standards No. 5, Accounting for Contingencies;
- (c) procedures for validating the Allowance methodology;
- (d) procedures to ensure that the estimation of credit losses considers the relevant qualitative and environmental factors, with particular focus on the following:
  - (i) trends in the Bank's internal risk ratings, delinquent and nonaccrual loans;
  - (ii) results of the Bank's external loan review;
  - (iii) concentrations of credit in the Bank;
  - (iv) present and prospective economic conditions; and
  - (v) experience, performance and sufficiency of the Bank's lending staff.

(2) The program shall provide for a process for summarizing and documenting, for the Board's review and approval, the amount to be reported in the Call Reports for the Allowance. Any deficiency in the Allowance shall be remedied in the quarter it is discovered, prior to the filing of the Call Report, by additional provisions from earnings. Written documentation shall be maintained indicating the factors considered and conclusions reached by the Board in determining the adequacy of the Allowance.

(3) A copy of the program developed pursuant to this Article shall be forwarded to the Assistant Deputy Comptroller within five (5) days of its adoption by the Board.

## Article XI

### BOOKS AND RECORDS

(1) Within sixty (60) days of this Order, the Board shall take the necessary steps to ensure that the Bank's books and records are restored to a complete and accurate condition and comply with GAAP. Thereafter, the Board shall ensure that the Bank's books, records and Management Information Systems are maintained in a complete and accurate condition and comply with GAAP.

(2) Within thirty (30) days of this Order, the Board shall review the following areas and make any necessary accounting or reporting corrections:

- (a) derivative agreements with the parent, Pedcor Bancorp;
- (b) Small Business Administration ("SBA") servicing asset, gain on sale income, and associated regulatory capital calculations;
- (c) Other Real Estate Owned;
- (d) loan participations with Bank affiliates;
- (e) charge-offs related to the loan participations;
- (f) put agreements with the parent; and
- (g) securities that are being held to maturity.

(3) Within sixty (60) days of this Order, the Board shall take the necessary steps to file amended Call Reports that reflect all of the accounting and reporting corrections described in the ROE as well as any other identified corrections, including but not limited to, those identified by the review required by Paragraph (2) of this Article.

(4) Within sixty (60) days of this Order, the Board shall develop, implement, and thereafter ensure Bank adherence to a written program of comprehensive accounting policies and procedures, to include at a minimum:

- (a) detailed guidance and/or the development of templates for ensuring compliance with complex accounting pronouncements that include, but are not limited to, Statements of Financial Accounting Standards (“SFAS”) 91, SFAS 114, SFAS 133, SFAS 140, SFAS 156, and SFAS 157;
- (b) guidelines to ensure that the Bank’s books and records are kept in accordance with GAAP and that compliance is maintained with all regulatory reporting requirements, with particular emphasis on the following areas:
  - (i) derivative agreements with the parent, Pedcor Bancorp;
  - (ii) SBA servicing asset, gain on sale income, and associated regulatory capital calculations;
  - (iii) Other Real Estate Owned;
  - (iv) loan participations with Bank affiliates;
  - (v) charge-offs related to the loan participations;
  - (vi) put agreements with the parent; and
  - (vii) securities that are being held to maturity; and
- (c) the performance of monthly analytical review of all significant accounts.

(5) Within sixty (60) days of this Order, the Board shall take the necessary steps to ensure that the Bank has sufficient accounting management and staff with adequate bank

regulatory experience to ensure compliance with GAAP and the program developed pursuant to this Article.

(6) A copy of the program developed pursuant to this Article shall be forwarded to the Assistant Deputy Comptroller within five (5) days of its adoption by the Board.

## Article XII

### AFFILIATE TRANSACTIONS

(1) Effective as of the date of this Order, the Bank shall not, directly or indirectly, pay money or its equivalent to or for the benefit of, or extend credit in any form to or for the benefit of, its affiliates, or transfer assets between the Bank and its affiliates, or enter into or engage in any transaction that obligates the Bank to do the same, unless:

- (a) the Board has conducted an independent review of the action, that is documented in writing; and
- (b) the Board has determined in writing that it is advantageous for the Bank to engage in such action, that the action complies with all applicable Bank policies, laws, rules, regulations, and Comptroller's issuances, including, but not limited to 12 C.F.R. Part 223, and is accounted for in accordance with GAAP.

(2) For purposes of this Order, "affiliate" shall have the meaning set forth in 12 C.F.R. § 223.2(a) as if the Bank were a member bank, provided that any subsidiary of the Bank shall be considered an affiliate of the Bank.

(3) The following transfers shall be excluded from the requirement contained in Paragraph (1) of this Article:

- (a) the deposit or withdrawal of any funds in the normal course of business from any demand deposit account held by the Bank for the benefit of any affiliate; and
- (b) the payment or receipt of funds related to any Interest Rate Protection Agreement that existed on or before September 30, 2008.

(4) Within thirty (30) days of this Order, the Board shall perform a comprehensive review of all of its derivative contracts and their associated documentation, reporting and accounting to determine whether the Bank has complied with its Derivative Policy, 12 C.F.R. Part 223, and GAAP. Upon completion of the review, the Board shall take the necessary steps to ensure that the Bank corrects any deficiencies in reporting or documentation, including those deficiencies identified in the ROE, and files amended Call Reports as necessary.

#### Article XIII

#### BOARD OVERSIGHT

(1) Within thirty (30) days of this Order, the Board shall develop, adopt, and thereafter adhere to a written policy designed to ensure that management effectively addresses adverse findings contained in compliance reviews, audits, and examinations. The policy shall include, at a minimum:

- (a) a requirement that management responds to audit, compliance, and regulatory criticisms with a written action plan that contains:
  - (i) corrective actions to be taken;
  - (ii) deadlines for taking the corrective action; and
  - (iii) the individual responsible for making the corrective action;

- (b) formal review and approval by the Board of management's proposed response;
  - (c) a tracking system that will ensure that applicable criticisms are reported to the Board and corrected in timely manner; and
  - (d) retention in the Bank's books and records of:
    - (i) all written responses to audit, compliance, and regulatory criticisms; and
    - (ii) documentation of Board approval of the written responses.
- (2) A copy of the policy developed pursuant to this Article shall be forwarded to the Assistant Deputy Comptroller within five (5) days of its adoption by the Board.

#### Article XIV

#### CLOSING

- (1) Although the Bank is required to submit certain proposed actions and programs for the review or prior written determination of no supervisory objection of the Deputy Comptroller, the Board has the ultimate responsibility for proper and sound management of the Bank and the completeness and accuracy of the Bank's books and records.
- (2) If, at any time, the Comptroller deems it appropriate in fulfilling the responsibilities placed upon him by the several laws of the United States to undertake any action affecting the Bank, nothing in this Order shall in any way inhibit, estop, bar or otherwise prevent the Comptroller from so doing.
- (3) The provisions of this Order shall remain effective and enforceable, except to the extent that, and until such time as, any provisions of this Order shall have been amended, suspended, waived, or terminated in writing by the Comptroller.

(4) In each instance in this Order in which the Bank or the Board is required to ensure implementation of or adherence to, or to undertake to perform, an obligation of the Bank, the Board shall:

- (a) Authorize and adopt such actions on behalf of the Bank as may be necessary or appropriate for the Bank to perform its obligations under this Order;
- (b) Require the timely reporting by Bank management of such actions directed by the Board to be taken under the terms of this Order;
- (c) Follow up on any non-compliance with such actions in a timely and appropriate manner; and
- (d) Require corrective action be taken in a timely manner for any non-compliance with such actions.

(5) This Order is intended to be, and shall be construed to be, a final order issued pursuant to 12 U.S.C. § 1818(b), and expressly does not form, and may not be construed to form, a contract binding the Comptroller or the United States.

(6) The terms of this Order, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreements or prior arrangements between the parties, whether oral or written.

**IN TESTIMONY WHEREOF**, the undersigned, authorized by the Comptroller, has hereunto set his hand on behalf of the Comptroller.

/s/

2/12/09

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Steven J. Vander Wal  
Assistant Deputy Comptroller  
Southern California – South Field Office

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Date



**UNITED STATES OF AMERICA  
DEPARTMENT OF THE TREASURY  
COMPTROLLER OF THE CURRENCY**

<b>In the Matter of:</b> International City Bank Long Beach, California		AA-WE-08-74
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**STIPULATION AND CONSENT TO THE ISSUANCE  
OF A CONSENT ORDER**

The Comptroller of the Currency of the United States of America (“Comptroller”) intends to initiate cease and desist proceedings against the International City Bank, Long Beach, California (“Bank”), pursuant to 12 U.S.C. § 1818(b) through the issuance of a Notice of Charges for an Order to Cease and Desist for: unsafe and unsound banking practices relating to the supervision of the affairs of the Bank.

The Bank, in the interest of compliance and cooperation, consents to the issuance of a Consent Order, dated February 12, 2009 (the “Order”);

In consideration of the above premises, the Comptroller, through his authorized representative, and the Bank, through its duly elected and acting Board of Directors, hereby stipulate and agree to the following:

**ARTICLE I**

**Jurisdiction**

(1) The Bank is a national banking association chartered and examined by the Comptroller pursuant to the National Bank Act of 1864, as amended, 12 U.S.C. § 1 *et seq.*

(2) The Comptroller is “the appropriate Federal banking agency” regarding the Bank pursuant to 12 U.S.C. §§ 1813(q) and 1818(b).

(3) The Bank is an “insured depository institution” within the meaning of 12 U.S.C. § 1818(b)(1).

## ARTICLE II

### Agreement

(1) The Bank, without admitting or denying any wrongdoing, hereby consents and agrees to the issuance of the Order by the Comptroller.

(2) The Bank further agrees that said Order shall be deemed an “order issued with the consent of the depository institution” as defined in 12 U.S.C. § 1818(h)(2), and consents and agrees that said Order shall become effective upon its issuance and shall be fully enforceable by the Comptroller under the provisions of 12 U.S.C. § 1818(i). Notwithstanding the absence of mutuality of obligation, or of consideration, or of a contract, the Comptroller may enforce any of the commitments or obligations herein undertaken by the Bank under his supervisory powers, including 12 U.S.C. § 1818(i), and not as a matter of contract law. The Bank expressly acknowledges that neither the Bank nor the Comptroller has any intention to enter into a contract.

(3) The Bank also expressly acknowledges that no officer or employee of the Comptroller has statutory or other authority to bind the United States, the U.S. Treasury Department, the Comptroller, or any other federal bank regulatory agency or entity, or any officer or employee of any of those entities to a contract affecting the Comptroller’s exercise of his supervisory responsibilities.

ARTICLE III

Waivers

- (1) The Bank, by signing this Stipulation and Consent, hereby waives:
  - (a) the issuance of a Notice of Charges pursuant to 12 U.S.C. § 1818(b);
  - (b) any and all procedural rights available in connection with the issuance of the Order;
  - (c) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(i), 12 C.F.R. Part 19
  - (d) all rights to seek any type of administrative or judicial review of the Order; and
  - (e) any and all rights to challenge or contest the validity of the Order.

ARTICLE IV

Other Action

(1) The Bank agrees that the provisions of this Stipulation and Consent shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any other action affecting the Bank if, at any time, it deems it appropriate to do so to fulfill the responsibilities placed upon him by the several laws of the United States of America.

IN TESTIMONY WHEREOF, the undersigned, authorized by the Comptroller as his representative, has hereunto set his hand on behalf of the Comptroller.

/s/	2/12/09
_____ Steven J. Vander Wal Assistant Deputy Comptroller Southern California – South Field Office	_____ Date

IN TESTIMONY WHEREOF, the undersigned, as the duly elected and acting Board of Directors of the Bank, have hereunto set their hands on behalf of the Bank.

/s/	2/12/09
_____ F. King Alexander	_____ Date
/s/	2/12/09
_____ Bruce A. Cordingley	_____ Date
/s/	2/12/09
_____ N. Jack Dilday	_____ Date
/s/	2/12/09
_____ Jane J. Netherton	_____ Date
/s/	2/12/09
_____ Beverly O'Neill	_____ Date
/s/	2/12/09
_____ Stephen R. Oettinger	_____ Date
/s/	2/12/09
_____ Gerald K. Pedigo	_____ Date
/s/	2/12/09
_____ Jean Bixby Smith	_____ Date
/s/	2/12/09
_____ James J. Sullos, Jr.	_____ Date

**EXHIBIT B**

**SUPERVISORY AGREEMENT**

This Supervisory Agreement (Agreement) is made this 13th day of August, 2010, by and through the Board of Managers (Board) of Pedcor Financial , LLC, Carmel, Indiana, OTS Docket No. H3598 (Holding Company) and the Office of Thrift Supervision (OTS), acting by and through its Regional Director for the Central Region (Regional Director).

**WHEREAS**, the OTS, pursuant to 12 U.S.C. § 1818, has the statutory authority to enter into and enforce supervisory agreements to ensure the establishment and maintenance of appropriate safeguards in the operation of the entities it regulates; and

**WHEREAS**, the Holding Company is subject to examination, regulation and supervision by the OTS;

**WHEREAS**, based on its November 9, 2009 examination of the enterprise consisting of the Holding Company and the Holding Company's direct and indirect subsidiaries, Pedcor Financial Bancorp, Carmel, Indiana, OTS Docket No. H4257 (Mid-Tier Holding Company), and Fidelity Federal Bancorp, Evansville, Indiana, OTS Docket No. H2204 (First-Tier Holding Company), the OTS finds that the Holding Company has engaged in unsafe or unsound practices in conducting its consolidated operations; and

**WHEREAS**, in furtherance of their common goal to ensure that the Holding Company addresses the unsafe or unsound practices identified by the OTS in the November 9, 2009 Report of Examination, the Holding Company and the OTS have mutually agreed to enter into this Agreement.

**NOW THEREFORE**, in consideration of the above premises, it is agreed as follows:

**Capital Plan.**

1. By October 31, 2010, the Holding Company shall submit to the Regional Director a written plan for enhancing the consolidated capital of the Holding Company (Capital Plan). The Capital Plan shall cover the period beginning with the quarter starting January 1, 2011 through the quarter ending December 31, 2012. At a minimum, the Capital Plan shall include:

- (a) establishment of a minimum tangible capital ratio of tangible equity capital to total tangible assets commensurate with the Holding Company's consolidated risk profile;
- (b) capital preservation and enhancement strategies with specific time frames to achieve and maintain the Board-established minimum tangible equity capital ratios;
- (c) operating strategies to achieve net income levels that will result in adequate debt service throughout the term of the Capital Plan;
- (d) contingency plans to provide capital support to the Mid-Tier Holding Company and First-Tier Holding Company based on an assessment of the risk profile of the activities of the consolidated Holding Company under various stress scenarios;
- (e) quarterly cash flow projections for the Holding Company on a stand alone basis for the period covered by the Capital Plan that identify both the sources of funds and the expected uses of funds;
- (f) detailed scenarios to stress-test the consolidated minimum capital targets and debt service coverage based on continuing operating results, economic conditions and risk profile of consolidated assets; and

(g) identification of all relevant assumptions made in formulating the Capital Plan and a requirement that documentation supporting such assumptions be retained by the Holding Company.

2. Upon receipt of written notification from the Regional Director that the Capital Plan is acceptable, the Holding Company shall implement and adhere to the Capital Plan. A copy of the Capital Plan shall be provided to the Regional Director within five (5) days after Board approval.

3. Any material modifications<sup>1</sup> to the Capital Plan shall receive the prior written non-objection of the Regional Director. The Holding Company shall submit proposed material modifications to the Regional Director at least forty-five (45) days prior to implementation.

**Capital Plan Variance Reports.**

4. Within forty-five (45) days after the end of each quarter, after implementation of the Capital Plan, the Board shall review quarterly variance reports on the Holding Company's compliance with the Capital Plan (Variance Reports). The Variance Report shall:

- (a) identify variances in the Holding Company's actual performance during the preceding quarter as compared to the projections set forth in the Capital Plan;
- (b) contain an analysis and explanation of identified variances; and
- (c) discuss the specific measures taken or to be taken by the Holding Company to address identified variances.

5. A copy of each Variance Report shall be provided to the Regional Director within five (5) days after Board review.

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<sup>1</sup> A modification shall be considered material under this Paragraph if the Holding Company: (a) plans to engage in any activity that is inconsistent with the Capital Plan; (b) plans to exceed the level of any activity contemplated in the Capital Plan by more than ten percent (10%); or (c) fails to meet target amounts established in the Capital Plan by more than ten percent (10%).



**Dividends and Capital Distributions.**

6. Effective immediately, the Holding Company shall not declare or pay any cash dividends or other capital distributions or purchase, repurchase or redeem or commit to purchase, repurchase, or redeem any Holding Company equity stock without the prior written non-objection of the Regional Director. The Holding Company shall submit its written request for non-objection to the Regional Director at least forty-five (45) days prior to the anticipated date of the proposed dividend, capital distribution, or stock transaction. The written request for such notice of non-objection shall: (a) contain current and pro forma projections regarding the Holding Company's capital, asset quality, and earnings; and (b) address compliance with the Capital Plan required by Paragraph 1 of this Agreement.

**Debt Limitations.**

7. Effective immediately, the Holding Company shall not: incur, issue, renew, redeem, or rollover any debt,<sup>2</sup> increase any current lines of credit, or otherwise incur any additional debt without receiving the prior written non-objection of the Regional Director. All written requests to the Regional Director shall include, at a minimum: a statement regarding the purpose of the debt; a copy of the debt agreement; the planned source(s) for debt repayment; and an analysis of the cash flow resources available to meet such debt repayment. The Holding Company's written request for non-objection shall be submitted to the Regional Director at least forty-five (45) days prior to the anticipated date of the proposed debt issuance, renewal, redemption, or rollover; the proposed increase in any current lines of credit; or any other incurrence of additional debt.

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<sup>2</sup> For purposes of this Paragraph, the term "debt" includes, but is not limited to: loans, bonds, cumulative preferred stock, hybrid capital instruments such as subordinated debt or trust preferred securities, and guarantees of debt; and does not include: liabilities that are incurred in the ordinary course of business to acquire goods and services and that are normally recorded as accounts payable or accruals under generally accepted accounting principles.

**Conflict of Interest Policy.**

8. Within ninety (90) days, the Holding Company shall adopt, implement, and thereafter adhere to a written, comprehensive conflict of interest policy (Conflict of Interest Policy) applicable to the Holding Company's directors, principal shareholders, and executive officers (Insiders) and related interests (Related Interests) of such Insiders as defined by 12 C.F.R. Part 215. The Conflict of Interest Policy, in addition to defining a conflict of interest, shall address:

- (a) avoidance of conflicts of interest and breaches of fiduciary duty, and the appearance of conflicts of interest by Insiders and Related Interests;
- (b) involvement in the Holding Company's transaction approval process by Insiders and Related Interests that may benefit directly or indirectly from a Holding Company's decision to enter into a transaction;
- (c) disclosure of actual and potential conflicts of interest to the Board and periodic disclosure of Related Interests as required by 12 C.F.R. Part 215;
- (d) requirements for arms-length dealing by the Holding Company, Mid-Tier Holding Company, and First-Tier Holding Company in any transactions involving Insiders and/or Related Interests;
- (e) a requirement that all transactions among the Holding Company and its direct or indirect subsidiaries are conducted in accordance with the applicable written agreement and are recorded accurately on the books and records of each entity;
- (f) disclosure of any Insider's or Related Interest's interest in the business of a borrower, vendor, independent contractor, supplier, or customer of the Holding Company; and
- (g) restrictions on and disclosure of receipt of anything of value received by Insiders

or Related Interests, directly or indirectly, from borrowers, vendors, independent contractors, suppliers, or customers of the Holding Company.

9. Upon adoption by the Board, a copy of the Conflict of Interest Policy shall be forwarded to the Regional Director.

10. The Board shall ensure that the Holding Company has processes, personnel, and control systems to ensure implementation of and adherence to its Conflict of Interest Policy.

**Golden Parachute Payments.**

11. Effective immediately, the Holding Company shall not make any golden parachute payment<sup>3</sup> unless, with respect to such payment, the Association has complied with the requirements of 12 C.F.R. Part 359.

**Directorate and Management Changes.**

12. Effective immediately, the Holding Company shall comply with the prior notification requirements for changes in directors and Senior Executive Officers<sup>4</sup> set forth in 12 C.F.R. Part 563, Subpart H.

**Effective Date.**

13. This Agreement is effective on the Effective Date as shown on the first page.

**Duration.**

14. This Agreement shall remain in effect until terminated, modified or suspended, by written notice of such action by the OTS, acting by and through its authorized representatives.

**Time Calculations.**

15. Calculation of time limitations for compliance with the terms of this Agreement run from the Effective Date and shall be based on calendar days, unless otherwise noted.

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<sup>3</sup> The term "golden parachute payment" is defined at 12 C.F.R. § 359.1(f).

<sup>4</sup> The term "Senior Executive Officer" is defined at 12 C.F.R. § 563.555.

**Submissions and Notices.**

16. All submissions to the OTS that are required by or contemplated by the Agreement shall be submitted within the specified timeframes.

17. Except as otherwise provided herein, all submissions, requests, communications, consents or other documents relating to this Agreement shall be in writing and sent by first class U.S. mail (or by reputable overnight carrier, electronic facsimile transmission or hand delivery by messenger) addressed as follows:

(a) **To the OTS:**

Regional Director  
Office of Thrift Supervision  
One South Wacker Drive, Suite 2000  
Chicago, Illinois 60606  
Facsimile: (312) 917-5001

(b) **To the Holding Company:**

Chairman of the Board  
Pedcor Financial, LLC  
770 3<sup>rd</sup> Avenue, SW  
Carmel, Indiana 46032  
Facsimile: (317) 218-2665

**No Violations Authorized.**

18. Nothing in this Agreement shall be construed as allowing the Holding Company, its Board, officers or employees to violate any law, rule, or regulation.

**OTS Authority Not Affected.**

19. Nothing in this Agreement shall inhibit, estop, bar or otherwise prevent the OTS from taking any other action affecting the Holding Company if at any time the OTS deems it appropriate to do so to fulfill the responsibilities placed upon the OTS by law.

**Other Governmental Actions Not Affected.**

20. The Holding Company acknowledges and agrees that its execution of the Agreement is solely for the purpose of resolving the matters addressed herein, consistent with Paragraph 19 above, and does not otherwise release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against, or liability of the Holding Company that arise pursuant to this action or otherwise, and that may be or have been brought by any governmental entity other than the OTS.

**Miscellaneous.**

21. The laws of the United States of America shall govern the construction and validity of this Agreement.

22. If any provision of this Agreement is ruled to be invalid, illegal, or unenforceable by the decision of any Court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby, unless the Regional Director in his or her sole discretion determines otherwise.

23. All references to the OTS in this Agreement shall also mean any of the OTS's predecessors, successors, and assigns.

24. The section and paragraph headings in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

25. The terms of this Agreement represent the final agreement of the parties with respect to the subject matters thereof, and constitute the sole agreement of the parties with respect to such subject matters.

**Enforceability of Agreement.**

26. This Agreement is a "written agreement" entered into with an agency within the meaning and for the purposes of 12 U.S.C. § 1818.

**Signature of Managers/Board Resolution.**

27. Each Manager signing this Agreement attests that he or she voted in favor of a Board Resolution authorizing the consent of the Holding Company to the issuance and execution of the Agreement. This Agreement may be executed in counterparts by the managers after approval of execution of the Agreement at a duly called board meeting. A copy of the Board Resolution authorizing execution of this Agreement shall be delivered to the Regional Director along with the executed original(s) of this Agreement.

**WHEREFORE**, the OTS, acting by and through its Regional Director, and the Board of the Holding Company, hereby execute this Agreement.

**PEDCOR FINANCIAL, LLC**  
Carmel, Indiana

**Accepted by:**  
**Office of Thrift Supervision**

\_\_\_\_\_/s/  
Bruce A. Cordingley, Manager

By: \_\_\_\_\_/s/  
Daniel T. McKee  
Regional Director, Central Region

\_\_\_\_\_/s/  
Gerald K. Pedigo, Manager

**EXHIBIT C**

**SUPERVISORY AGREEMENT**

This Supervisory Agreement (Agreement) is made this 13th day of August, 2010 by and through the Board of Directors (Board) of United Fidelity Bank, F.S.B., Evansville, Indiana, OTS Docket No. 03676 (Association) and the Office of Thrift Supervision (OTS), acting by and through its Regional Director for the Central Region (Regional Director);

**WHEREAS**, the OTS, pursuant to 12 U.S.C. § 1818, has the statutory authority to enter into and enforce supervisory agreements to ensure the establishment and maintenance of appropriate safeguards in the operation of the entities it regulates; and

**WHEREAS**, the Association is subject to examination, regulation and supervision by the OTS; and

**WHEREAS**, based on its examination of the Association, the OTS finds that the Association has engaged in unsafe or unsound practices and/or violations of law or regulation; and

**WHEREAS**, in furtherance of their common goal to ensure that the Association addresses the unsafe or unsound practices and/or violations of law or regulation identified by the OTS in the October 19, 2009 Report of Examination (2009 ROE), the Association and the OTS have mutually agreed to enter into this Agreement.

**WHEREAS**, on August 13th, 2010, the Association's Board, at a duly constituted meeting, adopted a resolution (Board Resolution) that authorizes the Association to enter into this Agreement and directs compliance by the Association and its directors, officers, employees, and other institution-affiliated parties with each and every provision of this Agreement.

**NOW THEREFORE**, in consideration of the above premises, it is agreed as follows:



**Transactions with Affiliates.**

1. Effective immediately, the Association shall not engage in any new or amended transaction with an affiliate unless, with respect to each such transaction, the Association has complied with the notice requirements set forth in 12 C.F.R. § 563.41(c)(4), which shall include the information set forth in 12 C.F.R. § 563.41(c)(3). The Board shall ensure that any transaction with an affiliate for which notice is submitted pursuant to this Paragraph, complies with the requirements of 12 C.F.R. § 563.41 and Regulation W, 12 C.F.R. Part 223.
2. Within sixty (60) days, the Association shall take specific steps to resolve the affiliate transaction violations identified in the 2009 ROE and to comply with the express terms and conditions of each written agreement covering a derivative transaction with an affiliate.
3. Within sixty (60) days, the Association shall adopt a written policy to comply with the requirements of 12 C.F.R. § 563.41 (Affiliate Transactions Policy). The Affiliate Transactions Policy shall include, at a minimum:
  - (a) a provision for training appropriate Association personnel and members of the Board at least annually regarding all aspects of Section 563.41 and Regulation W, 12 C.F.R. Part 223;
  - (b) a process to identify the Association's affiliates and continually update such information;
  - (c) a process to identify all of the Association's affiliate transactions as defined in 12 C.F.R. § 563.41 and non-affiliate transactions that benefit an affiliate as defined in 12 C.F.R. § 223.16(a);
  - (d) procedures for independent annual review of the Association's compliance with the contractual terms of each affiliate transaction and confirmation that each affiliate

transaction is accurately recorded on the books of the Association; and

(e) a requirement for adequate, centralized records of all transactions covered by the Affiliate Transactions Policy in a form and manner that will enable easy, independent review.

**Asset Quality.**

4. By September 30, 2010, the Association shall develop a written specific workout plan (Asset Workout Plan) for each adversely classified asset or group of such classified assets to any one borrower or loan relationship in the amount of five hundred thousand dollars (\$500,000) or greater.

5. Within forty-five (45) days after the end of each quarter, beginning with the quarter ending September 30, 2010, the Association shall submit a quarterly written asset status report (Quarterly Asset Report) to the Board. The Board's review of the Quarterly Asset Report shall be documented in the Board meeting minutes. The Quarterly Asset Report shall include, at a minimum:

- (a) the current status of all Asset Workout Plans;
- (b) the ratio of classified assets to Tier 1 (Core) capital plus allowance for loan and lease losses (ALLL);
- (c) a comparison of classified assets at the current quarter end with the preceding quarter; and
- (d) a discussion of the actions taken during the preceding quarter to reduce the Association's level of classified assets.

6. Within forty-five (45) days after the end of each quarter, beginning with the quarter ending September 30, 2010, a copy of the Quarterly Asset Report shall be provided to the Regional Director.

**Restriction on Lending to Classified Borrowers.**

7. Effective immediately, the Association shall not extend, directly or indirectly, without prior written Regional Director non-objection any additional credit to, or for the benefit of, any borrower who has a loan or other extension of credit from the Association that has been charged off or classified, in whole or in part, as a "Loss" and is uncollected. The Association's expenses incurred in connection with its real estate owned (REO), including in-substance foreclosures, are not covered by this Paragraph.

8. Effective immediately, the Association shall not make any additional extensions of credit, directly or indirectly, to any borrower whose loans are adversely classified as "Substandard" unless prior to extending additional credit pursuant to this Paragraph, whether in the form of a renewal, extension, or further advance of funds, such additional credit shall be approved by the Board, or a designated committee thereof, who shall certify in writing:

- (a) why the extension of such credit is in the best interests of the Association;
- (b) that an appropriate workout plan has been developed and will be implemented in conjunction with the additional credit to be extended; and
- (c) that the signed certification shall be made a part of the minutes of the meeting of the Board or designated committee with a copy retained in the borrower's credit file.

**Concentrations of Assets.**

9. Within sixty (60) days, the Association shall revise its written program for identifying,

monitoring, and controlling risks associated with concentrations of assets (Asset Concentration Policy) to ensure that it addresses all corrective actions set forth in the 2009 ROE relating to concentrations of assets. The Asset Concentration Policy shall comply with all applicable laws, regulations and regulatory guidance and shall:

- (a) establish comprehensive credit concentration limits expressed as a percentage of Tier 1 (Core) Capital plus ALLL and document the appropriateness of such limits based on the Association's risk profile;
- (b) establish comprehensive non-credit asset concentration limits expressed as a percentage of Tier 1 (Core) Capital and document the appropriateness of such limits based on the Association's risk profile;
- (c) establish stratification categories of the Association's concentrations of assets, such as real estate investments, multifamily Government National Mortgage Association (GNMA) securities, counterparty risk, and transactions with affiliates, and establish enhanced risk analysis, monitoring, and management for each stratification category;
- (d) contain specific review procedures and reporting requirements, including written reports to the Board, designed to identify, monitor, and control the risks associated with concentrations of assets and periodic market analysis for the various property types and geographic markets represented in its portfolio; and
- (e) contain a written action plan, including specific time frames, for bringing the Association into compliance with its concentration of assets limits.

10. A copy of the Asset Concentration Policy shall be provided to the Regional Director within five (5) days of adoption by the Board.

**Interest Rate Risk Management.**

11. Within ninety (90) days, the Association shall address all corrective actions in the 2009 ROE related to the Association's interest rate risk (IRR) management, including measures to be taken to bring the Net Portfolio Value (NPV) ratios and sensitivity limits to within Board-approved policy limits without consideration of the affiliate derivative agreements.

**Real Estate Investments.**

12. Within sixty (60) days, the Association shall develop a real estate investment policy (REI Policy) to ensure that it addresses all corrective actions contained in the 2009 ROE concerning the Association's investment, directly or indirectly, in real estate. The REI Policy shall conform to all applicable laws, regulations and regulatory guidance and include procedures and guidelines covering:

- (a) pre-purchase analysis of REI;
- (b) return objectives;
- (c) contractual requirements and considerations;
- (d) valuation methodologies;
- (e) appraisal standards;
- (f) type and frequency of monitoring reports;
- (g) REI portfolio concentration limits;
- (h) permissible REI limits and types; and
- (i) REI performance measurement criteria.

13. A copy of the REI Policy shall be provided to the Regional Director within five (5) days of adoption by the Board.

**Business Plan.**

14. By October 31, 2010, the Association shall submit to the Regional Director an updated business plan for the period beginning January 1, 2011 through December 31, 2012 (Business Plan) that is acceptable to the Regional Director and addresses all corrective actions set forth in the 2009 ROE. At a minimum, the Business Plan shall conform to applicable laws, regulations, and regulatory guidance and include:

- (a) establishment of a minimum Tier 1 (Core) Capital Ratio and Total Risk-Based Capital Ratio commensurate with the Association's risk profile;
- (b) detailed capital preservation and enhancement strategies with date specific narrative goals;
- (c) plans to improve the Association's core earnings and increase core deposits throughout the term of the Business Plan;
- (d) quarterly pro forma financial projections (balance sheet, income statement, and statement of cash flows), including Tier 1 (Core) and Total Risk-Based Capital Ratios, for the period covered by the Business Plan; and
- (e) identification of all relevant assumptions made in formulating the Business Plan and a requirement that documentation supporting such assumptions be retained by the Association.

15. Upon receipt of written notification from the Regional Director that the Business Plan is acceptable, the Association shall implement and adhere to the Business Plan. A copy of the Business Plan shall be provided to the Regional Director within five (5) days after Board approval.

16. Any material modifications<sup>1</sup> to the Business Plan shall receive the prior, written non-objection of the Regional Director. The Association shall submit proposed material modifications to the Regional Director at least forty-five (45) days prior to implementation.

17. By December 31, 2011, and each December 31st thereafter, while this Agreement is effective, the Business Plan shall be updated and submitted to the Regional Director pursuant to Paragraphs 14 through 16 above incorporating the Association's budget plan and profit projections for the next two (2) fiscal years taking into account any revisions to the Association's loan, investment and operating policies.

**Business Plan Variance Reports.**

18. Within forty-five (45) days after the close of each quarter, after implementation of the Business Plan, the Board shall review written quarterly variance reports on the Association's compliance with the Business Plan (Variance Reports). The Variance Reports shall:

- (a) identify variances in the Association's actual performance during the preceding quarter as compared to the projections set forth in the Business Plan;
- (b) contain an analysis and explanation of identified variances; and
- (c) discuss the specific measures taken or to be taken by the Association to address identified variances.

19. A copy of each Variance Report shall be provided to the Regional Director within five (5) days after review by the Board.

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<sup>1</sup> A modification shall be considered material under this Paragraph if the Association: (a) plans to engage in any activity that is inconsistent with the Business Plan; (b) plans to exceed the level of any activity contemplated in the Business Plan by more than ten percent (10%); or (c) fails to meet target amounts established in the Business Plan by more than ten percent (10%).

**Dividends and Other Capital Distributions.**

20. Effective immediately, the Association shall not declare or pay dividends or make any other capital distributions, as that term is defined in 12 C.F.R. § 563.141, without receiving the prior written approval of the Regional Director in accordance with applicable regulations and regulatory guidance. The Association's written request for approval shall be submitted to the Regional Director at least thirty (30) days prior to the anticipated date of the proposed declaration, dividend payment or distribution of capital.

**Growth.**

21. Effective immediately, the Association shall not increase its total assets during any quarter in excess of an amount equal to net interest credited on deposit liabilities during the prior quarter without the prior written non-objection of the Regional Director. The growth restriction imposed by this Paragraph shall remain in effect until the Regional Director reviews and approves the Association's Business Plan as required under Paragraph 15 of this Agreement.

**Directorate and Management Changes.**

22. Effective immediately, the Association shall comply with the prior notification requirements for changes in directors and Senior Executive Officers<sup>2</sup> set forth in 12 C.F.R. Part 563, Subpart H.

**Employment Contracts and Compensation Arrangements.**

23. Effective immediately, the Association shall not enter into any new contractual arrangement or renew, extend, or revise any contractual arrangement relating to compensation or benefits for any Senior Executive Officer or director of the Association, unless it first provides the Regional Director with not less than thirty (30) days prior written notice of the proposed

---

<sup>2</sup> The term "Senior Executive Officer" is defined at 12 C.F.R. § 563.555.



transaction. The notice to the Regional Director shall include a copy of the proposed employment contract or compensation arrangement or a detailed, written description of the compensation arrangement to be offered to such Senior Executive Officer or director, including all benefits and perquisites. The Board shall ensure that any contract, agreement, or arrangement submitted to the Regional Director fully complies with the requirements of 12 C.F.R. Part 359, 12 C.F.R. §§ 563.39 and 563.161(b), and 12 C.F.R. Part 570 – Appendix A.

**Third Party Contracts.**

24. Effective immediately, the Association shall not enter into any arrangement or contract with a third party service provider that is significant to the overall operation or financial condition of the Association<sup>3</sup> or outside the Association's normal course of business unless, with respect to each such contract, the Association has: (a) provided the Regional Director with a minimum of thirty (30) days prior written notice of such arrangement or contract and a written determination that the arrangement or contract complies with the standards and guidelines set forth in OTS Thrift Bulletin 82a; and (b) received written notice of non-objection from the Regional Director.

**Golden Parachute Payments.**

25. Effective immediately, the Association shall not make any golden parachute payment<sup>4</sup> unless, with respect to such payment, the Association has complied with the requirements of 12 C.F.R. Part 359.

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<sup>3</sup> A contract will be considered significant to the overall operation or financial condition of the Association where the annual contract amount equals or exceeds two percent (2%) of the Association's total capital, where there is a foreign service provider, or where it involves information technology that is critical to the Association's daily operations without regard to the contract amount.

<sup>4</sup> The term "golden parachute payment" is defined at 12 C.F.R. § 359.1(f).

**Effective Date.**

26. This Agreement is effective on the Effective Date as shown on the first page.

**Duration.**

27. This Agreement shall remain in effect until terminated, modified or suspended, by written notice of such action by the OTS, acting by and through its authorized representative.

**Time Calculations.**

28. Calculation of time limitations for compliance with the terms of this Agreement run from the Effective Date and shall be based on calendar days, unless otherwise noted.

**Submissions and Notices.**

29. All submissions to the OTS that are required by or contemplated by the Agreement shall be submitted within the specified timeframes.

30. Except as otherwise provided herein, all submissions, requests, communications, consents or other documents relating to this Agreement shall be in writing and sent by first class U.S. mail (or by reputable overnight carrier, electronic facsimile transmission or hand delivery by messenger) addressed as follows:

(a) **To: the OTS**

Regional Director  
Office of Thrift Supervision  
One South Wacker Drive, Suite 2000  
Chicago, Illinois 60606  
Facsimile: (312) 917-5001

(b) **To: the Association**

Chairman of the Board  
United Fidelity Bank, F.S.B.  
18 NW 4th Street  
Evansville, Indiana 47708  
Facsimile: (812) 429-0542

**No Violations Authorized.**

31. Nothing in this Agreement shall be construed as allowing the Association, its Board, officers or employees to violate any law, rule, or regulation.

**OTS Authority Not Affected.**

32. Nothing in this Agreement shall inhibit, estop, bar or otherwise prevent the OTS from taking any other action affecting the Association if at any time the OTS deems it appropriate to do so to fulfill the responsibilities placed upon the OTS by law.

**Other Governmental Actions Not Affected.**

33. The Association acknowledges and agrees that its execution of the Agreement is solely for the purpose of resolving the matters addressed herein, consistent with Paragraph 32 above, and does not otherwise release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against, or liability of the Association that arise pursuant to this action or otherwise, and that may be or have been brought by any governmental entity other than the OTS.

**Miscellaneous.**

34. The laws of the United States of America shall govern the construction and validity of this Agreement.

35. If any provision of this Agreement is ruled to be invalid, illegal, or unenforceable by the decision of any Court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby, unless the Regional Director in his or her sole discretion determines otherwise.

36. All references to the OTS in this Agreement shall also mean any of the OTS's predecessors, successors, and assigns.

37. The section and paragraph headings in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

38. The terms of this Agreement represent the final agreement of the parties with respect to the subject matters thereof, and constitute the sole agreement of the parties with respect to such subject matters.

**Enforceability of Agreement.**

39. This Agreement is a “written agreement” entered into with an agency within the meaning and for the purposes of 12 U.S.C. § 1818.

**Signature of Directors/Board Resolution.**

40. Each Director signing this Agreement attests that he or she voted in favor of a Board Resolution authorizing the consent of the Association to the issuance and execution of the Agreement. This Agreement may be executed in counterparts by the directors after approval of execution of the Agreement at a duly called board meeting. A copy of the Board Resolution authorizing execution of this Agreement shall be delivered to the OTS, along with the executed original(s) of this Agreement.

[Remainder of Page Intentionally Left Blank]

**WHEREFORE**, the OTS, acting by and through its Regional Director, and the Board of the Association, hereby execute this Agreement.

**UNITED FIDELITYBANK, F.S.B.**  
Evansville, Indiana

**OFFICE OF THRIFT SUPERVISION**

\_\_\_\_\_/s/\_\_\_\_\_  
John R. Cunningham, Chairman

By:\_\_\_\_\_/s/\_\_\_\_\_  
Daniel T. McKee  
Regional Director, Central Region

\_\_\_\_\_/s/\_\_\_\_\_  
Paul E. Becker, Director

\_\_\_\_\_/s/\_\_\_\_\_  
Bruce A. Cordingley, Director

\_\_\_\_\_/s/\_\_\_\_\_  
Donald R. Neel, Director

\_\_\_\_\_/s/\_\_\_\_\_  
Barry A. Schnakenburg, Director



Shackelford  
Melton  
McKinley

MF RCVD Wednesday, June 15, 2011

3333 Lee Parkway, Tenth Floor  
Dallas, Texas 75219  
Telephone 214.780.1400  
Facsimile 214.780.1401  
www.shacklaw.net

**John C. Shackelford**  
Also Admitted in Florida and  
Georgia  
Direct 214.780.1414  
jshack@shacklaw.net

June 15, 2011

Ms. Robbye Meyer  
Director of Multifamily Programs  
Texas Department of Housing  
& Community Affairs  
221 E. 11<sup>th</sup> Street  
Austin, Texas 78701

Re: Application Challenge –The Villas at Tuscany; TDHCA #11074 (the  
“Development”)

Dear Ms. Meyer:

This law firm has been retained to provide this Application Challenge, in accordance with Section 49.10(e) of the 2011 Qualified Action Plan (the “QAP”), for points awarded with respect to The Villas at Tuscany 2011 low income housing tax credit application (the “Application”).

Volume 4, Tab 13 of the Application, a copy of which is attached hereto as Exhibit A, claims 3 points under Section 49.9(a)(13)(D) of the QAP as a new construction development proposed to be located in an area that is part of a Community Revitalization Plan. (See Exhibit B). In support of this position, the Application includes a letter from Tom Martin, Mayor of City of Lubbock, which states that the City of Lubbock’s Consolidated Plan serves as a Community Revitalization Plan, and that the Development is within the area covered by the Community Revitalization Plan. Per our review of the 2009-2013 Consolidated Plan of the City of Lubbock (the “Lubbock Consolidated Plan”), as currently implemented by the City of Lubbock’s 2010-2011 Annual Action Plan (the “Lubbock Action Plan”), the Development is not located within an area covered by a Community Revitalization Plan and does not meet the definitional requirements to claim 3 points under Section 49.9(a)(13)(D) of the QAP for the following reasons:

**I. The Lubbock Consolidated Plan Does Not Qualify as a Community Revitalization Plan**

The Lubbock Consolidated Plan, on its own, does not implement its objectives nor does it specifically target areas for revitalization and, therefore, does not meet the definition of a Community Revitalization Plan.

The QAP defines a Community Revitalization Plan as “A published document under any name, approved and adopted by the local Governing Body or, if the Governing Body has lawfully assigned responsibility for oversight of communication or activities to a body created or sponsored by that Governing Body, the vote of the Governing Body so designated, by ordinance, resolution, or vote that targets specific geographic areas for revitalization and development of residential developments.”

The Lubbock Consolidated Plan, prepared in accordance with the U.S. Department of Housing and Urban Development (“HUD”) regulations, identifies the housing and community development needs and priorities of the City of Lubbock (the “City”) and sets out long-term goals and develops a strategic blueprint for the City to best meet such needs. As part of its strategy, the Lubbock Consolidated Plan sets forth parameters by which areas are to be targeted for revitalization by providing (a) that the City will direct assistance to low to moderate income Block Groups in the City, (b) proposed CDBG Target Areas (See Exhibit C), and (c) that to the extent specific geographic areas have greater needs than other areas in the City, such areas will receive a larger proportionate share of funding. Still, the Lubbock Consolidated Plan only provides proposed target areas and parameters to select the areas to be revitalized. It does not specify geographic areas to be revitalized and developed for residential developments and, accordingly, does not meet the definition of a Community Revitalization Plan under the QAP.

Furthermore, the mere fact that the Development is located in the City and the Lubbock Consolidated Plan’s objectives are the objectives of the entire City does not qualify the Development for the points under Section 49.9(a)(13)(D) of the QAP. Such rationale would undermine the purpose of the points awarded under Section 49.9(a)(13)(D) of the QAP. HUD requires every city to prepare a consolidated plan if it chooses to participate in the Community Development Block Grant, HOME Investment Partnerships or Emergency Shelter Grant and Housing Opportunities for Persons with AIDS programs. If a city’s broadly written HUD mandated consolidated plan constituted a Community Revitalization Plan under the QAP, then every development located in a city with a consolidated plan would automatically qualify for these points when the clear intent is to reward only those developments located in the areas specifically targeted to be revitalized.

## **II. Development Not Located in a Revitalization Area Under the Lubbock Consolidated Plan**

Assuming, *in arguendo*, the Lubbock Consolidated Plan constitutes a Community Revitalization Plan under the QAP, the Application still does not qualify for the points under Section 49.9(a)(13)(D) of the QAP because the location of the Development

identified in the Application is not located in the proposed CDBG Target Areas identified in the Lubbock Consolidated Plan.

To claim the points under Section 49.9(a)(13)(D) of the QAP, the Development for new construction must be located in an area that is part of a plan that targets specific geographic areas for revitalization and development of residential developments. The location of the Development identified in the Application is at the southwest corner of the intersection of Lola Ave. and 66<sup>th</sup> Street (See Exhibit D), which is not located within the specific geographic areas designated for revitalization and development of residential developments under the Lubbock Consolidated Plan. Moreover, the Development is not even located in the areas proposed as CDBG Target Areas under the Lubbock Consolidated Plan (See Exhibit C).

With the Development not located in an area under the Lubbock Consolidated Plan that targets specific geographic areas for revitalization and development of residential developments, then assuming, *in arguendo*, that the Lubbock Consolidated Plan constitutes a Community Revitalization Plan, the Development still does not qualify for the points under Section 49.9(a)(13)(D) of the QAP.

### **III. Development Not Located in Revitalization Area Under the Lubbock Action Plan**

As required annually by HUD, a consolidated plan is implemented only by an action plan adopted by the local governing body which identifies the resources that will be used in the upcoming year to address the consolidated plan's priority objectives and includes the geographic areas assistance will be directed during the ensuing program year.

The Lubbock Consolidated Plan, together with the Lubbock Action Plan, constitute a Community Revitalization Plan under the QAP. The Lubbock Action Plan is the document that implements the broad policies set forth in the Lubbock Consolidated Plan. The Lubbock Action Plan specifies both where the funds go and the areas targeted for revitalization. The current target areas and eligible areas set forth in the Lubbock Action Plan are identified in Exhibit E attached hereto.

The Development is not only outside the broader area designated in the Lubbock Consolidated Plan as above stated in Section II., but it is clearly and unquestionably outside the current target areas and eligible areas set forth in the Lubbock Action Plan. The Villas of Tuscany is located at the southwest corner of the intersection of Lola Ave. and 66<sup>th</sup> Street (See Exhibit D). This entire area, located in the southwestern portion of the City, is neither located in a CDBG Eligible Area or CDBG Target Area set forth in the Lubbock Action Plan.



To summarize this argument, the Lubbock Action Plan, together with the Lubbock Consolidated Plan, does constitute a Community Revitalization Plan, but the Development is not located within the boundaries of the area targeted in the Lubbock Action Plan.

#### **IV. No Evidence of Ordinance, Resolution or Specific Vote Included in the Application**

Pursuant to the instructions in the 2011 low income housing tax credit application, to claim the points under Section 49.9(a)(13)(D) of the QAP the applicant could submit, "A letter from the Appropriate Local Official stating there is a Community Revitalization Plan in effect and the Development is within the area covered by the plan." (See Exhibit A). In addition, Page 72 of the 2011 HTC Procedure Manual requires "evidence that the Community Revitalization Plan has been adopted by the local Governing Body by ordinance, resolution or specific vote." (See Exhibit F). No such ordinance, resolution or specific vote was included in the Application.

Although the letter from the Appropriate Local Official was included in the Application, evidence that the Community Revitalization Plan has been adopted by the local Governing Body by ordinance, resolution or specific vote has not be included in the Application (See Exhibit A). Failure to include evidence that the Community Revitalization Plan has been adopted by the local Governing Body by ordinance, resolution or specific vote in the application is not an administrative deficiency that can be cured. Pursuant to Section 49.7(a)(2) of the QAP, "For exhibits and other information required under §49.9 of this chapter (relating to Selection Criteria) not originally submitted in the Application (i.e. Community Revitalization Plan or letter from Appropriate Local Official missing entirely from the Application) staff will not award points for that item, even if points were requested in the Applicant's Self Scoring Form." (See Exhibit G).

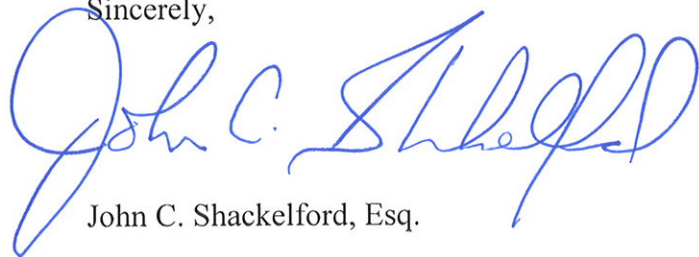
Since no evidence that an ordinance, resolution or specific vote approving the Community Revitalization Plan was included in the Application, we further request that the 3 points awarded under the Application in relation to Section 49.9(a)(13)(D) of the QAP be deducted.

For the foregoing reasons, we respectfully request the 3 points awarded under the Application with regard to Section 49.9(a)(13)(D) of the QAP be deducted.

Ms. Robbye Meyer  
June 15, 2011  
Page 5

Should you have any questions, please do not hesitate to contact me at (214) 780-1414 or [jshack@shacklaw.net](mailto:jshack@shacklaw.net).

Sincerely,

A handwritten signature in blue ink that reads "John C. Shackelford". The signature is fluid and cursive, with the first name "John" being the most prominent.

John C. Shackelford, Esq.

cc: Raquel Morales

Exhibit A

# **Volume 4**

# **Tab 13**

Volume 4, Tab 13

**COMMUNITY REVITALIZATION or HISTORIC PRESERVATION (§49.9(a)(13))**

The Application proposes:

- Community Revitalization**- the Development includes the use of an Existing Residential Development and proposes any Rehabilitation or any Reconstruction that is part of a Community Revitalization Plan. (§42(m)(1)(C)(iii))  
**Evidence to be provided to satisfy this requirement:**
    - Volume 2, Tab 1, Part B- 2011 Existing Residential Development Certification Form* is present in Volume 2, and is fully executed.
- AND**
- A letter from the Appropriate Local Official stating there is a Community Revitalization Plan in effect and the Development is within the area covered by the plan.

**If the Applicant is unable to obtain a letter from an Appropriate Local Official, then the following must be provided:**

- If the Community Revitalization Plan has specific boundaries, a copy of the Plan adopted by the jurisdiction or its designee and a map showing that the Development is within the area covered by the Community Revitalization Plan.
- 
- Historic Preservation** - The Development includes the use of an existing building that is designated as historic by a federal or state Entity and proposes Rehabilitation (including Reconstruction) or Adaptive Reuse.

**Evidence to be provided includes:**

- The Development includes\* the use of an existing building that is designated as historic by a federal or state entity and proposes Rehabilitation (including reconstruction) or Adaptive Reuse.
- Proof of the historic designation from the appropriate Governmental Body is included.
- Letter from the Texas Historical Commission indicating the effect of the proposed rehabilitation on historical structure is included.

**\*The Development itself must have the designation; points in this subparagraph are not available for Developments simply located within historic districts or areas that do not have a designation on the building. The Development must include the historic building.**

- Rehabilitation** - Application proposes to build solely Rehabilitation.
- Reconstruction** - Application proposes to build solely Reconstruction.
- Adaptive Reuse** - Application proposes to build solely Adaptive Reuse.

- New Construction** - the Development is New Construction and is proposed to be located in an area that is part of a Community Revitalization Plan.

**Evidence to be provided includes one of the following:**

**Evidence to be provided to satisfy this requirement:**

- A letter from the Appropriate Local Official stating there is a Community Revitalization Plan in effect and the Development is within the area covered by the plan.

**If the Applicant is unable to obtain a letter from an Appropriate Local Official, then the following must be provided:**

- If the Community Revitalization Plan has specific boundaries, a copy of the Plan adopted by the jurisdiction or its designee and a map showing that the Development is within the area covered by the Community Revitalization Plan.



**REMEMBER TO PLACE YOUR EVIDENCE BEHIND THIS FORM**



Tom Martin ★ Mayor

Certification of Consistency with  
City of Lubbock  
Community Revitalization Plan

To Whom It May Concern:

I, Tom Martin, Mayor of the City of Lubbock and authorized to act on behalf of the City, certify that the housing development activities proposed by **The Grove at Elm Park, Ltd.**, are consistent with and located within the boundaries covered by the city's concerted Community Revitalization Plan currently in effect, namely the Consolidated Plan.

**The Grove at Elm Park** is located at the intersection of 34<sup>th</sup> St and Milwaukee Ave (.18 miles west) in the City of Lubbock, Lubbock County, Texas. The proposed 2011 LIHTC Application for **The Grove at Elm Park, Ltd.**, contributes to the revitalization objectives of the Consolidated Plan.

Signed on this the 30<sup>th</sup> day of December, 20 10.

A handwritten signature in black ink, appearing to read "Tom Martin", is written over a horizontal line.

Tom Martin, Mayor

Exhibit B

- schools, charter schools and depending on how characterized could include day care centers; a PTA or PTO would qualify. Should an Applicant elect this option and the Application receives letters in opposition, then 2 points will be subtracted from the score for each letter in opposition, provided that the letter is from an organization serving the community.
- (B) An Application may receive 6 points for a letter of support, from a property owners association created for a master planned community whose boundaries include the Development Site that does not meet the requirements of a Neighborhood Organization for points under paragraph (2) of this subsection.
  - (C) An Application may receive 6 points for a letter of support from a Special Management District, whose boundaries, as of the Full Application Delivery Date as identified in §49.3 of this chapter, include the Development Site and for which there is not a Neighborhood Organization on record with the county or state.
- (12) **Housing Needs Characteristics.** (§42(m)(1)(C)(ii)) Applications may qualify to receive up to 6 points (if the Development Site is located in a Place with a certain Affordable Housing Need Score). Each Application may receive a score if correctly requested in the Self Score form based on objective measures of housing need in the Place where the Development is located. This Affordable Housing Need Score for each Place will be published in the 2011 Site Demographic Characteristics Report. For purposes of this item a Place is defined as the geographic area contained within the boundaries of:
- (A) An incorporated place; or
  - (B) Census Designated Place (CDP) as established by the U.S. Census Bureau for the most recent Decennial Census. For Developments located outside the boundaries of an incorporated place or CDP, the Development shall take up the Place characteristics of the incorporated place or CDP whose boundary is nearest to the Development Site.
- (13) **Community Revitalization, (§42(m)(1)(C)(iii)) Historic Preservation or Rehabilitation.** Applications may qualify to receive 6 points under subparagraphs (A) - (C) of this paragraph or 3 points under subparagraph (D) of this paragraph.
- (A) The Development includes the use of an Existing Residential Development and proposes any Rehabilitation or any Reconstruction that is part of a Community Revitalization Plan. Evidence of the Community Revitalization Plan must be in the form of a letter from the Appropriate Local Official stating there is a Community Revitalization Plan in effect and the Development is within the area covered by the plan or only if the Community Revitalization Plan has specific boundaries, a copy of the plan, adopted by the jurisdiction or its designee and a map showing that the Development is within the area covered by the Community Revitalization Plan; or
  - (B) The Development includes the use of an existing building that is designated as historic by a federal or state Entity and proposes Rehabilitation (including Reconstruction) or Adaptive Reuse. The Development itself must have the designation; points in this subparagraph are not available for Developments simply located within historic districts or areas that do not have a designation on the building. The Development must include the historic building. Evidence will include proof of the historic designation from the appropriate Governmental Entity.
  - (C) Rehabilitation (includes Reconstruction). Applications proposing to build solely Rehabilitation (excluding New Construction of non-residential buildings), solely Reconstruction (excluding New Construction of non-residential buildings), or solely Adaptive Reuse;
  - (D) The Development is New Construction and is proposed to be located in an area that is part of a Community Revitalization Plan (3 points).
- (14) **Pre-application Participation Incentive Points.** (§2306.6704) Applicants that submitted a pre-application during the Pre-Application Acceptance Period and meet the requirements



Exhibit C

**Exhibit VI-3.  
CDBG Target Areas, City of Lubbock, 2009-2013**

**Proposed CDBG Target Areas 2009-2013**



City of Lubbock Planning Department  
P.O. Box 2000  
1625 13th Street (Room 107)  
Lubbock, TX 79457




Source: City of Lubbock.

**2. Geographic allocation.** The City's primary method of allocating CDBG dollars is to assist low- to moderate-income and special needs populations.

To the extent that specific geographic areas have greater needs than other areas in the City and/or if service and housing organizations are located in certain areas, they will receive a larger proportionate share of the funding. For street and sidewalk improvements, the City will focus on the geographic areas where street, sidewalks, curb cuts and related ADA accommodations are lacking. Finally, to provide affordable single-family housing, the City's dollars will be allocated in areas of new development where affordable housing is lacking and/or infill areas that can accommodate affordable housing.

**3. Obstacles to meeting underserved needs.** The primary obstacle to meeting underserved needs is insufficient financial resources and operating funds. The City will pursue all potential funding resources and funding applications for other resources from other agencies will be supported. Funding resources will continue to be leveraged when possible by the City. When appropriate, funds provided to projects and programs will be in the form of loans and repayments will revolve to serve the greatest possible number of households over time.

Exhibit D



**U.S. Department of Housing and Urban Development**  
Office of Policy Development and Research

**Site is in Census Tract**  
**0104.01 (48303010401)**

**Qualified Census Tract Information**

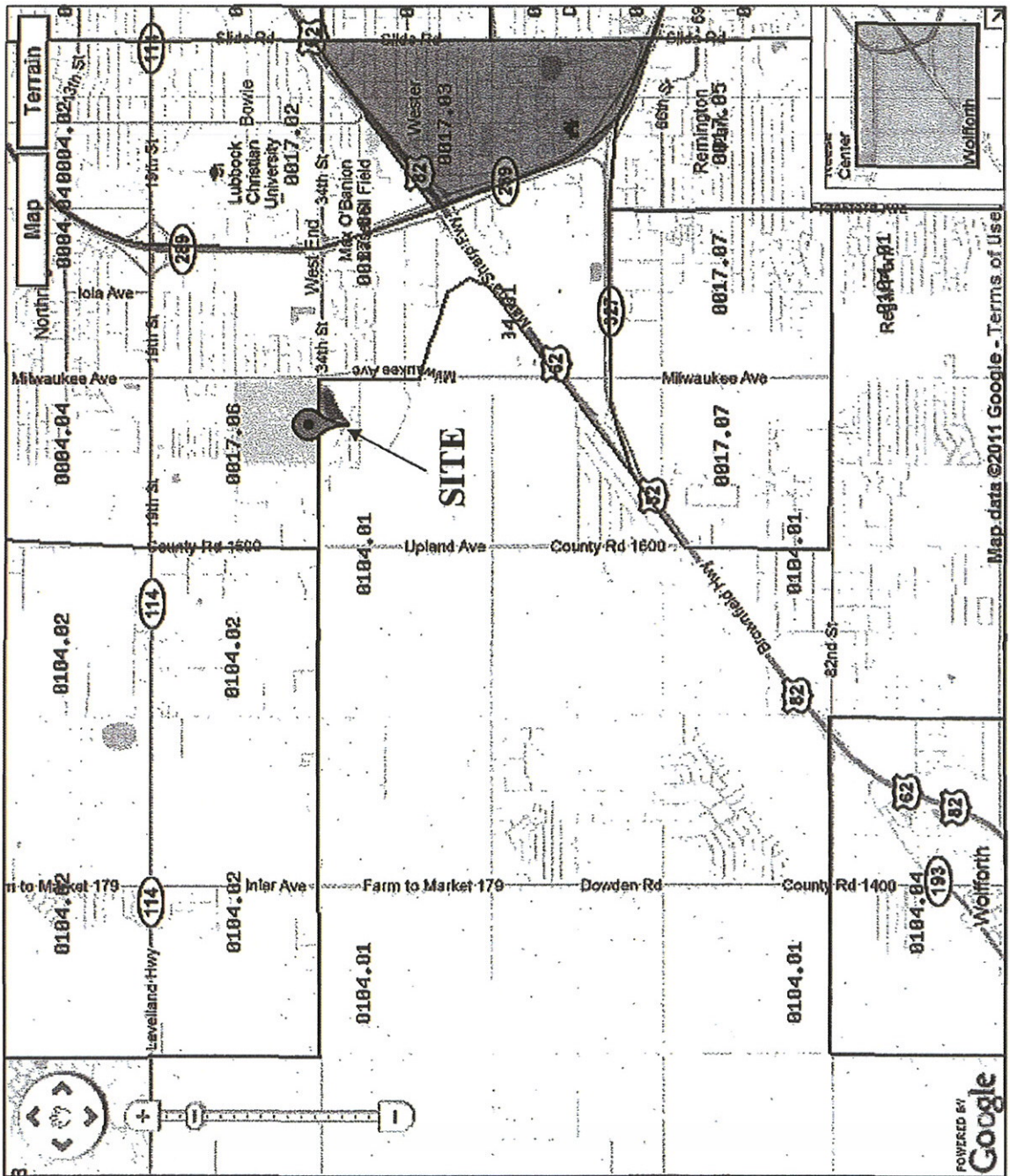
Full Tract Number	48303010401
Status (2010)	Not Qualified
Past Qualifications	None
County	Lubbock
State	Texas
Poverty Rate	19.60%
Households below Income Limit	24.50%

**SELECT LAYERS TO BE DRAWN**

- 14 Current Zoom Level
- Show Tracts Outline (Zoom 11+)
- Show LIHTC Projects (Zoom 11+)
- Color Qualified Tracts

**CENSUS TRACT QUALIFICATIONS**

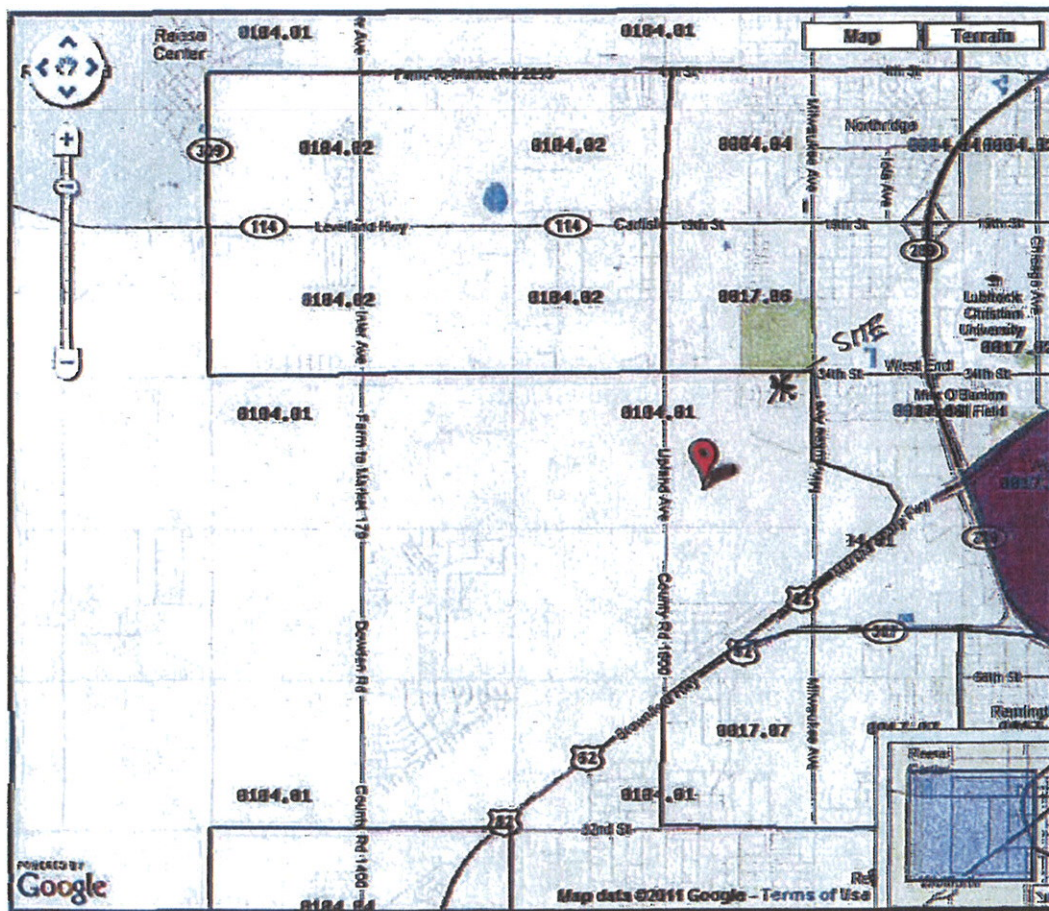
- Tract Outline
- Qualified Census Tracts (2010)



Relationship to City & Street Level Depiction of Census Tract

The Grove at Elm Park

Census Tract: 48303010401

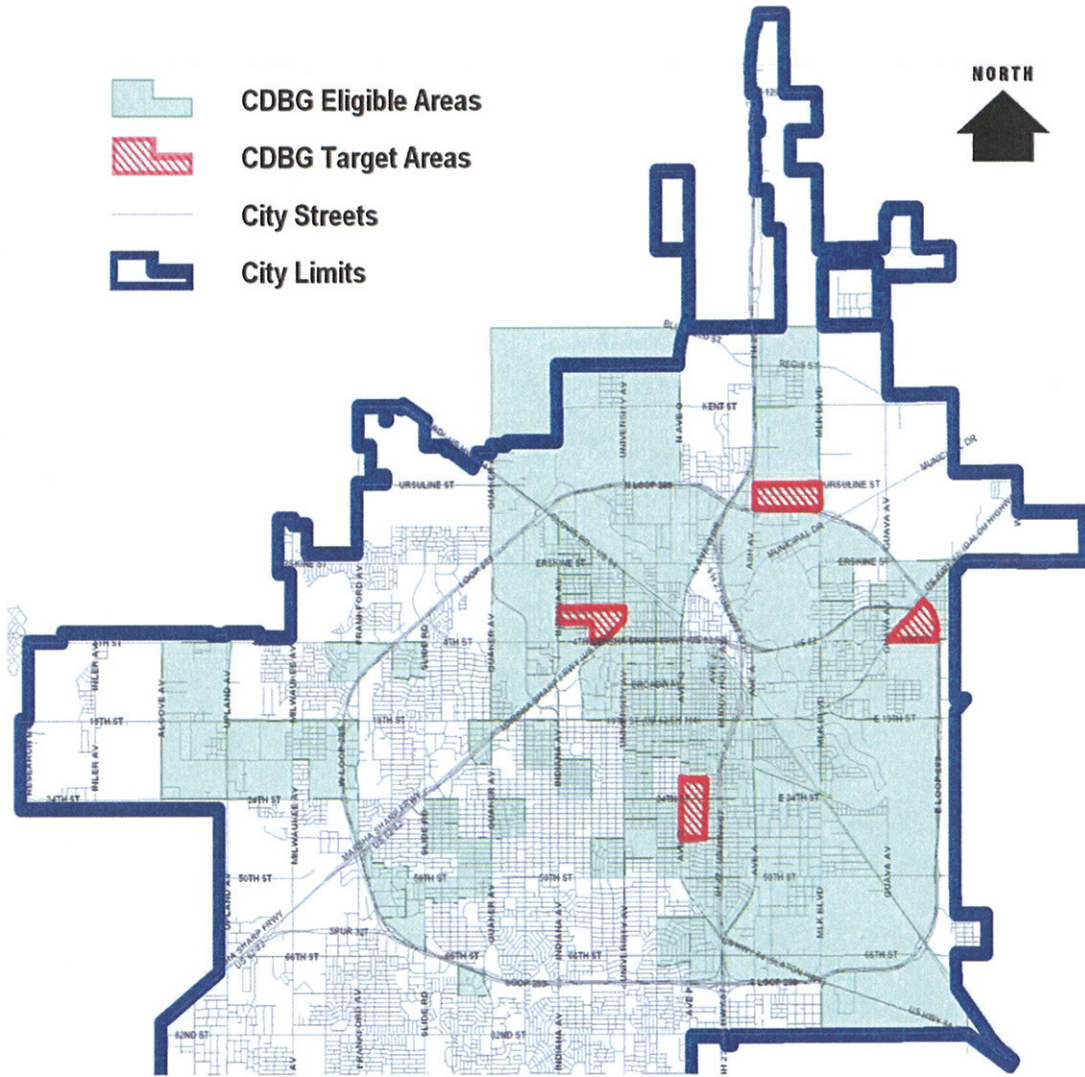


\* Site

Exhibit E

Clearance, Demolition	20 Units	4 Units
Senior and Handicapped Services	125 Persons	25 Persons
Youth Services	250 Persons	50 Persons
Transportation Services	1000 Disabled Persons	200 Disabled Persons
Child Care Services	375 Persons	75 Persons
Health and Dental Care Services	250 Persons	50 Persons
Interim Assistance	25 Persons	5 Persons
Code Enforcement	2500 Persons	500 Persons
Section 108 Loan Payments	N/A	N/A

In keeping with the Consolidated Plan goals the majority of activities will be conducted in areas of higher low-mod household concentration as specified in the Consolidated Plan. The target areas are within the CDBG eligible areas as indicated on the map below.



**Funding Summary**

Exhibit F



## 2011 HTC Procedures Manual

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### ❖ **Volume 4, Tab 13. (V4 T13) Community Revitalization, Historic Preservation or Rehabilitation (Maximum 6 points)**

- *Volume 2, Tab 1, Part B- 2011 Existing Residential Development Certification Form* must be present in Volume 2, and must be fully executed.
  - Community Revitalization
    - Submit a letter from the Appropriate Local Official stating that the Development Site is located within the area covered by the Community Revitalization Plan; or
    - Only if the Community Revitalization Plan has specific boundaries, a copy of the plan, adopted by the jurisdiction or its designee and a map showing that the Development is within the area covered by the Community Revitalization Plan.
    - Submit evidence that the Community Revitalization Plan has been adopted by the local Governing Body by ordinance, resolution or specific vote.
- Historic Preservation
 

Developments proposing Rehabilitation (including Reconstruction) or Adaptive Reuse, which include the use of an existing building that is designated as historic by a federal or state Entity.

  - **The historic building itself must be part of the Development; points in this subparagraph are not available for Developments simply located within historic districts or areas that do not have a designation on the building. The Development must include the historic building.**
  - Submit proof of the historic designation from the appropriate Governmental Entity. As a resource, information regarding state and federal historic designations can be printed from the following site:  
<http://atlas.thc.state.tx.us/index.asp>.
- Developments proposing solely Rehabilitation (includes Reconstruction), solely Reconstruction or solely Adaptive Reuse.
- New Construction Development proposed to be located in an area that is part of a Community Revitalization Plan (this item worth 3 points).

### ❖ **Volume 4, Tab 14. (V4 T14) Pre-Application Incentive Points (Maximum 6 points)**

- To be eligible for Pre-Application Incentive Points the Applicant must be able to affirm the following:
  - The site under control is identical to or is a reduced portion of the site as proposed in the Pre-Application; and
  - The Application has met the Pre-Application Threshold Criteria as determined by the Department; and
  - A certification must be included as part of the exhibit, signed by the Principals who signed the site control at Pre-Application, confirming that they are the same Principals at Application; and
  - The Development must serve the same target population (general or elderly) as indicated in the Pre-Application; and



NOTE!

Exhibit G

- 
- (i) an Applicant or Related Party; and
  - (ii) any Person who is:
    - (I) active in the construction, rehabilitation, ownership, or Control of the proposed Development, including:
      - (-a-) a General Contractor; and
      - (-b-) a Developer; and
      - (-c-) a General Partner, Principal or Affiliate of a General Partner or General Contractor; or
    - (II) employed as a consultant, lobbyist, or attorney by an Applicant or a Related Party.
- (B) During the period beginning on the first date of the Application Acceptance Period and ending on the date the Board makes a final decision with respect to the approval of any Application in that Application Round, an employee of the Department may communicate about any Application with the following Persons:
- (i) the Applicant or a Related Party; and
  - (ii) any Person who is:
    - (I) active in the construction, rehabilitation, ownership, or Control of the proposed Development, including:
      - (-a-) a General Partner or General Contractor; and
      - (-b-) a Developer; and
      - (-c-) a Principal or Affiliate of a General Partner or General Contractor; or
    - (II) employed as a consultant, lobbyist or attorney by the Applicant or a Related Party.
- (C) A communication under paragraph (2) of this subsection may be oral or in any written form, including electronic communication through the Internet, and must satisfy the following conditions:
- (i) the communication must be restricted to technical or administrative matters directly affecting the Application;
  - (ii) the communication must occur or be received on the premises of the Department during established business hours; and
  - (iii) a record of the communication must be maintained and included with the Application for purposes of Board review and must contain the following information:
    - (I) the date, time, and means of communication;
    - (II) the names and position titles of the Persons involved in the communication and, if applicable, the Person's relationship to the Applicant;
    - (III) the subject matter of the communication; and
    - (IV) a summary of any action taken as a result of the communication.
- (D) Notwithstanding subparagraph (A) or (B) of this paragraph, a Board member or Department employee may communicate without restriction with a Person listed in subparagraph (A) or (B) of this paragraph during any Board meeting or public hearing held with respect to the Application, but not during a recess or other non-record portion of the meeting or hearing.
- (E) Subparagraph (A) of this paragraph 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 all matters related to Applications to be considered by the Board will not be discussed.
- (2) **Administrative Deficiency Process.** The purpose of the Administrative Deficiency process is to allow the Applicant an opportunity to provide clarification or correction to information originally submitted in the Application. For example, if exhibits and other information required under §49.8 of this chapter (relating to Threshold Criteria) are not originally submitted in the Application (i.e. financing commitment missing entirely from
-

the Application) staff will recommend termination of the Application. However, for information missing in part from the Application (i.e. financing commitment is submitted but it is not executed by the lender) staff will request the missing or corrected information via an Administrative Deficiency. For exhibits and other information required under §49.9 of this chapter (relating to Selection Criteria) not originally submitted in the Application (i.e. Community Revitalization Plan or letter from Appropriate Local Official missing entirely from the Application) staff will not award points for that item, even if points were requested in the Applicant's Self Scoring Form. For information missing in part from the Application (i.e. the letter from the Appropriate Local Official does not include all required information) staff will request the missing information via an Administrative Deficiency and award points provided the information submitted in response to the Administrative Deficiency is satisfactory to the Department.

- (A) **Administrative Deficiencies for Applications submitted under the State Housing Credit Ceiling and Rural Rescue Applications.** If an Application contains Administrative Deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies. Because the review for Eligibility, Selection, Threshold Criteria, Quantifiable Community Participation (QCP) and review for financial feasibility by the Department's Real Estate Analysis Division may occur separately, Administrative Deficiency requests may be made during any of these reviews. The Department staff will request clarification or correction in a deficiency notice in the form of an e-mail, or if an e-mail address is not provided in the Application, by facsimile, and a telephone call (only if there has not been confirmation of the receipt of the e-mail within twenty-four (24) hours) to the Applicant and one other party identified by the Applicant in the Application advising that such a request has been transmitted. If Administrative Deficiencies are not clarified or corrected to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then five (5) points shall be deducted from the Selection Criteria score for each additional day the deficiency remains unresolved. If Administrative Deficiencies are not clarified or corrected by 5:00 p.m. on the seventh business day following the date of the deficiency notice, then the Application shall be terminated. The time period for responding to a deficiency notice begins at the start of the 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. An Applicant may not change or supplement any part of an Application in any manner after the filing deadline, 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 as a result of an Administrative Deficiency or by approved amendment of an Application after a commitment or allocation of tax credits as further described in §49.13(b) of this chapter (relating to Board Reevaluation) (§2306.6708). This Administrative Deficiency process applies to requests for information made by the Real Estate Analysis Division during their review. To the extent that the review of Administrative Deficiency documentation during the review alters the score assigned to the Application, Applicants will be re-notified of their final score.
- (B) **Administrative Deficiencies for Tax Exempt Bond Applications.** If an Application contains deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies. Because the review for Eligibility, Threshold Criteria, and review for financial feasibility by the Department's Real Estate Analysis Division may occur separately, Administrative Deficiency requests may be made during any of these

May 13, 2011

Robbye Meyer (via overnight & email [robbye.meyer@tdhca.state.tx.us](mailto:robbye.meyer@tdhca.state.tx.us))  
Texas Department of Housing & Community Affairs  
221 East 11th Street  
Austin, Texas 78701-2410

Re: Application Challenge – Main Street Commons; TDHCA #11077

Dear Robbye:

This law firm has been retained by a client to present the enclosed Application Challenge to the Texas Department of Housing & Community Affairs with respect to the 2011 low income housing tax credit allocations. This Challenge is pursuant to Section 49.10(e) of the 2011 Qualified Allocation Plan.

As you will see from the enclosed detailed materials, several challenges are being presented:

1. Community Revitalization Plan: The applicant submitted only a city comprehensive plan, and not a community revitalization plan, and as such points should not be awarded for this item.
2. Leveraging of Private, State and Federal Resources: The only evidence presented of these resources was a brief letter addressed to TDHCA, and not the required legally binding written contract between the applicant and the provider of the funds. Furthermore, the letter lacked the required terms and conditions. As such, points should not be awarded for this item.
3. Third Party Funding Commitment Outside of Qualified Census Tracts: The letter submitted does not amount to a commitment of funds, and is not addressed to the applicant/owner, such that points should not be awarded for this item.
4. HOME Match Requirement: The party offering the matching funds is a consultant to the project, will financially benefit from the project, and is listed as a member of the development team. The HOME rules specifically state that the match must originate from a source other than the project owner, developer, consultant or building contractor. As such, this proposed match violates the HOME rules, and the project should not be eligible for HOME funds. Without the HOME funds the project is not financially feasible.
5. Bond Fees: The Development Cost Schedule indicates that project fund uses include "Credit Enhancement Fees" and "Bond Premium"; however, this is not a bond transaction and there are no bond proceeds shown in the project sources.

05-16-11 11:10:35 RCVD

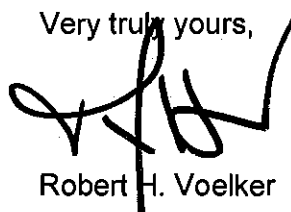
As this will not be a bond financed project, these items are not properly included in basis, which results in a reduction in eligible costs and a loss in tax credits. Without these credits, the project is not financially feasible.

6. Threshold Criteria-Financing Requirements: The application does not contain a required term sheet or letter of commitment from the proposed tax credit investor, Red Stone Equity Partnerships, LLC, such that the application failed to meet a threshold requirement.
7. Quantifiable Community Participation/Neighborhood Organization Support: Although the Main Street Neighborhood Organization submitted a letter of support, (i) the City of Taylor has stated that this organization was formed on February 9, 2011, at a meeting at which the developer presented the project, and the only function of the organization was to show TDHCA that the neighbors had no problem with this application, and (ii) the organization attempted to register with TDHCA at the time of providing its support letter, but failed to supply any evidence of the existence of the organization other than minutes of the February 9 meeting. As such, the neighborhood organization was formed by the applicant for purposes of this scoring item, and points should not be awarded for this item.

Please consider these materials in connection with finalizing the scoring of the applications in this Region, and place these materials in the applicant's file for review by the TDHCA Board as allocations are finalized and approved.

Please feel free to call me if you have any questions.

Very truly yours,



Robert H. Voelker

c: Raquel Morales (via email [Raquel.morales@tdhca.state.tx.us](mailto:Raquel.morales@tdhca.state.tx.us))

Enclosures

# Application Challenges

## Main Street Commons – Taylor, TX

TDHCA # 11077

05-16-11A10:35  
CVD

### Community Revitalization Plan (3 points)

The Main Street Commons application claims 3 points in Volume 4 Tab 13 for a development located within an area covered by a Community Revitalization Plan. According to Exhibit page 4 of the 2011 QAP as well as page 94 of the Procedures Manual, a Community Revitalization Plan “targets specific geographic areas for revitalization and development of residential developments”. Per application instructions in order to claim points under this category the applicant must provide “a letter from the Appropriate Local Official stating there is a **Community Revitalization Plan** in effect and the Development is within the area covered by the plan”; however, the plan that was submitted by Main Street Commons and referenced by the community development director merely references the city Comprehensive Plan which is completely different from a **Revitalization Plan**. Furthermore, according to page 72 of the Procedures Manual, evidence must be submitted that shows “the **Community Revitalization Plan** has been adopted by the local Governing Body by ordinance, resolution or specific vote” and the only evidence provided references the Comprehensive Plan, not a **Community Revitalization Plan**. A comprehensive plan and a revitalization plan are two separate aspects of community planning. Comprehensive Plans are very general in nature and are adopted in almost all municipalities to express a municipality’s strategy to govern growth and achieve its economic development goals. A comprehensive plan serves as a guide for a wide range of issues, including making land use changes, preparation of capital improvement programs, and the rate, timing, and location of future growth, and is based upon establishing long-term goals and objectives to guide the future growth of a city. In contrast to the broad scope of a comprehensive plan, a **Revitalization Plan** is a distinct plan that is adopted by a municipality that specifically describes in detail a community’s intention for revitalization and redevelopment of land within the project area in order to eliminate blight and remedy the conditions that caused it. In accordance with page 16 and 17 of the QAP regarding the Administrative Deficiency Process “For exhibits and other information required under §49.9 of this chapter (relating to Selection Criteria) not originally submitted in the Application (i.e. Community Revitalization Plan or letter from Appropriate Local Official missing entirely from the Application) staff will not award points for that item, even if points were requested in the Applicant's Self Scoring Form”.

PLEASE SEE EXHIBIT A FOR DOCUMENTATION RELATING TO COMMUNITY REVITALIZATION

### Leveraging of Private, State and Federal Resources (1point)

Under Volume 4 Tab 26 Main Street Commons claimed 1 point for the leveraging of private resources by way of a \$210,700 loan from a private individual, Jon Jessup. In order to claim these points the applicant must submit evidence of the funds which is defined on page 77 of the HTC Procedures manual as a “Commitment of funds or an Application for funding and letter from the funding entity indicating that the application was received” and “should include the amount and terms of the proposed funding”. As evidence of these funds Main Street Commons presented a letter from the private individual that was proposing to provide the loan.

This letter merely states that the "term of the loan will be for at least one year or until the placed in service date, whichever is longer, and the terms will be AFR at the time of closing should the application receive an award from TDHCA". However, per Page 2 in the Rules Manual, a commitment is defined as "A *legally binding* written contract, *setting forth the terms and conditions* under which housing tax credits, loans, grants or other sources of funds or financial assistance will be made available". Since the applicant merely provided a statement from the individual to TDHCA and the letter is not directed to the applicant, this statement that a loan for private funds is available to the project is clearly not a *legally binding written contract*, and therefore does not fit the requirements of the evidence requested for this point category. Without a \$210,700 loan the applicant cannot claim the 1 point in this category, and furthermore, this application becomes financially infeasible.

PLEASE SEE EXHIBIT B FOR DOCUMENTATION RELATING TO LEVERAGING OF PRIVATE, STATE and FEDERAL RESOURCES

### **3<sup>rd</sup> PARTY FUNDING COMMITMENT OUTSIDE OF QUALIFIED CENSUS TRACTS (1 point)**

In Volume 4 Tab 27 Main Street Commons has claimed 1 point for 3<sup>rd</sup> party funding, by using the private loan of \$210,700 that was used to score in a separate point category in Tab 4 Volume 26. According to page 77 of the Procedures Manual in order to claim this point the applicant must "Provide evidence that the Development has received a commitment (an application alone will not suffice) for Third-Party funding and the Development is not inside a Qualified Census Tract. Again, the evidence provided does is not a *commitment of funds* as defined by TDHCA and is ineligible for this point.

PLEASE SEE EXHIBIT C FOR DOCUMENTATION RELATING TO THIRD-PARTY FUNDING COMMITMENTS OUTSIDE OF QUALIFIED CENSUS TRACTS

### **HOME Match Requirement (Required for HOME Funds – 18 points)**

Included in the Main Street Commons application is an application for a HOME Loan of \$1,000,000 at 2% interest. Per the HOME rules, the applicant must show matching funds in the amount of 2% of the HOME loan amount provided by a 3<sup>rd</sup> party, and according to page 53 of 58 in the HOME Rule Manual, "*No person that would benefit from the award of HOME funds has provided a source of Match...*". In Volume 7 Tab 8 Main Street Commons states that these Match Funds will be provided by S2A Development Consulting, LLC through the donation of \$20,000 worth of services including "assembling and filing the HOME application, site monitoring and other development consulting services typically provided by our company". S2A Development Consulting, LLC is listed as part of the development team in Volume 1 Tab 1 Part A and Volume 1 Tab 6 and will receive a fee of \$150,000 for their services (as shown in the development cost schedule in Volume 1 Tab 3). As the development consultant, S2A Development Consulting, LLC would be ineligible to provide the required Match as not only are they considered to be a member of the development team that is applying for the HOME Loan, but they also have an obvious interest and would benefit substantially from the award of HOME funds through the \$150,000 fee that they are budgeted to receive. Absent an award of HOME funds, the Main Street Commons application would become financially infeasible and S2A Consulting, LLC would not receive the \$150,000 fee. In addition, TDHCA has historically considered donations from consultants as ineligible for HOME Match purposes. According to page 30 of the 2005 MATCH Guide (the latest available), the "Match



must originate from a source other than the project owner, developer, consultant or building contractor, and although “the value of donated volunteer labor, including professional services,...may be counted... This excludes building contractors or consultants who are under contract or seeking a contract to donate skilled or unskilled labor to a HOME-funded Contract Administrator”. Therefore S2A, in its position as a consultant for this project would be ineligible to provide the required Match. Furthermore, the attached Questions & Answers from TDHCA states that “Administration fees are not considered eligible match” and explains further that “Consultant fees are considered Administration fees and cannot be considered eligible match in assisting an applicant with a HOME award”.

PLEASE SEE EXHIBIT D FOR DOCUMENTATION RELATING TO THE HOME MATCH REQUIREMENT

### **Bond Fees**

Under Volume 1 Tab 3 Part A Development Cost Schedule the Main Street commons application lists a fee of \$255,367 for “Credit Enhancement Fees” as well as \$61,803 for “Bond Premium”. These fees indicate that revenue from a bond issuance will be included as a source for this development, however, there is no mention of bond financing in the sources in the funding request under Volume 1 Tab 1, nor are bond financing proceeds mentioned in the summary of sources and financing narrative in Volume 1 Tab 4. If financing from a bond issuance will be included as a source of funds (as the \$317,000 in fees related to bond activity indicate), the corresponding financing commitments have not been included with the original application, and therefore according to page 16 of the QAP the Application will be recommended for termination. Furthermore, the \$255,367 as shown for Credit Enhancement Fees is included in eligible basis which generates \$29,877 in credits. Removing this Credit Enhancement Fee, and the resulting eligible basis amount and tax credits attributable to it, results in an unbalanced sources and uses, and therefore makes this project financially infeasible.

PLEASE SEE EXHIBIT F FOR DOCUMENTATION RELATING TO THE BOND FEES SHOWN

### **Threshold Criteria – Financing Requirements**

Under Section 49.8 of the QAP (relating to Threshold Criteria), there are a number of items that are considered “mandatory requirements that must be submitted at the time of application submission”. According to the Threshold Criteria, page 34 of the QAP states the applicant must “provide a term sheet or letter of commitment from a syndicator that, at a minimum provides an estimate of the amount of equity dollars expected to be raised for the Development in conjunction with the amount of Housing Tax Credits requested for allocation to the Development Owner, including any pay-in schedules, anticipated developer fees paid during construction and anticipated deferred developer fees...”. In the “Sources and Uses” and “Financing Narrative” sections of Volume 1 Tab 4, as well as Volume 1 Tab 6 “Development Team” portion of the Main Street Commons application, Red Stone Equity Partnerships, LLC is listed as the Tax Credit Syndicator. However, through a review of the Main Street Commons Application we could not locate the required letter of intent or commitment from Red Stone Equity Partnerships, LLC or any other syndicator. In accordance with the Administrative Deficiency Process outlined on pages 16 and 17 of the QAP “if exhibits and other information required under Section 49.8 of this chapter (relating to Threshold Criteria) are not originally submitted in the

Application (i.e. financing commitment missing entirely from the Application) staff will recommend termination of the Application".

PLEASE SEE EXHIBIT G FOR DOCUMENTATION RELATING TO THRESHOLD CRITERIA & FINANCING REQUIREMENTS

### **Quantifiable Community Participation/Neighborhood Organization Support**

Section 49.8(5)(K) of the Qualified Allocation Plan requires that the applicant submit "a certification that the Applicant, Developer, or an employee or agent of the Applicant has not formed a Neighborhood Organization for purposes of §49.9(a)(2) of this chapter ... " The applicant submitted this certificate in its application under Volume 1, Tab 5. Additionally, under §49.9(a)(2)(A)(v), the applicant is required to submit with the application "documentation showing that the organization is on record with the state or county in which the development is proposed to be located." Although the submission of the QCP form that meets the requirements of this subsection constitutes being on record with the State, the QCP form requires "evidence of the organization's existence (ex. bylaws, newsletter, minutes, etc.).

The applicant claimed 24 Neighborhood Organization support points for the support of the Main Street Neighborhood Organization pursuant to the "Form For Qualified Neighborhood Organizations to Submit to TDHCA for Quantifiable Community Participation". However:

1. As of the date of the pre-application this organization did not exist (see Tab 9 of the pre-application, enclosed).
2. Per Deby Lannen, Main Street Manager for the City of Taylor, she is not aware of the "Main Street Neighborhood Organization" and "anything of that sort I hope I would have been involved in." Furthermore, per Jim Dunaway, City Manager of the City of Taylor, the organization was formed at a meeting on February 9, 2011, conducted by Jason Seale (the current landowner) and a representative of Herman Kittle, who explained the project and went over the development plans. Mr. Dunaway said "the only function was to show TDHCA that the neighbors had no problem with the application" and the organization was formed after the presentation.
3. The only "evidence of the organization's existence" provided to TDHCA was minutes of the February 9, 2011 meeting.

It is readily apparent that (i) the Main Street Neighborhood Organization was formed solely for purposes of §49.9(a)(2) of the Qualified Allocation Plan, (ii) the City of Taylor only became aware of the organization after the pre-application and the organization serves no purpose other than facilitating the attempt to score points for Neighborhood Organization support, which is particularly evident when the City has a Main Street Manager that is not even aware that the Main Street Neighborhood Organization exists, and (iii) mere minutes of a meeting of a group of people does not constitute evidence of the existence of an organization, such that the organization is not "on record" with TDHCA. Furthermore, the certifications by applicant, to the effect that the applicant has not formed the neighborhood organization for purposes of §49.9(a)(2) is erroneous. For the foregoing reasons, the application should not score the 24 points for Neighborhood Organization support.

PLEASE SEE EXHIBIT H FOR DOCUMENTATION RELATING TO QUANTIFIABLE COMMUNITY PARTICIPATION/NEIGHBORHOOD ORGANIZATION SUPPORT

# **EXHIBIT A**

Community Revitalization Plan

**COMMUNITY REVITALIZATION or HISTORIC PRESERVATION (§49.9(a)(13))**

The Application proposes:

- Community Revitalization** - the Development includes the use of an Existing Residential Development and proposes any Rehabilitation or any Reconstruction that is part of a Community Revitalization Plan. (§42(m)(1)(C)(iii))  
Evidence to be provided to satisfy this requirement:

- Volume 2, Tab 1, Part B- 2011 Existing Residential Development Certification Form* is present in Volume 2, and is fully executed.

**AND**

- A letter from the Appropriate Local Official stating there is a Community Revitalization Plan in effect and the Development is within the area covered by the plan.

If the Applicant is unable to obtain a letter from an Appropriate Local Official, then the following must be provided:

- If the Community Revitalization Plan has specific boundaries, a copy of the Plan adopted by the jurisdiction or its designee and a map showing that the Development is within the area covered by the Community Revitalization Plan.

- Historic Preservation** - The Development includes the use of an existing building that is designated as historic by a federal or state Entity and proposes Rehabilitation (including Reconstruction) or Adaptive Reuse.

Evidence to be provided includes:

- The Development includes\* the use of an existing building that is designated as historic by a federal or state entity and proposes Rehabilitation (including reconstruction) or Adaptive Reuse.
- Proof of the historic designation from the appropriate Governmental Body is included.
- Letter from the Texas Historical Commission indicating the effect of the proposed rehabilitation on historical structure is included.

**\*The Development itself must have the designation; points in this subparagraph are not available for Developments simply located within historic districts or areas that do not have a designation on the building. The Development must include the historic building.**

- Rehabilitation** - Application proposes to build solely Rehabilitation.
- Reconstruction** - Application proposes to build solely Reconstruction.
- Adaptive Reuse** - Application proposes to build solely Adaptive Reuse.
- New Construction** - the Development is New Construction and is proposed to be located in an area that is part of a Community Revitalization Plan.

Evidence to be provided includes one of the following:

Evidence to be provided to satisfy this requirement:

- A letter from the Appropriate Local Official stating there is a Community Revitalization Plan in effect and the Development is within the area covered by the plan.

If the Applicant is unable to obtain a letter from an Appropriate Local Official, then the following must be provided:

- If the Community Revitalization Plan has specific boundaries, a copy of the Plan adopted by the jurisdiction or its designee and a map showing that the Development is within the area covered by the Community Revitalization Plan.



**REMEMBER TO PLACE YOUR EVIDENCE BEHIND THIS FORM**



February 2, 2011



Michael A. Roderer  
Senior Development Associate  
Herman & Kittle Properties, Inc.  
500 E. 96<sup>th</sup> Street, Suite 300  
Indianapolis, IN 46240

**RE: Main Street Commons**

Dear Mike:

The City of Taylor understands you are proposing to develop approximately 2.8 acres of land located on the east side of N. Main Street approximately 450 feet south of its intersection with Carlos G Parker Blvd NW, located within the limits of the City of Taylor, as a multifamily residential apartment community for retirees and the elderly consisting of 75 units generally referred to as Main Street Commons.

As you are aware, the City of Taylor adopted a Comprehensive Plan in 2004, which encompasses the limits of the City of Taylor and its extraterritorial jurisdiction. Ordinance 2004-27, which evidences the adoption of this plan is included herewith for your reference. Chapter 5 of the 2004 Comprehensive Plan addresses the City's housing needs. Main Street Commons will meet two objectives of the City's Comprehensive Plan relative to housing. First, it will result in the demolition of two dilapidated residential structures currently located on the subject property, which will contribute positively to the overall revitalization and development trends of the surrounding area. Secondly, it will provide high-quality housing opportunities for retirees and the elderly.

Please don't hesitate to contact me if I can be of further assistance or provide additional information regarding the City of Taylor 2004 Comprehensive Plan.

Regards,

Bob van Til, AICP, CEcD  
Community Development Director  
City of Taylor  
512-352-5990 x 16

ORDINANCE No. 2004-27

AN ORDINANCE ADOPTING THE 2004 COMPREHENSIVE PLAN FOR THE CITY OF TAYLOR; PROVIDING A SAVINGS CLAUSE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH.

WHEREAS, the city of Taylor intends to ensure efficient delivery of public services; and

WHEREAS, the city of Taylor intends to coordinate public and private investments and minimize conflict between land uses; and

WHEREAS, the city of Taylor intends to manage growth in an orderly manner; and

WHEREAS, the city of Taylor intends to provide a rational and reasonable basis for making decisions about the community; and

WHEREAS, funding for the 2004 Comprehensive Plan was made possible by a grant from the Office of Rural and Community Affairs with matching funds provided by the City and the Taylor Economic Development Corporation.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TAYLOR, TEXAS;

SECTION I Under the authority vested in the City Council of the city of Taylor by Chapter 213 of the Local Government Code, the city of Taylor hereby adopts the 2004 Comprehensive Plan for the city of Taylor, a copy of which was presented to and considered during a public hearing on December 9, 2004.

SECTION II All ordinances, parts of ordinances, or resolutions, or parts of resolutions in conflict herewith, are expressly repealed.

SECTION III The validity of any section or provision of this ordinance shall not invalidate other sections or provisions thereof.

SECTION IV In accordance with article 8 of the City Charter, this ordinance was introduced before the City Council on the 9<sup>th</sup> day of December, 2004.

PASSED AND APPROVED THIS 13<sup>th</sup> DAY OF January, 2005

  
Donald R. Hill, Mayor

ATTEST

  
Susan Brock, City Clerk

- (i) an Applicant or Related Party; and
  - (ii) any Person who is:
    - (I) active in the construction, rehabilitation, ownership, or Control of the proposed Development, including:
      - (-a-) a General Contractor; and
      - (-b-) a Developer; and
      - (-c-) a General Partner, Principal or Affiliate of a General Partner or General Contractor; or
    - (II) employed as a consultant, lobbyist, or attorney by an Applicant or a Related Party.
- (B) During the period beginning on the first date of the Application Acceptance Period and ending on the date the Board makes a final decision with respect to the approval of any Application in that Application Round, an employee of the Department may communicate about any Application with the following Persons:
- (i) the Applicant or a Related Party; and
  - (ii) any Person who is:
    - (I) active in the construction, rehabilitation, ownership, or Control of the proposed Development, including:
      - (-a-) a General Partner or General Contractor; and
      - (-b-) a Developer; and
      - (-c-) a Principal or Affiliate of a General Partner or General Contractor; or
    - (II) employed as a consultant, lobbyist or attorney by the Applicant or a Related Party.
- (C) A communication under paragraph (2) of this subsection may be oral or in any written form, including electronic communication through the Internet, and must satisfy the following conditions:
- (i) the communication must be restricted to technical or administrative matters directly affecting the Application;
  - (ii) the communication must occur or be received on the premises of the Department during established business hours; and
  - (iii) a record of the communication must be maintained and included with the Application for purposes of Board review and must contain the following information:
    - (I) the date, time, and means of communication;
    - (II) the names and position titles of the Persons involved in the communication and, if applicable, the Person's relationship to the Applicant;
    - (III) the subject matter of the communication; and
    - (IV) a summary of any action taken as a result of the communication.
- (D) Notwithstanding subparagraph (A) or (B) of this paragraph, a Board member or Department employee may communicate without restriction with a Person listed in subparagraph (A) or (B) of this paragraph during any Board meeting or public hearing held with respect to the Application, but not during a recess or other non-record portion of the meeting or hearing.
- (E) Subparagraph (A) of this paragraph 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 all matters related to Applications to be considered by the Board will not be discussed.
- (2) **Administrative Deficiency Process.** The purpose of the Administrative Deficiency process is to allow the Applicant an opportunity to provide clarification or correction to information originally submitted in the Application. For example, if exhibits and other information required under §49.8 of this chapter (relating to Threshold Criteria) are not originally submitted in the Application (i.e. financing commitment missing entirely from

the Application) staff will recommend termination of the Application. However, for information missing in part from the Application (i.e. financing commitment is submitted but it is not executed by the lender) staff will request the missing or corrected information via an Administrative Deficiency. For exhibits and other information required under §49.9 of this chapter (relating to Selection Criteria) not originally submitted in the Application (i.e. Community Revitalization Plan or letter from Appropriate Local Official missing entirely from the Application) staff will not award points for that item, even if points were requested in the Applicant's Self Scoring Form. For information missing in part from the Application (i.e. the letter from the Appropriate Local Official does not include all required information) staff will request the missing information via an Administrative Deficiency and award points provided the information submitted in response to the Administrative Deficiency is satisfactory to the Department.

- (A) **Administrative Deficiencies for Applications submitted under the State Housing Credit Ceiling and Rural Rescue Applications.** If an Application contains Administrative Deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies. Because the review for Eligibility, Selection, Threshold Criteria, Quantifiable Community Participation (QCP) and review for financial feasibility by the Department's Real Estate Analysis Division may occur separately, Administrative Deficiency requests may be made during any of these reviews. The Department staff will request clarification or correction in a deficiency notice in the form of an e-mail, or if an e-mail address is not provided in the Application, by facsimile, and a telephone call (only if there has not been confirmation of the receipt of the e-mail within twenty-four (24) hours) to the Applicant and one other party identified by the Applicant in the Application advising that such a request has been transmitted. If Administrative Deficiencies are not clarified or corrected to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then five (5) points shall be deducted from the Selection Criteria score for each additional day the deficiency remains unresolved. If Administrative Deficiencies are not clarified or corrected by 5:00 p.m. on the seventh business day following the date of the deficiency notice, then the Application shall be terminated. The time period for responding to a deficiency notice begins at the start of the 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. An Applicant may not change or supplement any part of an Application in any manner after the filing deadline, 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 as a result of an Administrative Deficiency or by approved amendment of an Application after a commitment or allocation of tax credits as further described in §49.13(b) of this chapter (relating to Board Reevaluation) (§2306.6708). This Administrative Deficiency process applies to requests for information made by the Real Estate Analysis Division during their review. To the extent that the review of Administrative Deficiency documentation during the review alters the score assigned to the Application, Applicants will be re-notified of their final score.
- (B) **Administrative Deficiencies for Tax Exempt Bond Applications.** If an Application contains deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies. Because the review for Eligibility, Threshold Criteria, and review for financial feasibility by the Department's Real Estate Analysis Division may occur separately, Administrative Deficiency requests may be made during any of these



official pronouncements issued thereunder by the U.S. Department of the Treasury or the Internal Revenue Service (IRS).

- (7) **Certificate of Reservation**--The notice given by the Texas Bond Review Board (TBRB) to an issuer reserving a specific amount of the state ceiling for a specific issue of bonds.
- (8) **Community Revitalization Plan**--A published document under any name, approved and adopted by the local Governing Body or, if the Governing Body has lawfully assigned responsibility for oversight of communication or activities to a body created or sponsored by that Governing Body, the vote of the Governing Body so designated, by ordinance, resolution, or vote that targets specific geographic areas for revitalization and development of residential developments.
- (9) **Competitive Housing Tax Credits**--Tax credits available from the State Housing Credit Ceiling.
- (10) **Determination Notice**--A notice issued by the Department to the Development Owner of a Tax-Exempt Bond Development which specifies the Department's determination as to the amount of tax credits that the Development may be eligible to claim pursuant to §42(m)(1)(D) of the Code.
- (11) **Development Site**--The area, or if scattered site, areas, on which the Development is proposed to be located.
- (12) **Economically Distressed Area**--A county that contains an area that meets the criteria for an economically distressed area under §17.92(1), Texas Water Code, and has adopted and enforces the model rules under §16.343, Texas Water Code.
- (13) **Eligible Basis**--With respect to a building within a Development, the building's Eligible Basis pursuant to §42(d) of the Code.
- (14) **Existing Residential Development**--Any Development Site which contains existing residential Units at the time the Application is submitted to the Department.
- (15) **Housing Credit Allocation**--An allocation by the Department to a Development Owner for a specific Application of Housing Tax Credits in accordance with the provisions of this chapter.
- (16) **Housing Credit Allocation Amount**--With respect to a Development or a building within a Development, the amount the Department determines to be necessary for the financial feasibility of the Development and its viability as a Development throughout the affordability period which the Board allocates to the Development.
- (17) **Qualified Nonprofit Organization**--An organization that meets the requirements of Texas Government Code §2306.6706 and §2306.6729.
- (18) **Qualified Nonprofit Development**--A Development in which a Qualified Nonprofit Organization is to own an interest in the Development directly or through a partnership and materially participates (within the meaning of §469(h) of the Code) in the development and operation of the development throughout the Compliance Period.
- (19) **State Housing Credit Ceiling**--The aggregate amount of Housing Credit Allocations that may be made by the Department during any calendar year, as determined from time to time by the Department in accordance with applicable federal law, including §42(h)(3)(C) of the Code.
- (20) **Supportive Housing**--Residential rental developments intended for occupancy by individuals or households in need of specialized and specific non-medical services in order to maintain independent living.

- (24) Colonia**--A geographic Area that is located in a county some part of which is within 150 miles of the international border of this state, that consists of 11 or more dwellings that are located in close proximity to each other in an area that may be described as a community or neighborhood, and that:
- (A) Has a majority population composed of individuals and families of low-income and very low-income, based on the federal Office of Management and Budget poverty index, and meets the qualifications of an economically distressed Area under §17.921, Texas Water Code; or
  - (B) Has the physical and economic characteristics of a colonia, as determined by the Department.
- (25) Commitment**--A legally binding written contract, setting forth the terms and conditions under which housing tax credits, loans, grants or other sources of funds or financial assistance will be made available.
- (26) Community Revitalization Plan**--A published document under any name, approved and adopted by the local Governing Body or, if the Governing Body has lawfully assigned responsibility for oversight of communication or activities to a body created or sponsored by that Governing Body, the vote of the Governing Body so designated, by ordinance, resolution, or vote that targets specific geographic areas for revitalization and development of residential developments.
- (27) Comparable Unit**--A Unit, when compared to the subject Unit, similar in overall condition, location, unit amenities, utility structure, and common amenities, and:
- (A) for purposes of calculating the inclusive capture rate targets the same population and is likely to draw from the same demand pool;
  - (B) for purposes of estimating the Restricted Market Rent targets the same population and is similar in net rentable square footage and number of bedrooms; or
  - (C) for purposes of estimating the subject Unit market rent does not have any income or rent restrictions and is similar in net rentable square footage and number of bedrooms.
- (28) Competitive Housing Tax Credits**--Tax credits available from the State Housing Credit Ceiling.
- (29) Compliance Period**--Means with respect to any building, the period of 15 taxable years beginning with the 1<sup>st</sup> taxable year of the credit period.
- (30) Contract Rent**--Maximum rent limits based upon current and executed rental assistance contract(s), typically with a federal, state or local governmental agency.
- (31) Control (including the terms "Controlling," "Controlled by," and/or "under common Control with")**--The power or authority to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. Controlling entities of a partnership include the general partners, special limited partners when applicable, but not investor limited partners. Controlling entities of a limited liability company include the managing members, and any members with 10% or more ownership of the limited liability company, and any members with authority similar to that of a general partner in a limited partnership. Multiple Persons may be deemed to simultaneously have control.

## 2011 HTC Procedures Manual

- ❖ **Volume 4, Tab 13. (V4 T13) Community Revitalization, Historic Preservation or Rehabilitation (Maximum 6 points)**
  - *Volume 2, Tab 1, Part B- 2011 Existing Residential Development Certification Form* must be present in Volume 2, and must be fully executed.
    - Community Revitalization
      - Submit a letter from the Appropriate Local Official stating that the Development Site is located within the area covered by the Community Revitalization Plan; or
      - Only if the Community Revitalization Plan has specific boundaries, a copy of the plan, adopted by the jurisdiction or its designee and a map showing that the Development is within the area covered by the Community Revitalization Plan.
      - Submit evidence that the Community Revitalization Plan has been adopted by the local Governing Body by ordinance, resolution or specific vote.
  - Historic Preservation
    - Developments proposing Rehabilitation (including Reconstruction) or Adaptive Reuse, which include the use of an existing building that is designated as historic by a federal or state Entity.
      - **The historic building itself must be part of the Development; points in this subparagraph are not available for Developments simply located within historic districts or areas that do not have a designation on the building. The Development must include the historic building.**
      - Submit proof of the historic designation from the appropriate Governmental Entity. As a resource, information regarding state and federal historic designations can be printed from the following site:  
<http://atlas.thc.state.tx.us/index.asp>.
  - Developments proposing solely Rehabilitation (includes Reconstruction), solely Reconstruction or solely Adaptive Reuse.
  - New Construction Development proposed to be located in an area that is part of a Community Revitalization Plan (this item worth 3 points).
- ❖ **Volume 4, Tab 14. (V4 T14) Pre-Application Incentive Points (Maximum 6 points)**
  - To be eligible for Pre-Application Incentive Points the Applicant must be able to affirm the following:
    - The site under control is identical to or is a reduced portion of the site as proposed in the Pre-Application; and
    - The Application has met the Pre-Application Threshold Criteria as determined by the Department; and
    - A certification must be included as part of the exhibit, signed by the Principals who signed the site control at Pre-Application, confirming that they are the same Principals at Application; and
    - The Development must serve the same target population (general or elderly) as indicated in the Pre-Application; and



# **EXHIBIT B**

**Leveraging of Private, State and  
Federal Resources**

**LEVERAGING OF PRIVATE, STATE AND FEDERAL RESOURCES (§49.9(a)(26))**

Complete the following information for 1 point under §49.9(a)(26) of the 2011 QAP. Applicants may submit enough sources to substantiate the point request. For example, two sources may be submitted if each is for an amount equal to 1% of the Total Housing Development Cost.

The funding must be equal to or greater than 2% of the Total Housing Development Costs, without rounding, reflected in the Volume 1, Tab 3, Part A. Development Cost Schedule. In addition, the Volume 1, Tab 2, Part B. Rent Schedule must show that at least 3% of all low-income Units are designated to serve individuals or families with incomes at or below 30% AMGI.

**IMPORTANT!** Funding sources used for points under §49.9(a)(5) may be used for this point item but funding may not earn points twice. Funds committed must be enough so that both requests can be covered by the committed funds without counting any of the funds more than once.

Complete one form for each score. Use additional pages if necessary.

1. Name of Private, State or Federal Funding Entity: Jon Jessup

2. Funding Source. Refer to HTC Procedures Manual and 2011 QAP for specific requirements of each funding source. Check one box.

Loan

Source: Jon Jessup, private individual \$210,700

Source: \_\_\_\_\_

Source: \_\_\_\_\_

Total Loan Amount attributed to the Total Housing Development Costs: \$210,700

Grant

Source: \_\_\_\_\_

Source: \_\_\_\_\_

Source: \_\_\_\_\_

Total Grant Amount attributed to the Total Housing Development Costs: \$0

TDHCA HOME Funds  
 TDHCA HOME funds will only qualify if there is a Notice of Funding Availability (NOFA) out for available funds and the Applicant is eligible under that NOFA.

Total Amount attributed to the Total Housing Development Costs: \_\_\_\_\_

In-kind Contribution  
 For in-kind contributions, evidence must be submitted from a private, state or federal resource which substantiates the value of the in-kind contribution.

Source: \_\_\_\_\_

Source: \_\_\_\_\_

Source: \_\_\_\_\_

Total Amount attributed to the Total Housing Development Costs (from August 1, 2011 through Placed in Service date): \$0

Type of in-kind contribution: \_\_\_\_\_

**LEVERAGING OF PRIVATE, STATE AND FEDERAL RESOURCES (§49.9(a)(26)) (cont.)**

**Development Based Rental Subsidy**

Development based rental subsidies from private, state or federal resource may qualify under this section if evidence of the remaining value of the contract is submitted from the source. In this case, the value of the contract does not include past subsidies

Total Amount of Remaining Subsidy (August 1, 2011 through expiration of contract): \_\_\_\_\_

**3. Evidence of Funding. One of the following must be submitted.**

**Copy of commitment of funds.** The commitment must include a statement that the provider of funds is not the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application and that none of the funds committed were first provided to the entity by the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application, unless the Applicant itself is a Unit of General Local Government or Governmental Instrumentality.

**Copy of the application to the funding entity and a letter from the funding entity indicating that the application was received.** The Application should include the amount and terms of the proposed funding. For in-kind contributions and development based rental subsidies, a letter from the funding entity substantiating the anticipated value must be provided.



**REMEMBER TO SUBMIT YOUR EVIDENCE BEHIND THIS FORM**

- ❖ **Volume 4, Tab 25. (V4 T24) Developments Intended for Eventual Tenant Ownership – Right of First Refusal (Maximum 1 point)**
- ❖ **Volume 4, Tab 26. (V4 T26) Leveraging of Private, State, and Federal Resources (Maximum 1 point)**
  - Applicants may submit enough sources to substantiate the point request. For example, two sources may be submitted if each is for an amount equal to 2% of the Total Housing Development Cost (do not round).
    - Funding sources used for points under §49.9(a)(5) may be used for this point item but funding may not earn points twice. Funds committed must be enough so that both requests can be covered by the committed funds without counting any of the funds more than once.
    - The funding must be a loan, grant, in-kind contribution, or development based rental subsidy from a federal, state or private source in addition to the primary funding (construction and permanent loans) that is proposed to be utilized and cannot be from the same source or an affiliated source. Qualifying funds awarded through local entities may qualify points if the original source of the funds is from a private, state, or federal source and a statement from the local entity is provided that attests that the original source of funds is from a private, state, or federal source and identifies the original source of funds.
    - Funding must be equal to or greater than 2% (do not round) of the Total Housing Development Costs reflected in *Volume 1, Tab 3 Part A. Development Cost Schedule*.
    - *Volume 1, Tab 2 Part B. Rent Schedule* must show that at least 3% (do not round) of all low-income Units are designated to serve individuals or families with incomes at or below 30% of AMGI.
    - All funding, including in-kind contributions (except Development Based Rental Subsidies), must be reflected in the *Volume 1, Tab 4, Part A. Summary Sources and Uses* form, the and *Volume 1, Tab 4, Financing Narrative*.
    - Only enough sources to substantiate the points requested may be submitted, and all submitted sources must be shown on the *Volume 1, Tab 4, Part A. Summary Sources and Uses of Funds*. Do not submit more sources than are needed for points.
  - Eligible Funding Sources include:
    - Loans and Grants (including Capital Grant Funds and HOPE VI funds)
      - Must be reflected on *Volume 1, Tab 4, Part A. Summary Sources and Uses of Funds* form, and *Volume 1, Tab 4, Financing Narrative*.
      - Must be in addition to the primary funding and cannot be issued from the same primary funding source, or an affiliated source, as the primary funding.
    - TDHCA HOME or Housing Trust Fund
      - Only eligible if a NOFA is released and HOME or HTF funds are available.
      - Must be reflected on *Volume 1, Tab 4, Part A. Summary Sources and Uses of Funds* form, and *Volume 1, Tab 4, Financing Narrative*.
    - In-kind Contributions
      - Evidence from the funding entity that substantiates the value of the contribution must be provided.
      - Must be reflected on *Volume 1, Tab 4, Part A. Summary Sources and Uses of Funds* form, and *Volume 1, Tab 4, Financing Narrative*.
    - Development Based Rental Subsidies

- Evidence of the remaining value of the contract, from the funding source, must be submitted. If a signed contract is submitted, the remaining value of the subsidies must be evident. It must also be evident that the contract does not include past subsidies.
- One of the following must be submitted:
  - Commitment of funds. The commitment must include a statement that the provider of funds is not the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application and that none of the funds committed were first provided to the entity by the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application, unless the Applicant itself is a Unit of General Local Government; or
  - Application for funding and letter from the funding entity indicating that the application was received. The application should include the amount and terms of the proposed funding.
  - Funding must have already been applied for using the funding institution's application and normal process.
- ❖ **Volume 4, Tab 27. (V4 T27) Third Party Funding Outside of Qualified Census Tracts (Maximum 1 point)**
  - Provide evidence that the Development has received a commitment (an application alone will not suffice) for Third-Party funding and the Development is not inside a Qualified Census Tract. The provider of the funds must attest to the fact that they are not the Applicant, Developer, Consultant, Related Party or any individual or entity acting on behalf of the Application and attest that none of the funds committed were first provided to the entity by the Applicant, Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application. The Development also must have 10% of its Units restricted at 30% AMGI or less for rent and income and the commitment of funds must be equal to or greater than 2% (do not round) of the Total Development Costs. TDHCA HOME and Housing Trust Fund sources will not qualify for points and funding sources and amounts used for points under §49.9(a)(5) may not be used for this point item.
- ❖ **Volume 4, Tab 28. (V4 T28) Scoring Criteria Imposing Penalties**
  - §49.9(a)(28)(A) – Applicants that request extensions for submitting the Carryover Allocation Agreement and/or 10% Test packages will have five points deducted from their Application scores for each extension request made.
    - A five-point deduction will be made for each Carryover Allocation extension and a five-point deduction will be made for each 10% Test extension requested. The penalty will be calculated and assessed based on the 2011 Application Round. Penalties will NOT be imposed for extensions that were requested on Developments that involved Rehabilitation when the Department is the primary lender, or for Developments that involve TRDO-USDA as a lender if TRDO-USDA or the Department is the cause for the Applicant not meeting the deadline.
    - No documentation is required behind the tab for this penalty item.
  - §49.9(a)(30)(C) – Penalties will be imposed on an Application if a Developer or Principal of the Applicant violates §49.12(a) relating to Adherence to Obligations.



- (24) **Colonia**--A geographic Area that is located in a county some part of which is within 150 miles of the international border of this state, that consists of 11 or more dwellings that are located in close proximity to each other in an area that may be described as a community or neighborhood, and that:
- (A) Has a majority population composed of individuals and families of low-income and very low-income, based on the federal Office of Management and Budget poverty index, and meets the qualifications of an economically distressed Area under §17.921, Texas Water Code; or
  - (B) Has the physical and economic characteristics of a colonia, as determined by the Department.
- (25) **Commitment**--A legally binding written contract, setting forth the terms and conditions under which housing tax credits, loans, grants or other sources of funds or financial assistance will be made available.
- (26) **Community Revitalization Plan**--A published document under any name, approved and adopted by the local Governing Body or, if the Governing Body has lawfully assigned responsibility for oversight of communication or activities to a body created or sponsored by that Governing Body, the vote of the Governing Body so designated, by ordinance, resolution, or vote that targets specific geographic areas for revitalization and development of residential developments.
- (27) **Comparable Unit**--A Unit, when compared to the subject Unit, similar in overall condition, location, unit amenities, utility structure, and common amenities, and:
- (A) for purposes of calculating the inclusive capture rate targets the same population and is likely to draw from the same demand pool;
  - (B) for purposes of estimating the Restricted Market Rent targets the same population and is similar in net rentable square footage and number of bedrooms; or
  - (C) for purposes of estimating the subject Unit market rent does not have any income or rent restrictions and is similar in net rentable square footage and number of bedrooms.
- (28) **Competitive Housing Tax Credits**--Tax credits available from the State Housing Credit Ceiling.
- (29) **Compliance Period**--Means with respect to any building, the period of 15 taxable years beginning with the 1<sup>st</sup> taxable year of the credit period.
- (30) **Contract Rent**--Maximum rent limits based upon current and executed rental assistance contract(s), typically with a federal, state or local governmental agency.
- (31) **Control (including the terms "Controlling," "Controlled by," and/or "under common Control with")**--The power or authority to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. Controlling entities of a partnership include the general partners, special limited partners when applicable, but not investor limited partners. Controlling entities of a limited liability company include the managing members, and any members with 10% or more ownership of the limited liability company, and any members with authority similar to that of a general partner in a limited partnership. Multiple Persons may be deemed to simultaneously have control.

# **EXHIBIT C**

**3<sup>rd</sup> PARTY FUNDING  
COMMITMENT OUTSIDE OF  
QUALIFIED CENSUS TRACTS**

**THIRD-PARTY FUNDING COMMITMENT OUTSIDE OF QUALIFIED CENSUS TRACTS (§49.9(a)(27))**

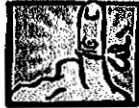
Complete the following information for 1 point under §49.9(a)(27) of the 2011 QAP. Use additional pages if necessary. For all sources, submit the funding commitment behind this tab. All sources must be included in the Volume 1, Tab 4, Part A. Summary of Sources and Uses form and Volume 1, Tab 4, Part B. Financing Narrative. Funding must equal at least 2% of the Total Housing Development Costs, without rounding, reflected in the Volume 1, Tab 3, Part A. Development Cost Schedule. The Development must be located outside a qualified census tract and have at least 10% of the units in the Development serving households at 30% AMGI or below. The funding source can not be a commercial lender. Funds from the Department's HOME and Housing Trust Fund sources are not eligible for these points.

Funding Source: Jon Jessup

Total Amount: \$210,700

Percentage of Development Cost: 2%

- Copy of commitment of funds is attached. The commitment must include a statement that the provider of funds is not the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application and that none of the funds committed were first provided to the entity by the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application.



**REMEMBER TO SUBMIT EVIDENCE BEHIND THIS FORM**

**Jon Jessup  
111 Monument Circle  
Chase Tower, Suite 4750  
Indianapolis, Indiana 46204  
Phone: (317) 713-2100; Fax: (317) 713-2103**

**Raquel Morales  
TDHCA  
PO Box 13941  
Austin, TX 78701**

**RE: Private Funding Commitment, TDHCA Application # 11077 Main Street Commons**

**Dear Ms. Morales:**

**Per the 2011 QAP (Section 49.9(a)(26)) please consider this to be a formal commitment of private funds to the above referenced application to be located in Taylor, TX. The commitment amount is \$210,700 or approximately 2 percent of the total development cost of the project. The repayment term of the loan is expected to last one year or until placed in service which ever is longer, the terms of which will be AFR at time of closing should the application receive an award from TDHCA.**

**Please note that I am not the Applicant, the Developer, Consultant, Related Party, or any individual acting on behalf of the proposed Application and that none of the funds that I have committed were first provided to me by the Applicant, the Developer, Consultant, Related party or any individual or entity acting on behalf of the proposed Application.**

**Sincerely,**

  
**Jon Jessup**

- (24) Colonia**--A geographic Area that is located in a county some part of which is within 150 miles of the international border of this state, that consists of 11 or more dwellings that are located in close proximity to each other in an area that may be described as a community or neighborhood, and that:
- (A) Has a majority population composed of individuals and families of low-income and very low-income, based on the federal Office of Management and Budget poverty index, and meets the qualifications of an economically distressed Area under §17.921, Texas Water Code; or
  - (B) Has the physical and economic characteristics of a colonia, as determined by the Department.
- (25) Commitment**--A legally binding written contract, setting forth the terms and conditions under which housing tax credits, loans, grants or other sources of funds or financial assistance will be made available.
- (26) Community Revitalization Plan**--A published document under any name, approved and adopted by the local Governing Body or, if the Governing Body has lawfully assigned responsibility for oversight of communication or activities to a body created or sponsored by that Governing Body, the vote of the Governing Body so designated, by ordinance, resolution, or vote that targets specific geographic areas for revitalization and development of residential developments.
- (27) Comparable Unit**--A Unit, when compared to the subject Unit, similar in overall condition, location, unit amenities, utility structure, and common amenities, and:
- (A) for purposes of calculating the inclusive capture rate targets the same population and is likely to draw from the same demand pool;
  - (B) for purposes of estimating the Restricted Market Rent targets the same population and is similar in net rentable square footage and number of bedrooms; or
  - (C) for purposes of estimating the subject Unit market rent does not have any income or rent restrictions and is similar in net rentable square footage and number of bedrooms.
- (28) Competitive Housing Tax Credits**--Tax credits available from the State Housing Credit Ceiling.
- (29) Compliance Period**--Means with respect to any building, the period of 15 taxable years beginning with the 1<sup>st</sup> taxable year of the credit period.
- (30) Contract Rent**--Maximum rent limits based upon current and executed rental assistance contract(s), typically with a federal, state or local governmental agency.
- (31) Control (including the terms "Controlling," "Controlled by," and/or "under common Control with")**--The power or authority to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. Controlling entities of a partnership include the general partners, special limited partners when applicable, but not investor limited partners. Controlling entities of a limited liability company include the managing members, and any members with 10% or more ownership of the limited liability company, and any members with authority similar to that of a general partner in a limited partnership. Multiple Persons may be deemed to simultaneously have control.

- Evidence of the remaining value of the contract, from the funding source, must be submitted. If a signed contract is submitted, the remaining value of the subsidies must be evident. It must also be evident that the contract does not include past subsidies.
- One of the following must be submitted:
  - Commitment of funds. The commitment must include a statement that the provider of funds is not the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application and that none of the funds committed were first provided to the entity by the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application, unless the Applicant itself is a Unit of General Local Government; or
  - Application for funding and letter from the funding entity indicating that the application was received. The application should include the amount and terms of the proposed funding.
  - Funding must have already been applied for using the funding institution's application and normal process.
- ❖ **Volume 4, Tab 27. (V4 T27) Third Party Funding Outside of Qualified Census Tracts (Maximum 1 point)**
  - Provide evidence that the Development has received a commitment (an application alone will not suffice) for Third-Party funding and the Development is not inside a Qualified Census Tract. The provider of the funds must attest to the fact that they are not the Applicant, Developer, Consultant, Related Party or any individual or entity acting on behalf of the Application and attest that none of the funds committed were first provided to the entity by the Applicant, Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application. The Development also must have 10% of its Units restricted at 30% AMGI or less for rent and income and the commitment of funds must be equal to or greater than 2% (do not round) of the Total Development Costs. TDHCA HOME and Housing Trust Fund sources will not qualify for points and funding sources and amounts used for points under §49.9(a)(5) may not be used for this point item.
- ❖ **Volume 4, Tab 28. (V4 T28) Scoring Criteria Imposing Penalties**
  - §49.9(a)(28)(A) – Applicants that request extensions for submitting the Carryover Allocation Agreement and/or 10% Test packages will have five points deducted from their Application scores for each extension request made.
    - A five-point deduction will be made for each Carryover Allocation extension and a five-point deduction will be made for each 10% Test extension requested. The penalty will be calculated and assessed based on the 2011 Application Round. Penalties will NOT be imposed for extensions that were requested on Developments that involved Rehabilitation when the Department is the primary lender, or for Developments that involve TRDO-USDA as a lender if TRDO-USDA or the Department is the cause for the Applicant not meeting the deadline.
    - No documentation is required behind the tab for this penalty item.
  - §49.9(a)(30)(C) – Penalties will be imposed on an Application if a Developer or Principal of the Applicant violates §49.12(a) relating to Adherence to Obligations.

# **EXHIBIT D**

HOME Match Requirement

Per the HOME Program Rule at 10 TAC §53.80, Match equal to 2% of the HOME award must be provided (except applications awarded under Persons with Disabilities Set-Aside or applications financed with USDA 515 funds). To the extent that Match in the amount of 5% of the HOME award is provided, the interest rate may be adjusted to as low as 0%; otherwise, the interest rate will be as low as 2%.

Indicate the amount of Match funds provided and the source in the appropriate spaces in the table below. Provide supporting documentation in the form of firm commitments from the source of the matching funds. If a property tax abatement is pledged as Match, include a letter from the appropriate appraisal district documenting a specific cash value and duration for the abatement.

TYPE OF MATCH PLEDGED	Pledged Amount	Source of Funds
Non-Federal Grants	\$	
Waived, foregone or deferred fees and charges (ex: debris removal and container fees, tap fees, building permits, other mandatory fees charged by the local municipality) <b>CANNOT INCLUDE DEVELOPER FEES</b>	\$	
Below-Market Financing**	\$	
Property Tax Abatement**	\$	
Donated Non-Professional Labor	\$	
Donated Professional Labor	\$ 20,000	S2A Development Consulting, LLC
Non-Federally Funded Infrastructure	\$	
Rental Value of Donated Use of Site Preparation or Construction Equipment	\$	
Donated Construction Materials	\$	
Donated Site Preparation	\$	
Donated Demolition Services	\$	
Donated Real Property	\$	
<b>Total Value of Match Pledged:</b>	<b>\$ 20,000</b>	
<b>Percentage of Project Funds to be Matched (Total Value of Match /Project Funds Requested)</b>	<b>%2</b>	

\*Generally, a related party contribution to the development is not considered eligible Match. Please contact the Department for specific examples that are not provided in the following guidance.

\*\*See following page for additional guidance and examples.





June 18, 2010

Mr. Chris Law, Administrator  
Multifamily HOME Program  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, Texas 78701

*Re: Donated Consulting Services for Main Street Commons*

Dear Mr. Law:

In accordance with the HOME program rules regarding the value of donated services counted as match for a TDHCA HOME award, S2A Development Consulting agrees to donate services valued at \$20,000 to the Main Street Commons project. These services may include assembling and filing the HOME application, site monitoring, and other development consulting services typically provided by our company. If awarded HOME funds, we will develop a formal service agreement that outlines in detail the scope of work to be performed by our company and the value of these services.

If you have any questions or require clarification, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sarah H. Andre', with a long horizontal stroke extending to the right.

Sarah H. Andre

1305 EAST 6TH STREET STE 12 AUSTIN TX 78702 • P: (512) 698 3369 • F: (512) 233 2269 • SARAH@S2ADEVELOPMENT.COM

whichever is later. For release of retainage the down date endorsement must be dated at least thirty (30) days after the date of construction completion;

(2) For hard construction costs, documentation of the total construction costs incurred and costs incurred since the last disbursement of funds. 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) If applicable, up to 50% of Project funds for an Activity may be drawn before providing evidence of Match. Thereafter, each CA or RSP must provide evidence of Match, including the date of provision, in accordance with the percentage of Project funds disbursed;

(4) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursement of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has provided a source of Match or has satisfied the Development Owner's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(5) Original, executed, legally enforceable loan documents for each assisted Household containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official;

(6) Developer fee schedule. Disbursement of Developer fees will be conditioned as follows:

(A) For Developments in which the Loan is secured by a first lien deed of trust against the property, 75% shall be disbursed in accordance with percent of construction completed (i.e. 75% of the total allowable fee will be multiplied by the percent completion) as documented by the construction contract and as may be verified by an inspection by the Department and 25% shall be disbursed at the time that the property reaches an occupancy of 50% or at release of retainage, whichever is later; 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 to finance development, 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 is determined that is not progressing as necessary to meet Contract benchmarks or that cost overruns may put the Department's funds or completion 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;

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*NOTE: This copy of 10 TAC Chapter 53, "State HOME Program Rule" is for reference purposes only. All final determinations are subject to the rule as published on the Texas Secretary of State website at [http://info.sos.state.tx.us/pls/pub/readtac?ext=ViewTAC?tac\\_view=3&tl=10&pt=1](http://info.sos.state.tx.us/pls/pub/readtac?ext=ViewTAC?tac_view=3&tl=10&pt=1)*

## PART A. ACTIVITY OVERVIEW

## 1. Multifamily Rental Development Name and Location

Development Name: Main Street Commons Region: 7  
 Address: East side of Main Street, South of Carlos Parker  
 City: Taylor County: Williamson ZIP: 76574-0000  
 If a Pre-Application was submitted, enter TDHCA assigned Development number: 11077

## 2. Target Population (Select by Placing a "x"):

General  Supportive Housing  
 Elderly

3. Construction Type (Select Only One by Placing a "x"):

New Construction  Adaptive Reuse  
 Rehabilitation  Single Room Occupancy  
 Reconstruction

## PART B. APPLICANT INFORMATION

Provide the contact information of the Applicant's staff person who is responsible for Application and contract administration. This primary contact will not be the consultant or the end service provider.

## 1. Applicant Contact Information

Applicant Legal Name: Main St Commons Senior, L.P.  
 Applicant Contact Name: Michael Roderer  
 Mailing Address: 508 East 96th Street, Suite 300  
 City: Indianapolis State: IN Zip: 46240  
 Phone: 317-663-6818 Fax: 317-663-6819 Email: mrodere@hemankittle.com

If Applicant's "Physical Address" is different from the "Mailing Address," provide physical address below:

Physical Address: NA  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 2nd Contact Name: Alyssa Carpenter  
 Phone: (512) 789-1295 Fax: (512) 233-2269 Email: alcarsen@gmail.com

## 2. Applicant Legal Description

Is Applicant Legally formed? No  
 Legal form of Applicant is/will be a (select only one): Limited Partnership  
 Other Designation (select all that apply): N/A  
 Applicant is in good standing with the Secretary of State? Yes State Filing #: to be filed

## 3. Application Technical Assistance and Capacity Building

Has the Applicant or its Principals received technical assistance or capacity building training for their organization in completing this Application or for the activity for which this Application is being made? Yes  
 If "Yes" it was sponsored by: TDHCA  
 If "Other Sponsor" provide name here: NA  
 The activity was: Workshop  
 If "Other" describe activity here: NA  
 Was a Consultant or Administering Agent used to complete the Applicant? Yes  
 If "Yes" provide Consultant/Agent Name here: S2A Development Consulting, LLC  
 Phone: (512) 698-3369 Fax: (512) 233-2269 Email: arah@s2adevelopment.com

**DEVELOPMENT TEAM MEMBERS (continued)**

Development Name: Main Street Commons Development City: Taylor

Supportive Services Provider: TBD  
 Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_  
 Proposed Fee: \$ \_\_\_\_\_ Entity is a Certified Texas HUB? \_\_\_\_\_  
 This is a direct or indirect, financial, or other interest with Applicant or other team members\* \_\_\_\_\_

Supportive Services Provider: TBD  
 Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_  
 Proposed Fee: \$ \_\_\_\_\_ Entity is a Certified Texas HUB? \_\_\_\_\_  
 This is a direct or indirect, financial, or other interest with Applicant or other team members\* \_\_\_\_\_

Supportive Services Provider: TBD  
 Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_  
 Proposed Fee: \$ \_\_\_\_\_ Entity is a Certified Texas HUB? \_\_\_\_\_  
 This is a direct or indirect, financial, or other interest with Applicant or other team members\* \_\_\_\_\_

Application Consultant or Admin Agent Name: S2A Development Consulting, LLC  
 Address: 1305 East 6th, Suite 12 City: Austin State: TX Zip: 78702  
 Phone: (512) 698-3369 Fax: (512) 233-2269 Email: sarah@s2adevelopment.com  
 Proposed Fee: \$ 150,000 Entity is a Certified Texas HUB? Yes  
 This is a direct or indirect, financial, or other interest with Applicant or other team members\* No

Other (Describe): NA  
 Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_  
 Proposed Fee: \$ \_\_\_\_\_ Entity is a Certified Texas HUB? \_\_\_\_\_  
 This is a direct or indirect, financial, or other interest with Applicant or other team members\* \_\_\_\_\_

Other (Describe): NA  
 Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_  
 Proposed Fee: \$ \_\_\_\_\_ Entity is a Certified Texas HUB? \_\_\_\_\_  
 This is a direct or indirect, financial, or other interest with Applicant or other team members\* \_\_\_\_\_

Other (Describe): NA  
 Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_  
 Proposed Fee: \$ \_\_\_\_\_ Entity is a Certified Texas HUB? \_\_\_\_\_  
 This is a direct or indirect, financial, or other interest with Applicant or other team members\* \_\_\_\_\_

\* If there is a direct or indirect, financial, or other interest with Applicant or other team members, provide an attachment behind Volume 3, Tab 2 of the Application that explains the relationship(s).

TOTAL DEVELOPMENT SUMMARY			Expected Payee Taxpayer Identification Number (TIN) <sup>1</sup> (and % of cost if item involves multiple payees)
Total	Eligible Basis (if Applicable)		
Cost	Acquisition	New/Rehab.	

DEVELOPMENT NAME:

Main Street Commons City: Taylor

**DIRECT CONSTRUCTION COSTS (Continued):**

Furnishings	161,370	161,370	26-0002273
Special Construction	229,870	229,870	26-0002273
Conveying Systems (Elevators)	65,743	65,743	26-0002273
Mechanical (HVAC; Plumbing)	1,013,491	1,013,491	26-0002273
Electrical	395,804	395,804	26-0002273
Individually itemize costs below:			
Detached Community Facilities/Building			
Carports and/or Garages	28,668		26-0002273
Lead-Based Paint Abatement			
Asbestos Abatement			
Other (specify) - see footnote 2			
Other (specify) - see footnote 2			
<b>Subtotal Direct Const. Costs</b>	<b>\$4,753,660</b>	<b>\$0</b>	<b>\$4,724,972</b>

**TOTAL DIRECT CONST. & SITE WORK**

<b>\$5,428,660</b>	<b>\$0</b>	<b>\$5,383,053</b>
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**OTHER CONSTRUCTION COSTS**

General requirements (<6%)	6.00%	322,983	322,983	26-0002273
Field supervision (within GR limit)				
Contractor overhead (<2%)	2.00%	107,661	107,661	26-0002273
G & A Field (within overhead limit)				
Contractor profit (<6%)	6.00%	322,983	322,983	26-0002273
Contingency (<5%)	6.00%	269,153	269,153	26-0002273
<b>Subtotal Ancillary Hard Costs</b>		<b>\$1,022,780</b>	<b>\$0</b>	<b>\$1,022,780</b>

**TOTAL DIRECT HARD COSTS**

<b>\$6,451,440</b>	<b>\$0</b>	<b>\$6,405,833</b>
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**INDIRECT CONSTRUCTION COSTS<sup>4</sup>**

Architectural - Design fees	370,822	370,822	26-0002273
Architectural - Supervision fees	11,700	11,700	26-0002273
Engineering fees	92,303	92,303	TBD
Real estate attorney/other legal fees	45,000	29,500	26-0002273
Accounting fees	6,200	6,200	35-1760664
Impact Fees	138,635	138,635	TBD
Building permits & related costs	70,421	70,421	TBD
Appraisal	10,000	10,000	TBD
Market analysis	7,500	7,500	20-3964988
Environmental assessment	7,500	7,500	37-0862096
Soils report	10,000	10,000	TBD
Survey	7,000	7,000	TBD
Marketing			
Partnership Hazard & liability insurance	49,676	49,676	TBD
Real property taxes	19,438	19,438	TBD
Personal property taxes			
Tenant relocation expenses			
Other (specify) - see footnote 2			
Other (specify) - see footnote 2			
<b>Subtotal Indirect Const. Cost</b>	<b>\$846,195</b>	<b>\$0</b>	<b>\$830,695</b>

**DEVELOPER FEES<sup>1</sup>**

Housing consultant fees <sup>6</sup>	150,000		26-1099310
General & administrative			
Profit or fee	1,167,300	1,167,300	26-0002273
<b>Subtotal Developer's Fees</b>	<b>\$1,317,300</b>	<b>\$0</b>	<b>\$1,167,300</b>

14.76%

# MATCH SOURCE: DONATED LABOR AND PROFESSIONAL SERVICES

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## BASICS

The value of donated or volunteer labor, including professional services, in connection with a HOME-assisted or HOME-eligible project may be counted as match. This excludes building contractors or consultants who are under contract or seeking a contract to donate skilled or unskilled labor to a HOME-funded Contract Administrator.

- This does not prohibit contractors who do not own any HOME project from contributing professional services.
- HUD will make the hourly labor rate for donated unskilled labor available annually. As of the Match Guide publication date, the rate was \$10 per hour.
- Skilled labor and professional services, such as those donated by a lawyer or accountant, will be valued at the rate normally charged by the entity providing the service.

## SOURCES OF DONATED LABOR AND PROFESSIONAL SERVICES MATCH BY ACTIVITY

A cross reference chart combining all sources by program activity is provided in the Appendices.

Note: In all cases, proper documentation is required for eligibility. Match must originate from a source other than the project owner, developer, consultant, or building contractor.

Activity	Eligible	Not Eligible
<b>CHDO – SF, CHDO – MF, HBA/ADDI, HBAR, RHD, OCC</b>	<ul style="list-style-type: none"> <li>• Skilled and unskilled labor, properly valued</li> <li>• Sweat equity valued as unskilled labor</li> <li>• Professional services from an architect, engineer or lawyer</li> </ul>	<ul style="list-style-type: none"> <li>• Program administration services</li> <li>• Labor that is considered part of a competitive bid</li> <li>• Donation from any entity, including building contractors and <u>consultants</u>, who are under contract, or seeking a contract with, the Contract Administrator</li> </ul>
<b>TBRA</b>	<ul style="list-style-type: none"> <li>• None</li> </ul>	<ul style="list-style-type: none"> <li>• Any source</li> </ul>

## DOCUMENTATION AND TIMING OF DONATED LABOR AND PROFESSIONAL SERVICES

### When Match May Be Counted

Donations of labor and professional services may be counted as match at the time that they are used for/contributed to the HOME-assisted project.

## **2003 HOME Application Questions & Answers**

### **What if my 501(c) 3 status is still pending?**

An organization's 501 (c) 3 status must be current at the time of application.

### **Can a for-profit organization apply for Rental Housing Development funds?**

A for-profit entity may apply for Rental Housing Development funds, but only under the Housing Preservation Program. This program funds the rehabilitation of existing housing developments.

### **Can a consultant be procured to help an organization with the HOME Application?**

Yes, a consultant can be procured to help an organization apply for HOME funds. The costs an organization accrues before funds are awarded are not reimbursable, however. All costs to be reimbursed must have taken place within the contract period.

### **Can labor from State prisons be used as match?**

Volunteer labor can be considered eligible match under the HOME Program.

### **Can consultant fees be considered eligible match in assisting an applicant complete the HOME application?**

Administration fees are not considered eligible match. Consultant fees are considered administration fees and cannot be considered eligible match in assisting an applicant with a HOME award.

### **When will the scores sheets and answers to questions be posted on the website?**

Look for score sheets to be posted on the website sometime next week. Incoming questions regarding all HOME applications will be posted on the TDHCA website at the Agency's earliest convenience, as well. You are more than welcome to email us at [pmcgillo@tdhca.state.tx.us](mailto:pmcgillo@tdhca.state.tx.us) with your question at any time.

### **Regarding the HBA activity, Section 13 of the HBA application guidelines states this the form of assistance will be a deferred 0% interest loan with a term equal to that of the first lien. Will 10 year notes be allowed? Currently, 10 year notes are allowed and they can be forgiven over the term on a prorated basis. Can 2003 HBA assistance be forgiven on a prorated basis?**

The HBA Guidelines are in error. The HBA awards are zero percent interest, 2nd or 3rd lien, 10-year deferred forgivable loans. The loan is payable to the Department if, within the 10-years, a) the house is sold, b) re-financed (to cash-out), or c) the house no longer is the homeowner's primary residence.

### **Are "for-profit entities" eligible to receive HOME funds through this cycle for new rental housing developments in conjunction with low income housing tax credit developments.**

A for-profit entity can apply for funds under the Housing Preservation Program Set-aside, which is a component of the Rental Housing Development. However, please note that these funds can only be used towards the preservation of existing affordable housing or subsidized rental housing, not the development.

Only non-profits applying for CHDO certification are eligible for the development funds. This does not mean that a for-profit organization cannot do both; form its own non-profit organization to apply for the HOME funds and apply for Tax Credits.

### **Does a unit of local government need to provide a Certificate of Good Standing?**

No, units of local government or nonprofit organizations do not need to get a Certificate of Good Standing from the State Comptroller. Only corporations subject to the franchise tax need to provide this certification.

### **Page 16 of the HBA, OCC, TBRA application, "Qualifying Threshold Requirements", states "HOME Program expenditure performance requirements for any open contract are not met as follows: For a previous Homebuyer Assistance and Owner Occupied Housing Assistance Contracts, 50% expended by April 2, 2003." Does this threshold requirement apply to entities funded under Disaster Relief?**

No, the expenditure rates are not applicable to contracts funded under the Disaster Relief Program.

### **How does an entity apply for funding under the persons with disabilities set-aside?**

If you plan on applying for funds coming out of the Persons with Disabilities set-aside, it is important that you check the *Special Needs* box under Section 4. Funding Request, Part A of the Uniform Application.

# MATCH

# ATTACHMENT 4

## Eligible Match:

To be considered eligible match, a contribution must be properly documented and meet the following requirements:

- **A non-federal source**
- A permanent contribution to a HOME project
- Meet the requirements of 24 CFR Part 92.218 through 92.222

## Eligible Sources of Match

- ✓ Cash contributions from nonfederal sources. Must be an eligible cost under 92.206 or 92.209
- ✓ Forbearance of fees, state and local taxes, charges or fees (HOME-assisted units)
- ✓ Donated real property
- ✓ Non-federally paid on-site and off-site infrastructure. (Directly required for HOME-assisted units and must have been completed 12 months before HOME funds are committed to the project.)
- ✓ Donated site preparation and construction materials
- ✓ Reasonable rental value of the donated use of site preparation of construction equipment
- ✓ Value of donated or voluntary labor or professional services
- ✓ Direct cost of homebuyer counseling services (HOME-assisted units)

## Non-Eligible Sources of Match

- Ø Contributions made with or derived from federal resources or funds
- Ø Funds raised through federal tax credit
- Ø Interest rate subsidy attributable to federal tax-exemption of financing (ex. bonds issued by States or local governments) or the value attributed to federal tax credits (e.g., Low Income Housing Tax Credits).
- Ø Owner equity or investment in a project
- Ø Costs for Administration
- Ø Program Income from open federal grant
- Ø Cash or other forms of contributions from applicants for or recipients of HOME assistance contracts, or investors who own, are working on, or are proposing to apply for, assistance for a HOME-assisted project.
- Ø Contributions counted as match toward any other federally-funded program may not be counted as matching contribution for the HOME program



# **EXHIBIT E**

## **BOND FEES**

TOTAL DEVELOPMENT SUMMARY			Expected Payee Taxpayer Identification Number (TIN) <sup>1</sup> (and % of cost if item involves multiple payees)
Total Cost	Eligible Basis (if Applicable)		
	Acquisition	New/Rehab.	

DEVELOPMENT NAME:

Main Street Commons

City: Taylor

**FINANCING:**

**CONSTRUCTION LOAN(S)<sup>4</sup>**

Interest	476,875	332,667	TBD
Loan origination fees	53,841	53,841	TBD
Title & recording fees	10,215		TBD
Closing costs & legal fees	25,000	25,000	TBD
Inspection fees	1,500		TBD
Credit Report			
Discount Points			
Other (specify) - see footnote 2			
Other (specify) - see footnote 2			

**PERMANENT LOAN(S)**

Loan origination fees	27,320		TBD
Title & recording fees			
Closing costs & legal	15,000		TBD
Bond premium	61,803		TBD
Credit report			
Discount points			
Credit enhancement fees			
Prepaid MIP			
Other (specify) - see footnote 2			
Other (specify) - see footnote 2			

**BRIDGE LOAN(S)**

Interest			
Loan origination fees			
Title & recording fees			
Closing costs & legal fees			
Other (specify) - see footnote 2			
Other (specify) - see footnote 2			

**OTHER FINANCING COSTS<sup>4</sup>**

Tax credit fees	66,093		TDHCA
Tax and/or bond counsel			
Payment bonds			
Performance bonds			
Credit enhancement fees	255,367	255,367	TBD
Mortgage insurance premiums			
Cost of underwriting & issuance			
Syndication organizational cost	16,000		TBD
Tax opinion			
Contractor Guarantee Fee			
Developer Guarantee Fee			
Soft Cost Contingency	5,000	5,000	TBD
Reimbursement of Pre Development Expenses	5,000		37-0962090
<b>Subtotal Financing Cost</b>	<b>\$1,011,014</b>	<b>\$0</b>	<b>\$671,876</b>

**RESERVES**

Rent-up	204,105		TBD
Operating	170,333		TBD
Replacement			
Escrows			
<b>Subtotal Reserves</b>	<b>\$374,438</b>	<b>\$0</b>	<b>\$0</b>

**TOTAL HOUSING DEVELOPMENT COSTS<sup>6</sup>**

	<b>\$10,490,387</b>	<b>\$0</b>	<b>\$9,075,703</b>
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- Commercial Space Costs<sup>7</sup>

<b>TOTAL RESIDENTIAL DEVELOPMENT COSTS</b>	<b>\$10,490,387</b>		
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# **EXHIBIT E**

## **BOND FEES**

Proceeds from a bond issuance are not included in the following documents from the Main Street Commons Application

- Summary of Sources and Uses of Funds (Volume 1 Tab 4 Part A)
- Financing Narrative



**Volume 1 Tab 4 Part B  
FINANCING PLAN  
Main Street Commons**

**Construction Loan**

The partnership will obtain a loan in an amount of \$6,385,000 through Capital One for the construction of the improvements. The interest rate on the construction loan is a fixed "spot rate" of 7.5% for underwriting purposes. The construction lender will have first lien on the land and the improvements. The letter confirming this is combined with the permanent lending letter and is included in the application.

**Equity**

Equity will be advanced from Red Stone Equity Partnership, LLC in the estimated amount of \$8,124,387 with 45% of this amount projected to be disbursed during the construction phase. The exact amount may be adjusted based on adjusters to be defined in the partnership agreement. The syndication proceeds are to be based on \$0.7652 per dollar of tax credits and a projected tax credit allocation of \$1,061,857. This letter of intent has been received and is enclosed in the application.

**Permanent Loan**

A permanent mortgage loan will be obtained through Capital One. The amount of the loan will be \$1,366,000. The interest rate is a fixed "spot rate" of 7.5%. Payments are based on a 30-year amortization and a term of 15 years. The developer has received conditional approval for this loan and the letter is enclosed in the application.

**Other**

The developer has applied for TDHCA HOME funds in the amount of \$1,000,000. The proposed interest rate is 2% over a 30 year amortization and 30 year term.

John Jessup will provide an interim loan in the amount of \$210,700 or 2% of the development costs. These funds will be used for pre development expenses and are intended to qualify as 2% of the total development cost. Terms are to be determined if an award of Tax Credits is received but they will confirm to all TDHCA guidelines per the QAP.

# **EXHIBIT G**

## **Threshold Criteria – Financing Requirements**



**Volume 1 Tab 4 Part B  
FINANCING PLAN  
Main Street Commons**

**Construction Loan**

The partnership will obtain a loan in an amount of \$6,385,000 through Capital One for the construction of the improvements. The interest rate on the construction loan is a fixed "spot rate" of 7.5% for underwriting purposes. The construction lender will have first lien on the land and the improvements. The letter confirming this is combined with the permanent lending letter and is included in the application.

**Equity**

Equity will be advanced from Red Stone Equity Partnership, LLC in the estimated amount of \$8,124,387 with 45% of this amount projected to be disbursed during the construction phase. The exact amount may be adjusted based on adjusters to be defined in the partnership agreement. The syndication proceeds are to be based on \$0.7652 per dollar of tax credits and a projected tax credit allocation of \$1,061,857. This letter of intent has been received and is enclosed in the application.

**Permanent Loan**

A permanent mortgage loan will be obtained through Capital One. The amount of the loan will be \$1,366,000. The interest rate is a fixed "spot rate" of 7.5%. Payments are based on a 30-year amortization and a term of 15 years. The developer has received conditional approval for this loan and the letter is enclosed in the application.

**Other**

The developer has applied for TDHCA HOME funds in the amount of \$1,000,000. The proposed interest rate is 2% over a 30 year amortization and 30 year term.

John Jessup will provide an interim loan in the amount of \$210,700 or 2% of the development costs. These funds will be used for pre development expenses and are intended to qualify as 2% of the total development cost. Terms are to be determined if an award of Tax Credits is received but they will confirm to all TDHCA guidelines per the QAP.



- (i) an Applicant or Related Party; and
  - (ii) any Person who is:
    - (I) active in the construction, rehabilitation, ownership, or Control of the proposed Development, including:
      - (-a-) a General Contractor; and
      - (-b-) a Developer; and
      - (-c-) a General Partner, Principal or Affiliate of a General Partner or General Contractor; or
    - (II) employed as a consultant, lobbyist, or attorney by an Applicant or a Related Party.
- (B) During the period beginning on the first date of the Application Acceptance Period and ending on the date the Board makes a final decision with respect to the approval of any Application in that Application Round, an employee of the Department may communicate about any Application with the following Persons:
- (i) the Applicant or a Related Party; and
  - (ii) any Person who is:
    - (I) active in the construction, rehabilitation, ownership, or Control of the proposed Development, including:
      - (-a-) a General Partner or General Contractor; and
      - (-b-) a Developer; and
      - (-c-) a Principal or Affiliate of a General Partner or General Contractor; or
    - (II) employed as a consultant, lobbyist or attorney by the Applicant or a Related Party.
- (C) A communication under paragraph (2) of this subsection may be oral or in any written form, including electronic communication through the Internet, and must satisfy the following conditions:
- (i) the communication must be restricted to technical or administrative matters directly affecting the Application;
  - (ii) the communication must occur or be received on the premises of the Department during established business hours; and
  - (iii) a record of the communication must be maintained and included with the Application for purposes of Board review and must contain the following information:
    - (I) the date, time, and means of communication;
    - (II) the names and position titles of the Persons involved in the communication and, if applicable, the Person's relationship to the Applicant;
    - (III) the subject matter of the communication; and
    - (IV) a summary of any action taken as a result of the communication.
- (D) Notwithstanding subparagraph (A) or (B) of this paragraph, a Board member or Department employee may communicate without restriction with a Person listed in subparagraph (A) or (B) of this paragraph during any Board meeting or public hearing held with respect to the Application, but not during a recess or other non-record portion of the meeting or hearing.
- (E) Subparagraph (A) of this paragraph 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 all matters related to Applications to be considered by the Board will not be discussed.
- (2) **Administrative Deficiency Process.** The purpose of the Administrative Deficiency process is to allow the Applicant an opportunity to provide clarification or correction to information originally submitted in the Application. For example, if exhibits and other information required under §49.8 of this chapter (relating to Threshold Criteria) are not originally submitted in the Application (i.e. financing commitment missing entirely from

the Application) staff will recommend termination of the Application. However, for information missing in part from the Application (i.e. financing commitment is submitted but it is not executed by the lender) staff will request the missing or corrected information via an Administrative Deficiency. For exhibits and other information required under §49.9 of this chapter (relating to Selection Criteria) not originally submitted in the Application (i.e. Community Revitalization Plan or letter from Appropriate Local Official missing entirely from the Application) staff will not award points for that item, even if points were requested in the Applicant's Self Scoring Form. For information missing in part from the Application (i.e. the letter from the Appropriate Local Official does not include all required information) staff will request the missing information via an Administrative Deficiency and award points provided the information submitted in response to the Administrative Deficiency is satisfactory to the Department.

- (A) **Administrative Deficiencies for Applications submitted under the State Housing Credit Ceiling and Rural Rescue Applications.** If an Application contains Administrative Deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies. Because the review for Eligibility, Selection, Threshold Criteria, Quantifiable Community Participation (QCP) and review for financial feasibility by the Department's Real Estate Analysis Division may occur separately, Administrative Deficiency requests may be made during any of these reviews. The Department staff will request clarification or correction in a deficiency notice in the form of an e-mail, or if an e-mail address is not provided in the Application, by facsimile, and a telephone call (only if there has not been confirmation of the receipt of the e-mail within twenty-four (24) hours) to the Applicant and one other party identified by the Applicant in the Application advising that such a request has been transmitted. If Administrative Deficiencies are not clarified or corrected to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then five (5) points shall be deducted from the Selection Criteria score for each additional day the deficiency remains unresolved. If Administrative Deficiencies are not clarified or corrected by 5:00 p.m. on the seventh business day following the date of the deficiency notice, then the Application shall be terminated. The time period for responding to a deficiency notice begins at the start of the 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. An Applicant may not change or supplement any part of an Application in any manner after the filing deadline, 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 as a result of an Administrative Deficiency or by approved amendment of an Application after a commitment or allocation of tax credits as further described in §49.13(b) of this chapter (relating to Board Reevaluation) (§2306.6708). This Administrative Deficiency process applies to requests for information made by the Real Estate Analysis Division during their review. To the extent that the review of Administrative Deficiency documentation during the review alters the score assigned to the Application, Applicants will be re-notified of their final score.
- (B) **Administrative Deficiencies for Tax Exempt Bond Applications.** If an Application contains deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies. Because the review for Eligibility, Threshold Criteria, and review for financial feasibility by the Department's Real Estate Analysis Division may occur separately, Administrative Deficiency requests may be made during any of these

- (6) **Limitation on Allocation.** No more than \$350,000 in credits will be forward committed from the 2011 State Housing Credit Ceiling. To the extent Applications are received that exceed the maximum limitation; staff will prepare the award for Board consideration noting for the Board that the award would require a waiver of this limitation.

#### **§49.8. Threshold Criteria.**

The Threshold Criteria listed in this section are mandatory requirements that must be submitted at the time of Application submission unless specifically indicated otherwise. If any of the Threshold Criteria indicated below are not resolved, clarified or corrected to the satisfaction of the Department, through the Administrative Deficiency process the Application will be terminated.

- (1) **Submission of the Application.** Includes the entire Uniform Application and any other supplemental forms which may be required by the Department and in the format prescribed by the Department. (§2306.1111)
- (2) **Governing Body Resolutions.** The following resolutions, if applicable to the proposed Development, must be submitted by the Resolutions Delivery Date as indicated in §49.3 of this chapter (relating to Program Calendar) and may not be more than one year old from the date the Volume 1 is submitted to the Department.
- (A) **Twice the State Average.** If the Development is located in a municipality or in a valid Extra Territorial Jurisdiction (ETJ) of a municipality, or if located completely outside a municipality, a county, that has more than twice the state average of units per capita supported by Housing Tax Credits or private activity bonds at the time the Application Round begins (or for Tax-Exempt Bond Developments at the time the Certificate of Reservation is issued by the Texas Bond Review Board) the Applicant must obtain prior approval of the Development from the Governing Body of the appropriate municipality or county containing the Development. Such approval must reference this rule and authorize an allocation of Housing Tax Credits for the Development; (§2306.6703(a)(4))
- (B) **One Mile Three Year Rule.** If the Applicant proposes to construct a Development proposing New Construction or Adaptive Reuse (excluding New Construction of non-residential buildings) that is located one (linear mile (measured by a straight line on a map) or less from a Development that: (§2306.6703(a)(3))
- (i) Serves the same type of household as the new Development, regardless of whether the Development serves families, elderly individuals, or another type of household; and
  - (ii) has received an allocation of Housing Tax Credits or private activity bonds for any New Construction at any time during the three-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments the three-year period preceding the date the Volume I is submitted); and
  - (iii) has not been withdrawn or terminated from the Housing Tax Credit Program;
  - (iv) an Application is not ineligible under this paragraph if:
    - (I) the Development is using federal HOPE VI funds received through the United States Department of Housing and Urban Development; locally approved funds received from a public improvement district or a tax increment financing district; funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§12701 et seq.); or funds provided to the state and participating jurisdictions under the Housing and Community Development Act of 1974 (42 U.S.C. §§5301 et seq.); or
    - (II) the Development is located in a county with a population of less than one million; or
    - (III) the Development is located outside of a metropolitan statistical area; or

funds represented in the Application and shall be provided in one or more of the following forms described in subclauses (I) - (IV) of this clause:

- (I) Financing is in place as evidenced by:
    - (-a-) A valid and binding loan agreement; and
    - (-b-) Deed(s) of trust in the name of the Development Owner as grantor; or
    - (-c-) For TRDO-USDA §515 Developments involving, an executed TRDO-USDA letter indicating TRDO-USDA has received a notification of the tax credit Application; or
  - (II) Commitment or term sheet for the interim and permanent loans issued by a lending institution or mortgage company that is actively and regularly engaged in the business of lending money which is addressed to the Development Owner and includes the following as identified in items (-a-) - (-d-) of this subclause:
    - (-a-) Has been executed by the lender; and
    - (-b-) A minimum loan term of fifteen (15) years with at least a thirty (30) year amortization; and
    - (-c-) An expiration date; and
    - (-d-) All the terms and conditions applicable to the financing including the mechanism for determining the interest rate, if applicable, and the anticipated interest rate, any required Guarantors, and anticipated developer fees paid during construction and anticipated deferred developer fees. Such a commitment may be conditional upon the completion of specified due diligence by the lender and upon the award of tax credits; or
  - (III) Any federal, state or local gap financing, whether of soft or hard debt, must be identified at the time of Application as evidenced by:
    - (-a-) A term sheet or commitment from the lending agency which clearly describes the amount and terms of the funding must be submitted. If applying for points under §49.9(a)(5) of this chapter then documentation must be submitted as required by the deadlines stated therein; and
    - (-b-) Evidence of application for funding from another Department program is not required except as indicated on the Uniform Application, as long as the Department funding is on a concurrent funding period with the Application submitted and the Applicant clearly indicates that such an Application has been filed as required by the application checklist in the Tax Credit (Procedures) Manual; and
  - (IV) If the Development will be financed through more than 5% of Development Owner contributions, provide a letter from a Third Party CPA verifying the capacity of the Development Owner to provide the proposed financing with funds that are not otherwise committed together with a letter from the Development Owner's bank or banks confirming that sufficient funds are available to the Development Owner. Documentation must have been prepared and executed not more than six (6) months prior to the close of the Application Acceptance Period;
- (ii) A written narrative describing the financing plan for the Development, including any non-traditional financing arrangements; the use of funds with respect to the Development; the funding sources for the Development including construction, permanent and bridge loans, rents, operating subsidies, and replacement reserves; and the commitment status of the funding sources for the Development. This information must be consistent with the information provided throughout the Application; and (§2306.6705(1))
  - (iii) Provide a term sheet or letter of commitment from a syndicator that, at a minimum, provides an estimate of the amount of equity dollars expected to be raised for the Development in conjunction with the amount of Housing Tax Credits requested for allocation to the Development Owner, including pay-in schedules, anticipated developer fees paid during construction and anticipated deferred developer fees,

# EXHIBIT H

## **Quantifiable Community Participation/ Neighborhood Organization Support**



FORM FOR QUALIFIED NEIGHBORHOOD ORGANIZATIONS TO SUBMIT TO TDHCA FOR QUANTIFIABLE COMMUNITY PARTICIPATION

Texas Department of Housing and Community Affairs

02-17-11A10:46 RCWD

Certify to each requirement by checking each box as required and accurately filling in all blanks. All attachments must be included in QCP submission package.

1.  This organization is submitting this form and attachments regarding the following proposed application:

Development Name: Main Street Commons TDHCA #: 11077  
 Development Location: 3610 North Main Street  
 Development City: Taylor Development County: Williamson

2.  The persons signing this form have the authority to sign on behalf of this organization.

Organization Name: Main Street Neighborhood Organization  
 1st Contact Name and Title: CAROL BACHMAYER Authorized Representative  
 1st Contact Mailing Address: 1902 OLD COUPLAND RD  
 1st Contact City: TAYLOR 1st Contact Zip Code: 76574  
 1st Contact Day Phone: 512 365 9617 1st Contact Fax: 512 352 5400  
 1st Contact Evening Phone: " 1st Contact E-Mail: c1b9617@yahoo.ca

3.  This organization is also providing the following additional contact and information for our organization:

2nd Contact Name: Nalin Werchan  
 2nd Contact Mailing Address: 3310 N. MAIN  
 2nd Contact City: Taylor 2nd Contact Zip Code: 76574  
 2nd Contact Day Phone: 512-2494 2nd Contact Fax: - 0 -  
 2nd Contact Evening Phone: - 0 - 2nd Contact E-Mail: - 0 -

4. **Boundary Description and Map:** Provide a written description of the geographical boundaries of the neighborhood organization. (Example: North boundary is Main St, East boundary is a railroad track, South boundary is First St and West boundary is Jones Ave) Submit a boundary map. The boundary map should be legible, clearly marked with the geographical boundaries of the neighborhood organization, and indicate the location of the proposed development. The written description and boundary map should have the same geographical boundaries.

Written Boundary Description:

West Boundary is Main Street, East Boundary is railroad Track,  
North Boundary is northernmost property line of 4002 N. Main  
Street, South Boundary is southernmost property line of  
3310 N. Main Street.

CB NW  
 Initials of Signer

5.  This organization certifies that the boundaries of this organization include the proposed Development site in its entirety. This organization acknowledges that annexations after March 1, 2011 are not considered eligible boundaries and a site that is only partially within the boundaries will not satisfy the requirement that the boundaries contain the proposed Development site.

6.  This organization certifies that it meets the definition of "Neighborhood Organization"; defined as an organization of persons living near one another within the organization's defined boundaries that contain the proposed Development Site and that has a primary purpose of working to maintain or improve the general welfare of the neighborhood. This organization further certifies that it is a (must check on of the following boxes):

Homeowners Association

Property Owners Association

Resident Council and our members occupy the existing development

Other (Explain \_\_\_\_\_)

7. **Certification of Record:** Choose one box. Registration with the county or with the Secretary of State both requires proof of registration. All 3 selections require evidence of the organization's existence (ex. bylaws, newsletter, minutes, etc.) and the process to provide notice to persons living within the boundaries to join or participate in the affairs of the organization (ex: letter, posting notice, etc.).

This organization certifies that it was:

On record, as of March 1, 2011, with the county in which the development is proposed to be located. (Attach documentation from the county of registration and required documentation)

On record, as of March 1, 2011, with The Secretary of State as an incorporated entity in good standing. (Attach documentation from the Secretary of State of registration and required documentation)

Requesting to be on record, as of March 1, 2011, with The Texas Department of Housing and Community Affairs (the "Department"). (Attach required documentation)

8. **Statement of Support/Opposition:** (Choose only one box and clearly and concisely state at least one or more reason(s) for the organization's support/opposition; use additional sheets, as needed.)


This organization certifies that we:

**Support** the application for Competitive Housing Tax Credits referenced above for the following reasons:

We believe that this development will benefit the community as well as bring added value to surrounding property.

**Oppose** the application for Competitive Housing Tax Credits referenced above for the following reasons:

\_\_\_\_\_

  
Initials of Signer

9. Certify the following:

- This organization acknowledges that this form and attachments must be submitted **no later than March 1, 2011**
  
- This organization certifies that it was not formed by any Applicant, Developer or any employee or agent of any Applicant in the 2011 Competitive Housing Tax Credit Application Round; the organization, and any members, did not accept money or a gift to cause the neighborhood organization to take its position of support or opposition; the Applicant, Developer or any employee or agent of any Applicant has not provided any assistance, other than education and information sharing, to the neighborhood organization for any application in the Application Round (i.e. hosting a public meeting, providing the "TDHCA Information Packet for Neighborhoods" to the neighborhood organization, or referring the neighborhood organization to TDHCA staff for guidance are acceptable forms of assistance); and that the Applicant, Developer or any employee or agent of any Applicant has not provided any "production" assistance for any application in the Application Round (i.e. use of fax machines owned by the Applicant, use of legal counsel related to the Applicant, delivery of form or assistance drafting a form).
  
- This organization acknowledges that this completed form and required attachments must be submitted to Texas Department of Housing and Community Affairs, Attention: Director of Multifamily Finance, Neighborhood Input, P.O. Box 13941 (MC 332-10), Austin TX 78711-3941. For overnight or courier delivery use the following physical address: 221 East 11<sup>th</sup> Street, Austin TX 78701-2410. **Do not use P.O. Box address for overnight or courier delivery.** Form and Attachments may also be faxed to (512) 475-1895 or toll free at (800) 733-5120.
  
- This organization certifies that all certifications contained herein are true and accurate. **(First and Second Contacts must sign below):**

  
(First Contact Signature)

2-9-11  
(Date)

CAROL BACHMAYER  
(Printed Name)

Authorized Representative  
(Title)

  
(Second Contact Signature)

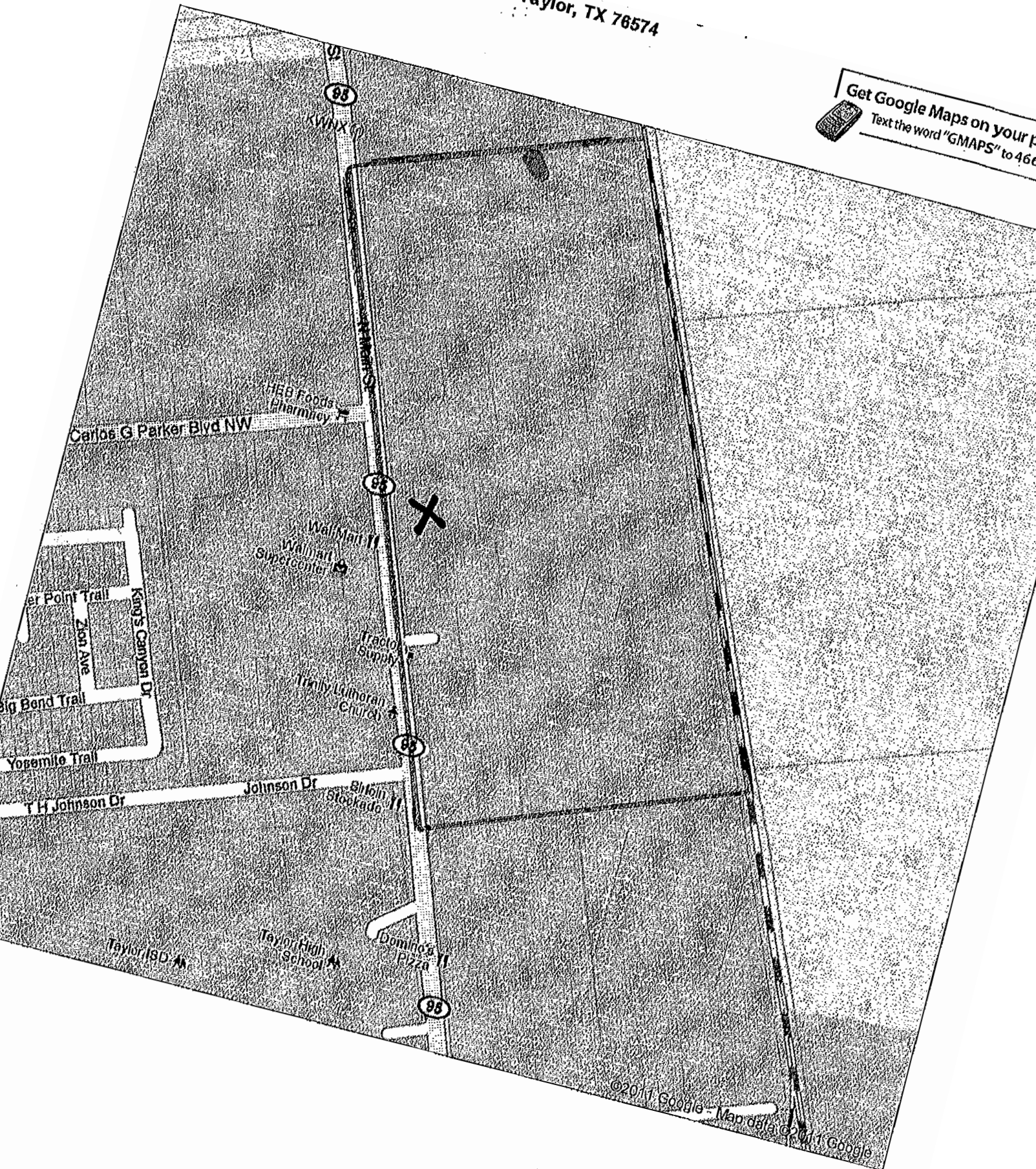
2-9-11  
(Date)

Robin Wachan  
(Printed Name)

Authorized Representative  
(Title)



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***Notice of Property Owner's Meeting***

***Date: Wednesday, February 9, 2011***

***Time: 6:00pm***

***Location: City Hall, 400 Porter Street***

***You are invited to attend a property owner's meeting to learn more about a proposed multifamily residential development called Main Street Commons, which will be located on the east side of Main Street in between AAA Self-Storage and the Tractor Supply Co. Please plan on attending this meeting to learn more about the development and ask questions.***

***Please contact Kevin Carter or Jason Seal at***

***(979) 846-4384 for more information.***

MAINSTREET COMMONS MTG 2-9-11 6 P.M.

Rod LEPZ

James Martinka

DAN DOS

Gene Randig

Betty Randig

Nalin Weichan

Carol Buchmayer

Carol Buchmayer

Jim Lee

Mike Koderer

# Main Street Neighborhood Organization

## Special Meeting

### Meeting Minutes

Date: 02/09/2010

Time: 6pm

Location: 400 Porter Street

Attendees: Ron Leps, James Martinka, Dan Dos, Gene Randig, Betty Randig, Nolin Werchen, Carol Bachmayer, Carrol Bachmayer, Jason Seal, Mike Roderer

#### Minutes:

Special meeting of Main Street Neighborhood Organization was called to order at 6pm

Jason Seal opened meeting by stating reason for calling the special meeting was receipt of the quantifiable community participation packet and to learn about the proposed Main Street Commons development located in between AAA Self-Storage and Tractor Supply Co. on Main Street.

Mr. Seal introduced Mike Roderer as a representative of Herman & Kittle Properties, Inc., the developer of the property.

Mr. Roderer provided some background on Herman & Kittle and stated his company wanted to develop the property as an apartment complex for seniors. Mr. Roderer presented an artist concept of the building and a site plan. Mr. Roderer indicated the property would be 75 units and restricted to adults 55 years and older.

Ms. Bachmayer said she was in favor of any nice developments on the north side of Taylor near her residence on Main Street. She asked if the property would be restricted 100% to adults. Mr. Roderer said that it would be 100% restricted to adults and that it would be a quality development.

Mr. Werchan asked if the site plan was final because it didn't show any landscaping. Mr. Roderer said the site plan was still being worked on with the city, and that the landscaping details would be completed later and conform with the City's landscaping requirements. Mr. Werchan asked what would happen if the property didn't lease up after it was built. Mr. Roderer said that his company's market research indicated a high demand for senior housing in Taylor, but that if the property didn't lease up his company had to provide financial assurances that it would be well kept. Mr. Werchan asked if anyone would be let in at the property if it was having trouble filling up. Mr. Roderer responded that all residents would have to meet the income restrictions and pass background checks. He also said the 55 and older requirement was a deed restriction and couldn't be changed.

Ron Leps asked Mr. Roderer how the development would be financed. Mr. Roderer said his company was apply for tax credits and a low interest loan from the State. Mr. Leps asked if the rents for the property were income based and if there were different income levels. Mr. Roderer said that the rents

were income based depending on the household size and that there were different income levels based on a percentage of the area median income.

Betty Randig asked Mr. Roderer if his company had any other properties in Texas. Mr. Roderer said that this was his firm's first development in Texas but that they had properties in Louisiana and the Midwest. Ms. Randig asked the location of the properties in Louisiana and how old they were. Mr. Roderer said the properties were only 3 years old. Ms. Randig wanted to know what the properties looked like after 10 years. Mr. Roderer said his firm had several properties that were older than 10 years and that he could mail pictures of them.

Mr. Roderer passed out information on his company and his contact information. He said any members of the organization could contact him with any more questions on the Main Street Commons.

Ms. Bachmayer said she would support any quality developments on the north side of Taylor on Main Street. Jason Seal asked if the organization wanted to support the Main Street Commons. Those in attendance agreed the organization should support it. Ms. Bachmayer and Mr. Werchan agreed to be contacts on the form from the TDHCA.

Meeting adjourned at 7:05pm

**PUBLIC NOTIFICATIONS INFORMATION AND CERTIFICATION FORM**

**NEIGHBORHOOD ORGANIZATION(S)** (Submit all neighborhood organizations in which the Applicant is/was required to notify per §49.7(c)(3)(B) and/or §49.8(9)(A)(ii) of the QAP.):

**Development Name:** Main Street Commons

**City:** Taylor

Name:	<u>NA</u>		
Address:	_____		
City:	State:	Zip:	
Phone:	Fax:	_____	

Name:	_____		
Address:	_____		
City:	State:	Zip:	
Phone:	Fax:	_____	

Name:	_____		
Address:	_____		
City:	State:	Zip:	
Phone:	Fax:	_____	

Name:	_____		
Address:	_____		
City:	State:	Zip:	
Phone:	Fax:	_____	

Name:	_____		
Address:	_____		
City:	State:	Zip:	
Phone:	Fax:	_____	

Name:	_____		
Address:	_____		
City:	State:	Zip:	
Phone:	Fax:	_____	

Name:	_____		
Address:	_____		
City:	State:	Zip:	
Phone:	Fax:	_____	

Name:	_____		
Address:	_____		
City:	State:	Zip:	
Phone:	Fax:	_____	

## PART E. CERTIFICATION OF PRINCIPAL or DEVELOPMENT OWNER (cont.)

Development Name: Main Street Commons Development City: Taylor

**16) Basic Amenities**

At least the minimum point threshold for amenities as further described in §49.8(5)(A) of the 2011 QAP (Common Amenities) will be satisfied.

**17) Unit Amenities**

The Development will have all of the following Amenities as further described in §49.4(c)(14) of the 2011 QAP at no charge to the tenants.

- All New Construction Units must be wired with RG-6 COAX or better and CAT3 phone cable or better, wired to each bedroom, dining room, and living room
- Laundry Connections
- Blinds or window coverings for all windows
- Screens on all operable windows
- Disposal and Energy-Star rated dishwasher (not required for TRDO-USDA Developments; SRO Developments; Rehabilitation Developments exempt from dishwasher if one was not originally in the unit)
- Energy-Star rated Refrigerator (Not required for SRO Developments)
- Oven/Range
- Exhaust/vent fans (vented to the outside) in bathrooms
- Energy-Star rated ceiling fans in living areas and bedrooms
- Energy-Star rated lighting fixtures in all Units which may include compact fluorescent bulbs
- Plumbing fixtures (toilets and faucets) must meet design standards at 30 TAC §290.252
- All Units must be air-conditioned
- Fire sprinklers in all Units where required by local code

**18) Minimum Unit Size**

The Development will satisfy the minimum threshold for size of Units as further described in §49.8(5)(B) of the 2011 QAP.

**19) Texas Property Code**

The Development will adhere to the Texas Property Code as further described in §49.8(5)(C) of the 2011 QAP.

**20) Compliance with State and Federal Laws**

The Applicant is in compliance with state and federal laws as further described in §49.8(5)(D) of the 2011 QAP.

**21) Attempting to Ensure Involvement of Minority Owned Businesses**

The Applicant will attempt to ensure that at least 30% of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses as further described in §49.8(5)(E) of the 2011 QAP.

**22) Accessibility**

The Development will comply with the accessibility standards as further described in §49.8(5)(F) and §49.8(5)(G) of the 2011 QAP.

**23) Minimum Standard Energy Saving Devices**

The Development will be equipped with energy saving devices as further described in §49.8(5)(H) of the 2011 QAP.

**24) General Contractor Requirement (Not Applicable to HOME)**

I (We) certify that the Development will be built by a General Contractor as further described in §49.8(5)(I) of the 2011 QAP.

**25) Reserve Account**

The Development Owner agrees to establish a reserve account as further described in §49.8(5)(J) of the 2011 QAP.

**26) Neighborhood Organizations (Not Applicable to HOME)**

The Applicant, Developer, or any employee or agent of the Applicant has not formed a Neighborhood Organization for purposes of §49.9(a)(2) of the 2011 QAP, as further described in §49.8(5)(K) of the 2011 QAP.

PART E. CERTIFICATION OF PRINCIPAL or DEVELOPMENT OWNER (cont.)

Development Name: Main Street Commons Development City: Taylor

27) Cooperation with Local Housing Authorities

I (we) will operate in accordance with the requirements pertaining to rental assistance in §60 of the Texas Administrative Code as further described in §49.8(5)(L) of the 2011 QAP.

28) Criminal Background Checks

I (we) will contract with a Management Company through out the Compliance Period that will perform criminal background checks on all adult tenants, head and co-head of households as further described in §49.8(5)(M) of the 2011 QAP.

29) Marketing to Veterans

I (We) will affirmatively market to veterans as further described in §49.8(5)(N) of the 2011 QAP.

The individual whose name is subscribed hereto, in his or her individual capacity, on behalf of Applicant, and in all other related capacities described above, as applicable, expressly represents, warrants, and certifies that all information contained in this certification and in the Application, including any and all supplements, additions, clarifications, or other materials or information submitted to the Department in connection therewith as required or deemed necessary by the materials governing the Housing Tax Credit Program are true and correct and the Applicant has undergone sufficient investigation to affirm the validity of the statements made. Further, the Applicant hereby expressly represents, warrants, and certifies that the individual whose name is subscribed hereto has read and understands all the information contained in Part E. (this section) of the Application. By signing this document, the undersigned, in their individual capacity, on behalf of Applicant, and in all other related capacities described above, is affirming under penalty of Chapter 37 of the Texas Penal Code titled Perjury and Other Falsification and subject to criminal penalties as defined by the State of Texas. TEX. PENAL CODE ANN. §§37.01 et seq. (Vernon 2003 & Supp. 2007) and subject to any and all other state or federal laws regarding the making of false statements to governmental bodies or the false statements or the providing of false information in connection with the procurement of allocations or awards that the Application and all materials relating thereto constitute government documents and that the Application and all materials relating thereto are true, correct, and complete in all material respects.

Check all capacities in which you are signing:

- Applicant/Development Owner: Main St Commons Senior, L.P.
- Principal of Development Owner

*[Handwritten Signature]*  
Signature

Jeffrey L. Kittle  
Printed Name

02/16/2011  
Date

STATE OF: Indiana  
COUNTY OF: Hamilton

I, the undersigned, a Notary Public in and for said County and State, do hereby certify that Jeffrey L. Kittle, whose name is signed to the foregoing statement, and who is known to be one in the same, has acknowledged before me on this date, that being informed of the contents of this statement, executed the same voluntarily on the date same foregoing statement bears.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this

16 day of Feb, 2011

(Seal)



LISA J. McNABB  
Resident of Hamilton County, IN  
Commission Expires: November 4, 2015

*[Handwritten Signature]*  
Notary Public Signature

Notary Public, State of \_\_\_\_\_  
County of \_\_\_\_\_  
My commission expires: \_\_\_\_\_



- (G) For Developments involving New Construction (excluding New Construction of non-residential buildings) where some Units are two-stories or single family design and are normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each Unit type (i.e. one bedroom, two bedroom, three bedroom) must provide an accessible entry level and all common-use facilities in compliance with the Fair Housing Guidelines, and include a minimum of one bedroom and one bathroom or powder room at the entry level. A similar certification will also be required after the Development is completed from an inspector, architect, or accessibility specialist.
- (H) A certification that the Development will be equipped with energy saving devices that meet the standard statewide energy code adopted by the state energy conservation office, unless historic preservation codes permit otherwise for a Development involving historic preservation. The measures must be certified by the Development architect as being included in the design of each tax credit Unit at the time the 10% Test Documentation is submitted and in actual construction upon Cost Certification. (§2306.6725(b)(1))
- (I) A certification that the Development will be built by a General Contractor hired by the Development Owner or the Applicant; if the Applicant serves as General Contractor, must demonstrate a history of constructing similar types of housing without the use of federal tax credits.
- (J) A certification that the Development Owner agrees to establish a reserve account consistent with §2306.186 of the Texas Government Code and as further described in §1.37 of this title (relating to Reserve for Replacement Rules and Guidelines).
- (K) A certification that the Applicant, Developer, or any employee or agent of the Applicant has not formed a Neighborhood Organization for purposes of §49.9(a)(2) of this chapter, has not given money or a gift to cause the Neighborhood Organization to take its position of support or opposition, nor has provided any assistance to a Neighborhood Organization outside of the assistance allowed under §49.9(a)(2)(A)(viii) to meet the requirements under §49.9(a)(2) of this chapter as it relates to the Applicant's Application or any other Application under consideration in 2011.
- (L) Operate in accordance with the requirements pertaining to rental assistance in Chapter 60 of this title.
- (M) A certification that the Development Owner will contract with a Management Company throughout the Compliance Period that will perform criminal background checks on all adult tenants, head and co-head of households.
- (N) A certification that 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.
- (O) A certification that the Applicant, Development Owner, Developer or Guarantor involved with the Application has not been voluntarily or involuntarily removed from a rent or income restricted multifamily Development by a lender, equity provider, or other investors or owners as a Principal during the previous ten (10) years, however designated, or any combination thereof or if any litigation to effectuate such removal has been instituted and is continuing at the time of Application. If an Applicant or Developer signs the certification, and the Department learns at a later date that a removal did take place as described, then the Application will be terminated and any Allocation made will be rescinded.

- (B) A statement in the commitment letter, or other form deemed acceptable by the Department, indicating that the lender's assessment finds that the Development will be feasible for fifteen (15) years.
  - (C) For Developments maintaining existing financing from TRDO-USDA, a current note balance must be provided or other form of documentation of the existing loan deemed acceptable by the Department to meet the requirements of this section.
  - (D) To qualify for an additional 8 points, the commitment letter from the permanent or construction lender must indicate that they have reviewed the Applicant's financial position and credit worthiness and have determined that the Applicant meets the financial liquidity or net worth standards that such lender would require in connection with the proposed Development. Furthermore, the letter must describe those standards that such lender would require in connection with the proposed Development. If at any time the Application is under consideration by the Department and the lender changes, the Applicant must provide a subsequent letter from the new lender addressing net worth and liquidity under the new lender's standards in order to remain eligible for the additional 8 points.
- (2) **Quantifiable Community Participation.** (§2306.6710(b)(1)(B); §2306.6725(a)(2)) Points will be awarded based on written statements of support or opposition from Neighborhood Organizations on record with the state or county in which the Development is to be located and whose boundaries contain the proposed Development Site. It is possible for points to be awarded or deducted based on written statements from organizations that were not identified by the process utilized for notification purposes under §49.8(9) of this chapter if the organization provides the information and documentation required in subparagraphs (A) and (B) of this paragraph. It is also possible that Neighborhood Organizations that were initially identified as appropriate organizations for purposes of the notification requirements will subsequently be determined by the Department not to meet the requirements for scoring. If an organization is determined not to be qualified under this paragraph, the organization may qualify under paragraph (11)(B) of this subsection.
- (A) **Submission Requirements.** Each Neighborhood Organization may submit the form as included in the QCP Neighborhood Information Packet that represents the organization's input. In order to receive a point score, the form must be received, by the Department, or postmarked, if mailed by the U.S. Postal Service, no later than the Quantifiable Community Participation Delivery Date as identified in §49.3 of this chapter (relating to Program Calendar). Forms received after the deadline will be summarized for the Board's information and consideration, but will not affect the score for the Application. The form must:
- (i) State the name and location of the proposed single Development;
  - (ii) Certify that the letter is signed by two officials or board members of the Neighborhood Organization with the authority to sign on behalf of the Neighborhood Organization, and include:
    - (I) the street and/or mailing addresses for the signers of the letter;
    - (II) day and evening phone numbers for the signers of the letter;
    - (III) email addresses and/or facsimile numbers for the signers of the letter and one additional contact for the organization; and
    - (IV)a written description and map of the organization's geographical boundaries;
  - (iii) Certify that the organization has boundaries, and that the boundaries in effect on or before the Full Application Delivery Date identified in §49.3 of this chapter contain the proposed Development Site;
  - (iv) Certify that the organization meets the definition of "Neighborhood Organization"; defined as an organization of persons living near one another within the organization's defined boundaries that contain the proposed Development Site and that has a primary purpose of working to maintain or improve the general welfare of the neighborhood (§2306.004(23-a)). For

purposes of this section, "persons living near one another" means two (2) or more separate residential households. "Neighborhood Organizations" include homeowners associations, property owners associations, and resident councils in which the council is commenting on the Rehabilitation or Reconstruction of the property occupied by the residents. "Neighborhood Organizations" do not include broader based "community" organizations;

- (v) Include documentation showing that the organization is on record as of the Full Application Delivery Date with the state or county in which the Development is proposed to be located. The receipt of the QCP form that meets the requirements of this subsection and further outlined in the QCP Neighborhood Information Packet will constitute being on record with the State. The Department is permitted to issue an Administrative Deficiency notice for this registration process and if satisfied, the organization will still be deemed to be timely placed on record with the state;
  - (vi) A Neighborhood Organization must take reasonable measures to provide notice to persons eligible to join or participate in the affairs of the organization of that right. Examples of reasonable measure would be giving notice in a newsletter distributed where residents will likely see them; posting notice (in compliance with local signage requirements); or distribution flyers. The Department may exclude from consideration Neighborhood Organizations that do not comply with their own bylaws or other constitutive or governing documents;
  - (vii) While not required, the organization is encouraged to hold a meeting to which all the members of the organization are invited to consider whether the organization should support, oppose, or be neutral on the proposed Development, and to have the membership vote on whether the organization should support, oppose, or be neutral on the proposed Development. The organization is also encouraged to invite the Developer or Applicant to this meeting; and
  - (viii) The form from the Neighborhood Organization for the purposes of this subsection must be submitted to the Department by the Neighborhood Organization and not the Applicant. This documentation must be submitted independent of the Application. Furthermore, while the Applicant may assist the Neighborhood Organization in the Administrative Deficiency process or any other request from the Department as it relates to this item, the Administrative Deficiency Notice from the Department will be issued to the Neighborhood Organization with a copy to the Applicant; however, the Deficiency response must be submitted to the Department directly by the Neighborhood Organization.
- (B) Scoring. The input must clearly and concisely state each reason for the Neighborhood Organization's support for or opposition to the proposed Development.
- (i) The score awarded for each letter for this exhibit will be based on the following:
    - (I) Support letters (must establish at least one reason for support) will receive 24 points; or
    - (II) Letters that do not establish a reason for support or opposition or that are unclear will be considered ineligible and scored as neutral (+12 points);
    - (III) Applications for which no letters from Neighborhood Organizations are scored will receive a neutral score of +12 points;
    - (IV) Opposition letters (must state at least one reason for opposition) will receive 0 points;
    - (V) If an Application receives multiple eligible letters, the average score of all eligible letters will be applied to the Application.
  - (ii) The final score will be determined by the Executive Director. The Department may investigate a matter and contact the Applicant and Neighborhood Organizations for more information. The Department may consider any relevant information specified



# HERMAN & KITTLE PROPERTIES, INC.

Real Estate Development • General Contracting • Property Management

May 25, 2011

Ms. Robbye Meyer  
Director, Multifamily Finance Production Division  
Texas Department of Housing and Community Affairs  
PO Box 13941  
Austin, TX 78711

RE: Response to Challenge of 11077 Main Street Commons

Dear Ms. Meyer:

This letter is in response to the challenge presented by Mr. Robert H. Voelker regarding various items on application 11077 Main Street Commons. Please find our responses below in numerical order as presented in Mr. Voelker's letter.

## **1. Community Revitalization Plan**

Mr. Voelker believes points should not be awarded for this item because the City of Taylor has referenced a Comprehensive Plan.

The 2011 QAP clearly defines a Community Revitalization Plan as follows:

*A published document under any name, approved and adopted by the local Governing Body or, if the Governing Body has lawfully assigned responsibility for oversight of communication or activities to a body created or sponsored by that Governing Body, the vote of the Governing Body so designated, by ordinance, resolution, or vote that targets specific geographic areas for revitalization and development of residential developments.*

While Mr. Voelker has his opinion of what should qualify as a "Community Revitalization Plan," the QAP already defines this. As a "published document under any name," a "Comprehensive Plan" is not prohibited from meeting this definition. As documented in the letter from the City of Taylor, the City of Taylor Comprehensive Plan addresses the city's housing needs and revitalization in the area, and Main Street Commons meets the objectives of this plan. Based on the QAP definition of "Community Revitalization Plan" and the language of the scoring item, points should be awarded.

## **2. Leveraging of Private, State, and Federal Resources.**

Mr. Voelker believes the documentation found in the application for this scoring item is insufficient because the application manual defines the term "Commitment."

The documentation provided in the application is in the same format that has been accepted by the Department for many application cycles and meets the requirements for the scoring item as found in

Ms. Robbye Meyer

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the QAP. The documentation clearly states that a formal commitment of funds is in place and outlines the terms of the loan. It should also be noted the QAP does not capitalize "commitment" in this scoring item except where there is a reference to the TDHCA Housing Tax Credit Commitment Notice, so we also question why Mr. Voelker has referenced the definition of "Commitment" in his challenge. Regardless, we are happy to provide this funding commitment in any format that the Department requests. Points should be awarded for this scoring item.

### **3. Third Party Funding Commitment Outside of Qualified Census Tracts**

Again, Mr. Voelker believes that the documentation found in the application for this scoring item is insufficient.

The documentation provided in the application is in the same format that has been accepted by the Department for many application cycles and meets the requirements for the scoring item as found in the QAP. The documentation clearly states that a formal commitment of funds is in place and outlines the terms of the loan. It should also be noted that the QAP does not capitalize "commitment" in this scoring item, so we also question why Mr. Voelker has referenced the definition of "Commitment" in his challenge. Regardless, we are happy to provide this funding commitment in any format that the Department requests. Points should be awarded for this scoring item.

### **4. HOME Match Requirement**

Mr. Voelker believes that this application should be ineligible for HOME funds because the HOME match requirement has not been satisfied.

The HOME Match Requirement is a new requirement this year for multifamily funding in conjunction with Housing Tax Credits. Based on the HOME guidelines, which Mr. Voelker provided in his challenge submission, professional services can be donated and counted as match if those services were not part of a contract. The match provided by S2A Development Consulting LLC was for services not provided under the current contract and were additional services above and beyond those offered on a HTC/HOME application. While TDHCA HOME staff has not yet reviewed this application, another HTC application with TDHCA HOME has been reviewed and this issue was resolved with an administrative deficiency where the applicant was able to use another source for the HOME match. For this application, the issue should be resolved through an administrative deficiency during the HOME review, and thus will still be eligible for HOME funds.

### **5. Bond Fees**

Mr. Voelker believes that the credit enhancement fees and bond premium fees included in the development cost schedule are for a MF Tax Exempt Bond transaction and the deletion of which will result in a loss of tax credits for the application, thus making it infeasible.

The Credit Enhancement Fee is a fee that Herman & Kittle (a member of the Applicant) collects from the LP/taxpayer for providing a payment, performance, completion, and repayment guaranty to the construction lender. It is a percentage of the construction loan amount. The Bond Premium Fee is the projected cost of having to bond the AIA construction contract. Neither of these items have anything to do with tax-exempt bond transactions. If necessary, these items can be discussed with the Multifamily and Real Estate Analysis divisions and will not affect the financial feasibility of the application.

Ms. Robbye Meyer

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## 6. Threshold Criteria-Financing Requirements.

Mr. Voelker believes that the application should be terminated because the syndicator letter was left out of the application.

Mr. Voelker correctly points out that one component of the financing commitment was inadvertently left out of the Application, but we contend that the QAP language he cited with regard to the Administrative Deficiency Process does not pertain to the omission of a single document to result in termination, but rather that proof of the financing commitment in its entirety is missing. This interpretation is consistent with the definition of Administrative Deficiencies, which states the following:

*Administrative Deficiencies--Information requested by the Department that is required to clarify or correct inconsistencies in an Application that in the Department's reasonable judgment, may be cured by supplemental information or explanation which will not necessitate a substantial reassessment or re-evaluation of the Application.*

This particular development has six parts to its financing commitment: construction loan, permanent loan, syndication proceeds, local funding (TDHCA HOME funds), a private loan, and a third party loan. Of the six parts, the syndicator letter was accidentally omitted, but reference to it and its terms are outlined throughout the application in the Summary of Sources and Uses, Financing Narrative, Development Team Members, and the lender construction/permanent financing letter. In fact, the lender letter from Capital One submitted with the application references that the equity for the development will come from Red Stone Equity Partners in an amount of \$8,124,387. Considering that reference to the equity is included in various areas of the application and was also analyzed by the construction/permanent lender for purposes of financial feasibility, the syndication is not a new addition to the application. Therefore, the inadvertent omission of the equity letter does not cause a substantial reassessment or reevaluation of the application.

We contend that the information related to the financing commitment as a whole was submitted. Additionally, enough information regarding the syndication was included in the Application that supplemental information would not necessitate a substantial reassessment or re-evaluation of the Application, and should be handled through the course of the Administrative Deficiency process.

Furthermore, we do not believe that this issue would make the application ineligible pursuant to Section 49.4(b) of the QAP. Specifically, 49.4(b)(9) addresses termination relating to the deficiency process:

*The Application is submitted after the Application submission deadline (time or date); includes an electronic submission that is unreadable by the Department's computer system; has an entire Volume of the Application missing; or has a Material Deficiency as defined under §1.1 of this title (relating to Definitions). If an Application is determined ineligible pursuant to this subsection, the Application will be terminated without further consideration and the Applicant will be notified of such termination. To the extent that a review was able to be performed, specific reasons for the Department's determination of ineligibility will be included in the termination letter to the Applicant*

This paragraph notes that an application *may* be terminated due to a Material Deficiency. The definition of Material Deficiency is as follows:

Ms. Robbye Meyer

May 25, 2011

Page 4 of 4

***Material Deficiency**--Any individual Application deficiency or group of Administrative Deficiencies which, if addressed, would require, in the Department's reasonable judgment, a substantial reassessment or re-evaluation of the Application or which, are so numerous and pervasive that they indicate a failure by the Applicant to submit a substantively complete and accurate Application.*

Again, the omission of one syndicator letter is not a Material Deficiency because it does not require a substantial reassessment or re-evaluation of the application or indicate a failure to submit a substantively complete and accurate application because reference to this letter and the terms are made in numerous areas of the application. This issue would be a *clarification for information* missing only in part from the application, again, does not require a substantial reassessment or re-evaluation of the application, and thus should be handled through the Administrative Deficiency process.

**7. Quantifiable Community Participation/Neighborhood Organization Support**

Mr. Voelker does not believe that the Neighborhood Organization of record should qualify for points under this scoring item. Mr. Voelker also believes that the Applicant's application certifications are erroneous by suggesting that the applicant formed the neighborhood group for purposes of this scoring item.

The Department does an extremely thorough job of reviewing the Neighborhood Organizations that provide support for HTC applications, and the Department awarded the full 24 points for this application based on the letter of support from the Main Street Neighborhood Organization. While Mr. Voelker has his own opinion of which date an organization should have had a meeting or which date the organization should be in existence in relation to the date a Pre-application is submitted to the Department, the QAP has clearly defined the requirements for a Neighborhood Organization that provides input under this scoring item. Furthermore, the Applicant did not form the Neighborhood Organization or have any involvement with the Neighborhood Organization that would be in violation of the QAP. The Main Street Neighborhood Organization meets the requirements of the QAP and points should be awarded for this scoring item.

Thank you for your attention to this matter. Please contact me with any questions.

Regards,



Michael A. Roderer  
Development Director

**ACKERMAN & SAVAGE, L.L.C.***Attorneys-at-Law*

8226 Douglas Avenue, Suite 330

Dallas, Texas 75225

(214) 346-4200

Fax: (214) 346-4201

Email: [cyh@ackermansavage.com](mailto:cyh@ackermansavage.com)**FACSIMILE TRANSMISSION**

**Date:** June 15, 2011

**To:** Robbye Meyer  
Raquel Morales

**Fax Phone:** 512.475.0764

**Pages:** 60, including cover

**From:** Cynthia Harris

**Subject:** Challenge to Points Awarded for  
Application Number 11080 Hidden  
Valley Estates and Challenge to Points  
Awarded for Application Number 11087  
Tidwell Lakes Ranch

**Notes:** Please see attached. If you have any questions, please feel free to call our office.

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June 15, 2011

Ms. Robbye Meyer  
Texas Department of Housing  
and Community Affairs  
221 East 11th Street  
Austin, Texas 78701

*via email: [robbye.meyer@tdhca.state.tx.us](mailto:robbye.meyer@tdhca.state.tx.us)  
and via fax no.: 512.475.0764*

Re: Challenge to Points Awarded for Application Number 11080, Hidden Valley Estates and Challenge to Points Awarded for Application Number 11087, Tidwell Lakes Ranch

Dear Ms. Meyer:

This law firm presents the enclosed Application Challenge to the Texas Department of Community Affairs with respect to the 2011 low income housing tax credit allocation. This Challenge is pursuant to Section 49.10(e) of the 2011 Qualified Allocation Plan.

The Challenges question the validity of the scoring for the items detailed on the attached exhibits.

Please consider the enclosed materials<sup>1</sup> in connection with finalizing the scoring of the application in this Region, and place these materials in the applicant's file for review by the TDHCA Board as allocations are finalized and approved.

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<sup>1</sup> Challenge to Points Awarded for Application Number 11080, Hidden Valley Estates and Challenge to Points Awarded for Application Number 11087, Tidwell Lakes Ranch

Ms. Robbye Meyer  
June 15, 2011

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Also, upon review of the TDHCA website it appears that application number 11149 ("Application") for Branch Village Apartments is not available for viewing. This firm requests you make the Application available for review by the public? Also, due to the fact the Application is currently unavailable to the public on-line, this firm requests additional time be afforded after the application deadline for us to review and challenge the Application. Accordingly, I look forward to your response.

Please feel free to contact me if you have any questions.

Sincerely,



W. Randall Ackerman

Cc: Raquel Morales *via email raquel.morales@tdhca.state.tx.us*  
*and fax no. 512.475.0764*

Enclosure

## **Challenge to Points Awarded for Application Number 11080, Hidden Valley Estates**

### **Item 1**

Volume 4, Tab 13 - Applicant claims that the site is located in an area that is covered by a Community Revitalization Plan. The Applicant takes pages from the 2010 City of Houston approved consolidated plan in which the City of Houston appears to direct their housing efforts to Low to Moderate Income Areas (LMI). The Applicant provides a map, but the actual site location is obscured by the I45 symbol. Upon further review of similar maps in the Consolidated Plan it is clear that the Applicant's site is not located in the LMI area as claimed in the LIHTC Application. The Applicant should not receive the three points for being part of a Community Revitalization Area because the site is not located in the LMI Area represented in the LIHTC application. I copy of the LMI map taken from another section of the consolidated plan clearly shows the site for application number 11080 is not in the area represented in the application.

#### **Attachments:**

- 1) V4, T13 from LIHTC Application
- 2) City of Houston 2010 Consolidated plan showing area obscured by the I45 symbol in the map provided by the Applicant.

### **Item 2**

Volume 4, Tab 23 - The Applicant claims two points for having a HUB own 51% of the General Partner. The HUB in the ownership structure has an expired certificate and, upon further review from the Comptroller, the HUB is inactive. The Applicant should not qualify for two points for this item since a valid HUB is not part of the ownership structure.

#### **Attachment:**

- 1) Expired HUB Certificate from LIHTC Application
- 2) Search results showing and "inactive" HUB for Songhai Ventures LLC

**1) V4, T13 from LIHTC Application**

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# Volume 4

# Tab 13

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**Volume 4, Tab 13**

**COMMUNITY REVITALIZATION or HISTORIC PRESERVATION (§49.9(a)(13))**

The Application proposes:

- Community Revitalization**- the Development includes the use of an Existing Residential Development and proposes any Rehabilitation or any Reconstruction that is part of a Community Revitalization Plan. (§42(m)(1)(C)(iii))

Evidence to be provided to satisfy this requirement:

- Volume 2, Tab 1, Part B- 2011 Existing Residential Development Certification Form* is present in Volume 2, and is fully executed.

AND

- A letter from the Appropriate Local Official stating there is a Community Revitalization Plan in effect and the Development is within the area covered by the plan.

If the Applicant is unable to obtain a letter from an Appropriate Local Official, then the following must be provided:

- If the Community Revitalization Plan has specific boundaries, a copy of the Plan adopted by the jurisdiction or its designee and a map showing that the Development is within the area covered by the Community Revitalization Plan.

- Historic Preservation** - The Development includes the use of an existing building that is designated as historic by a federal or state Entity and proposes Rehabilitation (including Reconstruction) or Adaptive Reuse.

Evidence to be provided includes:

- The Development includes\* the use of an existing building that is designated as historic by a federal or state entity and proposes Rehabilitation (including reconstruction) or Adaptive Reuse.
- Proof of the historic designation from the appropriate Governmental Body is included.
- Letter from the Texas Historical Commission indicating the effect of the proposed rehabilitation on historical structure is included.

\*The Development itself must have the designation; points in this subparagraph are not available for Developments simply located within historic districts or areas that do not have a designation on the building. The Development must include the historic building.

- Rehabilitation** - Application proposes to build solely Rehabilitation.

- Reconstruction** - Application proposes to build solely Reconstruction.

- Adaptive Reuse** - Application proposes to build solely Adaptive Reuse.

- New Construction** - the Development is New Construction and is proposed to be located in an area that is part of a Community Revitalization Plan.

Evidence to be provided includes one of the following:

Evidence to be provided to satisfy this requirement:

- A letter from the Appropriate Local Official stating there is a Community Revitalization Plan in effect and the Development is within the area covered by the plan.

If the Applicant is unable to obtain a letter from an Appropriate Local Official, then the following must be provided:

- If the Community Revitalization Plan has specific boundaries, a copy of the Plan adopted by the jurisdiction or its designee and a map showing that the Development is within the area covered by the Community Revitalization Plan.



**REMEMBER TO PLACE YOUR EVIDENCE BEHIND THIS FORM**

### ***Priority Housing Needs***

Housing remains the centerpiece of all of HCDD's efforts to serve the low and moderate-income citizens of Houston. Using U.S. Census Data, analysis was performed that showed that the size of households most in need were Small Related or 2 – 4 persons in multifamily housing. The income levels were largely within the low-income range of 51%-80% Medium Family Income (MFI) subgroup. Assigning a high priority to requested funds to be used for new construction, rehabbed multifamily housing, homebuyer assistance, is based on the CHAS indicators for family size and income grouping. CHAS data also indicated that at least one-third of the prospective HCDD homebuyers are at least 30 percent or more cost burdened. HCDD programs to address these priority needs are described below.

**Multi-Family / New Construction.** Increasing access to affordable rental housing for disabled, low income, and senior residents are a top priority. HCDD's annual goal is to make approximately 250 units of multifamily housing available to low and moderate-income residents through grants included in this Consolidated Plan. The Housing and Community Development Department will continue to require the Request for Proposals process as a tool to help finance acquisition, rehabilitation and/or construction of rental units.

**Down payment Assistance.** The Down payment Assistance Program (DAP) provides direct financial assistance to low to moderate-income homebuyers to purchase decent and safe affordable homes in the City of Houston. Primarily low- and moderate-income families, who must partake in an eight-hour homebuyer counseling education program comprised of program-eligible persons. The HCDD's DAP Division has developed two homebuyer programs: 1) the Homebuyer Assistance Program (HAP) and 2) the Houston Hope Program (HHP) both are provided to approximately 215 low to moderate-income homeowners per year.

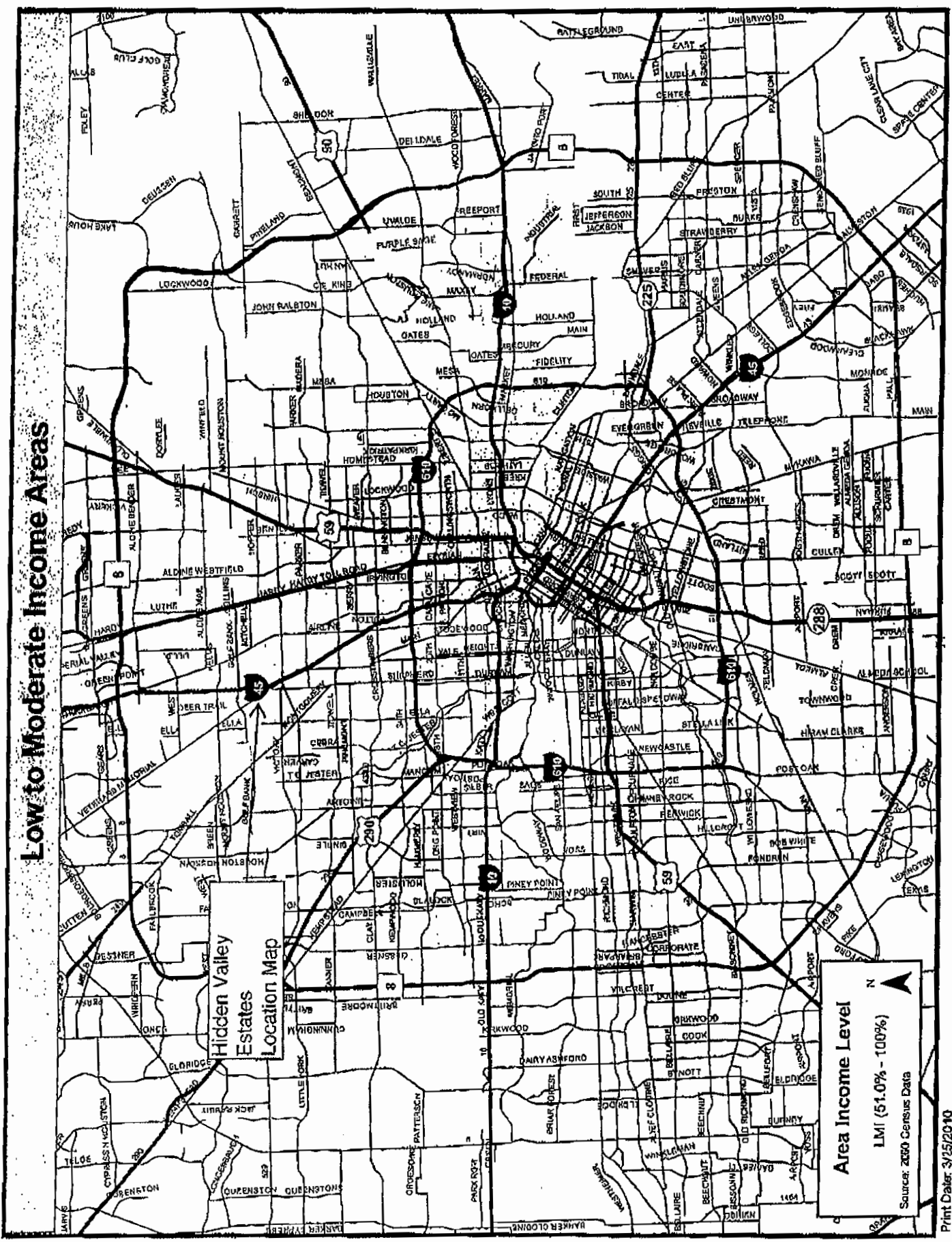
**Single Family Home.** In addition to accessing affordable housing, there is a growing demand for home repair as the housing stock ages. The following programs reflect the priorities set for this in this plan. The purpose of the Single Family Home Repair Program (SFHRP) is to:

- Address home repairs needed to alleviate specific life, health, and safety hazards resulting from substandard conditions in a home owned and occupied by a resident of the City of Houston ("Homeowner")
- Assist as many disabled, elderly, and low income homeowners as possible
- Keep repair costs at a minimum
- Improve curb appeal and uplift the general street appearance.

The SFHRP goal is to address and alleviate life, health, and safety threats to approximately 241 housing units per year

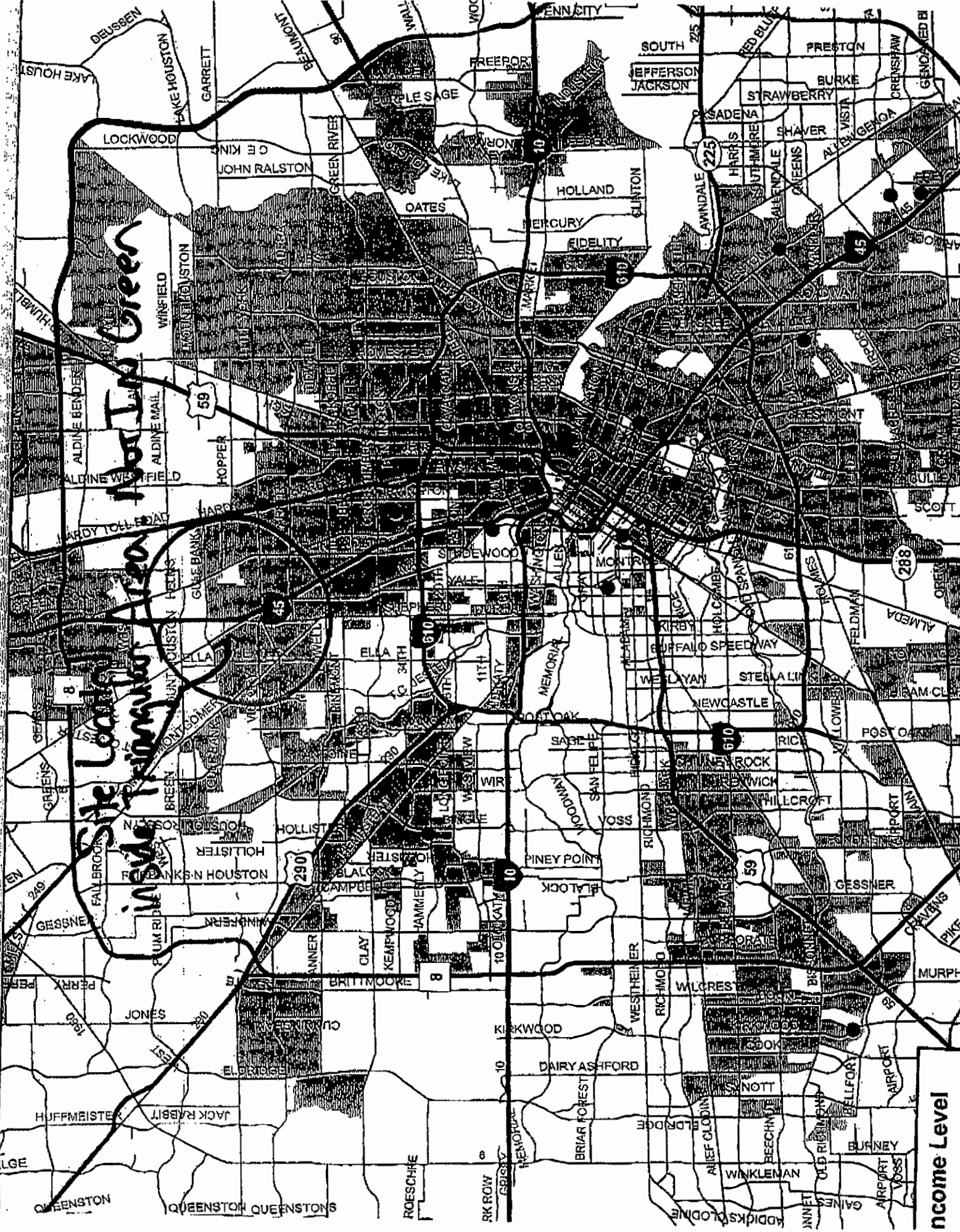
### ***Priority Homeless Needs***

For every five homeless families seeking housing, only two will have access to a permanent supportive housing unit, (See Homeless Needs/Continuum of Care table.) Only 25 percent of permanent housing facilities serve single women with children. To address the needs of homeless children, the Gulf Coast Workforce Board and the Continuum of Care partners train staff to quickly identify families at risk of becoming homeless. Increasing the availability and accessibility of permanent supportive housing units to serve the chronically homeless is the paramount objective for the Houston/Harris County Continuum of Care.





**2) City of Houston 2010 Consolidated plan showing area obscured by the I45 symbol in the map provided by the Applicant.**



Income Level

**1) Expired HUB Certificate from LIHTC Application**

**SPONSOR CHARACTERISTICS (§49.9(a)(23))**

Applicants may qualify to receive a maximum of 2 points. Select appropriate box below for points requested.

 **Option A (1 point)**

The Applicant has submitted 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 Applicant 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.

 **Option B (2 points)**

There is a HUB as certified by the Texas Comptroller of Public Accounts, has at least 51% ownership interest in the General Partner and materially participates in the Development and operation of the Development throughout the Compliance Period. To qualify for these points, the Applicant must submit a HUB certification from the Texas Comptroller of Public Accounts behind this tab.

**HUB REQUIREMENTS**

A historically underutilized business, in conformance with Chapter 2161 of the Texas Government Code, means an entity with its principal place of business in the state of Texas that is:

- a. A corporation formed for the purpose of making profit in which 51 percent or more of all classes of the shares of stock or other equitable securities are owned by one or more economically disadvantaged persons who have a proportionate interest and actively participate in the corporation's control, operation, and management;
- b. A sole proprietorship created for the purpose of making a profit that is completely owned, operated, and controlled by an economically disadvantaged person;
- c. A partnership formed for the purpose of making a profit in which 51 percent or more of the assets and interest in the partnership are owned by one or more economically disadvantaged persons who have a proportionate interest and actively participate in the partnership's control, operation and management;
- d. A joint venture in which each entity in the venture is a historically underutilized business, as determined under another paragraph of this definition; or
- e. A supplier contract between a historically underutilized business as determined under another paragraph of this subdivision and a prime contractor under which the historically underutilized business is directly involved in the manufacture or distribution of the goods or otherwise warehouses and ships the goods. Goods are defined as supplies, materials or equipment.

An economically disadvantaged person means a person who is economically disadvantaged because of the person's identification as a member of a certain group, including Black Americans, Hispanic Americans, women, Asian Pacific Americans, and Native Americans, and who has suffered the effects of discriminatory practices or other similar insidious circumstances over which the person has no control.

HUB is at Minority Business Enterprise (MBE)

**State of Texas**  
**Historically Underutilized Business**  
**Certification and Compliance Program**



The Texas Building & Procurement Commission (TBPC),  
hereby certifies that

**SONGHAI VENTURES, INC.**

has successfully met the established requirements of the  
State of Texas Historically Underutilized Business (HUB)  
Certification and Compliance Program to be recognized as a HUB.

This certificate, printed 25-MAR-2006, supersedes any registration and certificate previously issued by the TBPC's HUB Certification and Compliance Program. If there are any changes regarding the information (i.e., business structure, ownership, day-to-day management, operational control, addresses, phone and fax numbers or authorized signatures) provided in the submission of the business' application for registration/certification as a HUB, you must immediately (within 30 days of such changes) notify the TBPC's HUB program in writing. The Commission reserves the right to conduct a compliance review at any time to confirm HUB eligibility. HUB certification may be suspended or revoked upon findings of ineligibility.

*Paul A. Gibson*

Certificate/VID Number: 1743019162100  
File/Vendor Number: 25049  
Approval Date: 24-MAR-2006  
Expiration Date: 24-MAR-2010

Paul A. Gibson  
HUB Certification & Compliance Manager  
Texas Building & Procurement Commission  
(512) 305-9071

Note: In order for State agencies and institutions of higher education (universities) to be credited for utilizing this business as a HUB, they must award payment under the Certificate/VID Number identified above. Agencies and universities are encouraged to validate HUB certification prior to issuing a notice of award by accessing the Internet (<http://www.tbpc.state.tx.us>) or by contacting the TBPC's HUB Certification and Compliance Program at (888) 863-5881 or (512) 463-5872.

**2) Search results showing and "inactive" HUB for Songhai Ventures LLC**

# Results for HUBs only Search

**Vendor Name**

**Stat HUB Phone**

**Business Description**

Songhai Ventures, Inc.

I BL/F 512-458-5577

MULTIFAMILY HOUSING DEVELOPMENT

*0 active and 1 inactive vendor found where vendor ID is '1743019162100'.*

# ACKERMAN & SAVAGE, L.L.C.

Attorneys-at-Law

8226 Douglas Avenue, Suite 330

Dallas, Texas 75225

(214) 346-4200

Fax: (214) 346-4201

Email: cyh@ackermansavage.com

## FACSIMILE TRANSMISSION

**Date:** June 15, 2011

**To:** Robbye Meyer  
Raquel Morales

**Fax Phone:** 512.475.0764

**Pages:** 60, including cover

**From:** Cynthia Harris

**Subject:** Challenge to Points Awarded for  
Application Number 11080 Hidden  
Valley Estates and Challenge to Points  
Awarded for Application Number 11087  
Tidwell Lakes Ranch

**Notes:** Please see attached. If you have any questions, please feel free to call our office.

The information contained in this facsimile message is privileged and confidential information intended for the exclusive and private use of the individual or entity named above. If the reader of this message is not the intended recipient, employee or agent responsible to deliver this message, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you receive this communication in error, please immediately notify our office at 214/346-4200. If you are out of town, please call collect.

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fax.docx





8226 Douglas Avenue  
Suite 330  
Dallas, Texas 75225  
Telephone 214-346-4200  
Facsimile 214-346-4201  
www.ackermansavage.com

June 15, 2011

Ms. Robbye Meyer  
Texas Department of Housing  
and Community Affairs  
221 East 11th Street  
Austin, Texas 78701

*via email: robbye.meyer@tdhca.state.tx.us  
and via fax no.: 512.475.0764*

Re: Challenge to Points Awarded for Application Number 11080, Hidden Valley Estates and Challenge to Points Awarded for Application Number 11087, Tidwell Lakes Ranch

Dear Ms. Meyer:

This law firm presents the enclosed Application Challenge to the Texas Department of Community Affairs with respect to the 2011 low income housing tax credit allocation. This Challenge is pursuant to Section 49.10(e) of the 2011 Qualified Allocation Plan.

The Challenges question the validity of the scoring for the items detailed on the attached exhibits.

Please consider the enclosed materials<sup>1</sup> in connection with finalizing the scoring of the application in this Region, and place these materials in the applicant's file for review by the TDHCA Board as allocations are finalized and approved.

---

<sup>1</sup> Challenge to Points Awarded for Application Number 11080, Hidden Valley Estates and Challenge to Points Awarded for Application Number 11087, Tidwell Lakes Ranch

Ms. Robbye Meyer

June 15, 2011

Page 2

Also, upon review of the TDHCA website it appears that application number 11149 ("Application") for Branch Village Apartments is not available for viewing. This firm requests you make the Application available for review by the public? Also, due to the fact the Application is currently unavailable to the public on-line, this firm requests additional time be afforded after the application deadline for us to review and challenge the Application. Accordingly, I look forward to your response.

Please feel free to contact me if you have any questions.

Sincerely,



W. Randall Ackerman

Cc: Raquel Morales *via email raquel.morales@tdhca.state.tx.us*  
*and fax no. 512.475.0764*

Enclosure

### **Challenge to Points Awarded for Application Number 11087, Tidwell Lakes Ranch**

#### **Item 1**

Volume 4, Tab 13 - The Applicant makes the claim that being consistent with the consolidated plan is the same as being in a Community Revitalization Zone. The Consolidated Plan is a service area wide document and the site is not located in one of Harris County's Target Areas (see attached map) and also references specific Revitalization Areas (copy attached) of which the Applicant's site is in neither. The Applicant also claims to be in a state enterprise zone, which may be a state zone there is not proof in the application that the Governing Body has lawfully assigned responsibility for oversight of communication or activities to a body created or sponsored by that Governing Body.

The items presented in the LIHTC application do show consistency with the consolidated plan, but fail to show that the Applicant's site is part of a Community Revitalization Area as defined in the 2011 QAP. The Applicant should not receive 3 points for this item.

#### **Attachments:**

- 1) V4, T13 from 11087 LIHTC Application
- 2) Harris County Target Area Map
- 3) Harris County Excerpt Defining Revitalization Areas

**1) V4, T13 from 11087 LIHTC Application**

**COMMUNITY REVITALIZATION or HISTORIC PRESERVATION (§49.9(a)(13))**

The Application proposes:

- Community Revitalization** - the Development includes the use of an Existing Residential Development and proposes any Rehabilitation or any Reconstruction that is part of a Community Revitalization Plan. (§42(m)(1)(C)(iii))

Evidence to be provided to satisfy this requirement:

- Volume 2, Tab 1, Part B- 2011 Existing Residential Development Certification Form is present in Volume 2, and is fully executed.

AND

- A letter from the Appropriate Local Official stating there is a Community Revitalization Plan in effect and the Development is within the area covered by the plan.

If the Applicant is unable to obtain a letter from an Appropriate Local Official, then the following must be provided:

- If the Community Revitalization Plan has specific boundaries, a copy of the Plan adopted by the jurisdiction or its designee and a map showing that the Development is within the area covered by the Community Revitalization Plan.

- Historic Preservation** - The Development includes the use of an existing building that is designated as historic by a federal or state Entity and proposes Rehabilitation (including Reconstruction) or Adaptive Reuse.

Evidence to be provided includes:

- The Development includes\* the use of an existing building that is designated as historic by a federal or state entity and proposes Rehabilitation (including reconstruction) or Adaptive Reuse.
- Proof of the historic designation from the appropriate Governmental Body is included.
- Letter from the Texas Historical Commission indicating the effect of the proposed rehabilitation on historical structure is included.

\*The Development itself must have the designation; points in this subparagraph are not available for Developments simply located within historic districts or areas that do not have a designation on the building. The Development must include the historic building.

- Rehabilitation** - Application proposes to build solely Rehabilitation.
- Reconstruction** - Application proposes to build solely Reconstruction.
- Adaptive Reuse** - Application proposes to build solely Adaptive Reuse.

- New Construction** - the Development is New Construction and is proposed to be located in an area that is part of a Community Revitalization Plan.

Evidence to be provided includes one of the following:

Evidence to be provided to satisfy this requirement:

- A letter from the Appropriate Local Official stating there is a Community Revitalization Plan in effect and the Development is within the area covered by the plan.

If the Applicant is unable to obtain a letter from an Appropriate Local Official, then the following must be provided:

- If the Community Revitalization Plan has specific boundaries, a copy of the Plan adopted by the jurisdiction or its designee and a map showing that the Development is within the area covered by the Community Revitalization Plan.



REMEMBER TO PLACE YOUR EVIDENCE BEHIND THIS FORM

**VOLUME 4, TAB 13  
TIDWELL LAKES RANCH**

The Harris County Consolidated Plan addresses that the low/moderate income areas are part of its revitalization efforts in various sections. The Economic Development Goal of the plan is to encourage economic revitalization efforts, stimulate economic opportunities in low and moderate income communities throughout the Harris County service area. The median income for the census tract is less than 80% of MSA median income. Harris County target areas represent portions of communities in which 51 percent or more of the residents are low- to moderate-income, thus with more than 50% of the census tract being low income, it would by definition be a target area. Further, the enclosed Certification of Consistency for Harris County establishes the need for affordable housing and is consistent with the needs and strategies of the Consolidated Plan.

The plan shows that only 4% of multifamily housing is four or more bedrooms, thus leading to overcrowding and the need of additional units such as Tidwell Lakes Ranch with four or more bedrooms. Harris County has a goal of adding units to satisfy its needs by 2012.

Tidwell Lakes Ranch is located in a State Enterprise Zone, which by definition in Texas Government Code 2303, is a severely distressed area of the state in need of incentives by state and local government to induce private investment in those areas by removing unnecessary governmental regulatory barriers to economic growth and to provide tax incentives and economic development program benefits. A variety of benefits exist to encourage revitalization of the zone including refunds of sales taxes for development (.505), reduced utility rates and priority of municipal services (.511), and waiver of performance bonds for offsite work (.514).

The consolidated plan defines its area as the entire service area and a map of such is included showing the location of the property.

## **Lead-Based Paint Hazard Reduction Strategy**

Effective September 15, 2000, all housing activities supported by funding administered by HUD's Office of Community Planning and Development must comply with lead-based paint regulations (Title X of the Housing and Community Development Act of 1992). The changes will affect housing rehabilitation activities, tenant-based rental assistance, and acquisition, leasing, support services and operations. The new regulation changes the acceptable work practices and expands the requirements to protect occupants and workers from lead-based paint hazards. In addition, it requires testing for lead, stabilization, control or abatement in the event that lead is found on the property. Certain programs will have the additional responsibility of on-going maintenance and record keeping. The impact of the new regulations on existing programs will be in several areas such as budgeting, productivity, and staff training.

In response to the changes in regulations, Harris County will continue to implement HUD's Lead-Based Paint Hazard Reduction strategy. This strategy includes incorporating the approved Lead-Based Paint Hazard Reduction regulations into all housing programs operated by CEDD and those programs funded/operated by subrecipients. Subrecipient training will continue to include information regarding implementation, documentation and reporting on all housing activities that are affected by changes in regulations.

Other strategies for lead based paint hazard reduction include the continued support of the Harris County Public Health and Environmental Services Department's Childhood Blood/Lead Screening/Abatement program. Through these programs Harris County will actively pursue the reduction of the number of lead based paint hazards in the Harris County service area.

## **Goals and Measurable Objectives**

**HOUSING GOAL:** To create the opportunity for adequate, affordable, accessible housing for extremely low-, very low-, and low-income persons through eventual elimination of lead based paint hazards, encouragement of homeownership, minor home repair, rehabilitation of single-family and multi-family housing, provision of rental assistance, new construction, and development of partnerships.

### **Owners**

#### **Objective 1: Homeownership (13)**

To provide 800 individuals and families with the opportunity for homeownership by February 28, 2012, thus improving quality of life and supplying decent housing. This objective will be accomplished through financial assistance to prospective homebuyers. Financial assistance includes, but is not limited to downpayment and closing cost assistance. Programs providing Downpayment and Closing Cost services should provide a minimum of \$10,000 in downpayment and closing costs per eligible program

Renters/Owners

Of all low-income households, renter households make up 42 percent (554,905 households) and owners comprise 58 percent. Based on these totals, both renters and owners are in need of some form of housing assistance, such as rental assistance, housing rehabilitation, and construction of affordable units. Renter and owner households in need of housing were determined based upon the estimated housing cost deficits and rehabilitation needs of those households. Households with housing needs are identified by high ("H"), medium ("M") and low ("L") need level in Table 5.1, Priority Housing Needs /Investment Plan Table.

Table 5.1 Priority Housing Needs/Investment Plan Table (Table 2A)

PRIORITY HOUSING NEEDS (households)		Priority		Unmet Need
<b>Renter</b>	Small Related	0-30%	H	32,360
		31-50%	M	24,910
		51-80%	L	10,235
	Large Related	0-30%	H	12,025
		31-50%	H	6,370
		51-80%	M	1,357
	Elderly	0-30%	M	10,474
		31-50%	M	5,414
		51-80%	L	3,112
	All Other	0-30%	H	22,955
		31-50%	M	20,000
		51-80%	H	12,760
<b>Owner</b>	Small Related	0-30%	H	10,485
		31-50%	H	10,705
		51-80%	M	14,690
	Large Related	0-30%	H	5,085
		31-50%	H	5,805
		51-80%	M	5,140
	Elderly	0-30%	M	12,324
		31-50%	M	7,299
		51-80%	L	5,114
	All Other	0-30%	H	5,325
		31-50%	H	3,320
		51-80%	M	4,914
<b>Non-Homeless Special Needs</b>	Elderly	0-80%	H	7,016
	Frail Elderly	0-80%		
	Severe Mental Illness	0-80%		
	Physical Disability	0-80%	H	14,400
	Developmental Disability	0-80%		
	Alcohol/Drug Abuse	0-80%		
	HIV/AIDS	0-80%	H	1,500
Victims of Domestic	0-80%			



Table 5.4 Priority Housing Needs/Investment Plan Goals (Table 2A)

Priority Need	Yr. 1 Goal Plan	Yr. 2 Goal Plan	Yr. 3 Goal Plan	Yr. 4 Goal Plan	Yr. 5 Goal Plan
<b>Renters</b>					
0 - 30 of MFI	90	18	18	18	18
31 - 50% of MFI	117	23	23	24	24
51 - 80% of MFI	173	35	35	34	34
<b>Owners</b>					
0 - 30 of MFI	128	25	25	26	26
31 - 50 of MFI	375	75	75	75	75
51 - 80% of MFI	512	104	102	102	102
<b>Homeless*</b>					
Individuals	1,000	200	200	200	200
Families					
<b>Non-Homeless Special Needs</b>					
Elderly	500	100	100	100	100
Frail Elderly					
Severe Mental Illness					
Physical Disability	100	20	20	20	20
Developmental Disability					
Alcohol/Drug Abuse					
HIV/AIDS	50	10	10	10	10
Victims of Domestic Violence					
<b>Total</b>	<b>3,045</b>	<b>610</b>	<b>608</b>	<b>609</b>	<b>609</b>
<b>Total Section 215</b>					
212 Renter					
215 Owner					

\* Homeless individuals and families assisted with transitional and permanent housing



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### Geocoding System

MSA Code: 26420	State Code: 48	County Code: 201	Tract Code: 2323.00
-----------------	----------------	------------------	---------------------

#### Summary Census Demographic Information

Tract Income Level	Moderate	Tract Population	10106
Underserved or Distressed Tract	No	Tract Minority %	68.64
2010 HUD Estimated MSA/MD/non-MSA/MD Median Family Income	\$85,100	Minority Population	6936
2010 Est. Tract Median Family Income	\$48,868	Owner-Occupied Units	2178
2000 Tract Median Family Income	\$38,801	1- to 4-Family Units	3138
Tract Median Family Income %	75.05		

[GENERAL DATA](#) | 
 [INCOME DATA](#) | 
 [POPULATION DATA](#) | 
 [HOUSING DATA](#)

Last update: 08/04/2010 07:30 AM

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## HARRIS COUNTY, TEXAS

### COMMUNITY SERVICES DEPARTMENT

**David B. Turkel**  
*Director*  
**Daphne Lemelle**  
*Community Development Director*

**Office of Housing & Community Development**  
8410 Lantern Point Drive  
Houston, Texas 77054  
Tel (713) 578-2000  
Fax (713) 578-2190

February 8, 2011

W. Barry Kahn  
Tidwell Lakes Ranch, Ltd.  
5325 Katy Freeway, Suite One  
Houston, Texas 77007

**SUBJECT:** Tidwell Lakes Ranch Proposed Development  
Low Income Housing Tax Credit (LIHTC) Program  
Exhibit 202(A), Consolidated Plan, Exhibit 103(B)

Dear Mr. Kahn:

For the purposes of applying for tax credits, the Harris County Community Services Department (CSD) confirms receipt of your request for a letter to be used in connection with your organization's application for Low Income Housing Tax Credits (LIHTC) with the Texas Department of Housing and Community Affairs (TDHCA). Please accept this letter as this Department's response to your request. Note, this Certificate of Consistency does not denote support by the county for the individual project or developer, but confirms that the general scope of the project meets the county's 2008-2012 Consolidated Plan goal of promoting safe and affordable housing.

Increasing the supply of affordable rental housing was identified as a critical need, and is a high priority for Harris County in its Consolidated Plan. Your proposed project, with its set aside of 92 multi-family units is consistent with the needs and strategies in the Consolidated Plan. Harris County encourages your organization to consider, as potential tenants, those households on the Harris County Housing Authority's waiting list for assisted or affordable housing.

Attached please find Exhibit 202(A), Certification of Consistency with the Consolidated Plan for Harris County, which establishes the need for affordable rental housing in the county. Your project, Tidwell Lakes Ranch, located 1000 feet north of the 12900 block of Tidwell, Houston, Texas 77044, is located in the CSD service area. If awarded tax credits, the apartments proposed by your organization will contribute to the number of affordable housing units in Harris County.

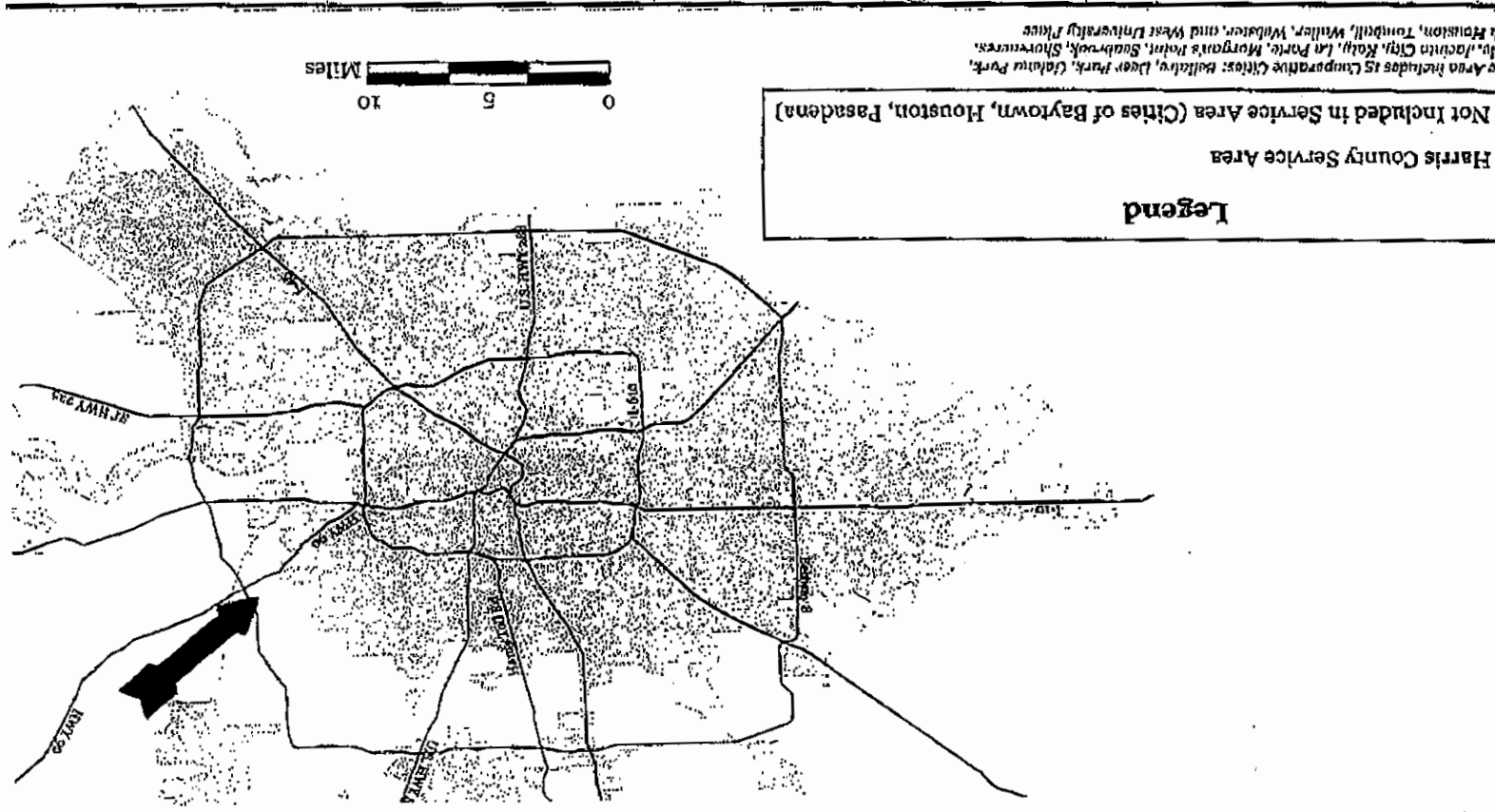
If you need additional information please contact Jared Briggs, Planner at (713) 578-2000.

Sincerely,

A handwritten signature in black ink, appearing to read "David B. Turkel", written over a horizontal line.

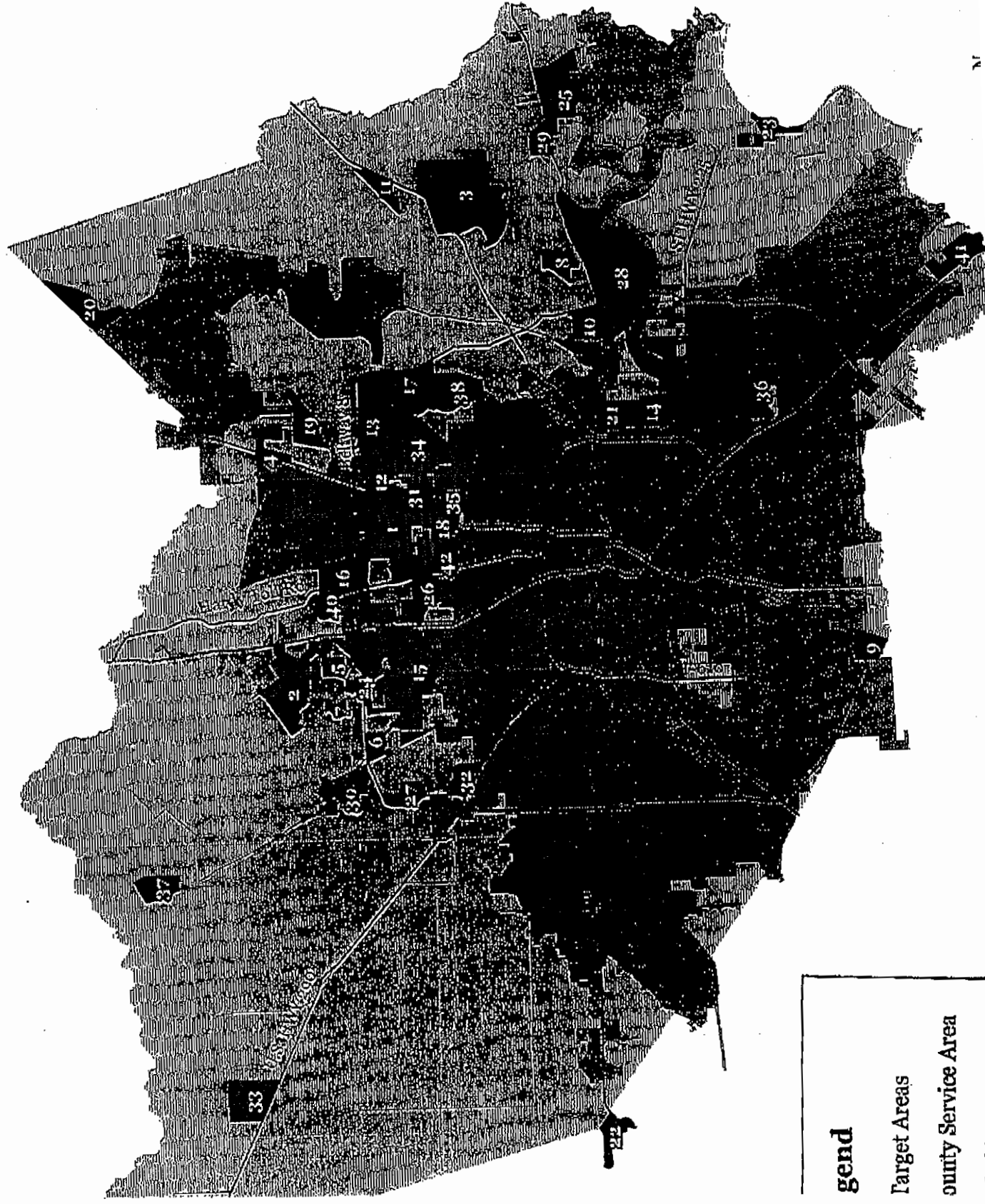
David B. Turkel  
Director

DT/DL/cl/jb



3	UNITED NESH
4	Borderville
5	Brough
6	Cedar Point
7	Champron
8	Channahon
9	Clear Creek
10	Clowleaf
11	Crosby
12	El Dorado
13	Fall Creek
14	Galena Park
15	Grainfield
16	Greenbriar
17	Greenwood
18	Greenwood
19	Humble
20	Idlewild
21	Jachno City
22	Katy
23	La Park
24	Liacon Gre
25	Linus
26	Little York
27	Maple
28	Marwood-D
29	McNair
30	Meadow Vi
31	Northington
32	Oakhollow
33	Rincht Coun
34	Riverwood
35	Silverwood P
36	South House
37	Totals-off
38	Yates-Koves

# Service Area & HUD-Defined Target Areas



gend  
 Target Areas  
 county Service Area

**2) Harris County Target Area Map**

**3) Harris County Excerpt Defining Revitalization Areas**

<http://www.csd.hctx.net/PYConsolidatedPlan.aspx>

Taken from link above. Only area with revitalization according to Harris County.

## **Airline Neighborhood Revitalization Strategy Area**

### **Introduction**

The Airline Community has developed a Neighborhood Revitalization Strategy Area (NRSA) in accordance with the 2008-2012 Consolidated Plan regulations, 24 CFR Part 91.215 (e)(2). The Airline Community NRSA was submitted with the 2008-2012 Harris County Consolidated Plan. The Department of Housing and Urban Development (HUD) established criteria for approving locally determined strategies for revitalizing an area that is among the community's most distressed. The criteria to be met are as follows:

1. The NRSA must be submitted with the 5-Year Consolidated Plan or it must be made an amendment to the existing Consolidated Plan.
2. Grantee must clearly identify the neighborhood's boundaries and the boundaries must be contiguous.
3. The designated area must be primarily residential and contain at least 70 percent low-to moderate-income persons as determined by the most recent census data.
4. The strategy must be developed in consultation with the area's stakeholder, residents, owners/operators of businesses and financial institutions, non-profit organizations, and community groups that are in or serve the neighborhood.
5. An economic assessment of the area must be completed.
6. The economic development assessment must examine opportunities for Improvement within the area.
7. The economic development assessment must examine problems that are likely to be encountered.
8. The implementation plan must promote the area's economic progress with a focus on activities that will create meaningful jobs for the unemployed and low- and moderate-income residents of the area.
9. The plan must promote activities for the substantial revitalization of the neighborhood.
10. The strategy must identify the results (e.g., physical improvements, social initiatives and economic empowerment) expected to be achieved in terms that are readily measurable or "benchmarks."



In 1996, the Department of Housing and Urban Development issued a Community Planning and Development notice [CPD 96-01] encouraging Community Development Block Grant (CDBG) entitlement grantees to develop comprehensive revitalization strategies. HUD identified the development of NRSAs to be the best tool for creating measurable impacts at the neighborhood level. The HUD notice states, "Successful neighborhood revitalization strategies are those that bring together the neighborhoods' and the larger community's stakeholders to forge partnerships that:

- Obtain commitments to neighborhood building;
- Make neighborhoods attractive for investments, thereby creating a market for profit;
- Generate neighborhood participation to ensure that the benefits of economic activity are reinvested in the neighborhood for long-term community development;
- Support the use of neighborhood intermediary institutions to bridge the gaps between local government agencies, the business community, community groups, and residents; and
- Foster the growth of resident-based initiatives to identify and address their housing, economic, and human services needs."

### **Benefits of NRS**

The incentives for entitlement communities to submit and secure approval for a revitalization strategy are described below.

- **Job Creation/Retention as Low/Moderate Income Area Benefit:** Job creation/retention activities undertaken pursuant to the strategy may be qualified as meeting area benefit requirements, thus eliminating the need for a business to track the income of persons that take, or are considered for, such jobs. (24 CFR 570.208 (a)(1)(vii) and (d)(5)(i).
- **Aggregation of Housing Units:** Housing units assisted pursuant to the strategy may be considered to be part of a single structure for purposes of applying the low- and moderate-income national objective criteria, thus providing greater flexibility to carry out housing programs that revitalize a neighborhood. (24 CFR 570.208 (a)(3) and (d)(5)(ii).
- **Aggregate Public Benefit Standard Exemption:** Economic development activities carried out under the strategy may, at the grantee's option, be exempt from the aggregate public benefit standards, thus increasing a grantee's flexibility for program design as well as reducing its record-keeping requirements (24 CFR 570.209 (b)(2)(v)(L) and (M).

- **Public Services Cap Exemption:** Public services carried out pursuant to the strategy by a Community-Based Development Organization (CBDO) will be exempt from the public service cap (24 CFR 570.204 (b)(2)(ii).

The Airline Neighborhood Revitalization Strategy is an effort to make a significant and measurable impact in the Airline community.

The Airline community seeks the opportunity to utilize CDBG funds to leverage private resources and make a lasting impact on the community. This focused funding approach will result in the revitalization of the Airline neighborhood, including development of new housing, new jobs, increased transportation options, and improved access to jobs, services, and public amenities.

In 2007, the Airline Improvement District received \$408,000.00 in CDBG funds from Harris County to acquire land for a park which was one of their planned activities in their 5 year revitalization plan.

**Airline NRSA Boundaries**

The Airline target area is located in northern Harris County, just north of the City of Houston, south of Greenspoint Mall and situated within unincorporated Harris County - Precinct One. Airline is bound by West Road, Hambrick Road, Lillja Road, and Aldine Mail Road to the north; the Hardy Toll Road, Bauman Road and the City of Houston limits to the east; East Canino Road and Carby Road to the south; and Sweetwater Lane to the west. The Airline target area consists of approximately 2,809.60 acres.



Table 1.1 details the location of Airline by key map, census tracts and block groups, county precinct, zip code and school district.

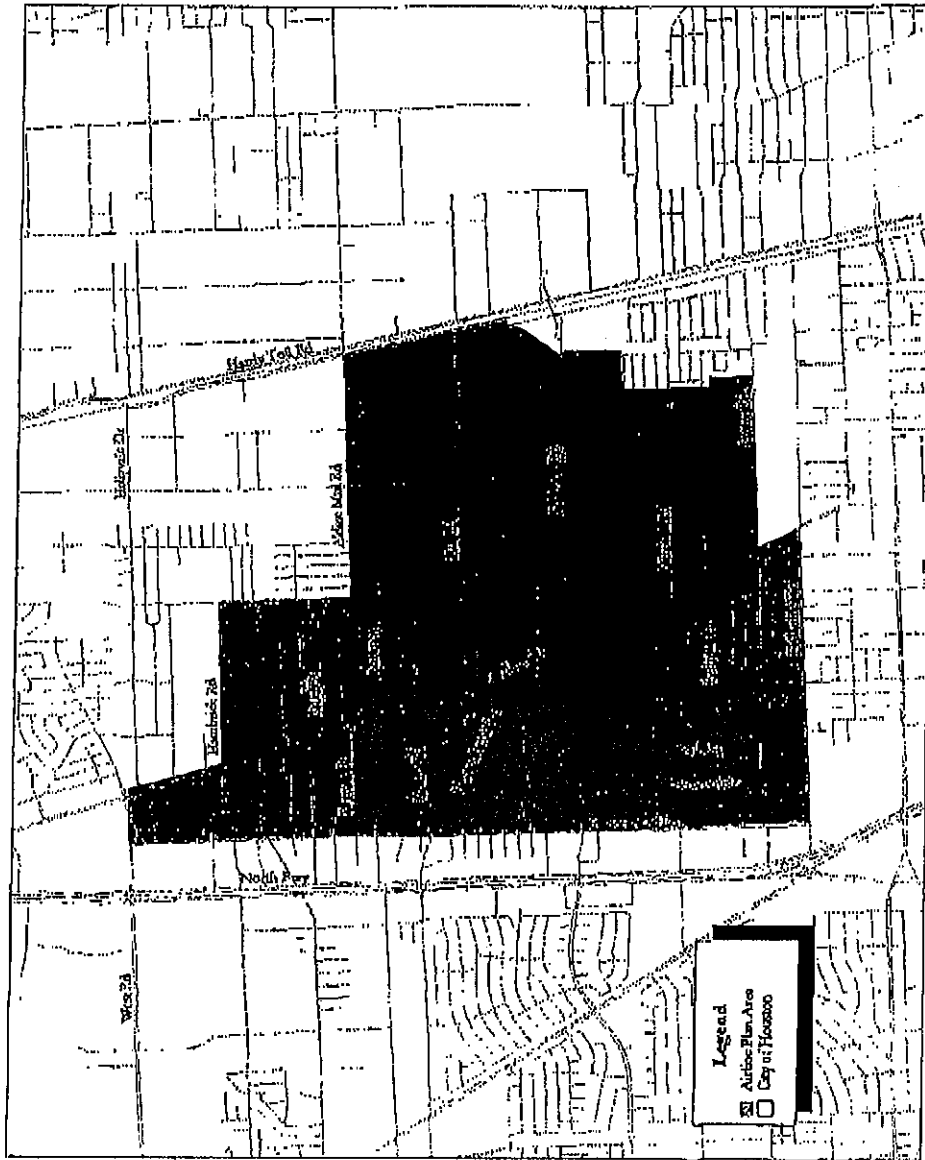
Table 1.1: Location Analysis of Airline

Identifier	Location/Information
Key Map, 2003 (pages)	412 and 413
Census Tracts	Tract 2216 (Block Groups 1,2, and 4) Tract 2217 (Block Groups 1 and 3) Tract 2224 (Block Groups 3 and 4)

County Precinct	Precinct One - Commissioner El Franco Lee
Zip Code	77037
School District	Aldine ISD

Source: Harris County Community & Economic Development Department, 2005

Map 1.1: Airline Target Area



Source: Harris County Community & Economic Development Department, 2005

## Demographic Criteria

Understanding current conditions and trends of the target area establishes the foundation for recommendations about effective ways to transform the area from its current state to what the residents envision it can become. Key opportunities and challenges for the target area are revealed through the analysis of residents' characteristics, specifically, population density, race/ethnicity, income, educational attainment, and language proficiency.

A community's population size and location is dependent upon a number of factors, including, but not limited to:

- the effect of growth on a community's ability to provide acceptable levels of service for basic public services and facilities such as police, fire, emergency medical services, streets, parks, libraries, schools, and utilities at a cost that is politically acceptable to the community's taxpayers;
- the impact of growth on the natural environment;
- the effect of growth on traffic flow and congestion in the community;
- the impact of growth on community quality of life issues such as the aesthetic quality of new development ; and
- the effect of growth on the supply of housing for various age and income groups

## Demographics and Land Use

Understanding current conditions, trends and land use in the target area establishes the foundation for recommendations regarding effective ways to transform the area from its current state to what the residents' visions of the future.

### *Demographics*

- More than 16,500 residents inhabit the 4.39 square mile Airline community. The population has increased almost 30 percent since the 1990 Census.
- More than 60 percent of the Airline population is Hispanic or Latino. The community experienced a 187 percent increase in the Hispanic/Latino population between the 1990 and 2000 Censuses.
- Approximately 26 percent of the Airline population is 19 years of age or younger.
- Approximately 52 percent of Airline residents 25 years of age or older are not high school graduates. Only 3.95 percent of Airline residents 25 years of age or older have a bachelor's degree or higher.
- The median household income is \$35,701, approximately \$7,000 less than Harris County.
- Approximately 17 percent of Airline residents below poverty level. The greatest percentage of residents below the poverty level is children under the age of five.

- Approximately 74 percent of all children ages 5 to 17 in Airline speak English 'very well'. More than 67 percent of all adults ages 18 to 64 speak English 'very well' and adults ages 65 and older speak English 'very well'.

#### *Land Use*

- Airline is predominantly an urban area with facets of a suburban and rural landscape. While urban communities similar to Airline are commonly typified by high density residential land use, it has suburban and rural development—specifically parcels/lots larger than .5 acres and mobile home communities—clustered along major thoroughfares and other arterials in the community.
- Airline has a number of abandoned properties and vacant lots prime for (re)development. Several vacant and abandoned properties are ideal for a community center, pocket parks, or conducive for an infill housing development program.

#### *Housing Primarily Residential*

- While urban communities are typified by high density residential land use, Airline has suburban and rural development—specifically parcels/lots larger than .5 acres and mobile home communities—clustered along major thoroughfares and other arterials in the community.
- More than 75 percent (75.51 percent) of Airline residents reside in owner occupied housing; approximately 25 percent (24.49 percent) reside in renter occupied housing.

This indicates that the Airline community is stable as residents have made an economic investment in the community. More than 73 percent of the Airline population resides in owner occupied single family detached homes; 24 percent reside in owner occupied mobile homes.

As Map 2.2 illustrates, the predominant land uses in Airline are single and multi-family residential. Single family residential land use accounts for more than 75 percent of the total land use in the target area. Single family residential land use in Airline is primarily characterized by neighborhood/subdivision development in the south and southwestern parts of the target area. The Bellmar and Northline Terrace subdivisions either have water and sewer service provided by a private service, Nitsch & Sons Industries, or well and septic systems. The homes in these neighborhoods are typically constructed on concrete slab with brick masonry. This part of the target area is primarily void of sidewalks; shallow ditches and curbs and gutters are seen in this part of the target area.

Map 2.2: Land Use in Airline



Source: Harris County Appraisal District, 2003

The single family residential homes in the north and northwest parts of the Airline community either have water and sewer service provided by Sunbelt Freshwater Supply District (Sunbelt FWSD) or well and septic systems. The single family homes constructed in this part of the target area are typically constructed on concrete slab with brick masonry. These homes are also void of sidewalks; shallow and deep, unkempt ditches are representative of this part of the target area.

The east and southeastern parts of the target area have single family residential lots that are primarily larger than .5 acres. McClosky Road, Castledale Road, Hartwick Road, and Turner Place Rd, have large, multi-floor, suburban ranch-style homes built of brick masonry and siding. Residents either have water and sewer services provided by well and septic tanks or privately maintain their own water tanks. Single family residences in this part of the community are more rural in nature. Several residences are home to livestock—typically horses, cattle, and poultry.

Multi-family residential land use accounts for less than 2 percent of land use in Airline. Nevertheless, it is a contributing factor to the increasing population.

density in the community. Many single family residential parcels are inhabited by multi-family apartment complexes and mobile home communities. There are approximately 17 mobile home communities and apartment complexes in Airline. Multi-family residences in Airline either have water and sewer service provided by a private water company or their own water system.

### **Consultation**

To assist communities, HCCEDD utilizes a community planning process that engages residents, business owners, civic leaders and potential investors to actively recognize community challenges, visions, goals and resources to seek viable solutions and develop a comprehensive community revitalization plan. This plan not only serves as a flexible roadmap to revitalization and reinvestment, but also reflects an innovative approach to rebuilding communities through civic participation at the local level with a comprehensive focus. Strategies and recommendations are devised to improve transportation and infrastructure, housing, community facilities and public services, public health and human services, economic development and urban design. Harris County Community and Economic Development Department, in partnership with State Representative Kevin Bailey and Harris County Precinct One Commissioner El Franco Lee worked with Airline residents, business owners, and civic leaders to develop a community revitalization plan for the Airline locale.

Developing a community revitalization plan is a community's primary approach to initiating a comprehensive, coordinated effort to enhance the social, economic, and environmental conditions of its residents. This plan will enable the community to organize their revitalization efforts and when necessary seek federal, state, local and private foundation funding for implementation, as the plan represents an organized and clear strategy for comprehensive (re)development. Residents, the business community, educators, and civic leaders were charged with the development of a community plan and its implementation. Essentially, planning is the process of thinking systematically through a situation to devise a better recommendation and/or solution. If residents are to be empowered, each individual must act and participate in a systematic fashion that characterizes planning. Planning is merely a conduit for the most efficient use of scarce resources through:

- Identifying the highest priorities to which resources will be directed
- Devising alternative to address community challenges
- Designing projects that meet several needs at once

Community-based planning and revitalization is imperative as it separates successful communities from declining communities in the new millennium. The following factors illustrate examples of a community's revitalization agenda:

- Renovating an aging or non-existent water and sewer infrastructure with increasingly scarce resources for its upgrading

- Providing a socially and economically healthy environment for investments by corporations and individuals for commercial and retail activities
- Providing recreational opportunities and social services for children and adolescents to prevent and/or halt criminal activity and promote future educational prospects

Articulating a comprehensive community revitalization agenda relies on mobilizing human, social, physical and financial resources. The HCCEDD Planning staff was contacted in March 2005 by State Representative Kevin Bailey and Harris County Precinct One representatives to develop a comprehensive revitalization strategy for the Airline community. Thus, in May 2005 a diverse group of community leaders – residents, business owners, law enforcement personnel, and educators formed the Airline Vision Team and officially partnered with HCCEDD to begin the community development planning process.

In partnership with HCCEDD, Airline Vision Team members organized a community meeting in late June 2005. With more than 110 residents in attendance, citizens discussed concerns about housing, flooding; crime prevention and police patrol; traffic control, improving water and sewer service, youth and senior programs, and economic development. In late July 2005, the Airline Vision Team and HCCEDD organized an urban design meeting. Architects and urban designers from STOA/Golemon/Bolullo Architects assisted residents in envisioning a renewed future in Airline. Ideas and suggestions discussed the June 2005 community meeting were visually discussed at the urban design meeting. Pictures and design sketching of commercial developments, public facilities, streetscapes, sidewalks, park improvements, and traffic control improvements and other visual additions provided much conversation and commentary for area residents. In August 2005, HCCEDD and the Airline Vision Team organized a community business owners' meeting and an educators' meeting with Aldine Independent School District (AISD) and Houston Independent School District (HISD) teachers and administrators of Airline area schools.<sup>3</sup> Issues and concerns discussed at all meeting were analyzed by HCCEDD staff and the Airline Vision Team and serve as the basis for goals, proposals and recommendations in this community plan.

A community plan is merely a blueprint for all revitalization efforts in a specific locality. Two scenarios can immediately doom any community plan:

1. A plan is prepared by a government entity or a consultant with minimal contact and input with residents; or
2. A plan is prepared by some residents –usually self-selected—that do not involve other residents, community organizations, business leaders, educators.



Residents involved in community planning should be recruited from a range of community organizations to ensure that the plan represents the consensus of a community, not just a small faction of residents. Community plans are most effective when a collaborative effort among government entities and neighborhood residents (including commercial residents and educators), such as the case between HCCEDD, the Office of State Representative Kevin Bailey, and the Office of Harris County Precinct One Commissioner El Franco Lee with the Airline community.

The Airline Community Revitalization Plan recommends strategies, solutions, and initiatives to address challenges facing Airline residents, business owners, and educators. It is organized to examine the area's demographics and land use, transportation and infrastructure, housing, community facilities and public services, public health and human services, economic development and urban design challenges, goals, and recommendations. Proposed goals and recommendations were derived from citizen input at community meetings and prioritized by the Airline Vision Team and the HCCEDD Planning staff. An implementation timeline details project and program information to be completed over the next five years.

Based on the planning and strategies focused on the revitalization of Airline, a comprehensive targeted approach to revitalization through a Neighborhood Revitalization Strategy Area has been determined to be the best use of CDBG and HOME funds for the next five years. Presentations for this approach have been made to area elected officials, businesses, boards and commissions, non-profit organizations, and citizens. All groups have enthusiastically supported this new approach.

## **Assessment**

### **Economic Development**

Economic development refers to progress toward a community's economic goals, including increases in economic productivity and competitiveness; employment; and business activity and investment. Economic development reflects qualitative factors such as human health, environmental quality and social equity, community development. When describing economic development, it is common to think of a series of job creation, retention, and training programs; a series of public and private capital investments; and a process of capacity building that allows a community to influence its economic future. This chapter details the current economic conditions and business environment in Airline. A market analysis was conducted analyzing the profitability of the Airline community to sustain retail (re)development.

#### *Labor Force Characteristics*

- According to the Bureau of Labor Statistics, Harris County's average weekly wage has been increasing at a modest rate. This indicates economic

growth and an enhanced quality of life for residents in Airline and Harris County.

- More than 67 percent of all males in the Airline community 16 years and older are in the labor force. Approximately 58 percent of all females in the Airline community 16 years and older are in the labor force.
- Construction, manufacturing and retail trade are the primary employment industries in Airline. A growing number of residents are employed in the arts, entertainment, and recreation industry.
- While more than 65 percent of Airline workers have commute times between 15 and 45 minutes, the 2000 Census reveals the travel time to work and the number of residents that work at home have increased since the 1990 Census.
- Approximately 65 percent of Airline workers drive their own vehicle to work; 3 percent use public transportation to get to work.

#### *Business Environment*

- Airline is home to a multitude of automotive-related businesses, childcare establishments, flea markets, professional services; feed and supply stores; trailer and boat storage; tractor sales; taqueria stands; appliance stores; washaterias; convenience stores; bridal and quinceañera shops; and hair and beauty establishments.
- There is no chain grocery store or fast food establishment located in the Airline target area.
- Since January 2000, more than 26 percent of all commercial permits issued in Airline have been for warehouse structures.
- As an integral economic engine in the community, the cluster of flea markets along Airline Drive attracts tens of thousand of shoppers every weekend.

#### *Market Analysis*

- Income density (purchasing power) data and supply indicators illustrate that Airline residents have a lack of retail establishments and levels of purchasing power comparable to other suburban locations in Harris County well-served by retail and could potentially support new retail establishments.
- Retail centers within the boundaries of the Airline target area function as destinations for multi-purpose shopping trips and attract more customers than stand alone businesses.

#### *Goals*

The Airline Improvement District is committed to improving the retail/commercial (re)investment and development in the Airline community. There are several overarching goals for strengthening and promoting retail development in Airline. These goals should inform the articulation of criteria for the selection of sites and choices of retail development.

1. Increase local access to goods and services at reasonable prices for Airline residents
2. Attract and retain businesses
3. Provide destinations and nodes to attract visitors/new residents to Airline
4. Reuse the existing commercial fabric in Airline
5. Provide employment for area residents
6. Increase the tax base
7. Reinforce and stimulate other investment in Airline
8. Encourage local entrepreneurship

### ***Recommendations***

The purpose of the following recommendations and goals is to support the Airline Improvement District commitment to sustainable economic development through the implementation and enforcement of appropriate organizations, incentives and programs, and legislation.

To support the Airline Improvement District's and the community's commitment to sustainable economic development, recommendation strategies include:

- The creation of an economic development council
- Enforcement of HB 414 (junkyard legislation approved in May 2005)
- Enforcement of HB 2509 (curbstoning law)
- Small business education workshops
- Locating a chain or independent grocery store in Airline
- The creation of a flea market business development organization

### **Transportation and Infrastructure**

Transportation and infrastructure investment is fundamental to meeting the challenges of growth, development and shifting priorities in the Airline community. Strategic transportation and infrastructure investments will enable Airline to achieve economic, housing, and quality of life goals concurrently. This chapter examines the current transportation and infrastructure options available to Airline residents, identifies inadequacies and delinquencies, and provides recommendations to ensure that the development of facilities and services to keep pace with current and future development.

#### ***Transportation***

##### ***Main Thoroughfares***

- Automobile and pedestrian traffic is particularly problematic along Airline Drive on weekends. Not only is Airline Drive the hub of commercial businesses in Airline, but it is inundated with vehicular traffic from the flea markets.
- There are several transportation plans and improvements to major streets in Airline currently proposed, under consideration or in the

development process by the Houston-Galveston Area Council (HGAC), Texas Department of Transportation (TXDOT), the Metropolitan Transit Authority of Harris County (METRO), and the Harris County Public Infrastructure Department – Engineering Division.

#### *METRO Routes in Airline*

- Airline is served by four METRO bus routes: (8) South Main/Yale, (9) North Main/Gulfton, (56) Airline Limited, and (59) Aldine Mail Crosstown.
- Airline residents state that the current METRO routes do not adequately serve the population.

#### *Light Rail Service in Airline*

- In 2005, METRO officials submitted a revised transit system plan to the Federal Transit Administration (FTA) in response to the low rating the North Corridor (of which the Airline community is part of) light rail extension received.
- METRO has proposed installing bus rapid transit service along Airline Drive and maintains that once ridership in the corridor grows sufficiently to support light rail, the conversion will be made.

### *Infrastructure*

#### *Water and Sewer Service*

- Water and sewer service is the most seriously delinquent public infrastructure item in Airline. While 99 percent of Airline housing units have complete plumbing facilities, there are a number of homes without access to public water or sewage services. Many housing units use underground water wells and septic tanks.
- Public infrastructure does not create economic growth in a community, but it does influence the location of growth. Water and sewer lines will not necessarily magically create economic development, but it is necessary for community growth and improvement.

#### *Drainage*

- Airline's drainage system consists of ditches, driveway culverts, road crossing culverts and few gutters.
- The eastern portion of the Airline community (closest to the Hardy Toll Road) is either in a floodway or in the 100 or 500 year flood plain.

#### *Roads and Sidewalks*

- The Airline community is virtually void of sidewalks. A lack of sidewalks is particularly difficult and dangerous for children as they are commonly forced to walk on street or deep ditches to avoid oncoming traffic.
- Many of the Airline roadways are paved, but some consist of rocks and concrete. Many streets are plagued with potholes and ruts.

## **Goals**

*Transportation & Infrastructure* is the foundation of a community. Streets, water lines, sewer lines, sidewalks, and lighting are all part of the transportation and infrastructure framework. Basic services exist because of a solid infrastructure. An organized transportation system allows residents to access businesses both for employment and leisure. Transportation options, such as buses, walkways, and bike paths, diversify communities, reduce traffic, and enhance quality of life.

1. Improve traffic management of flea market patrons on weekends
2. Install flashing school zone speed signs
3. Install traffic signals at the intersection of Gulfbank Road and Cobbleshire Road
4. Improve pedestrian traffic control at the flea markets
5. Restripe yellow lines
6. Investigate installing speed bumps on Rockcliff, Lillja, and Karen Streets
7. Increase and improve METRO bus service
8. Prevent drivers from using turn lanes as passing lanes
9. Investigate feasibility bussing flea market patrons into community from nearby Park & Ride lots

## **Recommendations**

The following recommendations will assist the Airline community in developing an effective transportation network in the community to assist current and future residents.

The following recommendations will assist the Airline community in developing an effective transportation network in the community to assist current and future residents:

- Installing of sidewalks
- Installing of streetlights
- Water and sewer service
- Addressing flooding and drainage issues with appropriate government entities
- Bilingual signage
- Restriping of major thoroughfares
- More flashing school zone speed signs
- Developing alternate routes to deal with weekend flea market traffics with the appropriate government entities
- Installing crosswalk signals and widening streets
- Working with METRO to provide additional bus routes in Airline
- Becoming a partner agency with the Harris County Coordinated Transportation Program

### **Community Facilities and Public Services**

The provision of community facilities and public services are the primary activities of local government and non-profit organizations. This element of the plan analyzes the current community facilities and public services available to Airline residents, identifies inadequacies and delinquencies, and provides recommendations to ensure that the development of facilities and services keep pace with current and future development.

#### *Parks*

- Airline residents have a fraction of park space per person recommended by the National Recreation and Park Association (NRPA). Currently, Airline has less than 1/20 of the recommended park space per person. The necessary park space recommended by NRPA for urban communities accounts for less than 4 percent of the total acreage in Airline.
- Dow Park is the only park/recreational sports field located in the Airline target area.

#### *Community Centers/Facilities/Programs*

- There are no community centers in Airline. Pep Mueller Community Center and Hardy Community Center are within several miles of the Airline target area.
- Opportunities exist in the community for a multi-purpose community center and Sheriff storefront.

#### *Crime and Police/Fire Services*

- Between 2002 and 2004, crimes of assault, burglary, drug-related activity, and theft increased 24.50 percent. This indicates that Airline needs a more visible and unified law enforcement presence.
- Between 2002 and 2004, automobile accidents increased 7.29 percent; driving under the influence (DUI) traffic offenses decreased 10.00 percent.
- The nearest Harris County Sheriff's Department community storefronts/substations are located in the Aldine community and Greenspoint Mall.
- The Little York Volunteer Fire Department has an Insurance Services Office, Public Protection Classification System (ISO) rating of 6 (the best rating is 1 and the worst rating is 10). This rating is a critical determinant in what area residents will pay for the fire protection portion of their homeowner's insurance.

#### *Education*

- The Airline community is home to twelve early childhood/pre-kindergarten, elementary, middle and high schools. Of the twelve schools, only five are directly situated in the Airline plan/target area. The balance of schools is not located in the target area, but children from the target area attend their campuses.

- The Airline community is home to two school districts: Aldine Independent School District (AISD) and Houston Independent School District (HISD). AISD earned a *Recognized* accountability rating from the Texas Education Agency (TEA) for the 2004-2005 academic year. HISD earned an *Acceptable* accountability rating from the TEA for the 2004-2005 academic year.
- Several junior and community colleges located in proximity to the Airline community offer adult education programs in English as a Second Language (ESL), adult basic education, and general education development (GED).

### **Goals**

*Community Facilities* constitute the cultural, educational, and social gathering places of a neighborhood. There are two types of community facilities: public and private. Public facilities include parks, schools, community centers, and any other site specifically designed for general resident gathering and owned by the public. Private facilities include churches, hospitals, theaters, and any other sites privately owned. Community centers, elementary schools, parish churches, and local libraries help define the sense of place within a given area. They provide a location for the collective energies of a community.

1. Locate a Harris County Sheriff's Department Storefront at the intersection of Airline Drive and Gulfbank Road.
2. Locate a community center in the target area
3. Provide greater police presence throughout the entire Community & Economic Development Department
4. Initiate a Weed & Seed Program in Airline
5. Clean up parks and locate new parks (possibly small pocket parks) in the Community & Economic Development Department

### **Recommendations**

The following recommendations have been suggested to ensure that community facilities and public services meet current and future residents' needs and contribute to an enhanced quality of life.

The following recommendations are suggested to ensure that the community facilities and public services meet current and future residents' needs and contribute to an enhanced quality of life:

- Designation as a Weed and Seed community
- Annual National Night Out celebrations
- Hiring contract deputies to patrol the Airline Improvement District
- Hiring nuisance abatement officers
- Locating new parks in Airline
- Locating a community center in Airline

- Developing a newsletter and website
- Developing a community beautification program
- Organizing and partnering with community organizations to have after-school programs, summer and youth mentoring programs; and senior citizen programs
- Locating a Harris County Sheriff Storefront/Substation in Airline

### **Public Health and Human Services**

Public health refers to the overall mental and physical health of a community. It includes the surveillance and control of infectious disease and promotion of healthy behaviors among members of a community.

- An assessment of the Airline community reveals that the area is void of hospitals and 24-hour medical clinics. There are a minimal number of physician's offices and dental clinics in the community.
- Data from the 2003 Harris County Public Health and Environmental (HCPHES) Retrospective Immunity Survey state that only 56 percent of children in the Airline community were appropriately immunized at age two.
- Litter and debris are threatening public health in Airline. Illegal dumping of household items and litter can collect water, which harbor and attract vermin and pests. Improperly stored automotive equipment can release noxious toxins into the water table and contaminate drinking water.

### ***Goals***

*Human Services* connect people to each other. They assist people in meeting health, welfare, employment, and other basic needs. Human service providers can be public or private, non-profit or for-profit, and range from day care to drug counseling to job training. Human services create the social fabric that supports a community.

1. More heavy trash collection days (4 times a year)
2. Develop a community watch program
3. Better litter control of public places
4. Provide more after-school programs/activities for children and adolescents (investigate partnerships with school districts and other youth organizations)
5. Investigate locating a 24-hr medical clinic in the community
6. Provide adult education programs
7. Make childcare more affordable

### ***Recommendations***

A community health initiative that merges existing and imminent health resources will provide more efficient services to Airline residents. The following recommendations will assist in this objective:



- Locating a 24-hour clinic in Airline
- More heavy trash collection days and litter control
- Ditch/culvert cleaning

### **Housing**

Housing of profound importance to Airline residents. Housing is an anchor, providing a link to family, neighbors, and the greater community. The home provides an important foundation for obtaining and maintaining employment, creating a secure and supportive environment for raising children, accessing public and private services, and building the web of relationships that underpin a socially cohesive community.

#### *Housing Supply*

- Approximately 70 percent of all Airline residents reside in single-family detached housing. More than 23 percent of Airline residents reside in manufactured homes (mobile homes). The balance of residents lives in multi-family housing.
- More than 75 percent of Airline residents reside in owner-occupied housing. In contrast, approximately 60 percent of Harris County residents live in owner occupied housing.

#### *Housing Tenure*

- Homeownership enhances the lives of individual households and increases the social capital of communities.
- More than 75 percent of all housing units in Airline are owner-occupied. In contrast, 55 percent of all housing units in Harris County are owner-occupied.

#### *Overcrowding*

- Many residents find overcrowding a threat to property values, public safety, and public infrastructure. It also creates problems for trash removal and debris. This is a common occurrence in Airline as many families commonly live in housing units with a large number of intergenerational family members living in a single home.
- Approximately 28 percent of Airline households have five persons or more; nearly 15 percent of Harris County households have five persons or more.

#### *Vacancy*

- Housing vacancy rates are an indicator of the saturation of the total housing stock.
- Approximately 6 percent of housing units in Airline are vacant compared to 7.13 percent for Harris County.

### *Housing Values*

- According to the National Association of Realtors, the average single-family home price in Airline is \$111,368; in Harris County, \$133,555.
- Almost 40 percent of owner occupied housing units in Airline are valued less than \$50,000.
- Approximately 70 percent of Airline renters pay between \$300 and \$699/month for housing.

### *Age of Housing Structures*

- Airline did not equally share in the substantial growth in housing construction that occurred in Harris County in the 1970s and 1980s. The median year housing was built in Airline is 1968; in Harris County it is 1976.
- More than 58 percent of Airline's housing stock was constructed before 1969. Subsequently, residents have commented about the lack of resources for home repairs and infill housing to strengthen the housing stock.

### *Condition of Housing Structures*

- The 2002 Harris County Appraisal District (HCAD) Housing Inspection Survey of houses in Airline indicates that the majority of dwellings are classified as *average*.
- No homes in Airline were classified as excellent. Homes west of Airline Drive are classified as *good*, *average*, or *fair*. Housing units to the north and east are primarily classified as *fair* and *average*, yet populated with several *poor*, *very poor* and *unsound* units.

### **Goals**

The following goals support the Airline Improvement District and the community's commitment to sustainable, quality and affordable housing:

- Demolish abandoned properties
- Deed restriction enforcement
- Homeownership program/campaign
- Infill housing program
- Home repair program
- Nuisance abatement of garbage, noise, weeds, rodents, insects, and junk
- Restrictions on trucks with more than two axles in residential neighborhoods

*Housing* specifies places where one raises a family and displays personal items. Homes can be single-family, multi-family, and mobile, contain garages or patios, and generally portray any characteristics a resident wishes to display. It is important that housing contain basic services, such as safe drinking water, as well as providing both a sense of privacy and connection to the larger community.

1. Improve flooding and drainage problems

2. Greater enforcement of deed restrictions
3. Restrict multiple families (housing units) living on one lot
4. Restrict trucks with more than 2 axles on residential streets
5. Install streetlights and sidewalks along major thoroughfares and residential neighborhoods
6. Limit the number of mobile home communities
7. Remove abandoned cars from street and yards
8. Landscape trees and cut overgrown lawns to beautify community
9. Demolish burnt and abandoned homes
10. Clean yards of trash and debris

### ***Recommendations***

The purpose of the following recommendations and goals is to support the Airline Improvement District and community's commitment to sustainable, quality and affordable housing through the implementation and enforcement of appropriate incentives and programs.

The following recommendations and goals support the Airline Improvement District and the community's commitment to sustainable, quality and affordable housing:

- Demolish abandoned properties
- Deed restriction enforcement
- Homeownership program/campaign
- Infill housing program
- Home repair program
- Nuisance abatement of garbage, noise, weeds, rodents, insects, and junk
- Restrictions on trucks with more than two axles in residential neighborhoods

### **Economic Empowerment**

The Airline Improvement District is committed to improving the retail/commercial (re)investment and development in the Airline community. There are several overarching goals for strengthening and promoting retail development in Airline. These goals should inform the articulation of criteria for the selection of sites and choices of retail development.

1. Increase local access to goods and services at reasonable prices for Airline residents
2. Attract and retain businesses
3. Provide destinations and nodes to attract visitors/new residents to Airline
4. Reuse the existing commercial fabric in Airline
5. Provide employment for area residents
6. Increase the tax base
7. Reinforce and stimulate other investment in Airline

## 8. Encourage local entrepreneurship

### **Recommendations**

The purpose of the following recommendations and goals is to support the Airline Improvement District commitment to sustainable economic development through the implementation and enforcement of appropriate organizations, incentives and programs, and legislation.

#### **1. Economic Development Council**

The creation of a local economic development council will benefit the Airline business community by creating a more favorable business environment; enhancing communication between businesses, government, and residents; and attracting new industries and businesses. To develop this organization:

- Determine if the organization should become private, nonprofit, or a membership driven organization
- Determine the focus of the organization (attracting, strengthening, and recruiting new businesses; encourage public/private cooperative partnerships)
- Create partnerships with the civic associations, the Airline Improvement District, the North Harris Greenspoint Chamber of Commerce, schools, Harris County Precinct One, the Greater Houston Partnership, University of Houston Small Business Development Center, SCORE: Counselors to America's Small Businesses
- Seek funding (grants and loans) to pay for business development or expansion, employee and business training, G.E.D. courses, remedial education, vocational training, professional certification, and advanced degrees

An economic development council, separate, but in coordination with the Airline Improvement District and North Houston Greenspoint Chamber of Commerce, will reinforce the Airline community's role in the regional business community. This organization will give citizens and business owners and employees the opportunity to enhance/improve local business networking opportunities and achieve greater economic prosperity for all business through a united and aggressive organization.

#### **2. Enforcement of HB 414 (Junkyard Legislation)**

The uncontrolled growth of automotive salvage and junkyards adjacent to residential homes, schools, and churches over the years in unincorporated Harris County has lead to the violation of state laws regulating distance requirements. Junkyard owners routinely pay the occasional Class C misdemeanor fine and consider it an expense of doing business in Airline.

Residents in Airline and other affected communities commonly live on small lots with backyard water wells that are 25-50 feet deep. Several schools have encroaching junkyards moving closer with cars piled high above fences, if indeed the back of the salvage and/or junkyard is fenced. The chemicals used at these

salvage and junkyards run-off into the local water table and penetrate the residents' shallow backyard water wells and cause other deleterious impacts to the potable water in the community. Rusting cars and automotive parts are commonly in violation of height requirements and are considered to be a visual blight on the community and threaten the public health and safety of all residents.

Thus, during the 79<sup>th</sup> Texas Legislative session, State Representative Kevin Bailey introduced legislation aiding Harris County in enforcing current laws restricting automotive wrecking and salvage yards from violating regulations and requirements for distance from existing homes, schools, and churches. The legislation, passed into law in May 2005, provides injunctive relief that will give Harris County a much desired tool in enforcing the existing law (Chapter 397, Texas Transportation Code – Automotive Wrecking and Salvage Yards in Certain Counties).

Enforcement of this law will quell Airline residents concerns with the lack of aesthetic attention junkyard owners give to their property. Retail establishments commonly locate in communities with a strong and stable housing stock and high property values. Economic prosperity can occur in harmony with the natural environment. Prospective businesses will not establish themselves in Airline if the drinking water is negatively impacted by other businesses.

### **3. Locate a Chain or Independent Grocery Store in Airline**

The Airline Improvement District, in partnership with the North-Houston Greenspoint Chamber of Commerce, Airline residents, Airline business owners, and other concerned individuals must unite to locate a chain or large, independent grocery store in Airline. The Fiesta grocery store at West Rd. and Airline Drive is the closest grocery store to Airline.

A chain or independent grocery store in Airline will fill the voids that small convenience stores and fast food restaurants leave in the community. A chain or independent grocery store with a varied target niche to the community will provide higher wages to workers, yet provide staple and ethnic foods to consumers at lower prices. To locate a chain or independent grocery store in Airline:

- Create a partnership with the North Houston Greenspoint Chamber of Commerce, Airline business owners, residents, and other concerned individuals
- Seek subsidies and tax breaks from Harris County to locate a chain grocery store in Airline
- Locate vacant buildings/land for a grocery store
- Identify large developable parcels and parcel owners
- Raise support and interest of large land owners in redevelopment of land
- Gain control of land
- Issue a request for proposals to identify and attract potential developers

- Contract with a developer

Attempting to locate a large scale development in Airline will possibly take several years. While attempting to locate a chain grocery store in the community, ask independent grocers to begin carrying more staple foods at lower prices.

#### **4. Flea Market Business Development Organization**

A flea market business development organization/association will serve as a separate, but collaborative organization with the Airline Improvement District and the Airline Economic Development Council. This organization will benefit the community by regaining and maintaining public trust in Airline residents to engage in ethical businesses practices, controlling noise and traffic along major corridors and residential streets, providing greater police protection to consumers and community members, and facilitating revitalization in Airline.

#### **5. Enforcement of HB 2509 (Curbstoning Law)**

Curbstoning, or the illegal sale of automobiles on a street curb, right of way or in parking lots by individuals, licensed and unlicensed dealers, is a consumer protection issue. Not only does it reduce business of licensed dealers but it causes blight in local neighborhoods and brings an unsavory criminal element into communities. Curbstoners do not pay taxes on vehicle sales or transfer titles, thus creating a loss of revenue for the Airline Improvement District. Harris County has the power to adjudicate curbstoning cases.

**6. Small Business Education Workshops.** Small business education workshops strengthen local businesses and assist in attracting new and retaining businesses through employee and owner education and training.

### **Performance Measurement**

#### **Community Vision**

The Airline Community created the Airline Improvement District which was created by House Bill #1458, authored by State Representative Kevin Bailey and sponsored in the Senate by Mario Gallegos in the 79th Regular Session of the Texas Legislature. The bill creating the District took effect June 17, 2005.

The Harris County Community and Economic Development Department (HCEDD), in coordination with the offices of State Representative Kevin Bailey and County Commissioner El Franco Lee, worked with area business and community leaders in a planning process for the Airline community's revitalization. The group, referred to as the Airline Drive District Community Plan Vision Team, held a series of public meetings conducted by area business and community leaders that helped develop a revitalization plan and established priorities for the District.

The District is located completely within unincorporated Harris County and is solely within a portion of the 77037 zip code. The District is predominately urban with some facets of suburban and rural landscape. It is approximately 4 square miles, has approximately 16,000 residents and is north of Downtown Houston. The District is surrounded by the City of Houston but is outside its corporate limits. Like many areas in unincorporated portions of North Houston it has experienced economic decline and social change. These elements have combined to create public needs that state laws do not empower county governments to serve.

The District's mission is to promote, develop, encourage and maintain employment, commerce, transportation, housing, tourism, recreation, the arts, entertainment, economic development, safety and the public welfare of the District. It is the desire of the District to improve the overall quality of life and create an environment where people want to live, work and raise their families.

The District generates revenue through a 1% retail sales tax that brings the total effective tax rate to 8.25% and began January 1, 2006 within the boundaries of the District. The revenue generated by the sales tax remains in the community to pay for projects improving such things as public safety, transportation and drainage, along with the costs of operating the District.

#### **Key Strategies**

The Airline Improvement District will implement the following strategies to promote economic empowerment for low- to moderate-income individuals and families.

#### **Airline Projects and Recommendations**

The following goals and recommendations have been organized to provide a systematic approach to community development and revitalization. The projects and recommendations are arranged in a matrix by year from one (2006) to five (2010). Each project or recommendation is described, objectives and responsible actors identified, and possible resources recognized. Projects and recommendations were developed in cooperation with Airline residents and community leaders utilizing a planning process that combines an understanding of the community's existing resources and innovative community development models.

#### **Economic Opportunity**

- 1. The creation of a Local Economic Development Council.** The local economic development council will benefit the Airline business community by creating a more favorable business environment; enhancing communication between businesses, government, and residents; and attracting new industries and businesses.
- 2. Enforcement of HB 414 (Junkyard Legislation).** Enforcement of this law will quell Airline residents concerns with the lack of aesthetic

attention junkyard owners give to their property. Retail establishments commonly locate in communities with a strong and stable housing stock and high property values. Economic prosperity can occur in harmony with the natural environment. Prospective businesses will not establish themselves in Airline if the drinking water is negatively impacted by other businesses.

3. **Locate a Chain or Independent Grocery Store in Airline.** A chain or independent grocery store in Airline will fill the voids that small convenience stores and fast food restaurants leave in the community. A chain or independent grocery store with a varied target niche to the community will provide higher wages to workers, yet provide staple and ethnic foods to consumers at lower prices.
4. **Flea Market Business Development Organization.** A flea market business development organization/association will serve as a separate, but collaborative organization with the Airline Improvement District and the Airline Economic Development Council. This organization will benefit the community by regaining and maintaining public trust in Airline residents to engage in ethical businesses practices, controlling noise and traffic along major corridors and residential streets, providing greater police protection to consumers and community members, and facilitating revitalization in Airline.
5. **Enforcement of HB 2509 (Curbstoning Law).** Curbstoning, or the illegal sale of automobiles on a street curb, right of way or in parking lots by individuals, licensed and unlicensed dealers, is a consumer protection issue. Not only does it reduce business of licensed dealers but it causes blight in local neighborhoods and brings an unsavory criminal element into communities. Curbstoners do not pay taxes on vehicle sales or transfer titles, thus creating a loss of revenue for the Airline Improvement District. Harris County has the power to adjudicate curbstoning cases.
6. **Small Business Education Workshops.** Small business education workshops strengthen local businesses and assist in attracting new and retaining businesses through employee and owner education and training.

### **Strategies Being Implemented**

- **Strategy #1:** Airline Improvement District leveraging funds from the 1 percent tax on commercial properties. Funds are being used for revitalization efforts in Airline.
- **Strategy #2:** Ensure that CDBG and HOME funds are used in the Airline community.
- **Strategy #3:** Created a partnership with the North Houston Greenspoint Chamber of Commerce, Airline business owners, residents, and other concerned individuals.



- **Strategy #4:** Identified a large parcel of land to develop a park. In the process of acquisitioning the land.
- **Strategy #5:** Partnering with the North-Houston Greenspoint Chamber of Commerce, the University of Houston Small Business Development Center, North Harris Montgomery Community College, SCORE: Counselors to America's Small Businesses, residents, other organizations, businesses, schools to assess job skills/training programs needed and currently available in the greater Houston area.

### **Affordable Housing**

1. **Demolish abandoned properties.** Reinvestment of abandoned properties supports the existing housing stock and increases property values in communities.
2. **Deed Restriction Enforcement.** Deed restrictions protect property values, residential character, and guard against locally unwanted land uses in communities. Northline Terrace and Bellmar Civic Associations have active deed restrictions that limit lots to residential use only. The Northline Terrace and Bellmar Civic Associations must work with property owners to ensure the proper and effective enforcement of deed restrictions in communities.
3. **Homeownership Program/Campaign.** Homeownership provides economic, social and civic benefits to communities. The Harris County CEDD Down-payment Assistance Program (DAP) assists prospective homeowners with down-payment and closing cost assistance. The Airline Improvement District will partner with the HCCEDD DAP to educate families about homeownership.
4. **Infill Housing Program.** Infill housing is an alternative for providing affordable housing to many low-income residents in Airline.
5. **Home Repair Program.** A home repair and rehabilitation program that includes minor home repairs and lead-based paint screening will assist local residents, particularly seniors, the disabled population, and families with young children with repairs, painting, etc.
6. **Nuisance Abatement (garbage, noise, weeds, rodents, insects, junk etc.).** The Neighborhood Nuisance Abatement Act (NNAA) is designed to abate public nuisances in unincorporated areas of Texas counties.
7. **Restrictions on Trucks with more than 2 Axles in neighborhoods.** To restrict trucks in the Airline community with more than 2 axles in neighborhoods (ex. Northline Terrace and Bellmar):

### **Strategies Being Implemented**

- **Strategy #1:** Identified properties (residential and commercial) that need to be demolished in the Airline community. Met with the Harris County Public Health & Environmental Services Department to determine the process to clear abandoned properties in the area.

- **Strategy #2:** Investigating re-use opportunities for properties (possible pocket parks, infill housing, community center)
- **Strategy #3:** Developing a program to implement Infill Housing. The Airline Improvement District along with the civic associations contacted LISC for housing program development information. Members of the civic associations and members of the Airline Improvement District will develop a CDC to become a certified CHDO (Community Housing Development Corporation) and build affordable housing on vacant lots.
- **Strategy #4:** Selecting and purchasing vacant properties within existing neighborhoods and the entire Airline Improvement District for infill housing development.
- **Strategy #5:** Meeting with housing developers and realtors, banks, renters to discuss needs in community and plan programs.

### **Transportation and Infrastructure**

1. **The installation of Sidewalks.** The installation of sidewalks will not only provide an alternate route of transit for residents, but it provides protection for children and other residents in the presence of vehicular traffic. The installation of sidewalks must be phased over several years to manage expenses, acquire right of way, establish plan for maintenance, etc.
2. **The installation of Streetlights.** The installation of streetlights in Airline will not only provide additional lighting and serve as a deterrent to crime. The installation of streetlights must be phased over several years to manage expenses, acquire right of way, establish plan for maintenance, etc.
3. **The installation of Water & Sewer Service.** The installation of water and sewer service is crucial for economic development, public health, public safety and overall quality of life. The installation of water and sewer service must be phased over several years to manage expenses, acquire right of way, establish plan for maintenance, etc.
4. **Eliminating Flooding and Drainage Issues.** Flooding and adequate drainage are critical issues for the Airline community. Flooding and inadequate drainage destroy private property, economic development opportunities, and infrastructure. The installation of adequate drainage must be phased over several years to manage expenses, acquire right of way, establish plan for maintenance, etc.
5. **Bilingual signage.** Hispanics/Latinos comprise 60.98% of all residents in Airline. Thus, in an effort to meet the need of all members of the Airline community, bilingual signage must be a consideration.

6. **Restriping of major thoroughfares.** The restriping of major thoroughfares is necessary for traffic safety – pedestrian and vehicular.
7. **Flashing school zone speed signs.** To combat traffic violations (speeding, pedestrian right of way) and ease traffic flow (particularly along Gulf Bank Rd. with the impeding construction and the September 2005 death of a Bussey Elementary school student), and protect the safety of all children in school zones, the installation of flashing school zone speed signs and other traffic calming techniques is needed.
8. **Flea market traffic.** Work with the flea market owners, engineering firms, and the Harris County Public Infrastructure Department regarding traffic on Airline Drive (develop alternate routes in and out the main area, provide more parking, work with METRO to use the nearest Park & Ride to alleviate congestion in the community).
9. **Cross walk signals/Widening of streets.** Investigate which intersections need cross walk signals and widening of streets (traffic feasibility studies done by an engineering or transportation firm). Met with Harris County PID – Engineering to discuss the plans to put cross walk signals at target intersections in the Airline Improvement District; possible traffic feasibility study conducted by Harris County PID. Met with Harris County PID – Engineering and TXDOT to discuss projected and impending construction plans.
10. **Greater bus service in the Airline community.** Discuss with METRO plans to add additional routes in the target area and increase frequency of pick-ups. Discuss with METRO plans to include the Airline community its transportation plans for light rail and/or bus rapid transit (BRT)

### **Strategies Being Implemented**

- **Strategy #1:** The Airline Improvement District must develop a phased implementation program (budget, financing, location of sidewalks, design of sidewalks, acquiring right of way)
- **Strategy #2:** Partner with Precinct One to acquire, install, and maintain sidewalks (particularly with the installation of stormwater drains).
- **Strategy #3:** The Airline Improvement District is developing a phased implementation program (budget, financing, location of streetlights, design of lights, operating costs) and applying for grants.

- **Strategy #4:** The Airline Improvement District is in the process of hiring a consultant to do a water and sewer feasibility study to assess installation of lines and linkage to current water and sewer lines, etc.
- **Strategy #5:** Partnering with Precinct One, the Harris County Flood Control District, and water districts to deal with the installation of stormwater drains.

### **Community and Education Services**

1. **24-Hour Medical Clinic.** Airline does not have a 24-Hour Medical Clinic. Residents must leave Airline for all emergent care needs.
2. **Provide adult education programs.** Partner with the Galena Park ISD and local community college to bring classes to local churches and schools in the evenings.

### **Strategies Being Implemented**

- **Strategy #1:** Partnering with the Harris County Health Department and Harris County Precinct One to explore possibilities of bringing a mobile health provider or a 24 Hour Health Clinic to Airline.
- **Strategy #2:** Identify possible locations for a health clinic (existing or leased structure), possibly a community health clinic housed in a community center.
- **Strategy #3:** Identify school sites and local churches where classes can be held.
- **Strategy #4:** Investigate/explore partnerships with Precinct One, the Harris County Public Health & Environmental Services Department (HCPHES) to provide healthcare (immunizations, checkups, etc.) in the community (decide on frequency). The Airline Improvement District and the HCPHES should partner to bring mobile immunization units to the community. The Airline Improvement District can schedule immunization services with HCPHES to ensure that services are provided at convenient times for families (including evenings and weekends). The Airline Improvement District and HCPHES can distribute the information to the civic associations, schools, churches, apartment complexes, mobile home communities, and child care centers.
- **Strategy #5:** Investigate funding opportunities with other organizations to develop a clinic.

## **Economic Actions**

### **Enforcement of County Salvage yard Regulations**

Harris County Commissioners Court has created a committee to review how the county can administer and enforce county salvage yard regulations. The committee is made up of representatives from each Court member, the County Attorney's Office, Public Health and Environmental Services as well as industry representatives.

The Airline Improvement District supports the County's decision to enforce Chapter 397 of the Transportation code that governs auto salvage yards. The District is interested in the counties enforcement of the regulations so that both salvage yards and residents can operate and live in the same community while taking quality of life issues into account for area residents.

The Harris County Public Health and Environmental Services Department has requested the County Attorney to file suit on Ortiz Auto Parts located at 8401 Airline Drive to compel compliance with current regulations. Commissioners Court approved the order on August 22, 2006.

### **National Night out Celebration**

The Bellmar and Northline Terrace Civic Clubs joined together to celebrate National Night Out. Teri Koerth, Executive Director for the Airline Improvement District presented the Deputies with a plaque in appreciation for their dedication and commitment to the District. "Police presence is a top priority of the District," said Airline Improvement District President Glenn Nitsch. "The goal of the Airline Improvement District is to improve our community where people want to live, work, and raise their families. To do that, we have been proactive in creating that environment and making sure people feel safe. Participating in the County's Contract Deputy Program was a huge step in that direction."

The Contract Deputy Program has provided Sheriff's deputies on patrol devoted strictly within the District boundaries since January 1, 2006 when the legislation authored by State Representative Kevin Bailey creating the District became effective.

Among the attendees, were approximately 65 citizens, staff from State Representative Kevin Bailey and Congressman Gene Green's offices, Glenn Nitsch, President of the Board of the Airline Improvement District, the Little York Volunteer Fire Department as well as Harris County Sheriff's Department Captain Tommy Wilson, Deputy J. Shriver, Deputy Mallnowski and Reserve Deputy K. Horton. Also on hand was one of the Sheriff Department's mobile command centers.

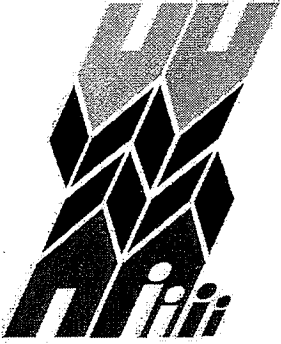
**Community Service Award** The President of the Board of the Airline Improvement District received an award for community service from the North Houston - Greenspoint Chamber of Commerce during their annual Public Safety

awards luncheon on October 19, 2006. Glenn Nitsch was recognized by the Chamber for his continued dedication to the Airline area. Mr. Nitsch has been active in the community for many years and has testified in the Texas House and Senate on many occasions on topics such as noise levels, salvage yards, county rule making, creation of the Improvement District and water utility issues.

Joe Shriver, a Contract Deputy for the Airline Improvement District, also received an award from the Chamber for his outstanding performance during the past year. Deputy Shriver grew up near the Airline area and has chosen to come back and help the community with its revitalization plan. His dedication to making the Airline area a safer place is giving residents and businesses a renewed sense of hope and commitment to the Airline community.

The Airline community has already taken many positive steps to achieve thriving revitalization of the Airline community. According to the 2006 Airline Revitalization Plan, Airline has already taken positive steps to revitalizing their neighborhood.

# **Housing and Community Services, Inc.**



8610 North New Braunfels, Suite 500  
San Antonio, Texas 78217-6397

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Gilbert M. Piette  
*Executive Director  
and CEO*

**Board of Directors**

John Longoria  
*President*

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BJ Burns  
Joan Cortinas  
Perry Deckard  
Gloria Flores  
Carl Forinash  
Diamantina Garcia  
Nancy Hard  
Adolph D. Jacobson  
Lucy Martinez  
Anthony Nanes  
Rafael Torres  
Ernestine Trujillo

June 14, 2011

Robbye Meyer  
Director of Multifamily Finance  
Texas Department of Housing and Community Affairs  
P.O. Box 13941  
Austin, Texas 78711-3941

Re: Low Income Housing Tax Credit Applications:  
11227 Dolphin's Landing Apartments  
11115 Castle Manor Apartments  
11045 Lexington Vista  
11050 Palm Gardens  
Clarification QAP -- 49.9(a)(5) Commitment of Development Funding  
by Units of General Local Government Clarification of economic  
viability

Dear Ms. Meyer:

The purpose of this letter is to request clarification and justification for the points awarded to the above noted applications under 49.9(a)(5) and to inquire how these applications are economically viable without an award of Corpus Christi HOME funds. Region 10 of the 2011 Texas Qualified Allocation Plan incorporates the City of Corpus Christi where six of the project applications are located.

First and foremost, the City of Corpus Christi has not supported the above four referenced applications with any funds. On February 22, 2011 the City Council of Corpus Christi passed a resolution supporting tax credit application 11166, The Palms at Leopard (see Exhibit 1). Further emphasizing this project as a priority for the City, on April 26, 2011 the Corpus Christi City Council awarded all of its 2011 funding for housing (HOME funds) to tax credit application 11166, The Palms at Leopard as it meets multiple housing priorities for the City (see Exhibit 2), including but not limited to, building a new project in an area targeted for redevelopment, transferring residents from an obsolete property which in turn will be torn down, and transferring the project based

section 8 subsidy to the new location. Consequently, none of the above four referenced applications have local funding nor are they a priority for the City.

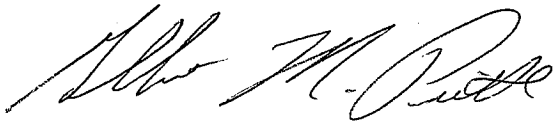
Second, none of the four referenced applications have obtained consent from the applicable Unit of General Local Government as evidenced by an executed Inter-local Agreement. The City of Corpus has not executed an Inter-local Agreement and does not intend to execute one that would allow another application to circumvent the 2011 top priority established by the Corpus Christi City Council at its meeting on February 22, 2011.

In addition, please verify the financial feasibility of applications 11227, 11045 and 11050 each of which included funding from the City of Corpus Christi as part of their financial feasibility. It appears that without funding from the City of Corpus Christi these applications are not financially feasible.

We respectfully request that you deduct the 18 points for the commitment of development funding by units of general local government as the local Governing Body (City of Corpus Christi) where the four referenced projects are located has not provided 2011 general local government support. If these points are deducted from these applications then tax credit application 11166 The Palms at Leopard, which the City of Corpus Christi has designated as its highest priority, would be the top application in Region 10 and would qualify for tax credit funding.

Your earliest consideration of this matter would be greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Gilbert M. Piette". The signature is fluid and cursive, with the first name being the most prominent.

Gilbert M. Piette  
Executive Director

Attachments: Exhibits 1 and 2



**EXHIBIT 1**

**City of Corpus Christi  
Council Resolution**

**RESOLUTION**

**DECLARING THE CITY OF CORPUS CHRISTI'S SUPPORT OF THE DEVELOPMENT OF THE PALMS AT LEOPARD STREET**

**WHEREAS**, The Palms at Leopard Street, Ltd. Has proposed a development for affordable rental housing on a tract of land on Palm Avenue between Lipan Street and Leopard Street named The Palms at Leopard Street in the City of Corpus Christi, Texas; and,

**WHEREAS**, The Palms at Leopard Street, Ltd. Intends to submit an application to the Texas Department of Housing and Community Affairs (TDHCA) for 2011 Housing Tax Credits funds; and,

**WHEREAS**, The Palms at Leopard Street is intended to serve as a replacement site for the units at the existing Northside Manor Apartments which is in dire need of demolition and relocation of families due to substandard living conditions and deterioration of the neighborhood; and,

**WHEREAS**, the development of The Palms at Leopard Street will bring much needed reinvestment to a major Urban Core area of the City marked by a medium and high density residential and commercial uses;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CORPUS CHRISTI, TEXAS THAT:**

**Section 1.** The City of Corpus Christi supports the development of The Palms at Leopard Street as its first priority application in the Region 10-Urban area designated by the State of Texas that includes the City.

DULY adopted at a regular meeting of the City Council of the City on the 22<sup>nd</sup> day of February, 2011.

**ATTEST:**

**CITY OF CORPUS CHRISTI**

By: Armando Chapa  
Armando Chapa  
City Secretary

By: Joe Adame  
Joe Adame, Mayor

028973

APPROVED AS TO LEGAL FORM:

FEBRUARY 17, 2011

By:

Carlos Valdez

Carlos Valdez, City Attorney

Corpus Christi, Texas

22<sup>nd</sup> day of February, 2011

The above Resolution was passed by the following vote:

Joe Adame	<u>Aye</u>
Chris N. Adler	<u>Aye</u>
Larry R. Elizondo, Sr.	<u>Aye</u>
Kevin Kieschnick	<u>Aye</u>
Priscilla Leal	<u>Aye</u>
John E. Marez	<u>Aye</u>
Nelda Martinez	<u>Aye</u>
Mark Scott	<u>Absent</u>
Linda Strong	<u>Aye</u>

028973

## **EXHIBIT 2**

**Excerpts from Corpus Christi City Council  
Meeting – 4/26/2011  
Award of HOME Funds to The Palms at  
Leopard**

MINUTES

CITY OF CORPUS CHRISTI, TEXAS  
Regular Council Meeting  
April 26, 2011 - 12:00 p.m.

PRESENT

Mayor Joe Adame  
Mayor Pro Tem Nelda Martinez

Council Members:

Chris Adler  
Larry Elizondo, Sr.\*\*  
Kevin Kieschnick  
John Marez  
Mark Scott  
Linda Strong\*

City Staff:

Interim City Manager Margie C. Rose  
City Attorney Carlos Valdez  
City Secretary Armando Chapa

ABSENT

Priscilla Leal

\*Arrived at 12:32 p.m.

\*\*Arrived at 1:38 p.m.

Mayor Adame called the meeting to order in the Council Chambers of City Hall.

The invocation was delivered by Council Member Martinez and the Pledge of Allegiance to the United States flag was led by Council Member Marez.

City Secretary Chapa called the roll and verified that the necessary quorum of the Council and the required charter officers were present to conduct the meeting.

Mayor Adame called for approval of the minutes of the Workshop meeting of April 12, 2011 and the regular Council meeting of April 19, 2011. A motion was made and passed to approve the minutes as presented.

\*\*\*\*\*

Mayor Adame called for consideration of the consent agenda (Items 2 - 18). There were no comments from the public. Council members requested that Items 4, 5, 7, 8, 12 and 15 be pulled for individual consideration. City Secretary Chapa polled the Council for their votes as follows:

2. MOTION NO. 2011-096

Motion approving a supply agreement with Ferguson Enterprises, Corpus Christi, Texas for approximately 3,755 non-shear flexible couplings ranging in size from 3" to 10", in accordance with Bid Invitation No. BI-0030-11, based on low bid, for an estimated annual expenditure of \$76,069.52 of which \$19,017.38 is budgeted for FY10-11. The term of the contract is for twelve months with options to extend for up to two additional twelve-month periods, subject to the approval of the contractor and the City Manager, or designee. These items are purchased into the Warehouse Inventory and charged out to the Wastewater Department.

The foregoing motion was passed and approved with the following vote: Adame, Adler, Kieschnick, Marez, Martinez, and Scott, voting "Aye"; Elizondo, Leal, and Strong were absent.

Minutes – Regular Council Meeting  
April 26, 2011 – Page 11

owners were not informed by the City that there were problems with the property at 1414 Leopard and so the property owners concentrated their efforts to demolish the property at 1420 Leopard.

The following topics pertaining to this item were discussed: the date of the last inspection; the anticipated costs to restructure the property; whether the owner has received bids that include a structural analysis; the proposed use for the property; when the property owner would begin improvements to the property if an appeal is granted; concern with the deterioration of the property; and notification to the property owner for 1414 Leopard.

Mayor Adame called for comments from the audience. Abel Alonzo, 1701 Thames, stated that it is not easy to demolish someone's property however based on the presentation by staff the City has no choice but to deny the appeal.

Mr. Kieschnick made a motion to deny the appeal. The motion was seconded by Ms. Martinez. City Secretary Chapa polled the Council for their votes as follows:

23. MOTION NO. 2011-104

Motion to deny an appeal by Mr. Manuel N. Cantu, Jr., of the Building Standards Board's decision to require demolition of a structure(s) located at Lot 4, Block 1, West End, commonly known as 1414 Leopard Street.

The foregoing motion was passed and approved with the following vote: Adame, Adler, Elizondo, Kieschnick, Marez, Martinez, Scott, and Strong, voting "Aye"; Leal was absent.

Mayor Adame opened discussion on Item 25 regarding the Downtown Street (Chaparral) project. Director of Engineering Services Pete Anaya introduced the presentation team including Raymond Gignac with Gignac & Associates and Carl Crull with HDR Engineering. Mr. Anaya explained that this item is for the design of the project and allows the City to go out for bids on Chaparral Street. Mr. Anaya reported that the project would be bid two ways including a complete closure and a partial closure. Mr. Anaya also stated that the City is going to resubmit the U.S. Department Economic Development Administration (EDA) grant in the amount of \$3.7 million. Mr. Gignac referred to a powerpoint presentation including the proposed design for the crosswalks, intersections parking and travel lanes; sidewalk paving; an aerial view; a realistic view of intersection; example of catenary lighting; and the proposed schedule.

The following topics pertaining to this item were discussed: the EDA grant funding; status of the kiosks at the Bayfront Park; start of construction date; and landscaping.

Council Member Martinez requested a future agenda item on the kiosks at the Bayfront Park. There were no comments from the audience. City Secretary Chapa polled the Council for their votes as follows:

25. MOTION NO. 2011-103

Motion authorizing the City Manager or designee to execute Amendment No. 2 to the Contract for Professional Services with Gignac Architects of Corpus Christi, Texas, in the amount of \$407,503, for a total re-stated fee of \$757,883 for the Downtown Street (Chaparral) project. (BOND ISSUE 2008)

The foregoing motion was passed and approved with the following vote: Adame, Adler, Elizondo, Kieschnick, Marez, Martinez, Scott, and Strong, voting "Aye"; Leal was absent.

Minutes – Regular Council Meeting  
April 26, 2011 – Page 12

Mayor Adame opened discussion on Item 24 regarding the adoption of the FY2011-2012 Consolidated Annual Action Plan. Director of Neighborhood Services Eddie Ortega reported that the City has received the further estimates from the U.S. Department of Housing and Urban Development with a reduction of 16 ½ % and highlighted the following changes: an additional reduction for CDBG- Program Administration in the amount of \$30,315 for a total funding level of \$401,309; a reduction of CDBG-Code Enforcement Program in the amount of \$25,000; a reduction of \$25,000 for the CDBG- Comprehensive Planning Assistance Program; funding of \$100,000 for the CDBG-Ethel Eyerly Senior Center by eliminating funding from the CDBG-Neighborhood Initiative Program & Model Block Revitalization Program in the amount of \$100,000 (working on the assumption that have available funding from previous years to support this year); reduction of \$25,000 for CDBG-Rehabilitation Services; funding for CDBG-Amistad Community Health Center in the amount of \$31,024; reduction from CDBG-Coastal Bend Alcohol & Drug Rehabilitation Center d/b/a Charlie's Place in the amount of \$31,024; and a reduction of \$5,766 to all of the agencies recommended for funding with the exception of CDBG-Boys and Girls Club which was reduced in the amount of \$5,756.

Mr. Ortega announced that the Emergency Shelter Grant (ESG) program received an additional \$56,424 and each ESG program received an additional \$5,936 with the exception of the ESG-Administrative Costs which received an additional \$2,811. Mr. Ortega announced that the HOME program received an additional \$4,174 and highlighted the following changes: HOME Administration/Technical Assistance receiving an additional \$7,745 for a total of \$156,662; HOME-Major Rehabilitation program receiving a total of \$764,965; HOME-Nueces County Community Action Agency receiving a total of \$300,000; and The Palms at Leopard will be recommended for funding in the amount of \$865,000. Mr. Ortega reported that after the last meeting, staff recommended funding Dolphin's Landing and The Palms at Leopard equally, however, after checking with the Texas Department of Housing and Community Affairs, it was determined that the City essentially needs to support one project so that the project can receive the 16 points for tax credits.

Mayor Adame called for comments from the audience. Abel Alonzo, 1701 Thames, stated that MHMR is extremely grateful for the funding that was provided. Eric Martinez, Association Coordinator for the World Changers Projects, thanked Mr. Ortega and Neighborhood Services employees Diana Garza and Tony Recio for their support of the World Changers Project and the CDBG-Neighborhood Initiative Program & Model Block Revitalization Project. Mr. Martinez asked the Council to continue to support the use of anticipated funds available for the Model Block Program. Therese Perez, Corpus Christi Hope House, expressed gratitude for the funding provided for the shelter. Michael Wynn, Atlantic Housing, spoke on behalf of Dolphin's Landing and thanked the Council for listening to concerns during the April 12<sup>th</sup> meeting. Council Member Martinez reiterated that staff was not supporting funding for Dolphin's Landing. Jaime Nodarse, Amistad Community Health Center, thanked the Council for their reconsideration for funding CDBG-Amistad Community Health Center. Mark Lechner, Lexington Vista and Palm Gardens, stated that it was hard to argue with staff's recommendation for their support to one HOME project to receive tax credits. Mr. Lechner provided information on both proposed projects and requested that Council consider a mechanism to transfer HOME funds to the project that gets awarded by TDHCA. Jose Mascorro, Housing and Community Services, spoke regarding The Palms at Leopard Project and thanked staff for their hard work on this project and the importance of the City supporting the project 100% to ensure tax funding does come to the City of Corpus Christi.

Mr. Scott made a motion to amend the Consolidated Annual Action Plan to include changes as recommended by staff in today's handout. The motion was seconded by Mr. Elizondo.



Minutes – Regular Council Meeting  
April 26, 2011 – Page 13

The foregoing motion was passed and approved with the following vote: Adame, Adler, Elizondo, Kieschnick, Marez, Martinez, Scott, and Strong, voting "Aye"; Leal was absent.

City Secretary Chapa polled the Council for their votes as follows:

24. RESOLUTION NO. 029047

Resolution adopting the Fiscal Year 2011-12 Consolidated Annual Action Plan ("CAAP") which includes the Community Development Block Grant (CDBG), Emergency Shelter Grant (ESG), and Home Programs (HOME); authorizing the City Manager or designee to submit the Fiscal Year 2011-12 CAAP to the U. S. Department of Housing and Urban Development ("HUD"); and authorizing the City Manager or designee to execute all necessary documents to make changes in the Fiscal Year 2011-12 CAAP if required by HUD.

The foregoing resolution was passed and approved as amended with the following vote: Adame, Adler, Elizondo, Kieschnick, Marez, Martinez, Scott, and Strong, voting "Aye"; Leal was absent.

\*\*\*\*\*

Mayor Adame returned to discussion on Item 8 regarding the acceptance of an anonymous donation for the decorative lighting of the Harbor Bridge project. City Secretary Chapa polled the Council for their votes as follows:

8.a. RESOLUTION NO. 029036

Resolution authorizing the City Manager or designee to accept an anonymous donation in the amount of \$300,000 for support of the decorative lighting of the Harbor Bridge project.

The foregoing resolution was passed and approved with the following vote: Adame, Adler, Elizondo, Marez, Martinez, Scott, and Strong, voting "Aye"; Kieschnick voting "No"; Leal was absent.

8.b. ORDINANCE NO. 029037

Ordinance appropriating \$300,000 from an anonymous donation into the No. 1020 General Fund for support of the decorative lighting of the Harbor Bridge project; changing the FY 2010-2011 Operating Budget adopted by Ordinance No. 028683 to increase revenues and appropriations by \$300,000 each.

An emergency was declared, and the foregoing ordinance was passed and approved with the following vote: Adame, Adler, Elizondo, Marez, Martinez, Scott, and Strong, voting "Aye"; Kieschnick voting "No"; Leal was absent.

Mayor Adame opened discussion on Item 12 regarding the Memorial Coliseum Demolition Project. Director of Engineering Services Pete Anaya provided a project budget showing the construction liquidated damages in the amount of \$70,000 and the \$28,000 for Amendment No. 1 to the contract with R.H. Shackelford, Inc. In response to Council Member Scott, the net savings on the project is approximately \$42,000. City Secretary Chapa polled the Council for their votes as follows:



CITY OF DALLAS

May 16, 2011

Robbye Meyer  
Director of Multifamily Finance  
Texas Dept. of Housing & Community Affairs  
P.O. Box 13941  
Austin, Texas 78711-3941

Re: Low Income Housing Tax Credit Application #11124 People's El Shaddai

Dear Ms Meyer:

The purpose of this letter is to request clarification and justification for points awarded to LIHTC application #11124 People's El Shaddai under the 2011 Qualified Allocation Plan 50.9(i) Selection (5) Local Political Subdivision Funding.

After the application for People's El Shaddai was reviewed by the Dallas City Council on February 23, 2011, the Council voted not to support the project (see attached). The project is not in keeping with the priorities for the City of Dallas. As we understand the nature of the language in the QAP under 50.9(i) Selection (5)(A)(ix), the Governing Body of the Local Political Subdivision should be the City of Dallas, where the project is located. This particular applicant provided a letter of commitment from an Austin based Housing Corporation, Capital Area Housing Finance Corporation. We do not believe that an Austin company should be able to approve projects for Dallas.

Additionally, this particular corporation's by-laws state that their assistance is conditioned on the "consent of the applicable Local Political Subdivision as evidenced by an executed Interlocal Agreement" (see attached). The City of Dallas has not executed an Interlocal Agreement nor do we intend to execute such an agreement.

The City of Dallas would ask TDHCA to deduct the 18 points for Local Political Subdivision Funding given that the Governing Body where the project is located does not support the project.

Sincerely,

A.C. Gonzalez, Assistant City Manager  
City Manager's Office

C: Kent Conine, TDHCA Board Chairman  
Michael Gerber, Executive Director

05-18-11A08:46 RCVD



City of Dallas

STATE OF TEXAS §  
COUNTY OF DALLAS §  
CITY OF DALLAS §

I, **DEBORAH WATKINS**, City Secretary of the City of Dallas, Texas, do hereby certify that the attached is a complete true and correct copy of:

**FILE NO. 11-0606**

filed in my office as official records of the City of Dallas, and that I have custody and control of said records.

WITNESS MY HAND AND THE SEAL OF THE CITY OF DALLAS, TEXAS,  
this the 28<sup>th</sup> day of **February, 2011**.

A handwritten signature in cursive script that reads "Deborah Watkins".

**DEBORAH WATKINS  
CITY SECRETARY  
CITY OF DALLAS, TEXAS**

PREPARED BY G. S. Ruelas

05-18-11A08:47 RCVD

**WHEREAS**, on February 10, 2010, the City Council approved a modification to the policy for the acceptance of applications seeking City of Dallas support for low income housing tax credit financing, when the State of Texas does not require direct City of Dallas approval by Resolution No. 10-0498; and

**WHEREAS**, the Applicant, Owen Metz, submitted an application to the City of Dallas on behalf of Dallas Leased Housing Associates II, Limited Partnership, for support of their application to TDHCA for the 2011 Low Income Housing Tax Credit Program; and

**WHEREAS**, on February 7, 2011 and February 22, 2011, the Peoples El Shaddai Low Income Housing Tax Credit multifamily project was briefed to the Housing Committee; and

**WHEREAS**, as a condition for being considered for the award of the 9% tax credit, the Applicant has committed to 100 units or 100% of the units to tenants with household incomes capped at 60% ~~or below the AMFI with rents affordable to tenants whose household incomes are 60% or below the AMFI~~; and

**DENIED**

**WHEREAS**, as with the City of Dallas' funding and endorsement of the TDHCA LIHTC application for Peoples El Shaddai, the owner of the project will provide social services with the project approved by the Housing/Community Services Department, if the owner is utilizing City funding in the financing of the low income housing tax credit project; and

**WHEREAS**, the City of Dallas desires to provide approval of the TDHCA LIHTC application for the Peoples El Shaddai project located at 2836 East Overton Road; **NOW, THEREFORE**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:**

**SECTION 1.** That the City of Dallas supports the Texas Department of Housing and Community Affairs (TDHCA) 9% low-income housing tax credit allocation for Peoples El Shaddai project located at 2836 East Overton Road for the acquisition and rehabilitation of the 100-unit multifamily residential development for low income family housing, provided, however, that the City's approval of the tax credit financing for this project shall be contingent upon, among other things, future City Council approval of zoning.

**SECTION 2.** That the City of Dallas' funding and endorsement of the TDHCA LIHTC application for Peoples El Shaddai will be contingent on the following if the owner is utilizing City funding in financing of the low income housing tax credit project: (1) the Project Owner expending a minimum of \$40,000 (a minimum of \$40,000 or \$200 per unit per year, whichever is greater) for social services for, and at no cost to, the residents of the development, based on a survey of residents needs, to be implemented within three months of project completion; (2) inclusion of this requirement in the Land Use Restriction Agreement (LURA) by the Texas Department of Housing and Community Affairs (TDHCA) and the City's Deed Restrictions containing the social services requirement; and, (3) if the LURA does not require the social services expenditures to be made prior to debt service payment, a separate guarantee by an entity or individual acceptable to the City that the social services expenditures will be made. Up to 50% of the social service requirement can be fulfilled with in kind social services provided the Housing/community services department gives prior approval of the social service plan.

**DENIED**

**SECTION 3.** That prior to receiving a conditional City of Dallas building permit required by TDHCA prior to closing on the tax credits, the Project Developer will consult with the City of Dallas Sustainable Development and Construction Department with regard to security related design standards.

**SECTION 4.** That the City of Dallas' funding and endorsement for this project will be contingent on the Project Owner paying to the City an annual monitoring review fee in the amount of \$500, beginning on the anniversary of the closing on the 9% tax credits and ending at the end of the tax credit compliance period, for the cost of monitoring compliance with the social service requirement, if the Project Owner is utilizing City funding in the financing of the low income housing tax credit project.

**SECTION 5.** That this resolution shall take effect immediately from and after its passage in accordance with the Charter of the City of Dallas, and it is accordingly so resolved.

**DISTRIBUTION:**

Housing/Community Services Department  
City Attorney's Office  
Office of Financial Services/Community Development, 4FN

**KEY FOCUS AREA:** Economic Vibrancy  
**AGENDA DATE:** February 23, 2011  
**COUNCIL DISTRICT(S):** 4  
**DEPARTMENT:** Housing/Community Services  
**CMO:** A. C. Gonzalez, 671-8925  
**MAPSCO:** 56S

---

**SUBJECT**

Authorize a resolution in support of the Texas Department of Housing and Community Affairs (TDHCA) 9% low-income housing tax credit (LIHTC) allocation for Peoples El Shaddai located at 2836 East Overton Road for the acquisition and rehabilitation of the proposed 100-unit multifamily residential development for low income families - Financing: No cost consideration to the City  
Recommendation of Staff: Denial

**BACKGROUND**

**DENIED**

On February 10, 2010, the City Council approved an action item authorizing a modification to the City of Dallas' policy for accepting applications seeking City of Dallas support for low income housing tax credit financing, when the State of Texas does not require direct City of Dallas approval to: 1) allow for only one application to be submitted; and 2) require applicants to submit a \$1,000 fee with the single application to cover administrative costs associated with reviewing the applications for City consideration of funding and endorsement by the City Council.

On January 21, 2011, the Applicant, Owen Metz, submitted an application to the City of Dallas on behalf of Dallas Leased Housing Associates II, Limited Partnership, for support of their application to TDHCA for the 2011 Low Income Housing Tax Credit Program.

The Applicant has committed to 100 units or 100% of the units to tenants with household incomes capped at 60% or below the AMFI with rents affordable to tenants whose household incomes are 60% or below the AMFI.

**BACKGROUND (continued)**

As a requirement for City of Dallas' funding and endorsement of low income housing tax credit projects, the Applicant(s) are required to conduct a survey of the needs of the tenants as each lease is signed and will provide some or all of the following social services at no cost to the tenants, such as: after-school and summer break care for children, health screenings; counseling/domestic crisis intervention; emergency assistance, computer education, adult education programs (such as: ESL, life skills and nutrition classes, etc.); and social and recreational activities. This requirement only applies if the Applicant(s) is utilizing City funding in the financing of the low income housing tax credit project.

The Housing/Community Services Department is not recommending that City Council grant funding and endorsement of the application to TDHCA for Peoples El Shaddai for the LIHTC program.

**PRIOR ACTION/REVIEW (Council, Boards, Commissions)**

On February 10, 2010, the City Council approved a modification to the policy for the acceptance of applications seeking City of Dallas support for low income housing tax credit financing, when the State of Texas does not require direct City of Dallas approval by Resolution No. 10-0498.

**DENIED**

On February 7, 2011, the Housing Committee of the City Council was briefed on the Low Income Housing Tax Credit Program.

On February 22, 2011, the Peoples El Shaddai Low Income Housing Tax Credit multifamily project was briefed to the Housing Committee.

**FISCAL INFORMATION**

No cost consideration to the City.

**OWNER(S)**

**Dallas Leased Housing Associates II,  
Limited Partnership**

**Dallas Leased Housing Associates GP II, LLC**

David L. Brierton, Chief Manager & President  
Jeffery R. Huggett, Vice President

**Investor Limited Partner (to be determined)**

**Dallas Leased Housing Associates SLP II, LLC**

David L. Brierton, Chief Manager & President  
Jeffery R. Huggett, Vice President

**MAP**

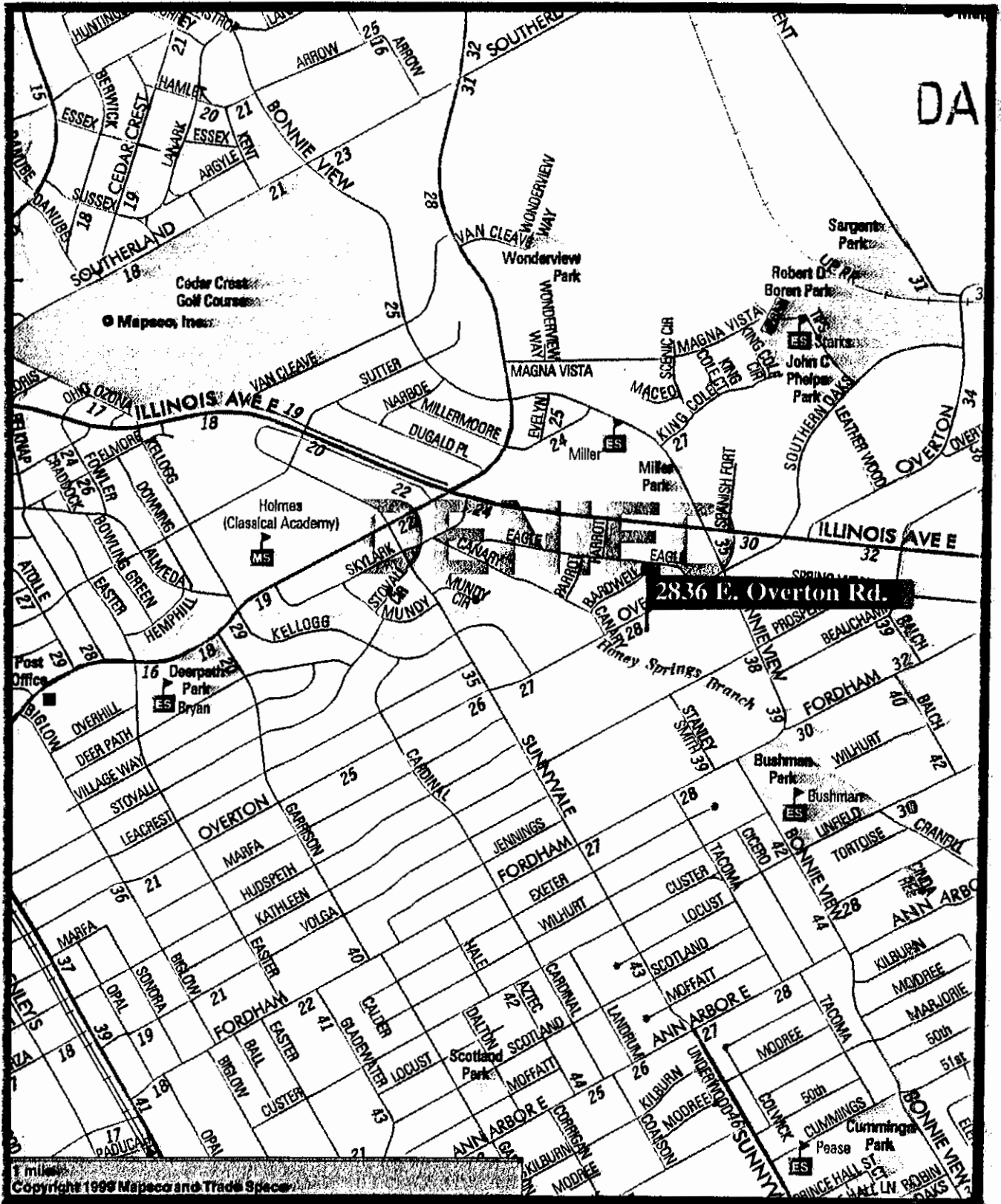
Attached

**DEVELOPER**

**Dallas Leased  
Housing  
Development LLC**

**DENIED**







## Rules for 9% Tax Credit Loans

### ABOUT CAHFC

- Mission
- Board Members & Staff
- Service Area / Data
- Contact Us
- Capital Area Affordable Housing, LLC
- Capital Area Multi-Housing

### NEWS / RESOURCES

- Publications
- Website Links

### BUYERS & RENTERS

- Homes For Sale
- First Time Home Buyer Program
- Find an Affordable Apartment

### HOUSING PROGRAMS

- Multi-Family Finance
- Previously Financed Projects

### APPLICATIONS

- Financing Qualified Residential Rental Property
- Rules for 9% Tax Credit Loans.

## Capital Area Housing Finance Corporation

### Rules for Loans in Connection with Obtaining Tax Credits for Multifamily Residential Rental Projects

#### Article I. Purpose and Scope

Capital Area Housing Finance Corporation (the "*Corporation*") was created as a public non-profit corporation under the provisions of the Texas Housing Finance Corporations Act, Texas Local Government Code, Chapter 394, as amended (the "*Act*"). The Corporation's primary purpose is to assist individuals of low and moderate income to obtain decent, safe, sanitary, and affordable housing. The Corporation is authorized by the Act to make loans to further its purposes thereunder. Applications for loans will be considered in connection with developments located in one or more of the following: Counties of Bastrop, Blanco, Burnet, Caldwell, Fayette, Hays, Lee, Llano and Williamson (collectively, the "*Program Area*") or in locations outside of the Program Area with the consent of the applicable Local Political Subdivision as evidenced by an executed Interlocal Agreement. The Corporation has adopted these Rules to set forth the general requirements and procedures applicable to qualifying for a loan in connection with obtaining tax credits from the Texas Department of Housing and Community Affairs (the "*TDHCA*") in connection with applicant's residential development. The Corporation makes no representation or warranty that the loan will comply with the rules and regulations of the TDHCA.

A. *Application of Rules.* These Rules apply to specific multifamily rental residential developments for which an applicant or a Local Political Subdivision on behalf of an applicant requests the Corporation to make a loan to obtain tax credits in connection with such development

B. *Waiver of Rules.* Specific provisions of these Rules may be waived by a majority vote of the Board of Directors of the Corporation

C. *Amendment of Rules.* These Rules may be amended, revised, repealed or otherwise altered by a majority of the Board of Directors of the Corporation at any time and from time to time and with or without notice.

#### Article II. General Requirements

The Corporation will not make a loan of funds to any applicant in connection with any financing for any residential development that has not satisfied, as determined by the

May 20, 2011

**Peoples El Shaddai Apartments**  
**Dallas, Texas**

**Deficiency:**

- 1.) **Volume 4, Tab 5** – Commitment of Development Funding by Governmental Instrumentality – 18 Points for commitment of funds equal to or greater than \$4,500 per unit
- 2.) **Volume 4, Tab 26** – Leveraging of Private, State and Federal Resources – 1 point for commitment of funds equal to or greater than 2% of the Total Housing Development Costs.

The application for Peoples El Shaddai was submitted to TDHCA requesting points under the above categories by including an application for funds from the Capital Area Housing Finance Corporation. Approval for funds from CAHFC requires consent of the applicable Local Political Subdivision through an executed Inter-local Agreement.

On May 16, 2011 the City of Dallas submitted a letter to TDHCA stating they have not and do not intend to execute an Inter-Local agreement with the Capital Area Housing Finance Corporation for the Peoples El Shaddai Village Project.

**Response:**

Peoples El Shaddia is currently a 100% Project Based Section 8 property with a twenty (20) year HAP contract dated 9/1/2008. According to Sections 49.9(a)(5) & 49.9(a)(26) of the QAP, Development Based Rental Subsidies are considered an eligible source of funding, provided:

- The Development Based Rental Subsidy must be administered by a Unit of General Local Government.
- Evidence of the remaining value of the contract as of December 31<sup>st</sup> of the application year, is provided from the Unit of General Local Government. If a signed contract is submitted the remaining value of the subsidies must be evident. It must also be evident that the contract does not include past subsidies.
- Only the value of the contract between August 1, 2011 and the expiration of the current contract will be eligible.

Please see attached:

- 1.) Amended Volume 4, Tab 5 – 18 Points.
- 2.) Amended Volume 4, Tab 26 – 1 Point.
- 3.) The calculation of remaining HAP value from 8/1/2011 until expiration.
- 4.) Executed HAP contract listing the Southwest Housing Compliance Corporation as the Contract Administrator.
- 5.) The executed HAP contract dated 9/1/2008 - 8/31/2028 with the rent schedule and subsidy obligation by HUD.

**Volume 4, Tab 5**

**COMMITMENT OF DEVELOPMENT FUNDING by GOVERNMENTAL INSTRUMENTALITY (49.9)(a)(5)**

Applications may qualify to receive up to 18 points for qualifying under this exhibit. An Applicant may submit enough sources to substantiate the point request.

Complete 1 form for each source. Use additional pages if necessary.

**All funding, including in-kind contributions (except Development Based Rental Subsidies), must be reflected in the Volume 1, Tab 4, Part A. Summary of Sources and Uses of Funds form and Volume 1, Tab 4, Financing Narrative**

**1. Name of Unit of General Local Government or Governmental Instrumentality:**

Project Based Section 8 HAP Contract: Southwest Housing Compliance Corporation (HUD)

**2. Funding Source. Refer to ASPM and QAP for specific requirements of each funding source. Check one box.**

Loan:

Loans must have a minimum term of the later of one year and Placed in Service Date, and the interest rate must be at or below the Applicable Federal Rate (AFR) at the time of loan closing

Source : \_\_\_\_\_ Amount: \_\_\_\_\_

Source: \_\_\_\_\_ Amount: \_\_\_\_\_

Source: \_\_\_\_\_ Amount: \_\_\_\_\_

Total Amount attributed to the Total Housing Development Cost: \_\_\_\_\_ **\$0**

Grant

Source: \_\_\_\_\_ Amount: \_\_\_\_\_

Source: \_\_\_\_\_ Amount: \_\_\_\_\_

Source: \_\_\_\_\_ Amount: \_\_\_\_\_

Total Amount attributed to the Total Housing Development Cost: \_\_\_\_\_ **\$0**

TDHCA HOME Funds

A resolution, dated on or before March 1, 2011, is submitted with the Application from the Unit of General Local Government authorizing the Applicant to act on behalf of the Unit of General Local Government in applying for HOME Funds from TDHCA for the pa

Total Amount attributed to the Total Housing Development Cost: \_\_\_\_\_

In-kind Contribution

In-kind contributions must provide a tangible economic benefit that results in a quantifiable reduction in the Total Housing Development Cost; evidence from the Unit of General Local Government that substantiates the value must be provided; the value of t

Source: \_\_\_\_\_ Amount: \_\_\_\_\_

Source: \_\_\_\_\_ Amount: \_\_\_\_\_

Source: \_\_\_\_\_ Amount: \_\_\_\_\_

Total Amount attributed to the Total Housing Development Cost (For all contributions except for land, include value of contribution from August 1, 2011 through Placed in Service date): \_\_\_\_\_ **\$0**

Type of in-kind contribution: \_\_\_\_\_

**Volume 4, Tab 5**

**COMMITMENT OF DEVELOPMENT FUNDING FROM LOCAL POLITICAL SUBDIVISION (50.9)(i)(5)**

Development Based Rental Subsidy

Total Amount of Remaining Subsidy (from Aug. 1, 2011 through expiration of contract):

\$13,228,684

**3. Evidence of Funding. One of the following must be submitted behind this exhibit.**

Copy of commitment of funds. The commitment must include a statement that any funds committed were not first provided to the Unit of General Local Government by the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on

Copy of the application to the funding entity and a letter from the funding entity indicating that the application was received. The Application should include the amount and terms of the proposed funding. For in-kind contributions and development based

A letter from the funding entity indicating that the award of funds with respect to the funding cycle for which the Applicant intends to apply for will be made by August 1, 2011 along with a statement from the Applicant with respect to the loan amount to

**4. Eligible Points. Check one box (do not round).**

6 points for a total contribution of at least \$900 (or \$450 for Rural Developments or Developments located in non-participating jurisdictions) per unit

12 points for a total contribution of at least \$2,250 (or \$1,125 for Rural Developments or Developments located in non-participating jurisdictions) per unit

18 points for a total contribution equal to or greater than \$4,500 (or \$2,250 for Rural Developments or Developments located in a non-participating ju



**PLACE EVIDENCE TO SUPPORT THE POINTS REQUESTED UNDER THIS SELECTION CRITERIA BEHIND THIS TAB, EVEN IF IT WAS PROVIDED EARLIER IN THE APPLICATION**



**Volume 4, Tab 26**

**LEVERAGING OF PRIVATE, STATE AND FEDERAL RESOURCES (§49.9(a)(26)) (cont.)**

Development Based Rental Subsidy

Development based rental subsidies from private, state or federal resource may qualify under this section if evidence of the remaining value of the contract is submitted from the source. In this case, the value of the contract does not include past subsidies

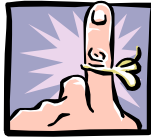
Total Amount of Remaining Subsidy (August 1, 2011 through expiration of contract):

**\$500,000**

**3. Evidence of Funding. One of the following must be submitted.**

Copy of commitment of funds. The commitment must include a statement that the provider of funds is not the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application and that none of the f

Copy of the application to the funding entity and a letter from the funding entity indicating that the application was received. The Application should include the amount and terms of the proposed funding. For in-kind contributions and development based



**REMEMBER TO SUBMIT YOUR EVIDENCE BEHIND THIS FORM**





**Volume 1, Tab 2. Populations Served**

**Part B. Rent Schedule (Cont.)**

		% of LI	% of Total	
<b>HOUSING</b>	TC30%	10%	10%	10
	TC40%			0
	TC50%	35%	35%	35
	TC60%	55%	55%	55
<b>TAX</b>	<b>HTC LI Total</b>			100
	TCEO			0
<b>CREDITS</b>	MR			0
	<b>MR Total</b>			0
	<b>TC Total</b>			100
<b>MORTGAGE</b>	MRB30%			0
	MRB40%			0
	MRB50%			0
	MRB60%			0
	<b>MRB LI Total</b>			0
<b>REVENUE</b>	MRBMR			0
	<b>MRBMR Total</b>			0
<b>BOND</b>	<b>MRB Total</b>			0

		% of LI	% of Total	
<b>HOUSING</b>	HTF30%			0
	HTF40%			0
	HTF50%			0
	HTF60%			0
<b>TRUST</b>	HTF80%			0
	<b>HTF LI Total</b>			0
	MR			0
<b>FUND</b>	<b>MR Total</b>			0
	<b>HTF Total</b>			0
<b>HOME</b>	30%			0
	LH/50%			0
	HH/60%			0
	HH/80%			0
	<b>HOME LI Total</b>			0
	EO			0
	MR			0
	<b>MR Total</b>			0
<b>HOME Total</b>			0	
<b>OTHER</b>	<b>Total OT Units</b>			0

Note: Pursuant to §49.8(8)(C)(i), any local, state or federal financing identified in this section which restricts household incomes at any AMGI lower than restrictions required in accordance with the Rules must be identified in the Rent Schedule and the local, state or federal income restrictions must include corresponding rent levels that do not exceed 30% of the income limitation in accordance with §42(g), Internal Revenue Code. The income and corresponding rent restrictions will be continuously maintained over the compliance and extended use period as specified in the Land Use Restriction Agreement.



A Subsidiary of the Housing Authority of the City of Austin

May 27, 2011

Texas Department of Housing & Community Affairs  
Attn: Liz Cline  
221 E. 11<sup>th</sup> St  
Austin, TX 78701

Re: Peoples El Shaddai Village  
TX16M000183

To Whom It May Concern:

The Southwest Housing Compliance Corporation processed a renewal for the units covered by the Housing Assistance Payment (HAP) contract referenced above. The contract renewal date is effective 09/01/2008 and expires on 08/31/2028.

There are approximately 17.10 years remaining in the HAP contract from 08/01/2011 through 08/31/2028 and the current HUD form 92458, rent schedule, has a yearly contract rent potential of \$1,003,800. The estimated remaining value of subsidy payments from 08/01/2011 - 08/31/2028 is \$17,164,980.

If you have any questions, please contact me at 512-474-5332, extension 3150, or [lonniew@hacanet.org](mailto:lonniew@hacanet.org).

Sincerely,

A handwritten signature in blue ink, appearing to read "Lonnie Winton", is written over the word "Sincerely".

Lonnie Winton  
Financial Analyst  
Southwest Housing Compliance Corporation



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# Southwest Housing Compliance Corporation

*A Subsidiary of the Housing Authority of the City of Austin*

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November 20, 2008

People's Investors, LLC  
C/o: PK Management, LLC  
880 S. Pleasantburg Dr., Suite 4D  
Greenville, Sc 29607  
Attn: Brenda Jones, V.P. Southern Region

**Re: Peoples El Shaddai Village  
TX16M000183**

Dear Ms. Jones,

We have processed a renewal for the units covered by the Housing Assistance Payments (HAP) contract referenced above. Enclosed is a fully executed copy of the form HUD 92458, Rent Schedule. Also enclosed are the HAP Contract and Notification of Section 8 Contract Rents and Funding. The new rents are effective 09/01/2008.

If you have any questions, please contact me at (512) 474-5332.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lonnie Winton".

Lonnie Winton  
Financial Analyst

Cc: PK Management, LLC  
Leslie Greene, Regional Property Manager  
5521 Davis Blvd.  
North Richland Hills, Tx 76180

Enclosures

**U.S. Department of Housing and Urban Development**  
**Office of Housing**

**Project-based Section 8**

**HOUSING ASSISTANCE PAYMENTS**

**BASIC RENEWAL CONTRACT**

**MULTI-YEAR TERM**

**PREPARATION OF CONTRACT**

Reference numbers in this form refer to notes at the end of the contract text.  
These endnotes are instructions for preparation of the Basic Renewal Contract.  
The instructions are not part of the Renewal Contract

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**NOV 10 2008**

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Basic Renewal Contract  
Multi-Year Term  
REV-11-05-2007

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**U.S. Department of Housing and Urban Development  
Office of Housing**

**Project-based Section 8**

**HOUSING ASSISTANCE PAYMENTS**

**BASIC RENEWAL CONTRACT<sup>1</sup>**

**MULTI-YEAR TERM**

**1 CONTRACT INFORMATION<sup>2</sup>**

**PROJECT**

**Section 8 Project Number: TX16M000183**

**Section 8 Project Number of Expiring Contract: N/A**

**FHA Project Number (if applicable): N/A**

**Project Name: Peoples El Shaddai Village**

**Project Description:<sup>3</sup>**

**2836 Overton Road, Dallas, TX 75216-4763**

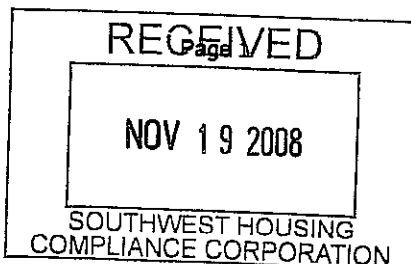
**Dallas County**

Basic Renewal Contract  
Multi-Year Term  
REV-11-05-2007

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*(received from owner)*



*(received from HUD)*

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**TYPE OF RENEWAL**

- Check this box for a project renewed under Section 524(a) of MAHRA (not including a Mark-Up-To-Market renewal).
- Check this box for a project renewed at exception rents under Section 524(b)(1) of MAHRA.

**PARTIES TO RENEWAL CONTRACT**

**Name of Contract Administrator<sup>4</sup>**

Southwest Housing Compliance Corporation

**Address of Contract Administrator**

1124 South IH 35  
Austin, TX 78704

**2 TERM AND FUNDING OF RENEWAL CONTRACT**

- a** The Renewal Contract begins on September 1, 2008<sup>5</sup> and shall run for a period of twenty (20)<sup>7</sup> years.
- b** Execution of the Renewal Contract by the Contract Administrator is an obligation by HUD of \$ 949,368,<sup>8</sup> an amount sufficient to provide housing assistance payments for approximately eleven(11)<sup>9</sup> months of the first annual increment of the Renewal Contract term.

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Basic Renewal Contract  
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- 
- c** HUD will provide additional funding for the remainder of the first annual increment and for subsequent annual increments, including for any remainder of such subsequent annual increments, subject to the availability of sufficient appropriations. When such appropriations are available, HUD will obligate additional funding and provide the Owner written notification of (i) the amount of such additional funding, and (ii) the approximate period of time within the Renewal Contract term to which it will be applied.

### **3 DEFINITIONS**

**ACC.** Annual contributions contract.

**Anniversary.** The annual recurrence of the date of the first day of the term of the Renewal Contract.

**Contract rent.** The total monthly rent to owner for a contract unit, including the tenant rent (the portion of rent to owner paid by the assisted family).

**Contract units.** The units in the Project which are identified in Exhibit A by size and applicable contract rents.

**Fifth year anniversary.** The Renewal Contract annual anniversary that falls at expiration of each 5-year period of the Renewal Contract term.

**Fifth year comparability adjustment.** An adjustment of contract rents by the contract administrator at the Fifth Year Anniversary. The contract rent for each unit size is set at comparable rent as shown by comparability analysis.

**HAP contract.** A housing assistance payments contract between the Contract Administrator and the Owner.

**HUD.** The United States Department of Housing and Urban Development.

**HUD requirements.** HUD regulations and other requirements, including changes in HUD regulations and other requirements during the term of the Renewal Contract.

**MAHRA.** The Multifamily Assisted Housing Reform and Affordability Act of 1997 (Title V of Public Law No.105-65, October 27, 1997, 111 Stat. 1384), as amended.

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**Mid-term comparability adjustment.** An adjustment of contract rents by the contract administrator within each 5-year period of the Renewal Contract term (in addition to the comparability analysis and adjustment at the Fifth Year Anniversary). The contract rent for each unit size is set at comparable rent as shown by comparability analysis.

**OCAF.** An operating cost adjustment factor established by HUD.

**PHA.** Public housing agency (as defined and qualified in accordance with the United States Housing Act of 1937, 42 U.S.C. 1437 et seq.).

**Project.** The housing described in section 1 of the Renewal Contract.

**Renewal Contract.** This contract, including applicable provisions of the Expiring Contract (as determined in accordance with section 5 of the Renewal Contract).

**Section 8.** Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

#### 4 RENEWAL CONTRACT

##### a Parties

- (1) The Renewal Contract is a housing assistance payments contract ("HAP Contract") between the Contract Administrator and the Owner of the Project (see section 1).
- (2) If HUD is the Contract Administrator, HUD may assign the Renewal Contract to a public housing agency ("PHA") for the purpose of PHA administration of the Renewal Contract, as Contract Administrator, in accordance with the Renewal Contract (during the term of the annual contributions contract ("ACC") between HUD and the PHA). Notwithstanding such assignment, HUD shall remain a party to the provisions of the Renewal Contract that specify HUD's role pursuant to the Renewal Contract, including such provisions of section 9 (HUD requirements), section 10 (statutory changes during term) and section 11 (PHA default), of the Renewal Contract.

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**b Statutory authority**

The Renewal Contract is entered pursuant to section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), and section 524 of MAHRA.

**c Expiring Contract**

Previously, the Contract Administrator and the Owner had entered into a HAP Contract ("expiring contract") to make Section 8 housing assistance payments to the Owner for eligible families living in the Project. The term of the expiring contract will expire prior to the beginning of the term of the Renewal Contract.

**d Purpose of Renewal Contract**

- (1) The purpose of the Renewal Contract is to renew the expiring contract for an additional term. During the term of the Renewal Contract, the Contract Administrator shall make housing assistance payments to the Owner in accordance with the provisions of the Renewal Contract.
- (2) Housing assistance payments shall only be paid to the Owner for contract units occupied by eligible families leasing decent, safe and sanitary units from the Owner in accordance with statutory requirements, and with all HUD regulations and other requirements. If the Contract Administrator determines that the Owner has failed to maintain one or more contract units in decent, safe and sanitary condition, and has abated housing assistance payments to the Owner for such units, the Contract Administrator may use amounts otherwise payable to the Owner pursuant to the Renewal Contract for the purpose of relocating or rehousing assisted residents in other housing.

**e Contract units**

The Renewal Contract applies to the Contract units.

**5 EXPIRING CONTRACT – PROVISIONS RENEWED**

- a Except as specifically modified by the Renewal Contract, all provisions of the Expiring Contract are renewed (to the extent such

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provisions are consistent with statutory requirements in effect at the beginning of the Renewal Contract term).

- b** All provisions of the Expiring Contract concerning any of the following subjects are not renewed, and shall not be applicable during the renewal term:
  - (1) Identification of contract units by size and applicable contract rents;
  - (2) The amount of the monthly contract rents;
  - (3) Contract rent adjustments; and
  - (4) Project account (sometimes called "HAP reserve" or "project reserve") as previously established and maintained by HUD pursuant to former Section 8(c)(6) of the United States Housing Act of 1937 (currently Section 8(c)(5) of the Act, 42 U.S.C. 1437f(c)(5)). Section 8(c)(5) does not apply to the Renewal Contract, or to payment of housing assistance payments during the Renewal Contract term.
- c** The Renewal Contract includes those provisions of the Expiring Contract that are renewed in accordance with this section 5.

## **6 CONTRACT RENT**

### **a Initial contract rents**

At the beginning of the Renewal Contract term, and until contract rents for units in the Project are adjusted in accordance with section 6b, the contract rent for each bedroom size (number of bedrooms) shall be the initial contract rent amount listed in Exhibit A of the Renewal Contract.

### **b Contract rent adjustments**

#### **(1) OCAF or Budget-Based Rent Adjustments**

- 
- (a) Except as provided in section 6b(2) below (concerning comparability adjustments at each Fifth Year Anniversary and discretionary comparability adjustments within each five-year term), during the term of the Renewal Contract the Contract Administrator shall annually, on the anniversary of the Renewal Contract, adjust the amounts of the monthly contract rents in accordance with HUD requirements by either of the following methods (as determined by the Contract Administrator in accordance with HUD requirements):
- (i) Using an OCAF; or
  - (ii) At the request of the owner, based on the budget for the Project, as approved by the Contract Administrator in accordance with HUD requirements.
- (b) Adjustments by use of the OCAF shall not result in a negative adjustment (decrease) of the contract rents. The OCAF shall not be used for adjustment of rent at each Fifth Year Anniversary (as determined in accordance with section 6b(2)(b) below).
- (2) **Comparability adjustments**
- (a) **Applicability.** This section 6b(2) is applicable only if the contract has been renewed pursuant to Section 524(a) of MAHRA. This section 6b(2) does not apply to a project renewed at exception rents under Section 524(b)(1) of MAHRA (See section 1 of the Renewal Contract).
- (b) **Fifth year adjustment (comparability adjustment at expiration of each 5-year period, *if applicable*).**
- (i) This section 6b(2)(b) is only applicable if the term of the Renewal Contract is longer than five (5) years (from the first day of the term specified in section 2a).

- 
- (ii) At the expiration of each 5-year period of the Renewal Contract term ("Fifth Year Anniversary"), the Contract Administrator shall conduct a comparability analysis of existing contract rents. At such Fifth Year Anniversary of the Renewal Contract, the Contract Administrator shall make any adjustments in the monthly contract rents, as reasonably determined by the Contract Administrator in accordance with HUD requirements, necessary to set the contract rent for each unit size at comparable market rent. Such adjustment may result in a negative adjustment (decrease) or positive adjustment (increase) of the contract rents for one or more unit sizes.
- (iii) To assist in the redetermination of contract rents at each Fifth Year Anniversary, the Contract Administrator may require that the Owner submit to the Contract Administrator a rent comparability study prepared (at the Owner's expense) in accordance with HUD requirements.
- (c) **Mid-term adjustment (discretionary comparability adjustment within 5-year term)**

In addition to the comparability analysis and adjustment of contract rents at the Fifth Year Anniversary, HUD may, at HUD's discretion, require or permit the Contract Administrator to conduct a comparability analysis and adjustment of contract rents ("mid-term adjustment"), one more time within each 5-year period of the Renewal Contract term

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**(d) Adjusting contract rent**

At the time of a fifth year or mid-term comparability adjustment, the Contract Administrator shall make any adjustments in the monthly contract rents, as reasonably determined by the Contract Administrator in accordance with HUD requirements, necessary to set the contract rent for each unit size at comparable rent. Such adjustment may result in a negative adjustment (decrease) or positive adjustment (increase) of the contract rents for one or more unit sizes.

**(3) Procedure for rent adjustments during renewal term**

- (a)** To adjust contract rents during the term of the Renewal Contract (including an OCAF or budget-based adjustment in accordance with section 6b(1), or a fifth year or midterm adjustment in accordance with section 6b(2)), the Contract Administrator shall give the Owner notice with a revised Exhibit A that specifies the adjusted contract rent amounts.
- (b)** The revised Exhibit A shall specify the adjusted contract rent amount for each bedroom size as determined by the Contract Administrator in accordance with this section. The adjustment notice by the Contract Administrator to the Owner shall specify when the adjustment of contract rent is effective.
- (c)** Notice of rent adjustment by the Contract Administrator to the Owner shall automatically constitute an amendment of the Renewal Contract.

**(4) No other adjustments**

Except for contract rent adjustments in accordance with this section, there shall not be any other adjustments of the contract rents during the term of the Renewal Contract. Special adjustments shall not be granted.



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**7 OWNER WARRANTIES**

- a The Owner warrants that it has the legal right to execute the Renewal Contract and to lease dwelling units covered by the contract.
- b The Owner warrants that the rental units to be leased by the Owner under the Renewal Contract are in decent, safe and sanitary condition (as defined and determined in accordance with HUD regulations and procedures), and shall be maintained in such condition during the term of the Renewal Contract.

**8 OWNER TERMINATION NOTICE**

- a Before termination of the Renewal Contract, the Owner shall provide written notice to the Contract Administrator and each assisted family in accordance with HUD requirements.
- b If the Owner fails to provide such notice in accordance with the law and HUD requirements, the Owner may not increase the tenant rent payment for any assisted family until such time as the Owner has provided such notice for the required period.

**9 HUD REQUIREMENTS**

The Renewal Contract shall be construed and administered in accordance with all statutory requirements, and with all HUD regulations and other requirements, including changes in HUD regulations and other requirements during the term of the Renewal Contract. However, any changes in HUD requirements that are inconsistent with the provisions of the Renewal Contract, including the provisions of section 6 (contract rent), shall not be applicable.

**10 STATUTORY CHANGES DURING TERM**

If any statutory change during the term of the Renewal Contract is inconsistent with section 6 of the Renewal Contract, and if HUD determines, and so notifies the Contract Administrator and the Owner, that the Contract Administrator is unable to carry out the provisions of section 6 because of such statutory change, then the Contract Administrator or the Owner may terminate the Renewal Contract upon notice to the other party.

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**11 PHA DEFAULT**

- a** This section 11 of the Renewal Contract applies if the Contract Administrator is a PHA acting as Contract Administrator pursuant to an annual contributions contract ("ACC") between the PHA and HUD. This includes a case where HUD has assigned the Renewal Contract to a PHA Contract Administrator, for the purpose of PHA administration of the Renewal Contract.
- b** If HUD determines that the PHA has committed a material and substantial breach of the PHA's obligation, as Contract Administrator, to make housing assistance payments to the Owner in accordance with the provisions of the Renewal Contract, and that the Owner is not in default of its obligations under the Renewal Contract, HUD shall take any action HUD determines necessary for the continuation of housing assistance payments to the Owner in accordance with the Renewal Contract.

**12 EXCLUSION OF THIRD-PARTY RIGHTS**

- a** The Contract Administrator does not assume any responsibility for injury to, or any liability to, any person injured as a result of the Owner's action or failure to act in connection with the Contract Administrator's implementation of the Renewal Contract, or as a result of any other action or failure to act by the Owner.
- b** The Owner is not the agent of the Contract Administrator or HUD, and the Renewal Contract does not create or affect any relationship between the Contract Administrator or HUD and any lender to the Owner or any suppliers, employees, contractors or subcontractors used by the Owner in connection with implementation of the Renewal Contract.
- c** If the Contract Administrator is a PHA acting as Contract Administrator pursuant to an annual contributions contract ("ACC") between the PHA and HUD, the Contract Administrator is not the agent of HUD, and the Renewal Contract does not create any relationship between HUD and any suppliers, employees, contractors or subcontractors used by the Contract Administrator to carry out functions or responsibilities in connection with contract administration under the ACC.

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**13 WRITTEN NOTICES**

- a** Any notice by the Contract Administrator or the Owner to the other party pursuant to the Renewal Contract shall be given in writing.
- b** A party shall give notice at the other party's address specified in section 1 of the Renewal Contract, or at such other address as the other party has designated by a contract notice. A party gives a notice to the other party by taking steps reasonably required to deliver the notice in ordinary course of business. A party receives notice when the notice is duly delivered at the party's designated address.

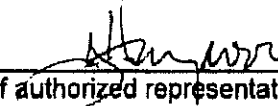
Attachment 11-2

**SIGNATURES**

**Contract administrator (HUD or PHA)**

Name of Contract Administrator

Southwest Housing Compliance Corporation

By:   
Signature of authorized representative

James Hargrove, President and CEO  
Name and official title

Date 11.13.08

**U.S. Department of Housing and Urban Development**

By:   
Signature of authorized representative

Ray Carson, Director, Fort Worth Multifamily Program Center  
Name and official title

Date 11/18/08

**Owner**

Date 11/4/08

Basic Renewal Contract  
Multi-Year Term  
REV-11-05-2007

**EXHIBIT A****IDENTIFICATION OF UNITS ("CONTRACT UNITS")  
BY SIZE AND APPLICABLE CONTRACT RENTS****Section 8 Contract Number: TX16M000183****FHA Project Number (if applicable): N/A****Effective Date of the Rent Increase (if applicable): 09/01/2008**

<b>Number of Contract Units</b>	<b>Number of Bedrooms</b>	<b>Contract Rent</b>	<b>Utility Allowance</b>	<b>Gross Rent</b>
20	1 BR	\$547	\$66	\$613
20	2 BR	\$668	\$78	\$746
30	3 BR	\$819	\$78	\$897
30	4 BR	\$951	\$120	\$1,071

**NOTE:** This Exhibit will be amended by Contract Administrator notice to the Owner to specify adjusted contract rent amounts as determined by the Contract Administrator in accordance with section 6b of the Renewal Contract.

Comments:

Basic Renewal Contract  
Multi-Year Term  
REV-11-05-2007

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## INSTRUCTIONS FOR PREPARATION OF RENEWAL CONTRACT

The following instructions are not part of the Renewal Contract.

Endnote numbers are keyed to references in the text of the Renewal Contract.

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<sup>1</sup> This form of Renewal Contract is to be used for initial and subsequent renewals of an expiring Section 8 project-based HAP contract under the authority of Section 524(a) or 524(b)(1) of MAHRA for a term of two years or more. Attachment 11-1 is to be used for renewals under the authority of Section 524(a) or 524(b)(1) of MAHRA for a renewal term of one year.

This form may not be used for Mark-Up-To-Market Renewals. The HUD prescribed form of Mark-Up-To-Market Renewal Contract must be used for this purpose.

Section 2 of the Renewal Contract specifies the contract term.

<sup>2</sup> To prepare the Renewal Contract for execution by the parties, fill out all contract information in section 1 and section 2.

<sup>3</sup> Enter a description of housing that will be covered by the Renewal Contract. The description must clearly identify the Project by providing the Project's name, street address, city, county, state, and zip code, block and lot number (if known), and any other information, necessary to clearly designate the covered Project.

<sup>4</sup> Enter the name of the Contract Administrator that executes the Renewal Contract. If HUD is the Contract Administrator, enter "United States of America – Department of Housing and Urban Development (HUD)". If the Contract Administrator is a public housing agency ("PHA"), enter the full legal name of the PHA.

<sup>5</sup> Enter the full legal name of the Owner. For example: "ABC Corporation, Inc., a Maryland corporation."

<sup>6</sup> The Renewal Contract must be entered before expiration of the Expiring Contract. Enter the date of the first day after expiration of the term of the Expiring Contract.

<sup>7</sup> Enter a whole number of two or more years.

<sup>8</sup> Enter the amount of funding obligated.

<sup>9</sup> Enter a whole number of months.







A Subsidiary of the Housing Authority of the City of Austin

May 27, 2011

Texas Department of Housing & Community Affairs  
Attn: Liz Cline  
221 E. 11<sup>th</sup> St  
Austin, TX 78701

Re: Peoples El Shaddai Village  
TX16M000183

To Whom It May Concern:

The Southwest Housing Compliance Corporation processed a renewal for the units covered by the Housing Assistance Payment (HAP) contract referenced above. The contract renewal date is effective 09/01/2008 and expires on 08/31/2028.

There are approximately 17.10 years remaining in the HAP contract from 08/01/2011 through 08/31/2028 and the current HUD form 92458, rent schedule, has a yearly contract rent potential of \$1,003,800. The estimated remaining value of subsidy payments from 08/01/2011 - 08/31/2028 is \$17,164,980.

If you have any questions, please contact me at 512-474-5332, extension 3150, or [lonniew@hacanet.org](mailto:lonniew@hacanet.org).

Sincerely,

A handwritten signature in blue ink, appearing to read "Lonnie Winton", is written over the word "Sincerely".

Lonnie Winton  
Financial Analyst  
Southwest Housing Compliance Corporation

TEXAS HOUSE OF REPRESENTATIVES



STATE REPRESENTATIVE

*Barbara Mallory Caraway*

DISTRICT 110

June 13, 2011

Robbye Meyer  
Director of Multifamily Finance  
Texas Dept. of Housing & Community Affairs  
P.O. Box 13941  
Austin, Texas 78711-3941

Re: Low Income Housing Tax Credit Application #11124 People's El Shaddai

Dear Ms Meyer:

The purpose of this letter is to challenge points awarded to LIHTC application #11124 People's El Shaddai under the 2011 Qualified Allocation Plan 49.9(a) Selection (5) The Commitment of Development Funding by Governmental Instrumentality.

The application for People's El Shaddai was reviewed by the Dallas City Council on February 23, 2011 and the City Council voted to DENY support for the project. The proposed rehabilitation of an existing LIHTC project is not in keeping with the City's goal to develop new construction of mixed-income housing. The proposed project would extend the life of an existing LIHTC complex for another 30 years and limit the opportunities for new development in the neighborhood.

This particular applicant provided a letter of commitment from an Austin based Housing Corporation, Capital Area Housing Finance Corporation to garner points in the category of Commitment of Development Funding.

I strongly request that TDHCA deduct the 18 points for the Commitment of Development Funding by Governmental Instrumentality given that the Governing Body where the project is located does not support the project.

Additionally, due to the city of Dallas's lack of support for this project, I too would like to register my opposition to application #11124 People's El Shaddai.

Sincerely,

A handwritten signature in black ink that reads "Barbara Mallory Caraway". The signature is written in a cursive style and extends to the right with a long horizontal flourish.

Representative Barbara Mallory Caraway  
Texas House of Representatives  
District 110

CC: Kent Conine, TDHCA Board Chairman  
Michael Gerber, Executive Director  
Mary K. Suhm, Dallas City Manager  
Stephanie Pegues, Dallas City Hall

**From:** [Metz, Owen](#)  
**To:** [Robbye Meyer](#);  
**cc:** [Liz Cline](#); [Raquel Morales](#); [JSpicer@statestreethousing.com](mailto:JSpicer@statestreethousing.com);  
[Moorhouse, Mark](#); [Ostrom, Patrick](#);  
**Subject:** RE: 11124 El Shaddai  
**Date:** Tuesday, June 14, 2011 9:22:47 AM  
**Attachments:** [RE 11124 People"s El Shaddai-Challenge.msg](#)  
[RE 11124 People"s El Shaddai-Challenge.msg](#)  
[11124 Caraway Challenge\\_.pdf](#)

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Good Morning Robbye,

Southwest Housing Compliance Corporation was created by the Housing Authority of the City of Austin, which qualifies it as a Governmental Instrumentality. In addition, per the attached email correspondence with Raquel and Liz it was represented that the 18 points would be awarded if a letter was received from Southwest Housing substantiating the remaining value of the HAP Contract. Further, I understand based on a phone conversation with Liz Cline that the Department has awarded these points to other Applicant(s) based on the same set of facts, which included a similar letter from Southwest Housing stating the remaining value of the HAP Contract and acknowledged that Southwest Housing was created by the City of Austin. We provided the letter from Southwest Housing and all other documentation that was requested by the Department (per the attached email), closed-out the previous challenge from the City of Dallas, and subsequently our scoring notice came out showing 209 points, including the 18 points for the remaining value of the HAP Contract. It was represented and communicated to us on several occasions that the letter from Southwest Housing would clear out the deficiency.

Finally, the following is our response to the attached challenge from Representative Caraway. First, per the above, we are not claiming any points associated with the Capital Area HFC. Second, any opposition was required to be received by April 1, 2011 (and withdrawn by June 1, 2011).

Best,

***Owen C. Metz***

*Senior Development Associate*  
***Dominium Development & Acquisition, LLC***  
*2905 Northwest Blvd, Suite 150*  
*Plymouth, MN 55441*

*763.354.5618 (direct)*  
*920.210.1428 (cell)*

763.249.8712 (fax)

---

**From:** Robbye Meyer [mailto:robbye.meyer@tdhca.state.tx.us]  
**Sent:** Thursday, June 09, 2011 5:54 PM  
**To:** Metz, Owen  
**Cc:** Liz Cline; Raquel Morales  
**Subject:** 11124 El Shaddai

Good Afternoon Owen,

In reviewing your response to the challenge to your El Shaddai application, you did not explain how the Southwest Housing Compliance Corporation would qualify as a Governmental Instrumentality from the Unit of General Local Government in the City of Dallas.

**Robbye G. Meyer**

Director of Multifamily Finance  
Texas Department of Housing and Community Affairs  
221 E. 11th Street | Austin, TX 78701  
Office: 512.475.2213  
Fax: 512.475.0764

**About TDHCA**

The Texas Department of Housing and Community Affairs is the state agency responsible for affordable housing, community services, energy assistance, colonia housing programs, and disaster recovery housing programs. It currently administers over \$3 billion through for-profit, nonprofit, and local government partnerships to deliver local housing and community-based opportunities and assistance to Texans in need. For more information please visit [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us).

# 1400 Belleview, L.P.

June 15, 2011

Email to [michael.gerber@tdhca.state.tx.us](mailto:michael.gerber@tdhca.state.tx.us)

Mr. Michael Gerber, Executive Director  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, TX 78701-2410

RE: TDHCA # 11136 – Sphinx at Lawnview – Challenge to Development Location Points.

Dear Mr. Gerber:

This letter is a challenge to the award of four points to Sphinx at Lawnview for Development Location in a High Opportunity Area. We wish to direct your attention to the following considerations:

1. Sphinx at Lawnview has applied for points under §49.9(a)(16)(E) of the QAP, which permits four points for being located in a high opportunity area as defined in §49.5(d)(3)(D)(i) – (iii). Although the application form clearly states that evidence must be provided behind Volume 4, Tab 16 in order to qualify for the points, the application as published on the TDHCA website does not have any evidence included. The applicant checked the box to indicate that points were sought for being in a “high opportunity area” as described in §49.5(d)(3)(D), but there was no certification included as to which of the following subsections applied:
  - (i) A four story or greater Development with structural parking that is proposed to be located within one-quarter mile of existing major bus transfer centers, regional or local commuter rail transportation stations, and/or Transit Oriented Districts that are accessible to all residents including Persons with Disabilities; or
  - (ii) A Development that is proposed to be located in a census tract which has an AMGI that is higher than the AMGI of the county or place in which the census tract is located as of the first day of the Application Acceptance Period; or
  - (iii) A Development that is proposed in a census tract that has no greater than 10% poverty population according to the most recent census data (these census tracts are designated in the 2011 Housing Tax Credit Site Demographic Characteristics Report).

We believe that the Sphinx at Lawnview does not meet any of the requirements for Development Location points in a high opportunity area.

- 
2. The Sphinx at Lawnview application does not qualify under (i) because the building elevations in Volume 3, Tab 2 of the Application (pages 96 and 97) clearly show that all buildings are only one story, as does the site plan (page 91). There also appears to be no structural parking.

## 1400 Belleview, L.P.

Although the application claims that there will be 32 detached garage spaces, such garages do not appear to be shown on the site plan, and no architectural drawings were provided showing the garages.

3. The Sphinx at Lawnview application fails to qualify under (ii) because the demographic information provided behind Volume 4, Tab 18 clearly shows that the AMGI for the project's census tract (\$31,966) is not greater than the AMGI for Dallas County (\$49,062).
4. The Sphinx at Lawnview application fails to qualify under (iii) because the demographic information provided behind Volume 4, Tab 18 clearly shows that project's census tract does not have no greater than 10% poverty population. See the column entitled "Eligible for Poverty <10% Points" which indicated "No."

The application for Sphinx at Lawnview did not provide any evidence of qualification under §49.5(d)(3)(D), although the box was checked in Volume 4, Tab 16 and the points were claimed in the Applicant Self-Score. Indeed, all of the evidence needed to refute the claim of points is included within the application. For this reason, we request that the claim of points be denied.

Thank you for your consideration of this challenge.

Sincerely,



Kristian Teleki  
Senior Vice President

CC: Raquel Morales – 9% Housing Tax Credit Administrator

May 13, 2011

Robbye Meyer (via overnight & email [robbye.meyer@tdhca.state.tx.us](mailto:robbye.meyer@tdhca.state.tx.us))  
Texas Department of Housing & Community Affairs  
221 East 11th Street  
Austin, Texas 78701-2410

Re: Application Challenge – Villas of Giddings; TDHCA #11140

Dear Robbye:

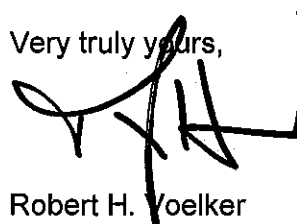
This law firm has been retained by a client to present the enclosed Application Challenge to the Texas Department of Housing & Community Affairs with respect to the 2011 low income housing tax credit allocations. This Challenge is pursuant to Section 49.10(e) of the 2011 Qualified Allocation Plan.

As you will see from the enclosed detailed materials, the applicant requested points for being in a census tract where no other existing same type developments were purported to exist; however, the Reference Manual clearly indicates that a development of the same type does exist in this census tract such that the points should not be awarded.

Please consider these materials in connection with finalizing the scoring of the applications in this Region, and place these materials in the applicant's file for review by the TDHCA Board as allocations are finalized and approved.

Please feel free to call me if you have any questions.

Very truly yours,



Robert H. Voelker

c: Raquel Morales (via email [Raquel.morales@tdhca.state.tx.us](mailto:Raquel.morales@tdhca.state.tx.us))

Enclosures



# Application Challenges

## Villas of Giddings – Giddings, TX

TDHCA # 11140

### Volume 4 Tab 18 – Developments in Census Tracts with No Other Existing Same Type Developments Supported by Tax Credits (4 Points)

According to page 74 of the HTC Procedures Manual, a Development is eligible for 4 points “if there are no other existing housing tax credit Developments in the census tract that serve the same population as the proposed Development”. The Villas at Giddings, a proposed family development to be located in Giddings, Lee County Texas in census tract 42887980400, has claimed 4 points in this category. However, a family project supported by tax credits, Windmill Apartments, was previously awarded tax credits in this particular census tract, and according to the *2011 Housing Tax Credit Site Demographic Characteristics Report* in the *Reference Manual* the census tract where this project is proposed in is not eligible for points in this category for family (General) projects. Therefore, Villas of Giddings should not be awarded the 4 points they have claimed in their application self score for Developments in Census Tracts with No Other Existing Same Type Developments Supported by Tax Credits. Please see Exhibit A for documentation supporting this challenge of the points claimed in Volume 4 Tab 18.

05-16-11 11:10:36 RCVD

# EXHIBIT A

## Volume 4 Tab 18 – Previous Projects in Census Tract

- Page 74 of the HTC Procedures Manual
- HTC Site Demographic Characteristics
- Map of Census Tract for Villas of Giddings

the location of the Development Site identified; the map must indicate the complete 11-digit census tract number.

- Provide evidence that the proposed Development is located in an Urban Core on a site where the proposed use is not prohibited by the Unit of General Local Government via ordinance or regulation.
- The proposed Development is located in a high opportunity area as identified in §49.5(d)(2)(D)(i)-(iii) of the QAP.

❖ **Volume 4, Tab 17. (V4 T17) Economic Development Initiatives (Maximum 4 points)**

**Points may be awarded to Developments located in one of the following areas provided that not more than 3 Tax Credit Developments have been awarded in the area in the last 7 years, as of December 20, 2010:**

- Designated State or Federal Empowerment/Enterprise Zone, Urban Enterprise Community, or Urban Enhanced Enterprise Community
  - Submit a letter and a map of the designated zone or community from a city/county official. The letter and map must:
    - Verify that the proposed Development is located within the designated zone or community; and
    - Not be older than June 20, 2010.
  - The appropriate designation should be noted on the *Volume 3, Tab 3 Site Information*.
- An area that has received an award within the past three years (as of December 20, 2010) from state or federally funded economic development initiatives approved by the Department. Examples of acceptable initiatives are the Texas Capital Fund, Texas or Federal Enterprise Zone Fund, Texas Leverage Fund, Industrial Revenue Bond Program, Rural Business Enterprise Grants, Certified Development Company Loans or Grants, and broad regional transportation initiatives targeted to expanding economic development.
- An Economically Distressed Area; a Colonia; or a Difficult Development Area (DDA) as designated by the Secretary of HUD at the time of Application submission. See the 2011 Housing Tax Credits Site Demographics Characteristics Report for the qualifying census tracts.

In order to qualify for these points, the Application must include evidence of the award, provided by the funding entity, including receipt of funds to the area by evidence of a map of the designated area for such funding and documentation of the recipient of the award of funds or a letter from the entity granting such funds stating that funds were awarded in the designated area.

❖ **Volume 4, Tab 18. (V4 T18) Developments in Census Tracts with No Other Existing Same Type Developments Supported by Tax Credits (Maximum 4 points)**

Provide a census tract map, indicating the full 11-digit census tract number, with the location of the Development Site identified.

- A Development is eligible if there are no other existing housing tax credit Developments in the census tract that serve the same population as the proposed Development. Refer to the *2011 Housing Tax Credit Site Demographic Characteristics Report* in the *Reference Manual* to determine the eligibility of a census tract, based on the population the proposed Development will serve.



# 2011 Housing Tax Credit Site Demographic Characteristics as of February 17, 2011

## Tract Level - Sorted by County then Tract

Tract Data Source: U.S. Census 2000

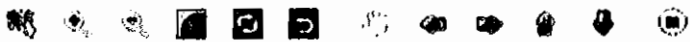
The complete tract identifier used by the Census Bureau is provided below (i.e. 48001950600). The first five digits are the state and county code. The remaining six digits are the tract code. Often in general use, only the tract code is shown with a decimal prior to the final two digits. For example, the above referenced tract would be shown as 9506.00.

Applicants may petition TDHCA to update the unit concentration data if they believe that the number of HTC units in the tract is in error. Such petition must be provided to Jason Burr via email at [jason.burr@tdhca.state.tx.us](mailto:jason.burr@tdhca.state.tx.us) or at fax at (512) 475-0784 prior to the commencement of the pre-application submission period for HTC applications. The results of such petitions will be posted on the HTC application updates portion of the website at <http://www.tdhca.state.tx.us/multifamily/hk/index.htm> and any changes to the area designations will be e-mailed to the applicant contact e-mail addresses as listed in the application.

**Notes:**

- (1) QAP §49.9(a)(16)(A), Tract MFI > County MFI Points - If "Yes", the Application is eligible for points pursuant to this section.
- (2) QAP §49.9(a)(16)(C), Developments Outside of Poverty Areas - If "Yes", the Application is eligible for points pursuant to this section.
- (3) QAP §49.9(a)(18), Developments Located in Census Tracts with No Other Same Type HTC Developments - If Development proposes to serve General populations - column says "Yes", the Application is eligible for points pursuant to this section.
- (4) QAP §49.9(a)(18), Developments Located in Census Tracts with No Other Same Type HTC Developments - If Development proposes to serve Elderly populations - column says "Yes", the Application is eligible for points pursuant to this section.
- (5) QAP §49.9(a)(18), Developments Located in Census Tracts with No Other Same Type HTC Developments - If Development proposes to serve Intergenerational populations - column says "Yes", the Application is eligible for points pursuant to this section.
- (6) QAP Ineligibility Item 49.8(2)(C): If "Yes", New Construction Applications are Ineligible for Housing Tax Credits unless the Applicant submits to the Department an approval of the Development referencing this rule in the form of a resolution from the Governing Body of the appropriate municipality or county containing the Development by the required deadlines outlined in the QAP.
- (7) For QAP Ineligibility Item 49.5(d)(1), If "Yes", Application is Ineligible for the 30% Eligible Basis Increase. (February 17, 2011 Version)

Tract ID	County	2000 Tract Median Family Income	2000 County Median Family Income	Eligible for §49.9(a)(16)(A) Tract MFI > County MFI Points (1)	2000 Tract Population	2000 Tract Poverty Population	Eligible for Poverty < 10% Points? (2)	Eligible for §49.9(a)(18)? If proposed to serve General (3)	Eligible for §49.9(a)(18)? If proposed to serve Elderly (4)	Eligible for §49.9(a)(18)? If proposed to serve Intergenerational (5)	Ineligible Tract? (6)	Ineligible For 30% Basis Increase? (7)	HTC Units/Occupied Housing Unit
48287980400	Lee	38024	42073	No	5778	767	No	No	Yes	No	No	No	1.31%



2009 Information	
Street Address	298 OAKBEND LN
City Name	GIDDINGS
State Abbr	TX
Zip Code	78942
MSA/MD Code	NA
State Code	48
County Code	287
Tract Code	9804.00

Fig 12

[Get Census Demographic](#)  
[Print Map](#)

**Legend**

- Highway
- Tract
- Street

Note: Click the map -- Re-center Map



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**John C. Shackelford**  
Also Admitted in Florida and  
Georgia  
Direct 214.780.1414  
jshack@shacklaw.net

May 25, 2011

**Via Email**

Robbye G. Meyer  
Director of Multifamily Finance  
Texas Department of Housing and Community Affairs  
221 E. 11<sup>th</sup> Street  
Austin, TX 78701

RE: Response to Application Challenge; Villas of Giddings; TDHCA No. 11140  
Our File No. 50449.1

Dear Ms. Meyer:

This law firm represents GS Old Denton Housing, LP (“Owner”) and I have been requested by Kelly Garrett to respond to the challenge made by Robert H. Voelker on May 13, 2011 regarding Villas of Giddings (“Project”).

Mr. Voelker challenges the eligibility of the Project to receive 4 points for being a development in a census tract with no other existing same type developments supported by tax credits. To support his challenge, Mr. Voelker cites the language from page 74 of the HTC Procedures Manual which provides, “A Development is eligible if there are no other existing housing tax credit Developments in the census tract that serves the same population as the proposed Development.” No one disputes that the Project is a proposed family development to be located in Giddings, Lee County, Texas, in census tract 42887980400 and that there is an existing family project supported by tax credits allocated in 2001 known as Windmill Apartments (herein so called) located in the same census tract.

It is the position of Owner that Mr. Voelker has mistakenly interpreted the following language “same population as the proposed Development.” His interpretation is overly broad and conveniently compromises the meaning of the words “same population” to a definition that would prohibit any family development regardless of the actual population served, with its own particular and distinguishable characteristics, from being eligible for the 4 points given for a development in this category.

The Project contemplated is a single-family project consisting of solely three and four bedroom houses. The population that will be served by the Project will be families comprised by several persons and thus constituting a larger family unit and necessitating their need for a three bedroom or four bedroom house. In contrast, the Windmill Apartments is an apartment complex

Ms. Robbye Meyer  
May 25, 2011 – Page 2

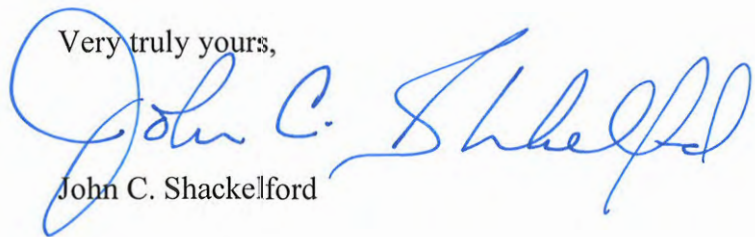
comprised of only one and two bedroom units. The population served by Windmill Apartments is dramatically different from the population that will be served by the Project. The limited number of bedrooms clearly mandates a population served that consists of much smaller family units.

It is our position that the Project and the Windmill Apartments do not serve the “same population”, and to claim otherwise is grossly overgeneralizing the nature of each development.

As you know, a Deficiency Notice was sent to Owner on April 12, 2011 and this issue was cited as a deficiency. Owner responded to the Deficiency Notice on April 14, 2011 and the Department has taken no further action with respect to Owner’s application for the Project. I am hopeful upon further review of this matter that you and Raquel Morales will conclude that the Project and the Windmill Apartments do not serve the “same population” and therefore the Project is eligible for receiving 4 points for being in a census tract with no other existing same type developments supported by tax credits.

Thank you for your consideration in this matter.

Very truly yours,



John C. Shackelford

JCS/klm

cc: Raquel Morales (via email)  
Kelly Garrett (via email)  
Dru Childre (via email)

**MUNSCH HARDT  
KOPF & HARR PC**  
ATTORNEYS & COUNSELORS  
Dallas | Houston | Austin

3800 Lincoln Plaza  
500 N. Akard Street  
Dallas, Texas 75201-6659  
Main 214.855.7500  
Fax 214.855.7584  
munsch.com

Direct Dial 214.855.7594  
Direct Fax 214.978.4379  
rvoelker@munsch.com

June 15, 2011

Robbye Meyer (via overnight & email [robbye.meyer@tdhca.state.tx.us](mailto:robbye.meyer@tdhca.state.tx.us))  
Texas Department of Housing & Community Affairs  
221 East 11th Street  
Austin, Texas 78701-2410

Re: Additional Application Challenge – Villas of Giddings; TDHCA #11140

Dear Robbye:

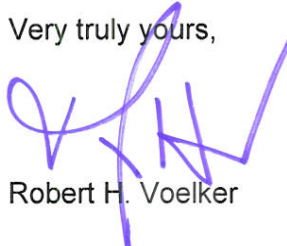
This law firm has been retained by a client to present the enclosed additional Application Challenge to the Texas Department of Housing & Community Affairs with respect to the 2011 low income housing tax credit allocations. This Challenge is pursuant to Section 49.10(e) of the 2011 Qualified Allocation Plan.

As you will see from the enclosed detailed materials, the applicant stated that it would receive HOME funds with a match. However, the source of the matching funds was not identified, no firm commitment for such matching funds was provided, and the apparent source of the match is probably ineligible under the HOME Procedures Manual.

Please consider these materials in connection with finalizing the scoring of the applications in this Region, and place these materials in the applicant's file for review by the TDHCA Board as allocations are finalized and approved.

Please feel free to call me if you have any questions.

Very truly yours,



Robert H. Voelker

c: Raquel Morales (via email [Raquel.morales@tdhca.state.tx.us](mailto:Raquel.morales@tdhca.state.tx.us))

Enclosures



## Giddings Challenge II

The LIHTC application submitted by GS Old Denton Housing, L.P. for Villas of Giddings (application #11140) lists HOME Funds as a source and has included a HOME Funds request as part of their LIHTC application. As part of the HOME program requirements (Per the HOME Program Rule at 10 TAC Chapter 553.80), a Match equal to 2% of the HOME award must be provided and Volume 7 TAB 8 MATCHING FUNDS form must be completed and included in the original application to be considered for an award of HOME funds. The required MATCHING FUNDS form provided by TDHCA directs the applicant to "indicate the amount of Match funds provided and the source". As you can see in the VOLUME 7 TAB 8 MATCHING Funds form from the Villas of Giddings original Application (attached as Exhibit A), the form shows that \$36,000 in donated services (namely donated site preparation) will be provided to the project, however, the applicant has not provided the source of the matching funds as required. Furthermore, the VOLUME 7 TAB 8 instructions direct the applicant to "provide supporting documentation" of the matching funds "in the form of firm commitments from the source of the matching funds", yet there was no firm commitment from the fund provider included in the Villas of Giddings application as required. Also, as the donated match is construction related (site preparation), it seems as there is an identity of interest between the match provider who would donate the services and the development owner, as Kelly Garrett is listed as principal of both the project's general contractor (GS Housing Construction, L.P.), as well as the development owner (GS Old Denton Housing, L.P.). Per the Match guidance (page 2 of 32 of the HOME Procedures Manual) if "a construction company (donating sitework) is owned by an individual who is also the owner of the general partner of the partnership that will own and benefit from the development" the donation "would not be considered eligible Match". Without the required match, the application for Villas of Giddings is an incomplete HOME fund application, and per page 5 of 32 of the Application Submission Procedures Manual "Incomplete Applications or improperly bound HOME Applications will not be accepted".

**SECTION 4****Application Submission Procedures Manual**

The Texas Department of Housing and Community Affairs' (the Department) Application Submission Procedures Manual (ASPM) sets forth the basic information needed for filing a Multifamily Development application. This document is meant to serve only as a complementary guide on how to put the Application together. Applicants are encouraged to familiarize themselves with all of the applicable state and federal rules that govern the programs they are applying for.

The Application consists of two parts: electronic submission and unbound items. A complete Volume I, II, III and VII must be submitted (unless an application qualifies for the Abbreviated Application process), as described in this section, for each proposed HOME Development. Incomplete Applications or improperly bound HOME Applications will not be accepted. Other Volumes may be required if an application is also being submitted for other Department programs.

**Electronic Submission of the Uniform Application (Volume I, Volume II and Volume III and VII) must be completed in the manner described in the Application Submission Procedures Manual (ASPM).**

Exhibits shown in *italics* are forms, templates or reference material included on the Department's website and in the Application. Other forms, templates and reference materials required to complete the Application are:

1. "2011 Uniform Application" – Will be referred to as "*Uniform Application*" in the ASPM. Link found at <http://www.tdhca.state.tx.us/multifamily/applications.htm>.
2. "2011 Reference Manual Items" – Will be referred to as "*Reference Manual*" in this ASPM. Link found at <http://www.tdhca.state.tx.us/multifamily/applications.htm>.
3. "2011 Real Estate Analysis Rules and Guidelines (PDF)" – Will be referred to as "*REA Rules*" in the ASPM. Link found at <http://www.tdhca.state.tx.us/rea/>.

**Non-Federal, Below-Market Financing**

Below-market interest rate financing can be used toward HOME MFD applicants' Match obligation. For HOME MFD developments, the market interest rate is defined as the yield on 10-year Treasury notes on the date of application submittal, plus 300 basis points. For example, the 10-year Treasury yield on 11/10/2010 was 2.65%; for an application submitted on this date, the market interest rate would be 5.65%.

In order to calculate Match contributions when below-market financing is utilized, the net present value (NPV) of the interest savings should be calculated, using the market interest rate as the discount rate.

**Example:**

Texas Development Co. received a financing commitment from a non-profit lender to assist in its HOME deal. Texas Development Co. agreed to borrow \$100,000 at 4% interest, with a 30 year term and 30 year amortization. They then submitted a complete HOME MFD application on 11/10/2010. The steps Texas Development Co. should take to calculate their Match contribution from this below-market financing are below:

Loan Amount	\$100,000
Monthly Payment at Market Interest Rate (5.65%)	\$577.24
Monthly Payment at Below-Market Rate (4%)	\$477.42
Interest Savings (per month)	\$99.82
NPV (360 months, 5.65% discount rate)	\$17,292.85

Texas Development Co. can claim \$17,292.85 in Match contribution from its below-market financing commitment.

**Property Tax Abatements**

Match stemming from property tax abatements should be calculated according to the net present value of the taxes foregone by the taxing entity. The discount rate used will be the yield on the Treasury notes with a maturity closest to the number of years the tax abatement is in effect.

**Example:**

Texas Development Co. also received a 10-year property tax abatement from the local appraisal district. The tax abatement will be for \$5,000 per year. The yield on 10-year Treasury notes on 11/10/2010 (Texas Development Co.'s date of application submittal) was 2.65%. Texas Development Co. should calculate Match from the property tax abatement as follows:

Annual Tax Abatement	\$5,000
Term	10 years
Discount Rate (10-year Treasury yield)	2.65%
Net Present Value	\$43,423.07

Texas Development Co.'s eligible match from its property tax abatement is \$43,423.07.

**Donated Services**

Donated services such as those provided by a general contractor, subcontractor or architect (among other service providers) can be considered eligible Match. However, a principal of the contractor, subcontractor, or architect providing the contribution cannot be related to the development owner or member of the development owner.

In order to document this Match in the application, the Applicant must submit, at a minimum, a signed letter from the company committing to provide the Match identifying the value of the donated services that are being committed. Once an award is made, this Match must be documented in a formal service agreement or contractor/subcontractor agreement.

**Example:**

A construction company is willing to donate \$50,000 in sitework to the HOME assisted project. This sitework will be done by the employees of the construction company. The construction company is owned by an individual who is also the owner of the general partner of the partnership that will own and benefit from the development.

*Under this scenario, the \$50,000 donation would not be considered eligible Match.*

<b>VOLUME 7 TAB 8 MATCHING FUNDS</b>
--------------------------------------

Per the HOME Program Rule at 10 TAC §53.80, Match equal to 2% of the HOME award must be provided (except applications awarded under Persons with Disabilities Set-Aside or applications financed with USDA 515 funds). To the extent that Match in the amount of 5% of the HOME award is provided, the interest rate may be adjusted to as low as 0%; otherwise, the interest rate will be as low as 2%.

Indicate the amount of Match funds provided and the source in the appropriate spaces in the table below. Provide supporting documentation in the form of firm commitments from the source of the matching funds. If a property tax abatement is pledged as Match, include a letter from the appropriate appraisal district documenting a specific cash value and duration for the abatement.

TYPE OF MATCH PLEDGED	Pledged Amount	Source of Funds
Non-Federal Grants	\$	
Waived, foregone or deferred fees and charges (ex: debris removal and container fees, tap fees, building permits, other mandatory fees charged by the local municipality) <b>CANNOT INCLUDE DEVELOPER FEES</b>	\$	
Below-Market Financing**	\$	
Property Tax Abatement**	\$	
Donated Non-Professional Labor	\$	
Donated Professional Labor	\$	
Non-Federally Funded Infrastructure	\$	
Rental Value of Donated Use of Site Preparation or Construction Equipment	\$	
Donated Construction Materials	\$	
Donated Site Preparation	\$ 36,000	
Donated Demolition Services	\$	
Donated Real Property	\$	
Total Value of Match Pledged:	\$ 36,000	
Percentage of Project Funds to be Matched (Total Value of Match /Project Funds Requested)	%2.0	

\*Generally, a related party contribution to the development is not considered eligible Match. Please contact the Department for specific examples that are not provided in the following guidance.

\*\*See following page for additional guidance and examples.



Shackelford  
Melton  
McKinley

MF RCV'D Wednesday, June 15, 2011 4:36 PM

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www.shacklaw.net

**John C. Shackelford**  
Also Admitted in Florida and  
Georgia  
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jshack@shacklaw.net

June 15, 2011

Ms. Robbye Meyer  
Director of Multifamily Programs  
Texas Department of Housing  
& Community Affairs  
221 E. 11<sup>th</sup> Street  
Austin, Texas 78701

Re: Application Challenge – The Grove at Elm Park; TDHCA #11163 (the  
“Development”)

Dear Ms. Meyer:

This law firm has been retained to provide this Application Challenge, in accordance with Section 49.10(e) of the 2011 Qualified Action Plan (the “QAP”), for points awarded with respect to The Grove at Elm Park 2011 low income housing tax credit application (the “Application”).

Volume 4, Tab 13 of the Application, a copy of which is attached hereto as Exhibit A, claims 3 points under Section 49.9(a)(13)(D) of the QAP as a new construction development proposed to be located in an area that is part of a Community Revitalization Plan. (See Exhibit B). In support of this position, the Application includes a letter from Tom Martin, Mayor of City of Lubbock, which states that the City of Lubbock’s Consolidated Plan serves as a Community Revitalization Plan, and that the Development is within the area covered by the Community Revitalization Plan. Per our review of the 2009-2013 Consolidated Plan of the City of Lubbock (the “Lubbock Consolidated Plan”), as currently implemented by the City of Lubbock’s 2010-2011 Annual Action Plan (the “Lubbock Action Plan”), the Development is not located within an area covered by a Community Revitalization Plan and does not meet the definitional requirements to claim 3 points under Section 49.9(a)(13)(D) of the QAP for the following reasons:

**I. The Lubbock Consolidated Plan Does Not Qualify as a Community Revitalization Plan**

The Lubbock Consolidated Plan, on its own, does not implement its objectives nor does it specifically target areas for revitalization and, therefore, does not meet the definition of a Community Revitalization Plan.

The QAP defines a Community Revitalization Plan as “A published document under any name, approved and adopted by the local Governing Body or, if the Governing Body has lawfully assigned responsibility for oversight of communication or activities to a body created or sponsored by that Governing Body, the vote of the Governing Body so designated, by ordinance, resolution, or vote that targets specific geographic areas for revitalization and development of residential developments.”

The Lubbock Consolidated Plan, prepared in accordance with the U.S. Department of Housing and Urban Development (“HUD”) regulations, identifies the housing and community development needs and priorities of the City of Lubbock (the “City”) and sets out long-term goals and develops a strategic blueprint for the City to best meet such needs. As part of its strategy, the Lubbock Consolidated Plan sets forth parameters by which areas are to be targeted for revitalization by providing (a) that the City will direct assistance to low to moderate income Block Groups in the City, (b) proposed CDBG Target Areas (See Exhibit C), and (c) that to the extent specific geographic areas have greater needs than other areas in the City, such areas will receive a larger proportionate share of funding. Still, the Lubbock Consolidated Plan only provides proposed target areas and parameters to select the areas to be revitalized. It does not specify geographic areas to be revitalized and developed for residential developments and, accordingly, does not meet the definition of a Community Revitalization Plan under the QAP.

Furthermore, the mere fact that the Development is located in the City and the Lubbock Consolidated Plan’s objectives are the objectives of the entire City does not qualify the Development for the points under Section 49.9(a)(13)(D) of the QAP. Such rationale would undermine the purpose of the points awarded under Section 49.9(a)(13)(D) of the QAP. HUD requires every city to prepare a consolidated plan if it chooses to participate in the Community Development Block Grant, HOME Investment Partnerships or Emergency Shelter Grant and Housing Opportunities for Persons with AIDS programs. If a city’s broadly written HUD mandated consolidated plan constituted a Community Revitalization Plan under the QAP, then every development located in a city with a consolidated plan would automatically qualify for these points when the clear intent is to reward only those developments located in the areas specifically targeted to be revitalized.

## **II. Development Not Located in a Revitalization Area Under the Lubbock Consolidated Plan**

Assuming, *in arguendo*, the Lubbock Consolidated Plan constitutes a Community Revitalization Plan under the QAP, the Application still does not qualify for the points under Section 49.9(a)(13)(D) of the QAP because the location of the Development

identified in the Application is not located in the proposed CDBG Target Areas identified in the Lubbock Consolidated Plan.

To claim the points under Section 49.9(a)(13)(D) of the QAP, the Development for new construction must be located in an area that is part of a plan that targets specific geographic areas for revitalization and development of residential developments. The location of the Development identified in the Application is at the southwest corner of the intersection of 34<sup>th</sup> Street and Milwaukee Avenue (See Exhibit D), which is not located within the specific geographic areas designated for revitalization and development of residential developments under the Lubbock Consolidated Plan. Moreover, the Development is not even located in the areas proposed as CDBG Target Areas under the Lubbock Consolidated Plan (See Exhibit C).

With the Development not located in an area under the Lubbock Consolidated Plan that targets specific geographic areas for revitalization and development of residential developments, then assuming, *in arguendo*, that the Lubbock Consolidated Plan constitutes a Community Revitalization Plan, the Development still does not qualify for the points under Section 49.9(a)(13)(D) of the QAP.

### **III. Development Not Located in Revitalization Area Under the Lubbock Action Plan**

As required annually by HUD, a consolidated plan is implemented only by an action plan adopted by the local governing body which identifies the resources that will be used in the upcoming year to address the consolidated plan's priority objectives and includes the geographic areas assistance will be directed during the ensuing program year.

The Lubbock Consolidated Plan, together with the Lubbock Action Plan, constitute a Community Revitalization Plan under the QAP. The Lubbock Action Plan is the document that implements the broad policies set forth in the Lubbock Consolidated Plan. The Lubbock Action Plan specifies both where the funds go and the areas targeted for revitalization. The current target areas and eligible areas set forth in the Lubbock Action Plan are identified in Exhibit E attached hereto.

The Development is not only outside the broader area designated in the Lubbock Consolidated Plan as above stated in Section II., but it is clearly and unquestionably outside the current target areas and eligible areas set forth in the Lubbock Action Plan. The Grove at Elm Park is located at the southwest corner of the intersection of 34<sup>th</sup> Street and Milwaukee Avenue, in the western portion of the City (See Exhibit D). According to the Lubbock Action Plan, the CDBG Eligible Area identified in the Lubbock Action Plan includes only the northwest corner of the intersection of 34<sup>th</sup> Street and Milwaukee Avenue, and not the other 3 corners of the intersection. Furthermore, the location of the

Grove at Elm Park is not located in any of the CDBG Target Areas set forth in the Lubbock Action Plan.

To summarize this argument, the Lubbock Action Plan, together with the Lubbock Consolidated Plan, does constitute a Community Revitalization Plan, but the Development is not located within the boundaries of the area targeted in the Lubbock Action Plan.

#### **IV. No Evidence of Ordinance, Resolution or Specific Vote Included in the Application**

Pursuant to the instructions in the 2011 low income housing tax credit application, to claim the points under Section 49.9(a)(13)(D) of the QAP the applicant could submit, "A letter from the Appropriate Local Official stating there is a Community Revitalization Plan in effect and the Development is within the area covered by the plan." (See Exhibit A). In addition, Page 72 of the 2011 HTC Procedure Manual requires "evidence that the Community Revitalization Plan has been adopted by the local Governing Body by ordinance, resolution or specific vote." (See Exhibit F). No such ordinance, resolution or specific vote was included in the Application.

Although the letter from the Appropriate Local Official was included in the Application, evidence that the Community Revitalization Plan has been adopted by the local Governing Body by ordinance, resolution or specific vote has not be included in the Application (See Exhibit A). Failure to include evidence that the Community Revitalization Plan has been adopted by the local Governing Body by ordinance, resolution or specific vote in the application is not an administrative deficiency that can be cured. Pursuant to Section 49.7(a)(2) of the QAP, "For exhibits and other information required under §49.9 of this chapter (relating to Selection Criteria) not originally submitted in the Application (i.e. Community Revitalization Plan or letter from Appropriate Local Official missing entirely from the Application) staff will not award points for that item, even if points were requested in the Applicant's Self Scoring Form." (See Exhibit G).

Since no evidence that an ordinance, resolution or specific vote approving the Community Revitalization Plan was included in the Application, we further request that the 3 points awarded under the Application in relation to Section 49.9(a)(13)(D) of the QAP be deducted.

For the foregoing reasons, we respectfully request the 3 points awarded under the Application with regard to Section 49.9(a)(13)(D) of the QAP be deducted.



Ms. Robbye Meyer  
June 15, 2011  
Page 5

MF RCVD Wednesday, June 15, 2011 4:36 PM

Should you have any questions, please do not hesitate to contact me at (214) 780-1414 or [jshack@shacklaw.net](mailto:jshack@shacklaw.net).

Sincerely,

A handwritten signature in blue ink that reads "John C. Shackelford". The signature is written in a cursive style with a large initial "J".

John C. Shackelford, Esq.

cc: Raquel Morales

Exhibit A

# Volume Four

## Tab 13

Community Revitalization, Historic  
Preservation, or Rehabilitation

Volume 4, Tab 13

COMMUNITY REVITALIZATION or HISTORIC PRESERVATION (§49.9(a)(13))

The Application proposes:

- Community Revitalization**- the Development includes the use of an Existing Residential Development and proposes any Rehabilitation or any Reconstruction that is part of a Community Revitalization Plan. (§42(m)(1)(C)(iii))

Evidence to be provided to satisfy this requirement:

- Volume 2, Tab 1, Part B- 2011 Existing Residential Development Certification Form is present in Volume 2, and is fully executed.*

AND

- A letter from the Appropriate Local Official stating there is a Community Revitalization Plan in effect and the Development is within the area covered by the plan.

If the Applicant is unable to obtain a letter from an Appropriate Local Official, then the following must be provided:

- If the Community Revitalization Plan has specific boundaries, a copy of the Plan adopted by the jurisdiction or its designee and a map showing that the Development is within the area covered by the Community Revitalization Plan.

- Historic Preservation** - The Development includes the use of an existing building that is designated as historic by a federal or state Entity and proposes Rehabilitation (including Reconstruction) or Adaptive Reuse.

Evidence to be provided includes:

- The Development includes\* the use of an existing building that is designated as historic by a federal or state entity and proposes Rehabilitation (including reconstruction) or Adaptive Reuse.
- Proof of the historic designation from the appropriate Governmental Body is included.
- Letter from the Texas Historical Commission indicating the effect of the proposed rehabilitation on historical structure is included.

**\*The Development itself must have the designation; points in this subparagraph are not available for Developments simply located within historic districts or areas that do not have a designation on the building. The Development must include the historic building.**

- Rehabilitation** - Application proposes to build solely Rehabilitation.
- Reconstruction** - Application proposes to build solely Reconstruction.
- Adaptive Reuse** - Application proposes to build solely Adaptive Reuse.

- New Construction** - the Development is New Construction and is proposed to be located in an area that is part of a Community Revitalization Plan.

Evidence to be provided includes one of the following:

Evidence to be provided to satisfy this requirement:

- A letter from the Appropriate Local Official stating there is a Community Revitalization Plan in effect and the Development is within the area covered by the plan.

If the Applicant is unable to obtain a letter from an Appropriate Local Official, then the following must be provided:

- If the Community Revitalization Plan has specific boundaries, a copy of the Plan adopted by the jurisdiction or its designee and a map showing that the Development is within the area covered by the Community Revitalization Plan.



REMEMBER TO PLACE YOUR EVIDENCE BEHIND THIS FORM



Tom Martin ★ Mayor

Certification of Consistency with  
City of Lubbock  
Community Revitalization Plan

February 7, 2011

Ms. Raquel Morales  
9% Housing Tax Credit Administrator  
Texas Department of Housing and Community Affairs  
P.O. Box 13941  
Austin, Texas 78711-3941

I, Tom Martin, Mayor of the City of Lubbock and authorized to act on behalf of the City, certify that the housing development activities proposed by **The Villas at Tuscany**, are consistent with and located within the boundaries covered by the city's concerted Community Revitalization Plan currently in effect, namely the Consolidated Plan.

**The Villas at Tuscany** is located south of 66<sup>th</sup> Street, between Iola Avenue and Milwaukee Avenue, in the City of Lubbock, Lubbock County, Texas. The proposed 2011 LIHTC Application for **The Villas at Tuscany**, contributes to the revitalization objectives of the Consolidated Plan.

Signed on this the 8<sup>th</sup> day of February 2011.

A handwritten signature in cursive script that reads "Tom Martin".

Tom Martin, Mayor

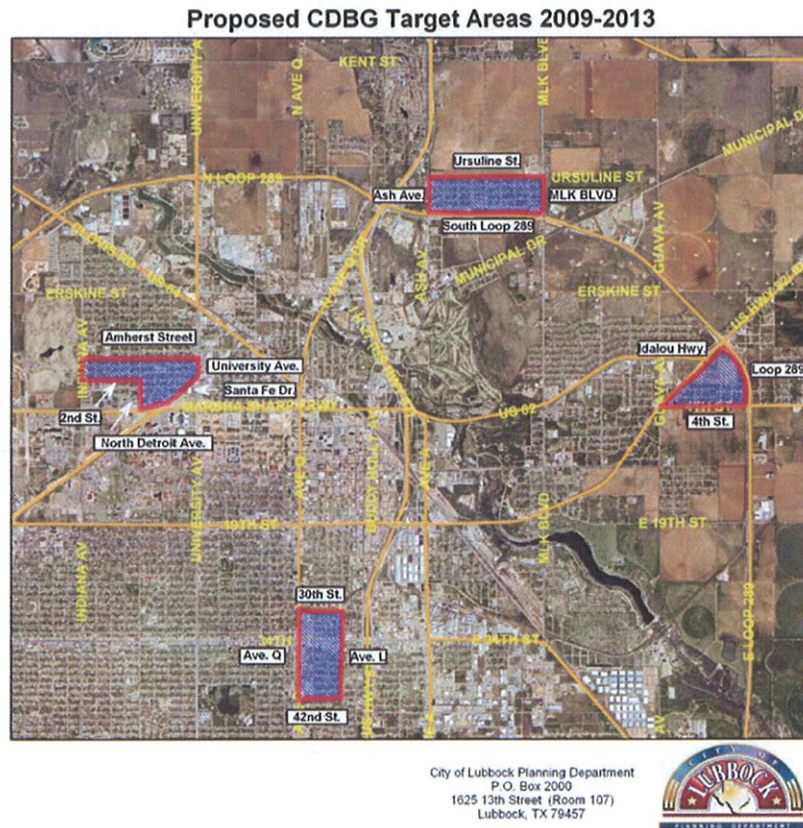
Exhibit B

- schools, charter schools and depending on how characterized could include day care centers; a PTA or PTO would qualify. Should an Applicant elect this option and the Application receives letters in opposition, then 2 points will be subtracted from the score for each letter in opposition, provided that the letter is from an organization serving the community.
- (B) An Application may receive 6 points for a letter of support, from a property owners association created for a master planned community whose boundaries include the Development Site that does not meet the requirements of a Neighborhood Organization for points under paragraph (2) of this subsection.
  - (C) An Application may receive 6 points for a letter of support from a Special Management District, whose boundaries, as of the Full Application Delivery Date as identified in §49.3 of this chapter, include the Development Site and for which there is not a Neighborhood Organization on record with the county or state.
- (12) **Housing Needs Characteristics.** (§42(m)(1)(C)(ii)) Applications may qualify to receive up to 6 points (if the Development Site is located in a Place with a certain Affordable Housing Need Score). Each Application may receive a score if correctly requested in the Self Score form based on objective measures of housing need in the Place where the Development is located. This Affordable Housing Need Score for each Place will be published in the 2011 Site Demographic Characteristics Report. For purposes of this item a Place is defined as the geographic area contained within the boundaries of:
- (A) An incorporated place; or
  - (B) Census Designated Place (CDP) as established by the U.S. Census Bureau for the most recent Decennial Census. For Developments located outside the boundaries of an incorporated place or CDP, the Development shall take up the Place characteristics of the incorporated place or CDP whose boundary is nearest to the Development Site.
- (13) **Community Revitalization, (§42(m)(1)(C)(iii)) Historic Preservation or Rehabilitation.** Applications may qualify to receive 6 points under subparagraphs (A) - (C) of this paragraph or 3 points under subparagraph (D) of this paragraph.
- (A) The Development includes the use of an Existing Residential Development and proposes any Rehabilitation or any Reconstruction that is part of a Community Revitalization Plan. Evidence of the Community Revitalization Plan must be in the form of a letter from the Appropriate Local Official stating there is a Community Revitalization Plan in effect and the Development is within the area covered by the plan or only if the Community Revitalization Plan has specific boundaries, a copy of the plan, adopted by the jurisdiction or its designee and a map showing that the Development is within the area covered by the Community Revitalization Plan; or
  - (B) The Development includes the use of an existing building that is designated as historic by a federal or state Entity and proposes Rehabilitation (including Reconstruction) or Adaptive Reuse. The Development itself must have the designation; points in this subparagraph are not available for Developments simply located within historic districts or areas that do not have a designation on the building. The Development must include the historic building. Evidence will include proof of the historic designation from the appropriate Governmental Entity.
  - (C) Rehabilitation (includes Reconstruction). Applications proposing to build solely Rehabilitation (excluding New Construction of non-residential buildings), solely Reconstruction (excluding New Construction of non-residential buildings), or solely Adaptive Reuse;
  - (D) The Development is New Construction and is proposed to be located in an area that is part of a Community Revitalization Plan (3 points).
- (14) **Pre-application Participation Incentive Points.** (§2306.6704) Applicants that submitted a pre-application during the Pre-Application Acceptance Period and meet the requirements

Exhibit C



**Exhibit VI-3.  
CDBG Target Areas, City of Lubbock, 2009-2013**



Source: City of Lubbock.

**2. Geographic allocation.** The City's primary method of allocating CDBG dollars is to assist low- to moderate-income and special needs populations.

To the extent that specific geographic areas have greater needs than other areas in the City and/or if service and housing organizations are located in certain areas, they will receive a larger proportionate share of the funding. For street and sidewalk improvements, the City will focus on the geographic areas where street, sidewalks, curb cuts and related ADA accommodations are lacking. Finally, to provide affordable single-family housing, the City's dollars will be allocated in areas of new development where affordable housing is lacking and/or infill areas that can accommodate affordable housing.

**3. Obstacles to meeting underserved needs.** The primary obstacle to meeting underserved needs is insufficient financial resources and operating funds. The City will pursue all potential funding resources and funding applications for other resources from other agencies will be supported. Funding resources will continue to be leveraged when possible by the City. When appropriate, funds provided to projects and programs will be in the form of loans and repayments will revolve to serve the greatest possible number of households over time.

Exhibit D

# Volume Two

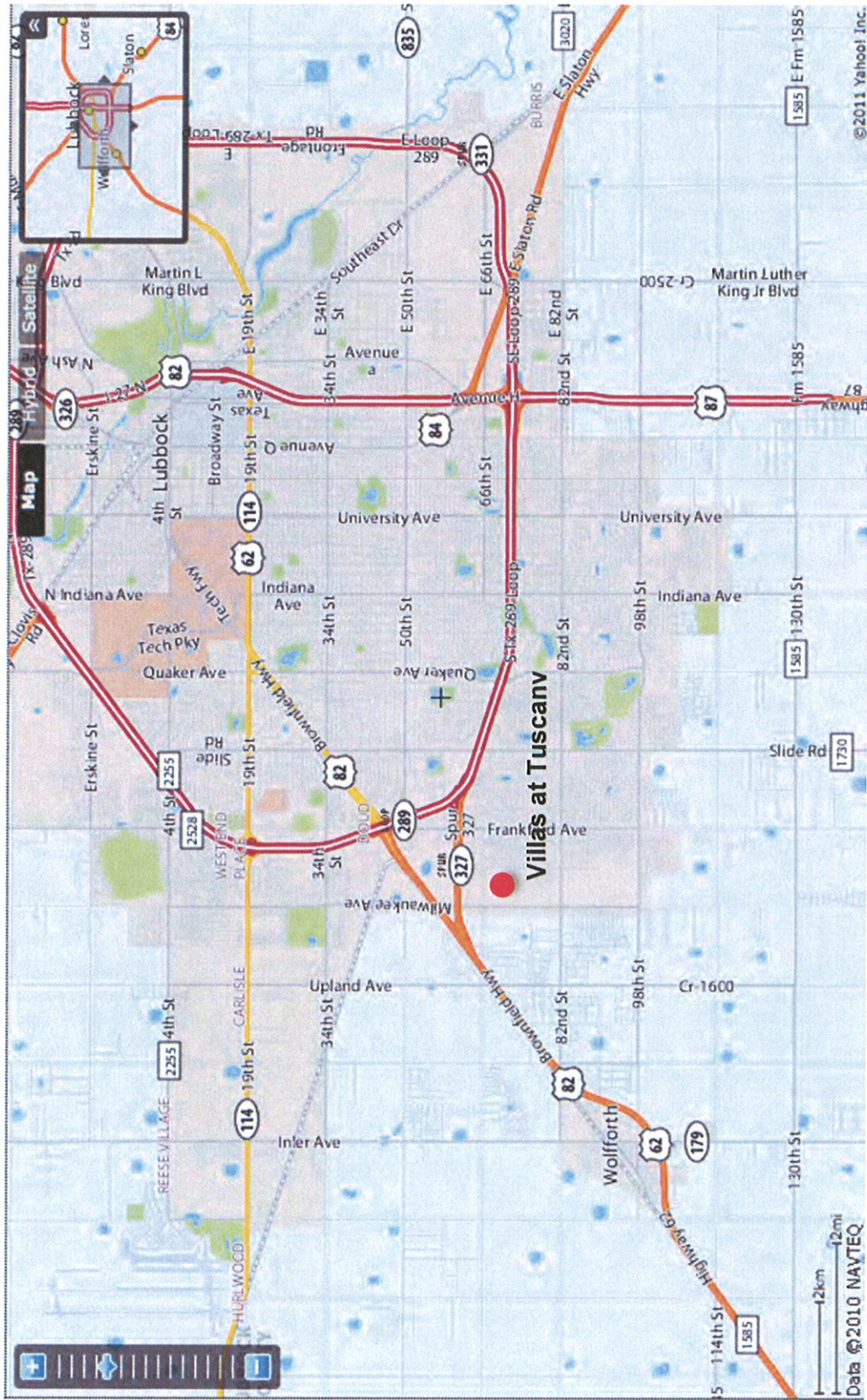
## Tab 1

### Part C: Development Location in relation to Entire City

Map indicating the following within  
two miles of the site:

- Existing HTC or other affordable housing projects
- Retail Centers
- Medical Complexes
- Recreational Facilities
- Educational Facilities
- Large Scale Employment Centers
- Public Transportation Stop Closest to the Site
- Census Tracts

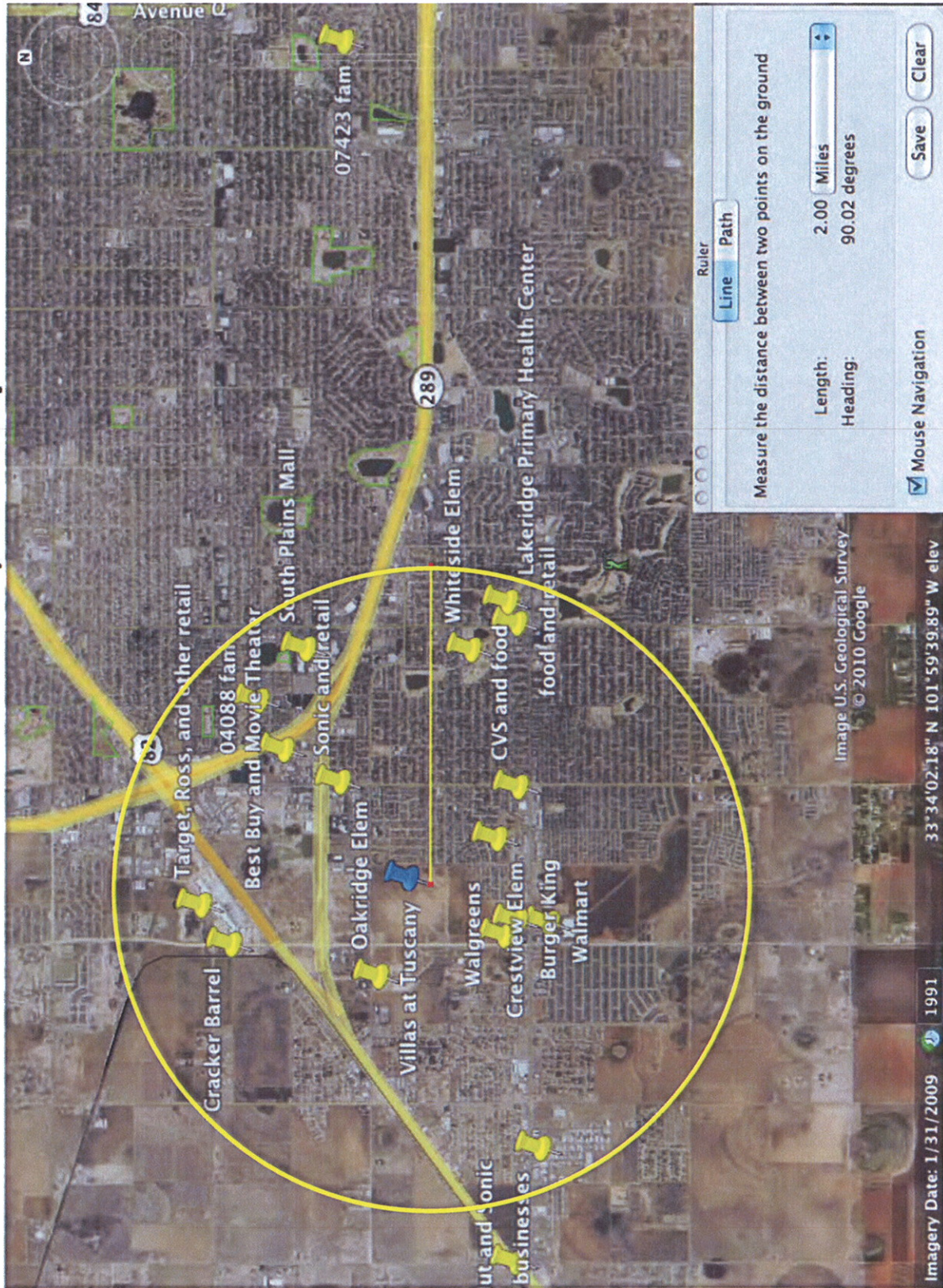
### Vol 2 Tab 1 Part C: Development in Relation to City Villas at Tuscany



Source: Yahoo Maps

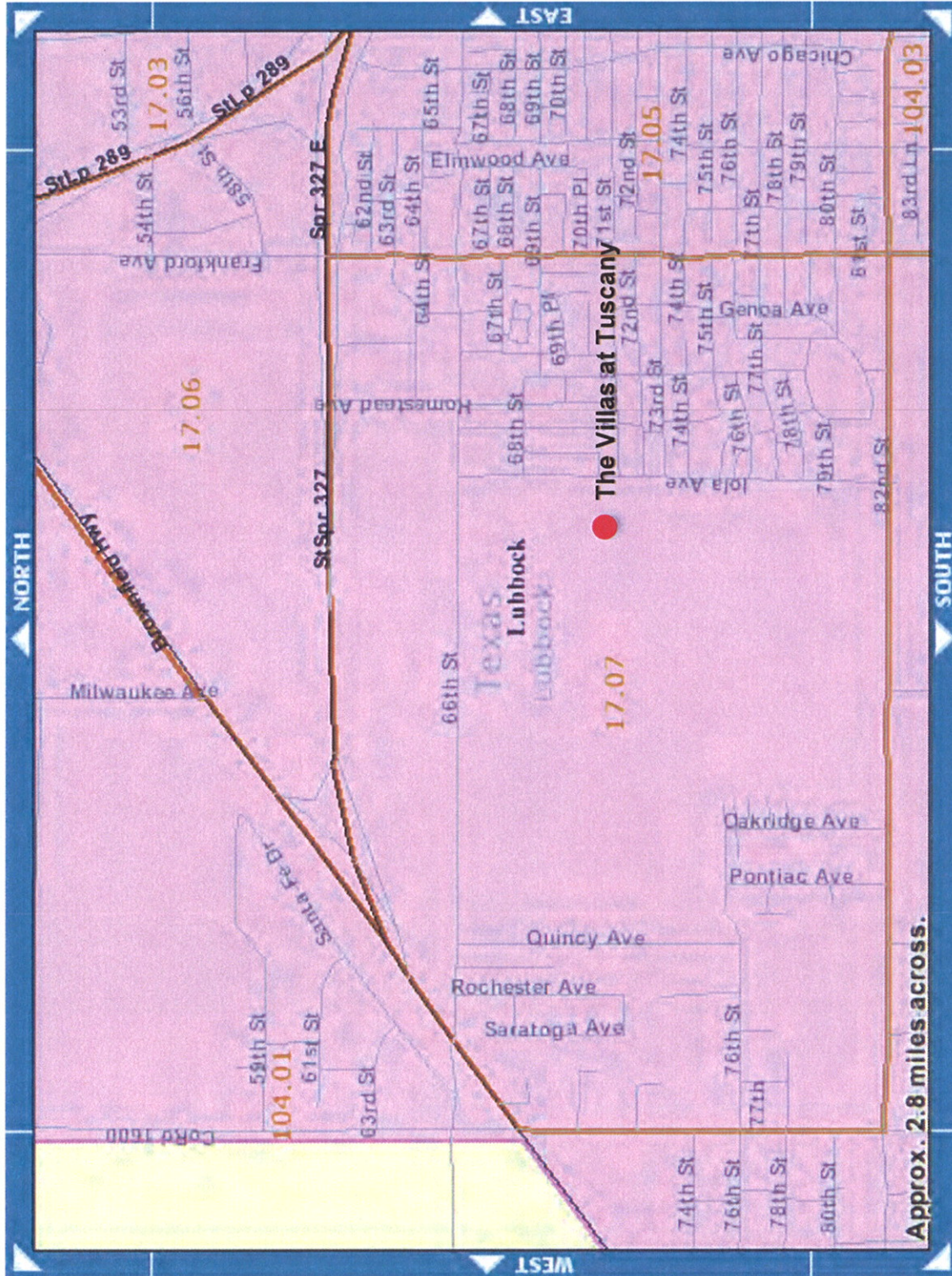
©2011 Yahoo! Inc.

### V2 T1 PC: Villas at Tuscany Facilities Map



Source: Google Earth

**Census Tract Map**  
**The Villas at Tuscany**  
48303001707

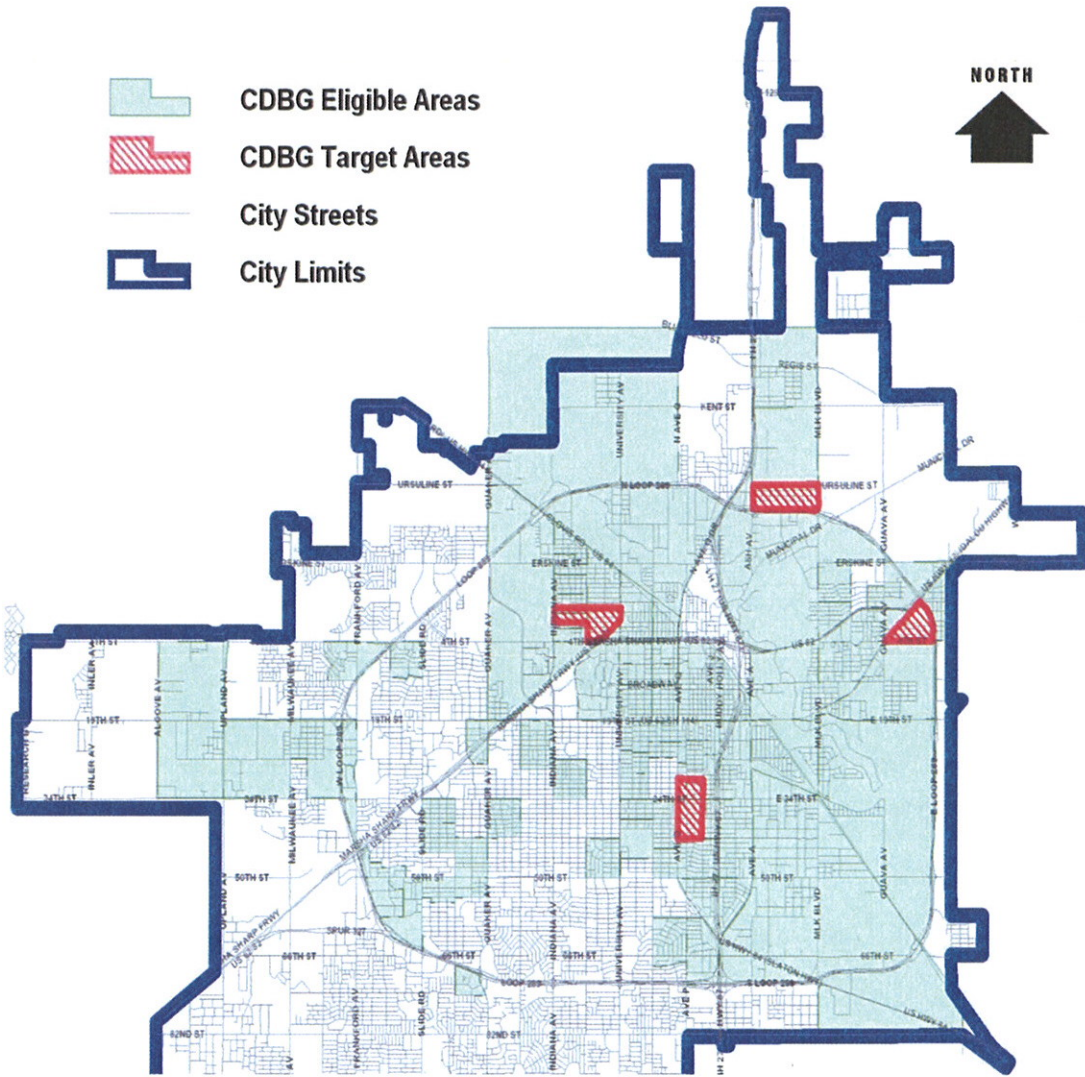


Source: 2000 US Census

Exhibit E

Clearance, Demolition	20 Units	4 Units
Senior and Handicapped Services	125 Persons	25 Persons
Youth Services	250 Persons	50 Persons
Transportation Services	1000 Disabled Persons	200 Disabled Persons
Child Care Services	375 Persons	75 Persons
Health and Dental Care Services	250 Persons	50 Persons
Interim Assistance	25 Persons	5 Persons
Code Enforcement	2500 Persons	500 Persons
Section 108 Loan Payments	N/A	N/A

In keeping with the Consolidated Plan goals the majority of activities will be conducted in areas of higher low-mod household concentration as specified in the Consolidated Plan. The target areas are within the CDBG eligible areas as indicated on the map below.



**Funding Summary**



Exhibit F

## 2011 HTC Procedures Manual

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### ❖ **Volume 4, Tab 13. (V4 T13) Community Revitalization, Historic Preservation or Rehabilitation (Maximum 6 points)**

- *Volume 2, Tab 1, Part B- 2011 Existing Residential Development Certification Form* must be present in Volume 2, and must be fully executed.
  - Community Revitalization
    - Submit a letter from the Appropriate Local Official stating that the Development Site is located within the area covered by the Community Revitalization Plan; or
    - Only if the Community Revitalization Plan has specific boundaries, a copy of the plan, adopted by the jurisdiction or its designee and a map showing that the Development is within the area covered by the Community Revitalization Plan.
    - Submit evidence that the Community Revitalization Plan has been adopted by the local Governing Body by ordinance, resolution or specific vote.
- Historic Preservation
 

Developments proposing Rehabilitation (including Reconstruction) or Adaptive Reuse, which include the use of an existing building that is designated as historic by a federal or state Entity.

  - **The historic building itself must be part of the Development; points in this subparagraph are not available for Developments simply located within historic districts or areas that do not have a designation on the building. The Development must include the historic building.**
  - Submit proof of the historic designation from the appropriate Governmental Entity. As a resource, information regarding state and federal historic designations can be printed from the following site:  
<http://atlas.thc.state.tx.us/index.asp>.
- Developments proposing solely Rehabilitation (includes Reconstruction), solely Reconstruction or solely Adaptive Reuse.
- New Construction Development proposed to be located in an area that is part of a Community Revitalization Plan (this item worth 3 points).

### ❖ **Volume 4, Tab 14. (V4 T14) Pre-Application Incentive Points (Maximum 6 points)**

- To be eligible for Pre-Application Incentive Points the Applicant must be able to affirm the following:
  - The site under control is identical to or is a reduced portion of the site as proposed in the Pre-Application; and
  - The Application has met the Pre-Application Threshold Criteria as determined by the Department; and
  - A certification must be included as part of the exhibit, signed by the Principals who signed the site control at Pre-Application, confirming that they are the same Principals at Application; and
  - The Development must serve the same target population (general or elderly) as indicated in the Pre-Application; and



Exhibit G

- 
- (i) an Applicant or Related Party; and
  - (ii) any Person who is:
    - (I) active in the construction, rehabilitation, ownership, or Control of the proposed Development, including:
      - (-a-) a General Contractor; and
      - (-b-) a Developer; and
      - (-c-) a General Partner, Principal or Affiliate of a General Partner or General Contractor; or
    - (II) employed as a consultant, lobbyist, or attorney by an Applicant or a Related Party.
- (B) During the period beginning on the first date of the Application Acceptance Period and ending on the date the Board makes a final decision with respect to the approval of any Application in that Application Round, an employee of the Department may communicate about any Application with the following Persons:
- (i) the Applicant or a Related Party; and
  - (ii) any Person who is:
    - (I) active in the construction, rehabilitation, ownership, or Control of the proposed Development, including:
      - (-a-) a General Partner or General Contractor; and
      - (-b-) a Developer; and
      - (-c-) a Principal or Affiliate of a General Partner or General Contractor; or
    - (II) employed as a consultant, lobbyist or attorney by the Applicant or a Related Party.
- (C) A communication under paragraph (2) of this subsection may be oral or in any written form, including electronic communication through the Internet, and must satisfy the following conditions:
- (i) the communication must be restricted to technical or administrative matters directly affecting the Application;
  - (ii) the communication must occur or be received on the premises of the Department during established business hours; and
  - (iii) a record of the communication must be maintained and included with the Application for purposes of Board review and must contain the following information:
    - (I) the date, time, and means of communication;
    - (II) the names and position titles of the Persons involved in the communication and, if applicable, the Person's relationship to the Applicant;
    - (III) the subject matter of the communication; and
    - (IV) a summary of any action taken as a result of the communication.
- (D) Notwithstanding subparagraph (A) or (B) of this paragraph, a Board member or Department employee may communicate without restriction with a Person listed in subparagraph (A) or (B) of this paragraph during any Board meeting or public hearing held with respect to the Application, but not during a recess or other non-record portion of the meeting or hearing.
- (E) Subparagraph (A) of this paragraph 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 all matters related to Applications to be considered by the Board will not be discussed.
- (2) **Administrative Deficiency Process.** The purpose of the Administrative Deficiency process is to allow the Applicant an opportunity to provide clarification or correction to information originally submitted in the Application. For example, if exhibits and other information required under §49.8 of this chapter (relating to Threshold Criteria) are not originally submitted in the Application (i.e. financing commitment missing entirely from

the Application) staff will recommend termination of the Application. However, for information missing in part from the Application (i.e. financing commitment is submitted but it is not executed by the lender) staff will request the missing or corrected information via an Administrative Deficiency. For exhibits and other information required under §49.9 of this chapter (relating to Selection Criteria) not originally submitted in the Application (i.e. Community Revitalization Plan or letter from Appropriate Local Official missing entirely from the Application) staff will not award points for that item, even if points were requested in the Applicant's Self Scoring Form. For information missing in part from the Application (i.e. the letter from the Appropriate Local Official does not include all required information) staff will request the missing information via an Administrative Deficiency and award points provided the information submitted in response to the Administrative Deficiency is satisfactory to the Department.

- (A) **Administrative Deficiencies for Applications submitted under the State Housing Credit Ceiling and Rural Rescue Applications.** If an Application contains Administrative Deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies. Because the review for Eligibility, Selection, Threshold Criteria, Quantifiable Community Participation (QCP) and review for financial feasibility by the Department's Real Estate Analysis Division may occur separately, Administrative Deficiency requests may be made during any of these reviews. The Department staff will request clarification or correction in a deficiency notice in the form of an e-mail, or if an e-mail address is not provided in the Application, by facsimile, and a telephone call (only if there has not been confirmation of the receipt of the e-mail within twenty-four (24) hours) to the Applicant and one other party identified by the Applicant in the Application advising that such a request has been transmitted. If Administrative Deficiencies are not clarified or corrected to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then five (5) points shall be deducted from the Selection Criteria score for each additional day the deficiency remains unresolved. If Administrative Deficiencies are not clarified or corrected by 5:00 p.m. on the seventh business day following the date of the deficiency notice, then the Application shall be terminated. The time period for responding to a deficiency notice begins at the start of the 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. An Applicant may not change or supplement any part of an Application in any manner after the filing deadline, 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 as a result of an Administrative Deficiency or by approved amendment of an Application after a commitment or allocation of tax credits as further described in §49.13(b) of this chapter (relating to Board Reevaluation) (§2306.6708). This Administrative Deficiency process applies to requests for information made by the Real Estate Analysis Division during their review. To the extent that the review of Administrative Deficiency documentation during the review alters the score assigned to the Application, Applicants will be re-notified of their final score.
- (B) **Administrative Deficiencies for Tax Exempt Bond Applications.** If an Application contains deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies. Because the review for Eligibility, Threshold Criteria, and review for financial feasibility by the Department's Real Estate Analysis Division may occur separately, Administrative Deficiency requests may be made during any of these



June 15, 2011

Email to: [raquel.morales@tdhca.state.tx.us](mailto:raquel.morales@tdhca.state.tx.us)

Mrs. Raquel Morales, Housing Tax Credit Administrator  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, TX 78701-2410

RE: TDHCA # 11169– Merritt Bryan Station Senior Village;  
Challenge to Quantifiable Community Participation Points

Dear Raquel,

This letter is to register a challenge to the award of twenty-four (24) points for Quantifiable Community Participation to Merritt Bryan Station Senior Village (the “Project”). In that regard, we wish to direct your attention to the following information. Please note that the supporting documentation for each paragraph below is attached under the number of the paragraph.:

1. DBB Old Reliance, LLC is the Seller of the site for the Project (the “Seller”). The Commercial Contract – Unimproved Property provided in the Project’s tax credit application shows that Blake A. Rue is the Managing Member of the Seller. The Special Warranty Deed with Vendor’s Lien into the Seller indicates that the Seller bought the site for the Project on November 23, 2010.
2. The records of the Secretary of State of Texas indicate that the Seller was organized by Blake Rue on November 9, 2010. Blake Andrew Rue is the Registered Agent and Blake Andrew Rue is one of three Managing Members. The other two Managing Members are David Middleton and Britt Hall Benton.
3. The broker representing the Seller is Oryx Commercial Properties, LLC, and the contact address for that broker is [britt@oryxproperties.net](mailto:britt@oryxproperties.net). (see Commercial Contract – Unimproved Property enclosed under attachment 1). A TREC licensee Info Search (copy enclosed) indicates that Britt Hall Benton is a broker. The Secretary of State’s records indicate that Britt H. Benton is the Managing Member of Oryx Commercial Properties, LLC.

Page 2

June 15, 2011

Challenge - TDHCA #11169 – Merritt Bryan Station Senior Village

4. The Project received a letter of support from Old Reliance Neighborhood Association (the “Association”), for which the Project was awarded 24 points. The letter of support (copy attached) shows that Blake Rue is an additional contact for the Association and is a Director of the Association.
5. The records of the Secretary of State of Texas indicate that the Association was organized on November 30, 2010. Blake Rue was the Organizer of the Association and currently serves as the Registered Agent of the Association and is one of three directors. The other two directors are shown to be Abigail Pfister-Rue (who shares an address with Blake Rue) and Britt Benton.
6. The Notice of Old Reliance Neighborhood Association Meeting Agenda for a meeting on February 25, 2011 (less than a week prior to the TDHCA application filing deadline) indicates that of the four individuals physically present, Blake Rue and Britt Benton were two of those persons. The document does not indicate that the persons present are Members. Four persons were also present by proxy. Blake A. Rue signed the document as the Secretary of the Association.
7. On October 16, 2010, the American-Statesman newspaper in Austin ran a story titled “Investors form neighborhood groups to help get public financing for housing”. In that article, Blake Rue and Britt Benton were identified as the organizers of four neighborhood associations during the past three years – in Leander, Hutto, Buda and Schertz. Blake Rue is stated to have said that he discovered a niche business in which he works as a combination advance man and fixer for tax credit developers – first finding sites whose neighbors appear willing to accept low-income senior housing developments, then buying the land through a company and assisting the neighbors in forming an association to give quantifiable community participation support to qualify the proposed project for maximum points.
8. Blake Rue was the Principal of the seller of each of the following TDHCA applications. Colby Dennison was the Principal of the developer of each of these applications. Copies of the earnest money contracts are provided.
  - a. 08253 – Creekside Villas Senior Village – Buda, TX
  - b. 09138 – Belmont Senior Village – Leander, TX
  - c. 10040 – Ashton Senior Village – Schertz, TX
  - d. 11169– Merritt Bryan Station Senior Village – Bryan, TX

Page 3

June 15, 2011

Challenge - TDHCA #11169 – Merritt Bryan Station Senior Village

9. Blake Rue, Britt Benton and Colby Dennison appear to have been collaborating on the tax credit applications in the manner set forth in the American-Statesman since at least 2008. The scheme under which they work is that Blake Rue and Britt Benton find the land, buy the land, create the neighborhood organization, organize the neighborhood organization, are shown as members of the neighborhood organization (**regardless of the fact that they do not reside in the neighborhood**) and vote to support the Colby Dennison tax credit development.
10. Based on the course of conduct, it is clear that Messrs. Rue and Benton are acting as “agents” for Colby Dennison and, as such, their actions violate the TDHCA rules for obtaining points for quantifiable community participation. Further, the certification provided in the tax credit application that the organization was not formed by the applicant or any employee or agent of any applicant “... is not correct.”

Because this association was formed by an agent of the Applicant the organization does not qualify as a “Neighborhood Organization” and the Applicant should not receive the 24 points.

Thank you for this opportunity to bring the circumstances to your attention.

Sincerely,

~~MGROUP HOLDINGS, INC.~~



Mark D. Musemeche

cc: Mrs. Robbye Meyer

Attachments



1



TEXAS ASSOCIATION OF REALTORS®  
**COMMERCIAL CONTRACT - UNIMPROVED PROPERTY**

USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS® IS NOT AUTHORIZED.  
©Texas Association of REALTORS®, Inc. 2010

1. **PARTIES:** Seller agrees to sell and convey to Buyer the Property described in Paragraph 2. Buyer agrees to buy the Property from Seller for the sales price stated in Paragraph 3. The parties to this contract are:

Seller: DBB Old Reliance, LLC  
Address: P.O.Box 302663, Austin, Tx 78703  
Phone: (512) 294-4017 Fax: \_\_\_\_\_  
E-mail: blake@rueinvestments.com

Buyer: Denison Construction, Inc.  
Address: 3701 N. Lamar, Suite 206, Austin, TX 78705  
Phone: (512) 732-1226 Fax: \_\_\_\_\_  
E-mail: colby@denisondevelopment.com

2. **PROPERTY:**

A. "Property" means that real property situated in Brazos County, Texas at Old Reliance Road (address) and that is legally described on the attached Exhibit A or as follows:

*10.05 acres out of 24.96 acres as described in Exhibit "A."*

B. Seller will sell and convey the Property together with:  
(1) all rights, privileges, and appurtenances pertaining to the Property, including Seller's right, title, and interest in any minerals, utilities, adjacent streets, alleys, strips, gores, and rights-of-way;  
(2) Seller's interest in all leases, rents, and security deposits for all or part of the Property; and  
(3) Seller's interest in all licenses and permits related to the Property.

*(Describe any exceptions, reservations, or restrictions in Paragraph 12 or an addendum.)  
(If mineral rights are to be reserved an appropriate addendum should be attached.)*

3. **SALES PRICE:**

A. At or before closing, Buyer will pay the following sales price for the Property:

(1) Cash portion payable by Buyer at closing ..... \$ 1,400,000.00  
(2) Sum of all financing described in Paragraph 4 ..... \$ \_\_\_\_\_  
(3) Sales price (sum of 3A(1) and 3A(2)) ..... \$ 1,400,000.00

(TAR-1802) 1-26-10 Initialed for Identification by Seller B.P. and Buyer CD Page 1 of 13

Commercial Contract - Unimproved Property Concerning Old Relaince Road

B. Adjustment to Sales Price: (Check (1) or (2) only.)

- (1) The sales price will not be adjusted based on a survey.
- (2) The sales price will be adjusted based on the latest survey obtained under Paragraph 6B.
  - (a) The sales price is calculated on the basis of \$ \_\_\_\_\_ per:
    - (i) square foot of  total area  net area.
    - (ii) acre of  total area  net area.
  - (b) "Total area" means all land area within the perimeter boundaries of the Property. "Net area" means total area less any area of the Property within:
    - (i) public roadways;
    - (ii) rights-of-way and easements other than those that directly provide utility services to the Property; and
    - (iii) \_\_\_\_\_
  - (c) If the sales price is adjusted by more than \_\_\_\_\_ % of the stated sales price, either party may terminate this contract by providing written notice to the other party within \_\_\_\_\_ days after the terminating party receives the survey. If neither party terminates this contract or if the variance is less than the stated percentage, the adjustment to the sales price will be made to the cash portion of the sales price payable by Buyer.

4. **FINANCING:** Buyer will finance the portion of the sales price under Paragraph 3A(2) as follows:

- A. Third Party Financing: One or more third party loans in the total amount of \$ \_\_\_\_\_ This contract:
  - (1) is not contingent upon Buyer obtaining third party financing.
  - (2) is contingent upon Buyer obtaining third party financing in accordance with the attached Commercial Contract Financing Addendum.
- B. Assumption: In accordance with the attached Commercial Contract Financing Addendum, Buyer will assume the existing promissory note secured by the Property, which balance at closing will be \$ \_\_\_\_\_
- C. Seller Financing: The delivery of a promissory note and deed of trust from Buyer to Seller under the terms of the attached Commercial Contract Financing Addendum in the amount of \$ \_\_\_\_\_

5. **EARNEST MONEY:**

- A. Not later than 3 days after the effective date, Buyer must deposit \$ 15,000.00 as earnest money with Heritage Title Company Attn: Brenda Hindsman (escrow agent) at 401 Congress Ave. 15th Floor, Austin (address) Texas 78701 (closer). If Buyer fails to timely deposit the earnest money, Seller may terminate this contract or exercise any of Seller's other remedies under Paragraph 15 by providing written notice to Buyer before Buyer deposits the earnest money.
- B. Buyer will deposit an additional amount of \$ \_\_\_\_\_ with the escrow agent to be made part of the earnest money on or before:
  - (i) \_\_\_\_\_ days after Buyer's right to terminate under Paragraph 7B expires; or
  - (ii) \_\_\_\_\_
 Buyer will be in default if Buyer fails to deposit the additional amount required by this Paragraph 5B within 3 days after Seller notifies Buyer that Buyer has not timely deposited the additional amount.
- C. Buyer may instruct the escrow agent to deposit the earnest money in an interest-bearing account at a federally insured financial institution and to credit any interest to Buyer.

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**6. TITLE POLICY AND SURVEY:**

**A. Title Policy:**

- (1) Seller, at Seller's expense, will furnish Buyer an Owner's Policy of Title Insurance (the title policy) issued by Heritage Title Company (title company) in the amount of the sales price, dated at or after closing, insuring Buyer against loss under the title policy, subject only to:
  - (a) those title exceptions permitted by this contract or as may be approved by Buyer in writing; and
  - (b) the standard printed exceptions contained in the promulgated form of title policy unless this contract provides otherwise.
- (2) The standard printed exception as to discrepancies, conflicts, or shortages in area and boundary lines, or any encroachments or protrusions, or any overlapping improvements:
  - (a) will not be amended or deleted from the title policy.
  - (b) will be amended to read "shortages in areas" at the expense of  Buyer  Seller.
- (3) Within 15 days after the effective date, Seller will furnish Buyer a commitment for title insurance (the commitment) including legible copies of recorded documents evidencing title exceptions. Seller authorizes the title company to deliver the commitment and related documents to Buyer at Buyer's address.

**B. Survey: Within 220 days after the effective date:**

- (1) Buyer will obtain a survey of the Property at Buyer's expense and deliver a copy of the survey to Seller. The survey must be made in accordance with the: (i) ALTA/ACSM Land Title Survey standards, or (ii) Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition.
- (2) Seller, at Seller's expense, will furnish Buyer a survey of the Property dated after the effective date. The survey must be made in accordance with the: (i) ALTA/ACSM Land Title Survey standards, or (ii) Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition.
- (3) Seller will deliver to Buyer and the title company a true and correct copy of Seller's most recent survey of the Property along with an affidavit required by the title company for approval of the existing survey. If the existing survey is not acceptable to the title company, Seller, at Seller's expense, will obtain a new or updated survey acceptable to the title company and deliver the acceptable survey to Buyer and the title company within 20 days after Seller receives notice that the existing survey is not acceptable to the title company. The closing date will be extended daily up to 20 days if necessary for Seller to deliver an acceptable survey within the time required. Buyer will reimburse Seller \_\_\_\_\_ (insert amount) of the cost of the new or updated survey at closing, if closing occurs.

**C. Buyer's Objections to the Commitment and Survey:**

- (1) Within 220 days after Buyer receives the commitment, copies of the documents evidencing the title exceptions, and any required survey, Buyer may object in writing to matters disclosed in the items if: (a) the matters disclosed are a restriction upon the Property or constitute a defect or encumbrance to title other than those permitted by this contract or liens that Seller will satisfy at closing or Buyer will assume at closing; or (b) the items show that any part of the Property lies in a special flood hazard area (an "A" or "V" zone as defined by FEMA). If Paragraph 6B(1) applies, Buyer is deemed to receive the survey on the earlier of: (i) the date of Buyer's actual receipt of the survey; or (ii) of the deadline specified in Paragraph 6B.

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- (2) Seller may, but is not obligated to, cure Buyer's timely objections within 15 days after Seller receives the objections. The closing date will be extended as necessary to provide such time to cure the objections. If Seller fails to cure the objections by the time required, Buyer may terminate this contract by providing written notice to Seller within 5 days after the time by which Seller must cure the objections. If Buyer terminates, the earnest money, less any independent consideration under Paragraph 7B(1), will be refunded to Buyer.
- (3) Buyer's failure to timely object or terminate under this Paragraph 6C is a waiver of Buyer's right to object except that Buyer will not waive the requirements in Schedule C of the commitment.

**7. PROPERTY CONDITION:**

A. Present Condition: Buyer accepts the Property in its present condition except that Seller, at Seller's expense, will complete the following before closing: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

B. Feasibility Period: Buyer may terminate this contract for any reason within 220 days after the effective date (feasibility period) by providing Seller written notice of termination. (Check only one box.)

(1) If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer less \$ 100.00 that Seller will retain as independent consideration for Buyer's unrestricted right to terminate. Buyer has tendered the independent consideration to Seller upon payment of the amount specified in Paragraph 5A to the escrow agent. The independent consideration is to be credited to the sales price only upon closing of the sale. If no dollar amount is stated in this Paragraph 7B(1) or if Buyer fails to deposit the earnest money, Buyer will not have the right to terminate under this Paragraph 7B.

(2) Not later than 3 days after the effective date, Buyer must pay Seller \$ \_\_\_\_\_ as independent consideration for Buyer's right to terminate by tendering such amount to Seller or Seller's agent. If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer and Seller will retain the independent consideration. The independent consideration will be credited to the sales price only upon closing of the sale. If no dollar amount is stated in this Paragraph 7B(2) or if Buyer fails to pay the independent consideration, Buyer will not have the right to terminate under this Paragraph 7B.

C. Inspections, Studies, or Assessments:

(1) During the feasibility period, Buyer, at Buyer's expense, may complete or cause to be completed any and all inspections, studies, or assessments of the Property (including all improvements and fixtures) desired by Buyer.

- (2) Buyer must:
  - (a) employ only trained and qualified inspectors and assessors;
  - (b) notify Seller, in advance, of when the inspectors or assessors will be on the Property;
  - (c) abide by any reasonable entry rules or requirements of Seller;
  - (d) not interfere with existing operations or occupants of the Property; and
  - (e) restore the Property to its original condition if altered due to inspections, studies, or assessments that Buyer completes or causes to be completed.

(3) Except for those matters that arise from the negligence of Seller or Seller's agents, Buyer is responsible for any claim, liability, encumbrance, cause of action, and expense resulting from

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Buyer's inspections, studies, or assessments, including any property damage or personal injury. Buyer will indemnify, hold harmless, and defend Seller and Seller's agents against any claim involving a matter for which Buyer is responsible under this paragraph. This paragraph survives termination of this contract.

**D. Property Information:**

- (1) Delivery of Property Information: Within 30 days after the effective date, Seller will deliver to Buyer:
  - (a) copies of all current leases pertaining to the Property, including any modifications, supplements, or amendments to the leases;
  - (b) copies of all notes and deeds of trust against the Property that Buyer will assume or that Seller will not pay in full on or before closing;
  - (c) copies of all previous environmental assessments, geotechnical reports, studies, or analyses made on or relating to the Property;
  - (d) copies property tax statements for the Property for the previous 2 calendar years;
  - (e) plats of the Property;
  - (f) copies of current utility capacity letters from the Property's water and sewer service provider; and
  - (g) \_\_\_\_\_

- (2) Return of Property Information: If this contract terminates for any reason, Buyer will, not later than 10 days after the termination date: (a) return to Seller all those items described in Paragraph 7D(1) that Seller delivered to Buyer and all copies that Buyer made of those items; and (b) deliver copies of all inspection and assessment reports related to the Property that Buyer completed or caused to be completed. This Paragraph 7D(2) survives termination of this contract.

**E. Contracts Affecting Operations:** Until closing, Seller: (1) will operate the Property in the same manner as on the effective date under reasonably prudent business standards; and (2) will not transfer or dispose of any part of the Property, any interest or right in the Property, or any of the personal property or other items described in Paragraph 2B or sold under this contract. After the feasibility period ends, Seller may not enter into, amend, or terminate any other contract that affects the operations of the Property without Buyer's written approval.

**8. LEASES:**

- A. Each written lease Seller is to assign to Buyer under this contract must be in full force and effect according to its terms. Seller may not enter into any new lease, fail to comply with any existing lease, or make any amendment or modification to any existing lease without Buyer's written consent. Seller must disclose, in writing, if any of the following exist at the time Seller provides the leases to the Buyer or subsequently occur before closing:
  - (1) any failure by Seller to comply with Seller's obligations under the leases;
  - (2) any circumstances under any lease that entitle the tenant to terminate the lease or seek any offsets or damages;
  - (3) any advance sums paid by a tenant under any lease;
  - (4) any concessions, bonuses, free rents, rebates, brokerage commissions, or other matters that affect any lease; and
  - (5) any amounts payable under the leases that have been assigned or encumbered, except as security for loan(s) assumed or taken subject to under this contract.

B. Estoppel Certificates: Within NA days after the effective date, Seller will deliver to Buyer estoppel certificates signed not earlier than \_\_\_\_\_ by each tenant that leases space in the Property. The estoppel certificates must include the certifications contained in the current version

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of TAR Form 1938 – Commercial Tenant Estoppel Certificate and any additional information requested by a third party lender providing financing under Paragraph 4 if the third party lender requests such additional information at least 10 days prior to the earliest date that Seller may deliver the signed estoppel certificates.

**9. BROKERS:**

A. The brokers to this sale are:

**Oryx Commercial Properties, LLC**

Principal Broker 0437687 License No.

Agent

2403 Rockmoor Ave.

Address

Austin, Texas 78703

(512) 636-6076

Phone

Fax

britt@oryxproperties.net

E-Mail

**E. Ted Davis & Associates**

Cooperating Broker 0323139 License No.

Agent

50 Briar Hollow Ln.

Address

Houston, Texas, 77027

(713) 552-1920

Phone

Fax

E-Mail

Principal Broker: (Check only one box.)

represents Seller only.

represents Buyer only.

is an intermediary between Seller and Buyer.

Cooperating Broker represents Buyer.

B. Fees: (Check only (1) or (2) below.)

(1) Seller will pay Principal Broker the fee specified by separate written commission agreement between Principal Broker and Seller. Principal Broker will pay Cooperating Broker the fee specified in the Agreement Between Brokers found below the parties' signatures to this contract.

(2) At the closing of this sale, Seller will pay:

Principal Broker a total cash fee of:

3.000 % of the sales price.

Cooperating Broker a total cash fee of:

3.000 % of the sales price.

The cash fees will be paid in Travis County, Texas. Seller authorizes escrow agent to pay the brokers from the Seller's proceeds at closing.

NOTICE: Chapter 62, Texas Property Code, authorizes a broker to secure an earned commission with a lien against the Property.

C. The parties may not amend this Paragraph 9 without the written consent of the brokers affected by the amendment.

**10. CLOSING:**

A. The date of the closing of the sale (closing date) will be on or before the later of:

(1)  \_\_\_\_\_ days after the expiration of the feasibility period.

September 30, 2011 (specific date).

(2) 7 days after objections made under Paragraph 6C have been cured or waived.

B. If either party fails to close by the closing date, the non-defaulting party may exercise the remedies in Paragraph 15.

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C. At closing, Seller will execute and deliver, at Seller's expense, a  general  special warranty deed. The deed must include a vendor's lien if any part of the sales price is financed. The deed must convey good and indefeasible title to the Property and show no exceptions other than those permitted under Paragraph 6 or other provisions of this contract. Seller must convey the Property:  
(1) with no liens, assessments, or other security interests against the Property which will not be satisfied out of the sales price, unless securing loans Buyer assumes;  
(2) without any assumed loans in default; and  
(3) with no persons in possession of any part of the Property as lessees, tenants at sufferance, or trespassers except tenants under the written leases assigned to Buyer under this contract.

D. At closing, Seller, at Seller's expense, will also deliver to Buyer:  
(1) tax statements showing no delinquent taxes on the Property;  
(2) an assignment of all leases to or on the Property;  
(3) to the extent assignable, an assignment to Buyer of any licenses and permits related to the Property;  
(4) evidence that the person executing this contract is legally capable and authorized to bind Seller;  
(5) an affidavit acceptable to the escrow agent stating that Seller is not a foreign person or, if Seller is a foreign person, a written authorization for the escrow agent to: (i) withhold from Seller's proceeds an amount sufficient to comply applicable tax law; and (ii) deliver the amount to the Internal Revenue Service (IRS) together with appropriate tax forms; and  
(6) any notices, statements, certificates, affidavits, releases, and other documents required by this contract, the commitment, or law necessary for the closing of the sale and issuance of the title policy, all of which must be completed by Seller as necessary.

E. At closing, Buyer will:  
(1) pay the sales price in good funds acceptable to the escrow agent;  
(2) deliver evidence that the person executing this contract is legally capable and authorized to bind Buyer;  
(3) sign and send to each tenant in a lease for any part of the Property a written statement that:  
(a) acknowledges Buyer has received and is responsible for the tenant's security deposit; and  
(b) specifies the exact dollar amount of the security deposit;  
(4) sign an assumption of all leases then in effect; and  
(5) execute and deliver any notices, statements, certificates, or other documents required by this contract or law necessary to close the sale.

F. Unless the parties agree otherwise, the closing documents will be as found in the basic forms in the current edition of the State Bar of Texas Real Estate Forms Manual without any additional clauses.

**11. POSSESSION:** Seller will deliver possession of the Property to Buyer upon closing and funding of this sale in its present condition with any repairs Seller is obligated to complete, ordinary wear and tear excepted. Any possession by Buyer before closing or by Seller after closing that is not authorized by a separate written lease agreement is a landlord-tenant at sufferance relationship between the parties.

**12. SPECIAL PROVISIONS:** (If special provisions are contained in an Addendum, identify the Addendum here and reference the Addendum in Paragraph 22D.)



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**13. SALES EXPENSES:**

- A. Seller's Expenses: Seller will pay for the following at or before closing:
  - (1) releases of existing liens, other than those liens assumed by Buyer, including prepayment penalties and recording fees;
  - (2) release of Seller's loan liability, if applicable;
  - (3) tax statements or certificates;
  - (4) preparation of the deed;
  - (5) one-half of any escrow fee;
  - (6) costs to record any documents to cure title objections that Seller must cure; and
  - (7) other expenses that Seller will pay under other provisions of this contract.
  
- B. Buyer's Expenses: Buyer will pay for the following at or before closing:
  - (1) all loan expenses and fees;
  - (2) preparation of any deed of trust;
  - (3) recording fees for the deed and any deed of trust;
  - (4) premiums for flood insurance as may be required by Buyer's lender;
  - (5) one-half of any escrow fee;
  - (6) other expenses that Buyer will pay under other provisions of this contract.

**14. PRORATIONS:**

- A. Prorations:
  - (1) Interest on any assumed loan, taxes, rents, and any expense reimbursements from tenants will be prorated through the closing date.
  - (2) If the amount of ad valorem taxes for the year in which the sale closes is not available on the closing date, taxes will be prorated on the basis of taxes assessed in the previous year. If the taxes for the year in which the sale closes vary from the amount prorated at closing, the parties will adjust the prorations when the tax statements for the year in which the sale closes become available. This Paragraph 14A(2) survives closing.
  - (3) If Buyer assumes a loan or is taking the Property subject to an existing lien, Seller will transfer all reserve deposits held by the lender for the payment of taxes, insurance premiums, and other charges to Buyer at closing and Buyer will reimburse such amounts to Seller by an appropriate adjustment at closing.
  
- B. Rollback Taxes: If Seller changes the use of the Property before closing or if a denial of a special valuation on the Property claimed by Seller results in the assessment of additional taxes, penalties, or interest (assessments) for periods before closing, the assessments will be the obligation of the Seller. If this sale or Buyer's use of the Property after closing results in additional assessments for periods before closing, the assessments will be the obligation of Buyer. This Paragraph 14B survives closing.
  
- C. Rent and Security Deposits: At closing, Seller will tender to Buyer all security deposits and the following advance payments received by Seller for periods after closing: prepaid expenses, advance rental payments, and other advance payments paid by tenants. Rents prorated to one party but received by the other party will be remitted by the recipient to the party to whom it was prorated within 5 days after the rent is received. This Paragraph 14C survives closing.

**15. DEFAULT:**

- A. If Buyer fails to comply with this contract, Buyer is in default and Seller may:
  - (1) terminate this contract and receive the earnest money, as liquidated damages and as Seller's sole remedy; or
  - (2) seek any other relief provided by law. Seller  may  may not enforce specific performance.

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- B. If, without fault, Seller is unable within the time allowed to deliver the estoppel certificates, survey or the commitment, Buyer may:
- (1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7B(1), as liquidated damages and as Buyer's sole remedy; or
  - (2) extend the time for performance up to 15 days and the closing will be extended as necessary.
- C. Except as provided in Paragraph 15B, if Seller fails to comply with this contract, Seller is in default and Buyer may:
- (1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7B(1), as liquidated damages and as Buyer's sole remedy; or
  - (2) enforce specific performance, or seek such other relief as may be provided by law, or both.
- 16. CONDEMNATION:** If before closing, condemnation proceedings are commenced against any part of the Property, Buyer may:
- A. terminate this contract by providing written notice to Seller within 15 days after Buyer is advised of the condemnation proceedings and the earnest money, less any independent consideration paid under Paragraph 7B(1), will be refunded to Buyer; or
  - B. appear and defend in the condemnation proceedings and any award will, at Buyer's election, belong to:
    - (1) Seller and the sales price will be reduced by the same amount; or
    - (2) Buyer and the sales price will not be reduced.
- 17. ATTORNEY'S FEES:** If Buyer, Seller, any broker, or any escrow agent is a prevailing party in any legal proceeding brought under or with relation to this contract or this transaction, such party is entitled to recover from the non-prevailing parties all costs of such proceeding and reasonable attorney's fees. This Paragraph 17 survives termination of this contract.
- 18. ESCROW:**
- A. At closing, the earnest money will be applied first to any cash down payment, then to Buyer's closing costs, and any excess will be refunded to Buyer. If no closing occurs, escrow agent may require payment of unpaid expenses incurred on behalf of the parties and a written release of liability of escrow agent from all parties.
  - B. If one party makes written demand for the earnest money, escrow agent will give notice of the demand by providing to the other party a copy of the demand. If escrow agent does not receive written objection to the demand from the other party within 15 days after the date escrow agent sent the demand to the other party, escrow agent may disburse the earnest money to the party making demand, reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and escrow agent may pay the same to the creditors.
  - C. Escrow agent will deduct any independent consideration under Paragraph 7B(1) before disbursing any earnest money to Buyer and will pay the independent consideration to Seller.
  - D. If escrow agent complies with this Paragraph 18, each party hereby releases escrow agent from all claims related to the disbursal of the earnest money.
  - E. Notices under this Paragraph 18 must be sent by certified mail, return receipt requested. Notices to escrow agent are effective upon receipt by escrow agent.
  - F. Any party who wrongfully fails or refuses to sign a release acceptable to escrow agent within 7 days after receipt of the request will be liable to the other party for liquidated damages in an amount equal to the sum of: (i) three times the amount of the earnest money; (ii) the earnest money; (iii) reasonable attorney's fees; and (iv) all costs of suit.

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G.  Seller  Buyer intend(s) to complete this transaction as a part of an exchange of like-kind properties in accordance with Section 1031 of the Internal Revenue Code, as amended. All expenses in connection with the contemplated exchange will be paid by the exchanging party. The other party will not incur any expense or liability with respect to the exchange. The parties agree to cooperate fully and in good faith to arrange and consummate the exchange so as to comply to the maximum extent feasible with the provisions of Section 1031 of the Internal Revenue Code. The other provisions of this contract will not be affected in the event the contemplated exchange fails to occur.

**19. MATERIAL FACTS:** To the best of Seller's knowledge and belief: *(Check only one box.)*

- A. Seller is not aware of any material defects to the Property except as stated in the attached Property Condition Statement.
- B. Except as otherwise provided in this contract, Seller is not aware of:
  - (1) any subsurface: structures, pits, waste, springs, or improvements;
  - (2) any pending or threatened litigation, condemnation, or assessment affecting the Property;
  - (3) any environmental hazards or conditions that materially affect the Property;
  - (4) whether the Property is or has been used for the storage or disposal of hazardous materials or toxic waste, a dump site or landfill, or any underground tanks or containers;
  - (5) whether radon, asbestos containing materials, urea-formaldehyde foam insulation, lead-based paint, toxic mold (to the extent that it adversely affects the health of ordinary occupants), or other pollutants or contaminants of any nature now exist or ever existed on the Property;
  - (6) any wetlands, as defined by federal or state law or regulation, on the Property;
  - (7) any threatened or endangered species or their habitat on the Property;
  - (8) any present or past infestation of wood-destroying insects in the Property's improvements;
  - (9) any contemplated material changes to the Property or surrounding area that would materially and detrimentally affect the ordinary use of the Property;
  - (10) any condition on the Property that violates any law or ordinance.

*(Describe any exceptions to (1)-(10) in Paragraph 12 or an addendum.)*

**20. NOTICES:** All notices between the parties under this contract must be in writing and are effective when hand-delivered, mailed by certified mail return receipt requested, or sent by facsimile transmission to the parties addresses or facsimile numbers stated in Paragraph 1. The parties will send copies of any notices to the broker representing the party to whom the notices are sent.

- A. Seller also consents to receive any notices by e-mail at Seller's e-mail address stated in Paragraph 1.
- B. Buyer also consents to receive any notices by e-mail at Buyer's e-mail address stated in Paragraph 1.

**21. DISPUTE RESOLUTION:** The parties agree to negotiate in good faith in an effort to resolve any dispute related to this contract that may arise. If the dispute cannot be resolved by negotiation, the parties will submit the dispute to mediation before resorting to arbitration or litigation and will equally share the costs of a mutually acceptable mediator. This paragraph survives termination of this contract. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.

**22. AGREEMENT OF THE PARTIES:**

- A. This contract is binding on the parties, their heirs, executors, representatives, successors, and permitted assigns. This contract is to be construed in accordance with the laws of the State of Texas. If any term or condition of this contract shall be held to be invalid or unenforceable, the remainder of this contract shall not be affected thereby.
- B. This contract contains the entire agreement of the parties and may not be changed except in writing.
- C. If this contract is executed in a number of identical counterparts, each counterpart is an original and all counterparts, collectively, constitute one agreement.

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D. Addenda which are part of this contract are: (Check all that apply.)

- (1) Property Description Exhibit identified in Paragraph 2;
- (2) Commercial Contract Financing Addendum (TAR-1931);
- (3) Commercial Property Condition Statement (TAR-1408);
- (4) Commercial Contract Addendum for Special Provisions (TAR-1940);
- (5) Notice to Purchaser of Real Property in a Water District (MUD);
- (6) Addendum for Coastal Area Property (TAR-1915);
- (7) Addendum for Property Located Seaward of the Gulf Intracoastal Waterway (TAR-1916);
- (8) Information About Brokerage Services; and
- (9) \_\_\_\_\_

(Note: Counsel for the Texas Association of REALTORS® (TAR) has determined that any of the foregoing addenda which are promulgated by the Texas Real Estate Commission (TREC) or published by TAR are appropriate for use with this form.)

E. Buyer  may  may not assign this contract. If Buyer assigns this contract, Buyer will be relieved of any future liability under this contract only if the assignee assumes, in writing, all obligations and liability of Buyer under this contract.

**23. TIME:** Time is of the essence in this contract. The parties require strict compliance with the times for performance. If the last day to perform under a provision of this contract falls on a Saturday, Sunday, or legal holiday, the time for performance is extended until the end of the next day which is not a Saturday, Sunday, or legal holiday.

**24. EFFECTIVE DATE:** The effective date of this contract for the purpose of performance of all obligations is the date the escrow agent receipts this contract after all parties execute this contract.

**25. ADDITIONAL NOTICES:**

- A. Buyer should have an abstract covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a title policy.
- B. If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fees of the district before final execution of this contract.
- C. Notice Required by §13.257, Water Code: "The real property, described below, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned purchaser hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in the notice or at closing of purchase of the real property." The real property is described in Paragraph 2 of this contract.
- D. If the Property adjoins or shares a common boundary with the tidally influenced submerged lands of the state, §33.135 of the Texas Natural Resources Code requires a notice regarding coastal area property to be included as part of this contract.

(TAR-1802) 1-26-10      Initialed for Identification by Seller   E.P.   and Buyer   CD

Commercial Contract - Unimproved Property Concerning Old Reliance Road


- E. If the Property is located seaward of the Gulf Intracoastal Waterway, §61.025, Texas Natural Resources Code, requires a notice regarding the seaward location of the Property to be included as part of this contract.
- F. If the Property is located outside the limits of a municipality, the Property may now or later be included in the extra-territorial jurisdiction (ETJ) of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and ETJ. To determine if the Property is located within a municipality's ETJ, Buyer should contact all municipalities located in the general proximity of the Property for further information.
- G. Brokers are not qualified to perform property inspections, surveys, engineering studies, environmental assessments, or inspections to determine compliance with zoning, governmental regulations, or laws. Buyer should seek experts to perform such services. Buyer should review local building codes, ordinances and other applicable laws to determine their effect on the Property. Selection of inspectors and repairmen is the responsibility of Buyer and not the brokers.


**26. CONTRACT AS OFFER:** The execution of this contract by the first party constitutes an offer to buy or sell the Property. Unless the other party accepts the offer by 5:00 p.m., in the time zone in which the Property is located, on January 6, 2011, the offer will lapse and become null and void.

**READ THIS CONTRACT CAREFULLY.** The brokers and agents make no representation or recommendation as to the legal sufficiency, legal effect, or tax consequences of this document or transaction. **CONSULT** your attorney **BEFORE** signing.

Seller: DDB Old Reliance, LLC Buyer: Denison Construction, Inc.

By: Blake A. Rue By: Colby Denison

By (signature):   
Printed Name: Blake A. Rue  
Title: Managing Member

By (signature):   
Printed Name: Colby Denison  
Title: President

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

By (signature): \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By (signature): \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

RETURN TO:  
ALAMO TITLE COMPANY  
901 S. MOPAC EXPRESSWAY  
BLDG. III, SUITE 100  
AUSTIN, TEXAS 78746-5776

MF RCV'D Wednesday, June 15, 2011 4:30 PM

Doc Bk Vol Pg  
01079595 0R 9961 92

GF# ALAM005164-6  
~~When recorded, please return this deed and tax~~  
~~statements to:~~

Bill & Return to:  
University Title Company  
P.O. Drawer DT  
College Station, Texas 77841

DBB Old Reliance Road, LLC  
3002 Kerbey Lane  
Austin, TX 78703

GF# 102943 HREU

Space above for Recorder's use only

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

**SPECIAL WARRANTY DEED WITH VENDOR'S LIEN  
(VENDOR'S LIEN RESERVED AND ASSIGNED TO THIRD PARTY LENDER)**

STATE OF UTAH )  
 )  
COUNTY OF SANPETE, SS: )

KNOW ALL MEN BY THESE PRESENTS THAT the undersigned, **OLD RELIANCE ROAD, LLC**, a Texas limited liability company (the "Grantor"), of 130 West 300 North, Ephraim, Sanpete County, Utah 84627, in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration paid to the Grantor by the Grantee hereinafter named, the receipt and sufficiency of which is hereby acknowledged, and for the further consideration of the execution and delivery by the Grantee of that certain promissory note of even date herewith in the principal sum of \$970,000.00, payable to the order of David Middleton, as therein specified, providing for acceleration of maturity and for attorney's fees, the payment of which note is secured by the vendor's lien herein retained and is additionally secured by a deed of trust of even date herewith to Thomas H. Daniel, Trustee, has **GRANTED, SOLD AND CONVEYED**, and by these presents does hereby **GRANT, SELL AND CONVEY** unto **DBB OLD RELIANCE, LLC**, a Texas limited liability company (the "Grantee"), whether one or more, of 3002 Kerbey Lane, Austin, Texas 78703, all of the Grantor's right, title and interest in and to the following described real property, to wit:

All that certain tract or parcel of land lying and being situated in the **STEPHEN F. AUSTIN LEAGUE, No. 10, Abstract No. 63**, Bryan, Brazos County, Texas and being part of the 102.545 acre Tract B lying northeast of State Highway No. 6 - East Bypass as described in the Declaration of Trust Capacity of Venture 102 to Keith Chunn, Jr., Successor Trustee, recorded in Volume 3029, Page 139, Official Records of Brazos County, Texas (O.R.B.C.) and being more particularly described by metes and bounds as follows:

COMMENCING: at a 6" cedar post fence corner found marking the original north corner of the said 102.545 acre Tract B, same being a four-way corner between the 25 acre and 50 acre Helen Bailey et al tracts recorded in Volume 2154, Page 336 (O.R.B.C.), the 202.3 acre Richard H. Harrison, III, Trustee remainder tract recorded in Volume 2563, Page 201 (O.R.B.C.), and the 12.91 acre Lot 1, Block 1, Luv Homes Subdivision as recorded in Volume 5683, Page 117 (O.R.B.C.);

THENCE: S 48° 07' 30" E (called S 45° E) along the common line between the beforesaid 102.545 acre tract and the 202.3 acre tract, adjacent to a fence, for a distance of 399.39 feet to a 1/2-inch iron rod set for the POINT OF BEGINNING, from whence a found 1/2-inch iron rod bears N 40° 16' 50" E at a distance of 0.80 feet for reference;

THENCE: S 48° 07' 30" E (called S 45° E) continuing along said common line for a distance of 1732.61 feet to a found 1/2-inch iron rod, said iron rod also being in the northwest margin of a public road commonly known as Old Reliance Road;

THENCE: S 41° 53' 00" W (called S 45° W) along said line of Old Reliance Road for a distance of 774.50 feet to a 1/2-inch iron rod set for corner, from whence a found 1/2-inch iron rod marking the most easterly corner of a 24.496 acre State Highway No. 6 (Earl Rudder Freeway) right-of-way tract as described in the Eminent Domain proceedings of the State of Texas, et al vs. F. W. Wheeler, et al, recorded in Volume 275, Page 727, Brazos County Deed Records (B.C.D.R.) bears S 41° 53' 00" W at a distance of 404.05 feet for reference;

THENCE: N 40° 04' 27" W into the interior of the said 102.545 acre tract, said line also being the northeast line of the 100-foot wide Gulf States Utility Company Easement described in Volume 130, Page 434 (B.C.D.R.); for a distance of 802.17 feet to a 1/2-inch iron rod set for corner;

THENCE: N 49° 45' 27" W continuing along said easement line for a distance of 479.25 feet to a 1/2-inch iron rod set for corner;

THENCE: N 36° 01' 39" E for a distance of 260.57 feet to a 1/2-inch iron rod set for corner;

THENCE: N 49° 43' 10" W for a distance of 200.87 feet to a 1/2-inch iron rod set for corner;

THENCE: S 40° 16' 50" W for a distance of 260.00 feet to a 1/2-inch iron rod set for corner, said iron rod also being in the beforementioned northeast line of the Gulf States Utility Company Easement;

THENCE: N 49° 45' 27" W for a distance of 220.00 feet along said easement to a 1/2-inch iron rod set for corner, said iron rod also being in the southeast line of the beforementioned Lot 1, Block 1, Luv Homes Subdivision;

THENCE: N 40° 16' 50" E (Subdivision call N 43° 28' 57" E) along the southeast line of said Lot 1, Block 1 for a distance of 688.62 feet to the POINT OF BEGINNING and containing 26.241 acres of land, more or less;

**SAVE AND EXCEPT FROM SAID 26.241 ACRES THE FOLLOWING:**

Being all that certain 1.287 acre parcel of land, located in the Stephen F. Austin Survey, Abstract No. 63 in Brazos County and being part of a called 26.241 acre tract from Keith Chunn, Jr., Successor Trustee, pursuant to Declaration of Trust Capacity of Venture 102 to BCS Development Company recorded in Volume 6901, Page 66 of the Official Records of Brazos County, Texas (ORBCT) and being more particularly described as follows:

BEGINNING at a 1/2-iron rod found for the easterly corner of the herin described tract in the existing fenced ROW of Old Reliance Road, said corner being the most easterly corner of the said 26.241 acre tract;

THENCE S 41°53'16" W 774.50 feet along the existing fenced ROW of Old Reliance Road to a 1/2-inch rod found for the most southerly corner of the said 26.241 acre tract;

THENCE N 40°04'27" W 78.98 feet along the southwesterly line of the said 26.241 acre tract to a 1/2" iron rod set for corner;

THENCE N 42°41'05" E 763.54 feet to a 1/2-inch iron rod set in the northeasterly line of the said 26.241 acre tract for the northerly corner of the herin described tract;

THENCE S 48°06'28" E 67.57 feet to the POINT OF BEGINNING and containing 1.287 acres of land more or less;

(the "Property") subject, however, to any and all restrictions, easement, covenants and conditions, if any, relating to the Property filed in the real property records of the County of Brazos, State of Texas, and the matters and instruments identified in Exhibit A attached hereto;

TO HAVE AND TO HOLD the above Property, together with all and singular the rights and appurtenances thereto in anywise belonging, unto the Grantee's, the Grantee's heirs, executors, administrators, successors and/or assigns forever; and the Grantor does hereby bind the Grantor's heirs, executors, administrators, successors and/or assigns to WARRANT AND FOREVER DEFEND all and singular the said Property unto the Grantee, the Grantee's heirs, executors, administrators, successors and/or assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the reservations from and exceptions to conveyance and warranty, but only when the claim is by, through or under Grantor and not otherwise.

But it is expressly agreed that the Vendor's Lien, as well as Superior Title in and to the above Property, is retained against the above Property, premises and improvements until the above described note and all interest thereon are fully paid according to the face, tenor, effect and reading thereof, when this Deed shall become absolute. David Middleton, at the instance and request of the Grantee herein, having advanced and paid in cash to the Grantor herein that portion of the purchase price of the Property as is evidenced by the Note, the Vendor's Lien, together with the Superior Title to the above Property, is retained herein for the benefit of the said Lender and the same are hereby TRANSFERRED AND ASSIGNED to the Lender, its successors and assigns.

Taxes have been prorated as of the date of this Deed. Grantee assumes payment of all ad valorem taxes, standby fees and assessments for the year 2010 and all subsequent years.

EXECUTED this 23 day of November, 2010.

GRANTOR:

OLD RELIANCE ROAD, LLC, a Texas Limited Liability Company

By *Matthew A. Nielson*  
Matthew A. Nielson, Its Manager

Grantee's Address:  
3002 Kerbey Lane  
Austin, TX 78703

**ACKNOWLEDGMENT**

STATE OF UTAH )  
COUNTY OF SANPETE, ss: )

The foregoing instrument was acknowledged before me on the 23rd day of November, 2010, by Matthew A. Nielson, as the Manager of Old Reliance Road, LLC, a Texas limited liability company, on behalf of said company.

IN WITNESS WHEREOF, I have heretunto subscribed my name and affixed my official seal, on the day set forth above.

*Angie Parish*  
Notary Public  
My Commission expires Jan. 29, 2013





**Exhibit A**  
**Reservations from and Exceptions to Conveyance and Warranty**

1. All oil, gas and other minerals, together with the rights of ingress and egress for developing, mining, producing and transporting the same, heretofore reserved or conveyed by predecessors in title.
2. Any portion of the Property located within the boundaries of any roadway or highway.
3. Easement:  
  
From: E.E. Yeager  
To: Gulf States Utilities  
Date: June 13, 1947  
Recorded: Volume 130, Page 434, Deed Records of Brazos County, Texas
4. Easement:  
  
From: Rose Carrabo, et al.  
To: Lone Star Gas Company  
Date: October 16, 1939  
Recorded: Volume 102, Page 62, Deed Records of Brazos County, Texas  
  
Modified and Partially Released:  
  
Recorded: Volume 605, Page 523, Official Records of Brazos County, Texas
5. Easement:  
  
From: F.W. "Bert" Wheeler, Trustee  
To: City of Bryan  
Date: September 10, 1974  
Recorded: Volume 333, Page 548, Deed Records of Brazos County, Texas
6. Easement:  
  
From: F.W. "Bert" Wheeler, Trustee  
To: Ferguson Crossing Pipeline Company  
Date: December 14, 1981  
Recorded: Volume 508, Page 190, Deed Records of Brazos County, Texas
7. Easement:  
  
From: F.W. "Bert" Wheeler, Trustee  
To: Andrus Pipeline Corporation  
Date: February 17, 1983  
Recorded: Volume 562, Page 377 and 381, Deed Records of Brazos County, Texas
8. Easement:  
  
From: F.W. "Bert" Wheeler, Trustee  
To: Ferguson Crossing Pipe Line Company  
Date: December 14, 1981  
Recorded: Volume 508, Page 202, Deed Records of Brazos County, Texas

9. Easement:

From: Keith Chunn, Jr.  
To: City of Bryan  
Date: August 24, 2005  
Recorded: Volume 6901, Page 96, Official Records of Brazos County, Texas

10. Easement:

From: Keith Chunn, Jr.  
To: City of Bryan  
Date: August 24, 2005  
Recorded: Volume 6901, Page 101, Official Records of Brazos County, Texas

11. Easement:

From: John Carrabo, et al.  
To: Humble Pipe Line Company  
Date: June 14, 1919  
Recorded: Volume 48, Page 563, Deed Records of Brazos County, Texas

12. Roadway Reservation to Well Site in Deed:

By: Keith Chunn, Jr., Successor Trustee  
To: BCS Development Company  
Date: August 24, 2005  
Recorded: Volume 6901, Page 66, Official Records of Brazos County, Texas

13. Mineral Reservation in Deed:

By: Keith Chunn, Jr., Successor Trustee  
To: BCS Development Company  
Date: August 24, 2005  
Recorded: Volume 6901, Page 66, Official Records of Brazos County, Texas

14. Waiver of Surface Use:

From: BWOC, Inc.  
To: Venture 102  
Date: August 24, 2005  
Recorded: Volume 6901, Page 57, Official Records of Brazos County, Texas

15. Memorandum of Oil and Gas Lease, and all terms, conditions and stipulations therein:

Lessor: Bert Wheeler, Inc., et al.  
Lessee: Amalgamated Bonanza Petroleum, Ltd.  
Date: June 1, 1977  
Recorded: Volume 378, Page 325, Deed Records of Brazos County, Texas

Amended:

Recorded: Volume 41, Page 420, Oil & Gas Lease Records, Brazos County, Texas

Doc Bk Vol Ps  
01079595 OR 9961 97

Filed for Record in:  
BRAZOS COUNTY

On: Dec 21, 2010 at 02:29P

As a  
Recording

Document Number: 01079595

Amount 36.00

Receipt Number - 404040

By:  
Krystal Ocon

STATE OF TEXAS COUNTY OF BRAZOS  
I hereby certify that this instrument was  
filed on the date and time stamped hereon by me  
and was duly recorded in the volume and page  
of the Official Public records of:


BRAZOS COUNTY

as stamped hereon by me.

Dec 21, 2010

HONORABLE KAREN MCQUEEN, COUNTY CLERK  
BRAZOS COUNTY

2

Secretary of State P.O. Box 13697 Austin, TX 78711-3697 FAX: 512/463-5709  Filing Fee: \$300	  <b>Certificate of Formation                  Limited Liability Company</b>	Filed in the Office of the Secretary of State of Texas Filing #: 801340839 11/09/2010 Document #: 339543670002 Image Generated Electronically for Web Filing
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**Article 1 - Entity Name and Type**

The filing entity being formed is a limited liability company. The name of the entity is:

**DBB Old Reliance, LLC**

**Article 2 – Registered Agent and Registered Office**

A. The initial registered agent is an organization (cannot be company named above) by the name of:

OR

B. The initial registered agent is an individual resident of the state whose name is set forth below:

Name:

**Blake Andrew Rue**

C. The business address of the registered agent and the registered office address is:

Street Address:

**3002 Kerbey Lane Austin TX 78703**

**Consent of Registered Agent**

A. A copy of the consent of registered agent is attached.

OR

B. The consent of the registered agent is maintained by the entity.

**Article 3 - Governing Authority**

A. The limited liability company is to be managed by managers.

OR

B. The limited liability company will not have managers. Management of the company is reserved to the members.

The names and addresses of the governing persons are set forth below:

Managing Member 1: **Blake Andrew Rue**

Title: **Managing Member**

Address: **PO Box 302663 Austin TX, USA 78703**

Managing Member 2: **David Middleton**

Title: **Managing Member**

Address: **2509 Terryhill Place Austin TX, USA 78703**

Managing Member 3: **Britt Hall Benton**

Title: **Managing Member**

Address: **PO Box 302663 Austin TX, USA 78703**

**Article 4 - Purpose**

The purpose for which the company is organized is for the transaction of any and all lawful business for which limited liability companies may be organized under the Texas Business Organizations Code.

**Supplemental Provisions / Information**

[The attached addendum, if any, is incorporated herein by reference.]

**Organizer**

The name and address of the organizer are set forth below.

**Blake Rue**      **3002 Kerbey Lane, Austin, Texas 78703**

**Effectiveness of Filing**

A. This document becomes effective when the document is filed by the secretary of state.

**OR**

B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of its signing. The delayed effective date is:

**Execution**

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

**Blake Rue**

Signature of Organizer

**FILING OFFICE COPY**

3

MF RCVD Wednesday, June 15, 2011 4:30 PM



[Home](#)
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[Forms, Laws & Contracts](#)
[News & Public Data](#)
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[Education & Exams](#)
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[Complaints, Consumer Info](#)

**Please Note:** The information in this Licensee Info Search page is refreshed each night from our main computer system records. For example, if you have changed your mailing address online today, the new address will not show up on this page until tomorrow.

## TREC Licensee Info Search w/ sponsor info & completed MCE and SAE

Tip: A License Number search is faster than a Name search.

License Type:  Salesperson or Broker  Inspector  E.R.W.

License Number or Name: "LastName, FirstName" or "Business Name"

(see [search tips](#))

Optional:  any part of name (for name searches only)

### Licensee Details for: Salesperson or Broker - "Benton, Britt Hall"

Licensee Name	Lic. Nbr	Lic. Type	Lic. Status	Exp. Date	Fingerprint Status
Benton, Britt Hall	437687	Broker	Active	07/31/2012	Fingerprinting requirements have been met.

Licensee Email Address ([see disclosure policy](#)) Licensee Phone

[click for email address](#)

Permanent Mailing Address Business Physical Address

2403 ROCKMOOR AUSTIN, TX 78703	3701 N LAMAR SUITE 206 AUSTIN, TX 78705
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### Education Information

This licensee may be subject to MCE Requirements - which mandates completion of 15 hours of MCE courses (including the 3 hr TREC Legal Update course and the 3 hr TREC Ethics course). Regarding "duplicate" courses, see [22 TAC Sec. 535.92\(g\)](#). Also, please see our [MCE FAQs page](#).

### Completed Courses

Course Date	Course Nbr	Course Name	Provider Name	Total Legal Hrs	Legal Hrs
07/19/2010	18657	TREC LEGAL UPDATE MCE (L) (ONLINE EXAM)	123CE INC	3	3
05/07/2010	19041	20TH ANNUAL OUTLOOK FOR TEXAS LAND MARKETS	REAL ESTATE CENTER	12	0
05/07/2010	18650	TREC ETHICS MCE (E)	REAL ESTATE CENTER	3	3
07/25/2008	17086	IT'S GOOD TO BE GREEN	TEXAS TECH UNIVERSITY CPD	9	0
07/25/2008	16503	TREC LEGAL UPDATE AND ETHICS MCE (EL) (INCLUDES TREC L & E)	TEXAS TECH UNIVERSITY CPD	3	3
07/25/2008	16503	TREC LEGAL UPDATE AND ETHICS MCE (EL) (INCLUDES TREC L & E)	TEXAS TECH UNIVERSITY CPD	3	3
07/21/2006	14202	TEXAS LEGAL UPDATE (EL) (INCLUDES TREC LEGAL & ETHICS)	TEXAS TECH UNIVERSITY CPD	3	3
07/21/2006	14202	TEXAS LEGAL UPDATE (EL) (INCLUDES TREC LEGAL & ETHICS)	TEXAS TECH UNIVERSITY CPD	3	3
04/04/2005	6100	ALL RELATED (EXCEPT R.E.)	SCHOOLS FROM WHICH RELATED CREDIT IS ACCEPTED	540	0
11/18/2004	13724	ANATOMY OF A PURCHASE AGREEMENT	FULBRIGHT & JAWORSKI LLP	1	0
10/04/2004	0511	REAL ESTATE MARKETING I	STATE UNIV OF NY COLLEGE TECHNOLOGY AT CANTON	30	0
08/21/2001	0412	REAL ESTATE FINANCE II	STATE UNIV OF NY COLLEGE TECHNOLOGY AT CANTON	30	0
10/19/2000	0511	REAL ESTATE MARKETING I	STATE UNIV OF NY COLLEGE TECHNOLOGY AT CANTON	30	0



MF RCV'D Wednesday, June 15, 2011 4:30 PM

07/24/1999	0911 REAL ESTATE INVESTMENTS I	ALL OUT OF STATE SCHOOLS	30	0
02/28/1998	0911 REAL ESTATE INVESTMENTS I	ALL OUT OF STATE SCHOOLS	30	0
07/31/1996	1021 RES INSPECTION RE AGENTS	SPENCER SCHOOL OF REAL ESTATE	30	0
05/31/1994	0711 REAL ESTATE BROKERAGE I	SPENCER SCHOOL OF REAL ESTATE	30	0
05/23/1994	6100 ALL RELATED (EXCEPT R.E.)	SCHOOLS FROM WHICH RELATED CREDIT IS ACCEPTED	90	0
03/31/1994	0411 REAL ESTATE FINANCE I	SPENCER SCHOOL OF REAL ESTATE	30	0
03/31/1994	0111 REAL ESTATE PRINCIPLES I	SPENCER SCHOOL OF REAL ESTATE	30	0

**Sponsoree Information (1 sponsorees)**

Sponsoree Name	Lic. Nbr	License Type	Lic. Status	Exp. Date	Spons. Date	Fingerprint Status
<u>Benton, Stacy Lynn</u>	531776	Salesperson	Active	11/30/2012	12/31/2009	Fingerprinting requirements have been met.

**New Licensee Info Search**


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Site Map ▪ Privacy & Security Policy ▪ Open Records ▪ Linking to TREC site ▪ Accessibility

Texas Online (texas.gov) ▪ Statewide Search ▪ Texas Homeland Security ▪ Where the Money Goes ▪ Report Fraud



Secretary of State  
P.O. Box 13697  
Austin, TX 78711-3697  
FAX: 512/463-5709

Filing Fee: \$300

**Certificate of Formation  
Limited Liability Company**

Filed in the Office of the  
Secretary of State of Texas  
Filing #: 800774076 02/15/2007  
Document #: 160664340002  
Image Generated Electronically  
for Web Filing

**Article 1 - Entity Name and Type**

The filing entity being formed is a limited liability company. The name of the entity is:

**Oryx Commercial Properties, LLC**

The name of the entity must contain the words "Limited Liability Company" or "Limited Company," or an accepted abbreviation of such terms. The name must not be the same as, deceptively similar to or similar to that of an existing corporate, limited liability company, or limited partnership name on file with the secretary of state. A preliminary check for "name availability" is recommended.

**Article 2 - Registered Agent and Registered Office**

A. The initial registered agent is an organization (cannot be company named above) by the name of:

OR

B. The initial registered agent is an individual resident of the state whose name is set forth below:

Name:

**Britt H Benton**

C. The business address of the registered agent and the registered office address is:

Street Address:

**3701 N Lamar**

**Suite 206 Austin TX 78705**

**Article 3 - Governing Authority**

A. The limited liability company is to be managed by managers.

OR

B. The limited liability company will not have managers. Management of the company is reserved to the members.

The names and addresses of the governing persons are set forth below:

Managing Member 1: **Britt H Benton**

Title: **Managing Member**

Address: **3701 N. Lamar Suite 206 Austin TX, USA 78705**

**Article 4 - Purpose**

The purpose for which the company is organized is for the transaction of any and all lawful business for which limited liability companies may be organized under the Texas Business Organizations Code.

**Supplemental Provisions / Information**

[The attached addendum, if any, is incorporated herein by reference.]

**Organizer**

The name and address of the organizer are set forth below.

**Britt Hall Benton**      **3701 N Lamar, Suite 206 Austin, Texas 78705**

**Effectiveness of Filing**

A. This document becomes effective when the document is filed by the secretary of state.

**OR**

B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of its signing. The delayed effective date is:

**Execution**

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument.

**Britt H Benton**

Signature of Organizer

**FILING OFFICE COPY**

4



FORM FOR QUALIFIED NEIGHBORHOOD ORGANIZATIONS TO SUBMIT TO TDHCA FOR QUANTIFIABLE COMMUNITY PARTICIPATION

Texas Department of Housing and Community Affairs

Certify to each requirement by checking each box as required and accurately filling in all blanks. All attachments must be included in QCP submission package.

- 1. [X] This organization is submitting this form and attachments regarding the following proposed application:

Development Name: Merritt Bryan Station Senior Village TDHCA #: 11169
Development Location: N. of Hwy 6 and W of Old Reliance
Development City: Bryan Development County: Brazos

- 2. [X] The persons signing this form have the authority to sign on behalf of this organization.

Organization Name: Old Reliance Neighborhood Association
1st Contact Name and Title: GARY A. WELCH - CHAIR
1st Contact Mailing Address: 4880 AUSTINS CREEK DR.
1st Contact City: BRYAN 1st Contact Zip Code: 77808
1st Contact Day Phone: (979) 777-2456 1st Contact Fax: (979) 778-0067
1st Contact Evening Phone: (979) 777-2456 1st Contact E-Mail: garywelchconstruction@gmail.com

- 3. [X] This organization is also providing the following additional contact and information for our organization:

2nd Contact Name: ROBERT F. HOLZWEISS
2nd Contact Mailing Address: 4027 Austin's Estates Dr.
2nd Contact City: Bryan 2nd Contact Zip Code: 77808-7301
2nd Contact Day Phone: 979-691-4074 2nd Contact Fax: 979-691-4030
2nd Contact Evening Phone: 979-691-8164 2nd Contact E-Mail: ROBERT.HOLZWEISS@GMAIL.COM

4. Boundary Description and Map: Provide a written description of the geographical boundaries of the neighborhood organization. (Example: North boundary is Main St, East boundary is a railroad track, South boundary is First St and West boundary is Jones Ave) Submit a boundary map. The boundary map should be legible, clearly marked with the geographical boundaries of the neighborhood organization, and indicate the location of the proposed development. The written description and boundary map should have the same geographical boundaries.

Written Boundary Description:

See attached

GWRH
Initials of Signer

03-01-11A11:03 RCVD

5.  This organization certifies that the boundaries of this organization include the proposed Development site in its entirety. This organization acknowledges that annexations after March 1, 2011 are not considered eligible boundaries and a site that is only partially within the boundaries will not satisfy the requirement that the boundaries contain the proposed Development site.

6.  This organization certifies that it meets the definition of "Neighborhood Organization"; defined as an organization of persons living near one another within the organization's defined boundaries that contain the proposed Development Site and that has a primary purpose of working to maintain or improve the general welfare of the neighborhood. This organization further certifies that it is a (must check on of the following boxes):

Homeowners Association

Property Owners Association

Resident Council and our members occupy the existing development

Other (Explain \_\_\_\_\_)

7. **Certification of Record:** Choose one box. Registration with the county or with the Secretary of State both requires proof of registration. All 3 selections require evidence of the organization's existence (ex. bylaws, newsletter, minutes, etc.) and the process to provide notice to persons living within the boundaries to join or participate in the affairs of the organization (ex: letter, posting notice, etc.).

This organization certifies that it was:

On record, as of March 1, 2011, with the county in which the development is proposed to be located. (Attach documentation from the county of registration and required documentation)

On record, as of March 1, 2011, with The Secretary of State as an incorporated entity in good standing. (Attach documentation from the Secretary of State of registration and required documentation)

Requesting to be on record, as of March 1, 2011, with The Texas Department of Housing and Community Affairs (the "Department"). (Attach required documentation)

8. **Statement of Support/Opposition:** (Choose only one box and clearly and concisely state at least one or more reason(s) for the organization's support/opposition; use additional sheets, as needed.)

This organization certifies that we:

Support the application for Competitive Housing Tax Credits referenced above for the following reasons:

OUR AREA NEEDS RESPONSIBLE DEVELOPMENT & I FEEL THIS PROJECT IS WORTHY & PROVIDES THAT.

Oppose the application for Competitive Housing Tax Credits referenced above for the following reasons:  
City of Bryan has a significant need for senior affordable housing.

GW RH  
Initials of Signer

9. Certify the following:

- This organization acknowledges that this form and attachments must be submitted no later than March 1, 2011
- This organization certifies that it was not formed by any Applicant, Developer or any employee or agent of any Applicant in the 2011 Competitive Housing Tax Credit Application Round; the organization, and any members, did not accept money or a gift to cause the neighborhood organization to take its position of support or opposition; the Applicant, Developer or any employee or agent of any Applicant has not provided any assistance, other than education and information sharing, to the neighborhood organization for any application in the Application Round (i.e. hosting a public meeting, providing the "TDHCA Information Packet for Neighborhoods" to the neighborhood organization, or referring the neighborhood organization to TDHCA staff for guidance are acceptable forms of assistance); and that the Applicant, Developer or any employee or agent of any Applicant has not provided any "production" assistance for any application in the Application Round (i.e. use of fax machines owned by the Applicant, use of legal counsel related to the Applicant, delivery of form or assistance drafting a form).
- This organization acknowledges that this completed form and required attachments must be submitted to Texas Department of Housing and Community Affairs, Attention: Director of Multifamily Finance, Neighborhood Input, P.O. Box 13941 (MC 332-10), Austin TX 78711-3941. For overnight or courier delivery use the following physical address: 221 East 11<sup>th</sup> Street, Austin TX 78701-2410. **Do not use P.O. Box address for overnight or courier delivery.** Form and Attachments may also be faxed to (512) 475-1895 or toll free at (800) 733-5120.
- This organization certifies that all certifications contained herein are true and accurate. **(First and Second Contacts must sign below):**

*Jay A. Welch*  
 (First Contact Signature)

2-25-2011  
 (Date)

GARY A. WELCH  
 (Printed Name)

Director  
 (Title)

*Robert F. Hollweiser*  
 (Second Contact Signature)

2-25-11  
 (Date)

ROBERT F. HOLLWEISER  
 (Printed Name)

DIRECTOR  
 (Title)


Additional Contact

Blake Rue  
 Director

Blakerue@hotmail.com  
512-294-4017

5



<p><b>Form 202</b></p> <p>Secretary of State                  P.O. Box 13697                  Austin, TX 78711-3697                  FAX: 512/463-5709</p> <p>Filing Fee: \$25</p>	 <p><b>Certificate of Formation                  Nonprofit Corporation</b></p>	<p>Filed in the Office of the                  Secretary of State of Texas                  Filing #: 801349017 11/30/2010                  Document #: 343018970002                  Image Generated Electronically                  for Web Filing</p>
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**Article 1 - Corporate Name**

The filing entity formed is a nonprofit corporation. The name of the entity is :

**Old Reliance Neighborhood Association**

**Article 2 – Registered Agent and Registered Office**

A. The initial registered agent is an organization (cannot be corporation named above) by the name of:

OR

B. The initial registered agent is an individual resident of the state whose name is set forth below:

Name:

**Blake Rue**

C. The business address of the registered agent and the registered office address is:

Street Address:

**3002 Kerbey Lane Austin TX 78703**

**Consent of Registered Agent**

A. A copy of the consent of registered agent is attached.

OR

B. The consent of the registered agent is maintained by the entity.

**Article 3 - Management**

A. Management of the affairs of the corporation is to be vested solely in the members of the corporation.

OR

B. Management of the affairs of the corporation is to be vested in its board of directors. The number of directors, which must be a minimum of three, that constitutes the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting or until their successors are elected and qualified are set forth below.

Director 1: **Blake Rue**

Title: **Director**

Address: **PO Box 302663 Austin TX, USA 78703**

Director 2: **Abigail Pfiester-Rue**

Title: **Director**

Address: **PO Box 302663 Austin TX, USA 78703**

Director 3: **Britt Benton**

Title: **Director**

Address: **PO Box 302663 Austin TX, USA 78703**

**Article 4 - Organization Structure**

A. The corporation will have members.

or

B. The corporation will not have members.

**Article 5 - Purpose**

The corporation is organized for the following purpose or purposes:

**The purpose of the Association is to encourage the voluntary participation of members to maintain and improve the quality of residential life in Bryan, Texas within the boundaries of the Association**

**Supplemental Provisions / Information**

[The attached addendum, if any, is incorporated herein by reference.]

**Effectiveness of Filing**

A. This document becomes effective when the document is filed by the secretary of state.

**OR**

B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of its signing. The delayed effective date is:

**Organizer**

The name and address of the organizer are set forth below.

**Blake A. Rue**      **3002 Kerbey Lane, Austin, Texas 78703**

**Execution**

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

**Blake A Rue**

Signature of organizer.

**FILING OFFICE COPY**

6

**NOTICE OF OLD RELIANCE NEIGHBORHOOD ASSOCIATION  
MEETING AGENDA**

Meeting Date: Friday, February 25, 2011

Meeting Time: 6:00 P.M.

Location: Messina Hof Winery  
4545 Old Reliance Rd.  
Bryan, TX 77808

The undersigned, being elected Secretary of the Old Reliance Neighborhood Association, Inc., a Texas Non-Profit Corporation (the "Association") do hereby certify the following took place at the February 25, 2011 Meeting of the Members (the "Meeting") of the Association

WHEREAS, notice of the Meeting was timely given to each property owner in the Association by electronic mail or UPS overnight mail.

WHEREAS, the following individuals were present at the Meeting either in person or by proxy: Karen Melvin, Becky Simmons, Blake Rue, Britt Benton, Robert Holzweiss (by proxy), Diane Cornett (by proxy), Gary Welch (by Proxy), Greg Lamb (by proxy).

RESOLVED, that the following is a true and accurate account of the minutes of the Meeting

Re: Meeting of the Members

1. Call to Order
2. Introduction
3. Open discussion and Q&A on the proposed Merritt Bryan Station. Developer Colby Denison and residents from other Merritt properties to be available to answer questions.

Becky Simmons asked about number of bedrooms and units. It was discussed that no 3 bedroom units would be included in the project. The project is currently projected to have approximately 60% one bedroom units with the remainder being two bedroom units.

The number of entrances was discussed. Two entrances would be developed off Old Reliance Road to access the project. Additionally, the city would require a median cut for a left turn entrance into the project when traveling east from Old Reliance Road.

The number of stories of the project was discussed. The project would be set off the road and will be three stories and is anticipated to conform to existing City ordinances. A number of elevators will be provided in the project to assist seniors accessing different floor levels.

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Becky asked Britt Benton and Blake Rue if they had met with Mark Corraba a local developer in Bryan. Items covered in Britt and Blake's meeting with Mark were discussed.

Discussions of the numerous meetings with the City of Bryan regarding this project and the City's current position on the eight separate tax credit applications in Bryan for the 2011 application cycle.

Karen asked about under what circumstances the senior facility could be changed to a family facility. It was communicated that a land use restriction agreement would be filed on the property on which the project is located which would restrict the property to a senior multifamily use for 40 years.

Discussions regarding the project's potential applicatoin for a 50% property tax exemption. Although the Merritt Bryan Station developer initially considered applying for 50% property tax exemption, the developer of the project, Mr. Colby Denison, had indicated the structure of his ownership entity had changed and would result in no property tax exemptions being applied for. The Merritt Bryan Station will not apply for a property tax exemption.

Questions about parking for the project were discussed. The developer currently expects to fully comply with existing City of Bryan parking requirements which are 1 parking space per bedroom

Becky and Karen asked what use of their land, if any, might Britt and Blake pursue should the Merritt Bryan Station not be awarded tax credit funding. Discussions of other potential multifamily uses, both family and senior, would be a possibility due to existing multifamily zoning. The portion of the property fronting Old Reliance is zoned commercial and therefore would be a candidate for commercial development. Becky would love to see a Chic-Filet or Corabba's restaurant in the area.

4. Discussion and possible action on previously distributed proposed Bylaws of Old Reliance Neighborhood Association. Action item

Vote was taken to adopt previously distributed proposed bylaws. Bylaws were adopted by a vote of 7-0. Voting in favor were Karen Melvin, Becky Simmons, Blake Rue, Robert Holzweiss (by proxy), Diane Cornett (by proxy), Gary Welch (by Proxy), Greg Lamb (by proxy).

5. Discussion and possible action on election of Directors. Action item.

Gary Welch, Robert Holzweiss and Blake Rue were nominated to serve as Directors. A Vote was taken to elect directors of the Association. Gary Welch, Robert Holzweiss and Blake Rue were elected to serve as Directors by a vote of 7-0. Voting in favor were Karen Melvin, Becky Simmons, Blake Rue, Robert Holzweiss (by proxy), Diane Cornett (by proxy), Gary Welch (by Proxy), Greg Lamb (by proxy).

6. Discussion and possible action on whether to grant support and write a letter to the Texas Department of Housing and Community Affairs in support of the proposed Merritt Bryan Station Senior affordable housing project located within the boundaries of the Association. Action item.

A vote was taken to grant support and write a letter to the Texas Department of Housing and Community Affairs in support of the proposed Merritt Bryan Station Senior affordable housing project located within the boundaries of the Association and was approved 7-0. Voting in favor were Karen Melvin, Becky Simmons, Blake Rue, Robert Holzweiss (by proxy), Diane Cornett (by proxy), Gary Welch (by Proxy), Greg Lamb (by proxy).

7. Open discussion of the latest community issues regarding the quality of residential life affecting residents inside boundary of the Association such as zoning and future land use in the area and public services, drainage, water and sewage lines, traffic, neighborhood and pedestrian safety; taxation, property maintenance, restoration, and improvement.

Becky and Karen discussed the need for a fire hydrant to serve the 6 homes on Austin's Creek. Currently the closest fire hydrant is at the high school down Old Reliance too far away to serve their homes.

Extension of Austin Colony's road was discussed. Mark Corraja indicated in previous discussions that the timeline of the extension would be 3-5 years.

The potential uses of land on the corner of Old Reliance and Hwy 6 owned by Keith Chunn and M.D. Wheeler were discussed. Sewer lines that serve the Merritt Bryan Station would also serve these properties.

8. Close Meeting

#### CERTIFICATION OF SECRETARY

I certify that I am the duly elected and acting Secretary of **Old Reliance Neighborhood Association, Inc.** and that the foregoing minutes constitute a true and accurate account of the minutes of the Meeting of the Members on February 25, 2011

By:



Blake A. Rue, Secretary of the Association

7

# Investors form neighborhood groups to help get public financing for housing

*Community support of projects designed for people with lower incomes has evolved into pre-eminent part of Texas process.*

By **Eric Dexheimer**

AMERICAN-STATESMAN STAFF

Published: 10:49 p.m. Saturday, Oct. 16, 2010

On paper, **Blake Rue and Britt Benton** appear to be among Central Texas' most community-minded people. According to state corporation records, the two have formed four neighborhood associations in the past three years, in Leander, Hutto, Buda and Schertz though the men themselves live in Austin.

Rue and Benton are also executives in companies that in recent years have invested in publicly financed housing projects for low-income residents — in Leander, Hutto, Buda and Schertz. Each of the neighborhood groups they formed later wrote letters of support on behalf of the affordable housing developments in which the men had invested.

Such letters can literally be worth millions of dollars. That's because in Texas, more than other states, neighborhood organizations play a make-or-break role in projects built with public money through tax credit financing.

Begun in 1987, the federal tax credit program pays for more affordable housing than any other program, about 10,000 units a year in Texas alone. Managed by the Texas Department of Housing and Community Affairs, the tax credit deals are highly sought after by developers, with more than twice as many applicants as awards.

Applications for the public money are graded on a point system. In it, a neighborhood association's letter of support is worth so many points that "it is not part of the scoring — it's virtually 'pass-fail,'" said Mike Rawlings, a businessman until recently known as Dallas' homeless czar.

Rue and Benton broke no laws by creating neighborhood organizations to provide support for projects in which they invested. Rather, affordable housing experts say, such behind-the-scenes maneuvering highlights a Byzantine — and broken — system of public financing for low-income housing that satisfies no one.

To affordable housing advocates, an application that lives and dies on a neighborhood's say-so has resulted in NIMBY — Not In My Backyard — sentiment gone wild. Thanks to state laws, "Texas is the most NIMBY state in the country," said Robert Voelker, a former Dallas affordable housing developer who now provides legal advice.

Studies show it has contributed to projects being clustered in less affluent areas with high concentrations of minorities, such as East Austin, while relatively wealthy and well-organized neighborhoods see few if any such projects.

It has also created a dramatic shift in the type of affordable housing being built in Texas using tax credits. Over the past decade, the percentage of projects intended for poor elderly residents, which tend to provoke milder community response, has nearly doubled, meaning fewer units built for low-income families.

State regulators, meanwhile, say they wage a constant battle monitoring developers angling to win the crucial neighborhood support points. In 2010, it took a housing department staffer working full time five months just to verify community support letters; a quarter were disqualified.

"It's an annual concern," said Thomas Gouris, the state housing department's deputy director of housing programs. "There's always an angle that is new, that no one could foresee."

In recent years, the agency has approved millions of dollars' worth of support for projects based on the backing of neighborhood organizations consisting of only two people.

**'Make or break'**



Issued by the U.S. Treasury, affordable housing tax credits are apportioned to states based on their populations. In Texas, the Department of Housing and Community Affairs distributes the federal credits by region, awarding about \$450 million worth of credits annually to developers to build new affordable housing or rehab existing developments.

Competition is intense for the credits, which offer a dollar-for-dollar reduction in their holders' income tax.

A developer who wins them typically sells the credits at a discount to a large corporation, which uses them to defray its tax bill. The developer uses the proceeds to pay for a project that promises to include a certain number of low-income units.

Developers covet the deals, which let them use government money instead of their own. They can also be lucrative: A typical arrangement has a built-in profit margin potentially worth several million dollars.

After scandals in the 1990s and early 2000s, in which housing department board members were found to have awarded the credits to favored developers, Texas legislators enacted a series of reforms designed to make the tax credit applications more objective and transparent.

The system awards applicants points if certain criteria — proximity to supermarkets and public transportation, financial feasibility and so on — are met. The higher the score, the better a developer's chances of winning the tax credits.

Early on, only a handful of points were awarded to developers who secured support from local officials and community organizations. But in 2003, a series of highly contentious battles over tax credit properties in the Houston suburb of Katy prompted the local House member, Bill Callegari, to sponsor a bill that radically changed the calculation.

"I felt it was important to get citizen input," Callegari recalled. "People in the vicinity deserve to have some input."

The new law required developers to put up signs alerting neighbors to proposed projects. And it ultimately gave their opinion dramatically more weight in the point system.

The law was tweaked again in the 2005 and 2007 legislative sessions, each time giving local organizations more say in tax credit developments. Today, a letter of support from a neighborhood association is more important than any other part of the application except the project's financial soundness.

A 2010 state survey found Texas gives neighborhood groups far more influence in housing projects than other states. "We tell our clients this is a make or break for them," said Sarah Anderson, an Austin-based consultant who advises developers seeking tax credits.

'Just say, "no" '

Few disagree that developers should work closely with locals. "Neighbors should have the right and ability to talk to you," said Stuart Shaw, whose Austin company has developed low-income tax credit projects for a decade. "It holds the developer accountable to do the right thing."

Yet experts also say a neighborhood's virtual veto power has altered the landscape in the way affordable housing is being built in Texas. "Because the community knows they wield this lever, they don't even sit around the table and negotiate," Rawlings said. "They just say 'no.' "

In some cases, "it gives residents the right to block projects based on their prejudices," said John Henneberger, co-director of the Texas Low Income Housing Information Service. "I believe in neighborhood associations, but I also believe they have to be told about the requirements of the Civil Rights Act."

Neighborhood groups often oppose deals because they equate low-income with high crime. In March, state Rep. Debbie Riddle, R-Houston, wrote to the housing department to protest a proposed 142-unit tax credit "multi-generational" development in her Harris County district.

"We are already dealing with an escalation of crime that will surely increase with this type of project," she wrote, adding "I will do everything in my power to represent my constituents in opposing this effort." The project was not funded.

"Once the community gets that fear of these people moving in," said Anderson, the Austin consultant, "there's absolutely nothing you can say to change their minds."

With the cost of preparing a tax credit application as high as \$80,000, many developers try to avoid such neighborhood fights altogether, said Jim Brown, director of the Texas Affiliation of Affordable Housing Providers: "Why would you want to invest your money with an application that will fail?"

One way has been to site new proposals in neighborhoods that are less organized. Often, that has meant lower-income minority communities that already have more than their share of affordable housing projects.

A 2006 legislative report found that 86 percent of Austin's housing projects financed by tax credits were in areas with higher-than-average concentrations of minority residents; three-quarters were in neighborhoods considered low-income. The pattern in other large Texas cities was the same. Studies show that concentration hurts affordable housing residents. A recent national analysis found low-income elementary students perform better when attending affluent schools. A 2010 study by the Texas Low Income Housing Information Service found that the majority of the state's tax credit properties were located near poorer-performing schools.

Another way to avoid tangling with locals is to build where there are no neighbors. "We recommend the developer try to site where they're nowhere close to any single-family homes," preferably near vacant land, said Anderson.

Advocates say that has resulted in more low-income projects being built farther from the town and city centers where services and amenities needed by the poor and elderly are located. "The developments are not getting built where they ought to be built — in high-opportunity areas," Henneberger said.

Developers seeking to sidestep neighborhood ire have also altered the type of projects being built. Builders have learned that low-income housing targeting elderly residents "seems to be less offensive to some folks," Gouris said.

As a developer, Voelker said he regularly persuaded neighborhoods that had rejected low-income family housing to accept his affordable senior projects. "It's sort of the path of least resistance to go senior," Anderson added. "People just don't have the visceral reaction to the elderly that they do to the poor. It's an unintended consequence of the legislation."

In 2000, 22 percent of Texas tax credit projects targeted poor seniors, according to the Texas Low Income Housing Information Service. In 2009, it was 41 percent. Building more affordable housing for seniors and less for families "is not a sustainable trend," said Kevin Jewell, a researcher for the organization.

Some lawmakers have tried to tweak the state's tax credit laws to remedy the problems. In an effort to curtail so-called tax-credit neighborhoods, legislators several years ago proposed a new law prohibiting developers from siting two low-income tax credit developments within a mile of each other. But it was narrowed to include only Dallas, Houston and San Antonio, and only projects built within two years of each other.

Last month, the Sunset Advisory Commission released its review of the Texas Department of Housing and Community Affairs. Among its top recommendations: Change the law to give neighborhood associations less power in affordable housing decisions.

### **Working the system**

The rules that make locals' opinions worth millions of dollars also give developers and investors "an incentive to game the system," Voelker said.

Earlier this year, the housing agency rejected community support points for Evergreen at Richardson, a low-income seniors project north of Dallas. The reason: The property owners association that had given its blessing to the project had only two members — a husband and wife living in the same house.

The developer appealed, pointing out that the state defines members of a neighborhood organization simply as "persons living near one another."

"We define persons to be more than one person," the developer's lawyer explained, according to a transcript of the meeting. "The Legislature could have defined this requirement in terms of homes, households, dwellings, accommodations. But they didn't use those words. They used persons."

The housing board overturned its staff's decision, awarding the points. The project received \$20 million worth of tax credits.

State rules prohibit a developer or his employees from forming a neighborhood organization to support his own project. "But beyond that," the housing department's Gouris said, "it gets grayer and grayer."

That's where Rue said he discovered a niche business. A lawyer, Rue said he acts strictly according to state rules, working as a combination advance man and fixer for tax credit developers.

First, he looks for sites whose neighbors appear willing to accept low-income senior housing developments. One of his companies typically then buys the land and assists its new neighbors in forming an association whose support for an

affordable housing project will qualify it for the maximum application points. "We're out there creating opportunities for projects that are supported by neighborhoods," Rue said.

MFRCVW Wednesday, June 15, 2011 4:30 PM

If the project wins approval, the company then lends money to the developer. Since 2007, state housing records show Rue and partner Benton listed as financiers for at least four proposed tax credit properties: Creekside Village in Buda; the Enclave in Hutto; Belmont Senior Village in Leander; and Ashton Senior Village in Schertz, north of San Antonio. In each case, they also founded the neighborhood groups that wrote the letters in support of the projects, which have won a total of more than \$50 million worth of tax credits.

And some neighbors said they were happy to have the organizational help. T.J. Higginbotham, chairman of the 967 Gateway Neighborhood Association that signed the letter supporting Creekside Village, said residents knew development along their Onion Creek properties in Buda was inevitable, so "we founded the organization so we could collectively get things to work."

"We saw a presentation on (the proposed Ashton Senior Village), and we were all interested, and we needed something like that here," said Rebecca Schetter, who is chairman of the Gleaming Springs Neighborhood Association. "The developers needed our support, so we lent our support and said we wanted it for our area."

The approach hasn't always worked.

State corporation records show Rue, Benton and Hutto landowner John Lloyd founded the Hutto Exchange TS Neighborhood Association on Feb. 21, 2008. A day later, the new association sent a letter to the Texas Department of Housing and Community Affairs granting its support for the Hutto Enclave. "The Association feels a development of this type would be a welcome addition to the neighborhood," it read.

When Hutto residents in an existing association discovered the arrangement, however, many were outraged. "It was sneaky, and it was underhanded," said Jon Coyle, who organized neighbors against the Enclave.

The new neighborhood group eventually withdrew its support in the face of community opposition, and the project was scuttled.

edexheimer@statesman.com; 445-1774

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Find this article at:

[http://www.statesman.com/news/statesman\\_focus/investors-form-neighborhood-groups-to-help-get-public-976298.html](http://www.statesman.com/news/statesman_focus/investors-form-neighborhood-groups-to-help-get-public-976298.html)

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TEXAS ASSOCIATION OF REALTORS®  
COMMERCIAL CONTRACT AMENDMENT

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AMENDMENT TO COMMERCIAL CONTRACT BETWEEN THE UNDERSIGNED BUYER AND SELLER  
CONCERNING THE PROPERTY AT

11,902 Acres on FM 967, Buda, Texas

Effective January 4, 2008, Seller and Buyer amend the contract as follows: (Check all applicable boxes.)

- A. **Sales Price:** The sales price in Paragraph 3 of the contract is changed to:
  - Cash portion payable by Buyer at closing .....\$ \_\_\_\_\_
  - Sum of all financing described in the contract .....\$ \_\_\_\_\_
  - Sales price (sum of cash portion and sum of all financing) .....\$ \_\_\_\_\_

- B. **Property Description:** The Property's legal description in Paragraph 2A of the contract is changed to:  
 The property size is modified as depicted on the attached Exhibit "B"  
 Property size is reduced by 0.94 acres as depicted in Exhibit "B". Amended  
 Property size is 10.962 acres. *cd/B.R.*

- C. **Repairs:** Buyer accepts the Property in its present condition except that Seller, at Seller's expense, will complete the following before closing:

Amendment to Commercial Contract concerning 11.902 Acres on FM 967, Buda, Texas

- D. Extension of Feasibility Period: For nominal consideration, the receipt of which Seller acknowledges, and the consideration described under (1) or (2) below, if any, Buyer's right to terminate under Paragraph 7B of the contract is extended until 11:59 p.m. on \_\_\_\_\_.
- (1) The independent consideration for Buyer's right to terminate that will be deducted from the earnest money if Buyer terminates the contract under Paragraph 7B(1) is increased to a total amount of \$\_\_\_\_\_. (Insert an amount greater than the amount in Paragraph 7B(1) of the contract.)
- (2) Buyer has paid Seller additional consideration of \$\_\_\_\_\_ for the extension. This additional consideration  will  will not be credited to the sales price upon the closing of the sale.
- E. Closing: The closing date in Paragraph 10A of the contract is changed to \_\_\_\_\_.
- F. Expenses: At closing Seller will pay the first \$\_\_\_\_\_ of Buyer's expenses under Paragraph 13 of the contract.
- G. Waiver of Right to Terminate: Upon final acceptance of this Amendment, Buyer waives the right to terminate under Paragraph 7B of the contract.
- H. Other Modifications:


Buyer:   
Denison Construction, Inc.

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

Buyer: \_\_\_\_\_

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

Seller:   
Rueben Investments, LLC

By:   
Printed Name: Blake Rue  
Title: Managing Member

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

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



TEXAS ASSOCIATION OF REALTORS®  
COMMERCIAL CONTRACT - UNIMPROVED PROPERTY

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1. PARTIES: Seller agrees to sell and convey to Buyer the Property described in Paragraph 2. Buyer agrees to buy the Property from Seller for the sales price stated in Paragraph 3. The parties to this contract are:

Seller: Rueben Investments, LLC  
Address: 6709 Capitol of Texas, Suite 300, Austin, Tx 78730  
Phone: (512) 637-3160 Fax: (512) 343-8793  
E-mail: \_\_\_\_\_  
Buyer: Denison Development, Inc., or Assigns  
Address: 3701 N Lamar, Suite 206, Austin, Tx 78705  
Phone: (512) 732-1226 Fax: (512) 732-1276  
E-mail: \_\_\_\_\_

2. PROPERTY:

A. "Property" means that real property situated in Hayes County, Texas at 11.902 Acres on FM 967, Buda, Texas (address) and that is legally described on the attached Exhibit "A" or as follows:

B. Seller will sell and convey the Property together with:  
(1) all rights, privileges, and appurtenances pertaining to the Property, including Seller's right, title, and interest in any minerals, utilities, adjacent streets, alleys, strips, gores, and rights-of-way;  
(2) Seller's interest in all leases, rents, and security deposits for all or part of the Property; and  
(3) Seller's interest in all licenses and permits related to the Property.

(Describe any exceptions, reservations, or restrictions in Paragraph 12 or an addendum.)

3. SALES PRICE:

A. At or before closing, Buyer will pay the following sales price for the Property:  
(1) Cash portion payable by Buyer at closing ..... \$ 1,100,000.00  
(2) Sum of all financing described in Paragraph 4 ..... \$ \_\_\_\_\_  
(3) Sales price (sum of 3A(1) and 3A(2)) ..... \$ 1,100,000.00

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B. Adjustment to Sales Price: (Check (1) or (2) only.)

- (1) The sales price will not be adjusted based on a survey.
- (2) The sales price will be adjusted based on the latest survey obtained under Paragraph 6B.
  - (a) The sales price is calculated on the basis of \$ \_\_\_\_\_ per.
    - (i) square foot of  total area  net area.
    - (ii) acre of  total area  net area.
  - (b) "Total area" means all land area within the perimeter boundaries of the Property. "Net area" means total area less any area of the Property within:
    - (i) public roadways;
    - (ii) rights-of-way and easements other than those that directly provide utility services to the Property; and
    - (iii) \_\_\_\_\_.
  - (c) If the sales price is adjusted by more than \_\_\_\_\_ % of the stated sales price, either party may terminate this contract by providing written notice to the other party within \_\_\_\_\_ days after the terminating party receives the survey. If neither party terminates this contract or if the variance is less than the stated percentage, the adjustment to the sales price will be made to the cash portion of the sales price payable by Buyer.

4. **FINANCING:** Buyer will finance the portion of the sales price under Paragraph 3A(2) as follows:

- A. Third Party Financing: One or more third party loans in the total amount of \$ \_\_\_\_\_ This contract:
  - (1) is not contingent upon Buyer obtaining third party financing.
  - (2) is contingent upon Buyer obtaining third party financing in accordance with the attached Commercial Contract Financing Addendum.
- B. Assumption: In accordance with the attached Commercial Contract Financing Addendum, Buyer will assume the existing promissory note secured by the Property, which balance at closing will be \$ \_\_\_\_\_.
- C. Seller Financing: The delivery of a promissory note and deed of trust from Buyer to Seller under the terms of the attached Commercial Contract Financing Addendum in the amount of \$ \_\_\_\_\_.

5. **EARNEST MONEY:**

- A. Not later than 3 days after the effective date, Buyer must deposit \$ 10,000.00 as earnest money with LandAmerica Commercial Services (escrow agent) at 1717 W 6th, Suite 100, Austin, Tx 78703 (address). If Buyer fails to timely deposit the earnest money, Seller may terminate this contract by providing written notice to Buyer before Buyer deposits the earnest money and may exercise Seller's remedies under Paragraph 15.
- B. Buyer will deposit an additional amount of \$ 10,000.00 with the escrow agent to be made part of the earnest money on or before:
  - (i) \_\_\_\_\_ days after Buyer's right to terminate under Paragraph 7B expires; or
  - (ii) March 4, 2008
 Buyer will be in default if Buyer fails to deposit the additional amount required by this Paragraph 5B within 3 days after Seller notifies Buyer that Buyer has not timely deposited the additional amount.
- C. Buyer may instruct the escrow agent to deposit the earnest money in an interest-bearing account at a federally insured financial institution and to credit any interest to Buyer.



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**6. TITLE POLICY AND SURVEY:**

**A. Title Policy:**

- (1) Seller, at Seller's expense, will furnish Buyer an Owner's Policy of Title Insurance (the title policy) issued by LandAmerica Commercial Services (title company) in the amount of the sales price, dated at or after closing, insuring Buyer against loss under the title policy, subject only to:
  - (a) those title exceptions permitted by this contract or as may be approved by Buyer in writing; and
  - (b) the standard printed exceptions contained in the promulgated form of title policy unless this contract provides otherwise.
- (2) The standard printed exception as to discrepancies, conflicts, or shortages in area and boundary lines, or any encroachments or protrusions, or any overlapping improvements:
  - (a) will not be amended or deleted from the title policy.
  - (b) will be amended to read "shortages in areas" at the expense of  Buyer  Seller.
- (3) Buyer may object to any restrictive covenants on the Property within the time required under Paragraph 6C.
- (4) Within \_\_\_\_\_ days after the effective date, Seller will furnish Buyer a commitment for title insurance (the commitment) including legible copies of recorded documents evidencing title exceptions. Seller authorizes the title company to deliver the commitment and related documents to Buyer at Buyer's address.

**B. Survey:** Within 10 days after the effective date:

- (1) Buyer will obtain a survey of the Property at Buyer's expense and deliver a copy of the survey to Seller. The survey must be made in accordance with the Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition.
- (2) Seller, at Seller's expense, will furnish Buyer a survey of the Property dated after the effective date. The survey must be made in accordance with the Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition.
- (3) Seller will deliver to Buyer and the title company a true and correct copy of Seller's existing survey of the Property dated November 23, 2004 along with an affidavit required by the title company for approval of the survey. If the survey is not acceptable to the title company, Seller, at Seller's expense, will obtain a survey acceptable to the title company and deliver the acceptable survey to the Buyer and the title company within 15 days after Seller receives notice that the existing survey is not acceptable to the title company. The closing date will be extended daily up to 15 days if necessary for Seller to deliver an acceptable survey within the time required.

**C. Buyer's Objections to the Commitment and Survey:**

- (1) Within 30 days after Buyer receives the commitment, copies of the documents evidencing the title exceptions, and any required survey, Buyer may object in writing to matters disclosed in the items if: (a) the matters disclosed constitute a defect or encumbrance to title other than those permitted by this contract or liens that Seller will satisfy at closing or Buyer will assume at closing; or (b) the items show that any part of the Property lies in a special flood hazard area (an "A" or "V" zone as defined by FEMA). If Paragraph 6B(1) applies, Buyer is deemed to receive the survey on the earlier of: (i) the date of Buyer's actual receipt of the survey; or (ii) of the deadline specified in Paragraph 6B.

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- (2) Seller may, but is not obligated to, cure Buyer's timely objections within 15 days after Seller receives the objections. The closing date will be extended as necessary to provide such time to cure the objections. If Seller fails to cure the objections by the time required, Buyer may terminate this contract by providing written notice to Seller within 5 days after the time by which Seller must cure the objections. If Buyer terminates, the earnest money, less any independent consideration under Paragraph 7B(1), will be refunded to Buyer.
- (3) Buyer's failure to timely object or terminate under this Paragraph 6C is a waiver of Buyer's right to object except that Buyer will not waive the requirements in Schedule C of the commitment.

**7. PROPERTY CONDITION:**

A. Present Condition: Buyer accepts the Property in its present condition except that Seller, at Seller's expense, will complete the following before closing: \_\_\_\_\_  
\_\_\_\_\_

B. Feasibility Period: Buyer may terminate this contract for any reason within 300 days after the effective date (feasibility period) by providing Seller written notice of termination. (Check only one box.)

(1) If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer less \$ 10,000.00 that Seller will retain as independent consideration for Buyer's unrestricted right to terminate. Buyer has tendered the independent consideration to Seller upon payment of the amount specified in Paragraph 5A to the escrow agent. The independent consideration is to be credited to the sales price only upon closing of the sale. If no dollar amount is stated in this Paragraph 7B(1) or if Buyer fails to timely deposit the earnest money, Buyer will not have the right to terminate under this Paragraph 7B.

(2) Not later than 3 days after the effective date, Buyer must pay Seller \$ \_\_\_\_\_ as independent consideration for Buyer's right to terminate by tendering such amount to Seller or Seller's agent. If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer and Seller will retain the independent consideration. The independent consideration will be credited to the sales price only upon closing of the sale. If no dollar amount is stated in this Paragraph 7B(2) or if Buyer fails to timely pay the independent consideration, Buyer will not have the right to terminate under this Paragraph 7B.

C. Inspections, Studies, or Assessments:

(1) During the feasibility period, Buyer, at Buyer's expense, may complete or cause to be completed any and all inspections, studies, or assessments of the Property (including all improvements and fixtures) desired by Buyer.

(2) Buyer must:

- (a) employ only trained and qualified inspectors and assessors;
- (b) notify Seller, in advance, of when the inspectors or assessors will be on the Property;
- (c) abide by any reasonable entry rules or requirements of Seller;
- (d) not interfere with existing operations or occupants of the Property; and
- (e) restore the Property to its original condition if altered due to inspections, studies, or assessments that Buyer completes or causes to be completed.

(3) Except for those matters that arise from the negligence of Seller or Seller's agents, Buyer is responsible for any claim, liability, encumbrance, cause of action, and expense resulting from

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Buyer's inspections, studies, or assessments, including any property damage or personal injury. Buyer will indemnify, hold harmless, and defend Seller and Seller's agents against any claim involving a matter for which Buyer is responsible under this paragraph. This paragraph survives termination of this contract.

**D. Property Information:**

- (1) Delivery of Property Information: Within 10 days after the effective date, Seller will deliver to Buyer:
  - (a) copies of all current leases pertaining to the Property, including any modifications, supplements, or amendments to the leases;
  - (b) copies of all notes and deeds of trust against the Property that Buyer will assume or that Seller will not pay in full on or before closing;
  - (c) copies of all previous environmental assessments, geotechnical reports, studies, or analyses made on or relating to the Property;
  - (d) copies property tax statements for the Property for the previous 2 calendar years;
  - (e) plats of the Property;
  - (f) copies of current utility capacity letters from the Property's water and sewer service provider; and
  - (g) \_\_\_\_\_

- (2) Return of Property Information: If this contract terminates for any reason, Buyer will, not later than 10 days after the termination date: (a) return to Seller all those items described in Paragraph 7D(1) that Seller delivered to Buyer and all copies that Buyer made of those items; and (b) deliver copies of all inspection and assessment reports related to the Property that Buyer completed or caused to be completed. This Paragraph 7D(2) survives termination of this contract.

**E. Contracts Affecting Operations:** Until closing, Seller: (1) will operate the Property in the same manner as on the effective date under reasonably prudent business standards; and (2) will not transfer or dispose of any part of the Property, any interest or right in the Property, or any of the personal property or other items described in Paragraph 2B or sold under this contract. After the feasibility period ends, Seller may not enter into, amend, or terminate any other contract that affects the operations of the Property without Buyer's written approval.

**8. LEASES:**

**A.** Each written lease Seller is to assign to Buyer under this contract must be in full force and effect according to its terms. Seller may not enter into any new lease, fail to comply with any existing lease, or make any amendment or modification to any existing lease without Buyer's written consent. Seller must disclose, in writing, if any of the following exist at the time Seller provides the leases to the Buyer or subsequently occur before closing:

- (1) any failure by Seller to comply with Seller's obligations under the leases;
- (2) any circumstances under any lease that entitle the tenant to terminate the lease or seek any offsets or damages;
- (3) any advance sums paid by a tenant under any lease;
- (4) any concessions, bonuses, free rents, rebates, brokerage commissions, or other matters that affect any lease; and
- (5) any amounts payable under the leases that have been assigned or encumbered, except as security for loan(s) assumed or taken subject to under this contract.

**B. Estoppel Certificates:** Within N/A days after the effective date, Seller will deliver to Buyer estoppel certificates signed not earlier than \_\_\_\_\_ by each tenant that leases space in the Property. The estoppel certificates must state:

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- (1) that no default exists under the lease by the landlord or tenant as of the date the estoppel certificate is signed;
- (2) the amount of the scheduled rents to be paid through the end of the lease and any rental payments that have been paid in advance;
- (3) the amount of any security deposit;
- (4) the amount of any offsets tenant is entitled against rent;
- (5) the expiration date of the lease;
- (6) a description of any renewal options; and
- (7) \_\_\_\_\_

**9. BROKERS:**

A. The brokers to this sale are:

E. Ted Davis + Associates

~~Denison Development, Inc.~~

Cooperating Broker

License No. \_\_\_\_\_

Oryx Commercial Properties, LLC

Principal Broker

0437687 License No.

Address \_\_\_\_\_

2403 Rockmoor

Address

Austin, Texas

Phone \_\_\_\_\_

Fax \_\_\_\_\_

(512) 636-6076

Phone

Fax \_\_\_\_\_

E-mail: \_\_\_\_\_

E-mail: britt@oryxproperties.net

Cooperating Broker represents buyer.

Principal Broker: (Check only one box.)

represents Seller only.

represents Buyer only.

is an intermediary between Seller and Buyer.

B. Fees. (Check only one box.)

- (1) Seller will pay Principal Broker the fee specified by separate written commission agreement between Principal Broker and Seller. Principal Broker will pay Cooperating Broker the fee specified in the Agreement Between Brokers found below the parties' signatures to this contract.

(2) At the closing of this sale, Seller will pay:

Cooperating Broker a total cash fee of:

3.000 % of the sales price.

\_\_\_\_\_ % of the sales price.

Principal Broker a total cash fee of:

3.000 % of the sales price.

\_\_\_\_\_ % of the sales price.

The cash fees will be paid in Travis County, Texas. Seller authorizes escrow agent to pay the brokers from the Seller's proceeds at closing.

NOTICE: Chapter 62, Texas Property Code, authorizes a broker to secure an earned commission with a lien against the Property.

C. The parties may not amend this Paragraph 9 without the written consent of the brokers affected by the amendment.

**10. CLOSING:**

A. The closing of the sale will be on or before September 30, 2008

\_\_\_\_\_ or within 7 days after objections made under Paragraph 6C have been cured or waived, whichever date is later (the closing date).

B. If either party fails to close by the closing date, the non-defaulting party may exercise the remedies in Paragraph 15.

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- C. At closing, Seller will execute and deliver, at Seller's expense, a  general  special warranty deed. The deed must include a vendor's lien if any part of the sales price is financed. The deed must convey good and indefeasible title to the Property and show no exceptions other than those permitted under Paragraph 6 or other provisions of this contract. Seller must convey the Property:
- (1) with no liens, assessments, or other security interests against the Property which will not be satisfied out of the sales price, unless securing loans Buyer assumes;
  - (2) without any assumed loans in default; and
  - (3) with no persons in possession of any part of the Property as lessees, tenants at sufferance, or trespassers except tenants under the written leases assigned to Buyer under this contract.
- D. At closing, Seller, at Seller's expense, will also deliver to Buyer:
- (1) tax statements showing no delinquent taxes on the Property;
  - (2) an assignment of all leases to or on the Property;
  - (3) to the extent assignable, an assignment to Buyer of any licenses and permits related to the Property;
  - (4) evidence that the person executing this contract is legally capable and authorized to bind Seller;
  - (5) an affidavit acceptable to the escrow agent stating that Seller is not a foreign person or, if Seller is a foreign person, a written authorization for the escrow agent to: (i) withhold from Seller's proceeds an amount sufficient to comply applicable tax law; and (ii) deliver the amount to the Internal Revenue Service (IRS) together with appropriate tax forms; and
  - (6) any notices, statements, certificates, affidavits, releases, and other documents required by this contract, the commitment, or law necessary for the closing of the sale and issuance of the title policy, all of which must be completed by Seller as necessary.
- E. At closing, Buyer will:
- (1) pay the sales price in good funds acceptable to the escrow agent;
  - (2) deliver evidence that the person executing this contract is legally capable and authorized to bind Buyer;
  - (3) sign and send to each tenant in a lease for any part of the Property a written statement that:
    - (a) acknowledges Buyer has received and is responsible for the tenant's security deposit; and
    - (b) specifies the exact dollar amount of the security deposit;
  - (4) sign an assumption of all leases then in effect; and
  - (5) execute and deliver any notices, statements, certificates, or other documents required by this contract or law necessary to close the sale.
- F. Unless the parties agree otherwise, the closing documents will be as found in the basic forms in the current edition of the State Bar of Texas Real Estate Forms Manual without any additional clauses.
- 11. POSSESSION:** Seller will deliver possession of the Property to Buyer upon closing and funding of this sale in its present condition with any repairs Seller is obligated to complete, ordinary wear and tear excepted. Any possession by Buyer before closing or by Seller after closing that is not authorized by a separate written lease agreement is a landlord-tenant at sufferance relationship between the parties.
- 12. SPECIAL PROVISIONS:** *(Identify exhibit if special provisions are contained in an attachment.)*  
**Earnest Money in Section 5 A. herein will be released to Seller immediately upon receipt of this Contract at the Title Company.**
- Buyer may have three options to extend the Closing for periods of 30 days each, by depositing \$5,0000.00 for each extension with the Title Company.
- All monies deposited for Closing Extensions shall be non refundable but applicable to the Purchase Price.

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**13. SALES EXPENSES:**

- A. Seller's Expenses: Seller will pay for the following at or before closing:
- (1) releases of existing liens, other than those liens assumed by Buyer, including prepayment penalties and recording fees;
  - (2) release of Seller's loan liability, if applicable;
  - (3) tax statements or certificates;
  - (4) preparation of the deed;
  - (5) one-half of any escrow fee;
  - (6) costs to record any documents to cure title objections that Seller must cure; and
  - (7) other expenses that Seller will pay under other provisions of this contract.
- B. Buyer's Expenses: Buyer will pay for the following at or before closing:
- (1) all loan expenses and fees;
  - (2) preparation of any deed of trust;
  - (3) recording fees for the deed and any deed of trust;
  - (4) premiums for flood insurance as may be required by Buyer's lender;
  - (5) one-half of any escrow fee;
  - (6) other expenses that Buyer will pay under other provisions of this contract.

**14. PRORATIONS:**

- A. Prorations:
- (1) Interest on any assumed loan, taxes, rents, and any expense reimbursements from tenants will be prorated through the closing date.
  - (2) If the amount of ad valorem taxes for the year in which the sale closes is not available on the closing date, taxes will be prorated on the basis of taxes assessed in the previous year. If the taxes for the year in which the sale closes vary from the amount prorated at closing, the parties will adjust the prorations when the tax statements for the year in which the sale closes become available. This Paragraph 14A(2) survives closing.
  - (3) If Buyer assumes a loan or is taking the Property subject to an existing lien, Seller will transfer all reserve deposits held by the lender for the payment of taxes, insurance premiums, and other charges to Buyer at closing and Buyer will reimburse such amounts to Seller by an appropriate adjustment at closing.
- B. Rollback Taxes: If Seller changes the use of the Property before closing or if a denial of a special valuation on the Property claimed by Seller results in the assessment of additional taxes, penalties, or interest (assessments) for periods before closing, the assessments will be the obligation of the Seller. If this sale or Buyer's use of the Property after closing results in additional assessments for periods before closing, the assessments will be the obligation of Buyer. This Paragraph 14B survives closing.
- C. Rent and Security Deposits: At closing, Seller will tender to Buyer all security deposits and the following advance payments received by Seller for periods after closing: prepaid expenses, advance rental payments, and other advance payments paid by tenants. Rents prorated to one party but received by the other party will be remitted by the recipient to the party to whom it was prorated within 5 days after the rent is received. This Paragraph 14C survives closing.

**15. DEFAULT:**

- A. If Buyer fails to comply with this contract, Buyer is in default and Seller may:
- (1) terminate this contract and receive the earnest money as liquidated damages, thereby releasing the parties from this contract; or
  - (2) enforce specific performance, or seek other relief as may be provided by law, or both.

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- B. If, without fault, Seller is unable within the time allowed to deliver the estoppel certificates, survey, or commitment, Buyer may:
  - (1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7B(1), as the sole remedy; or
  - (2) extend the time for performance up to 15 days and the closing will be extended as necessary.
- C. Except as provided in Paragraph 15B, if Seller fails to comply with this contract, Seller is in default and Buyer may:
  - (1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7B(1), as liquidated damages, thereby releasing the parties from this contract; or
  - (2) enforce specific performance, or seek such other relief as may be provided by law, or both.
- 16. **CONDEMNATION:** If before closing, condemnation proceedings are commenced against any part of the Property, Buyer may:
  - A. terminate this contract by providing written notice to Seller within 15 days after Buyer is advised of the condemnation proceedings and the earnest money, less any independent consideration paid under Paragraph 7B(1), will be refunded to Buyer; or
  - B. appear and defend in the condemnation proceedings and any award will, at Buyer's election, belong to:
    - (1) Seller and the sales price will be reduced by the same amount; or
    - (2) Buyer and the sales price will not be reduced.
- 17. **ATTORNEY'S FEES:** If Buyer, Seller, any broker, or any escrow agent is a prevailing party in any legal proceeding brought under or with relation to this contract or this transaction, such party is entitled to recover from the non-prevailing parties all costs of such proceeding and reasonable attorney's fees. This Paragraph 17 survives termination of this contract.

**18. ESCROW:**

- A. At closing, the earnest money will be applied first to any cash down payment, then to Buyer's closing costs, and any excess will be refunded to Buyer.
- B. If both parties make written demand for the earnest money, escrow agent may require payment of unpaid expenses incurred on behalf of the parties and a written release of liability of escrow agent from all parties.
- C. If one party makes written demand for the earnest money, escrow agent will give notice of the demand by providing to the other party a copy of the demand. If escrow agent does not receive written objection to the demand from the other party within 15 days after the date escrow agent sent the demand to the other party, escrow agent may disburse the earnest money to the party making demand, reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and escrow agent may pay the same to the creditors.
- D. Escrow agent will deduct any independent consideration under Paragraph 7B(1) before disbursing any earnest money to Buyer and will pay the independent consideration to Seller.
- E. If escrow agent complies with this Paragraph 18, each party hereby releases escrow agent from all claims related to the disbursement of the earnest money.
- F. Notices under this Paragraph 18 must be sent by certified mail, return receipt requested. Notices to escrow agent are effective upon receipt by escrow agent.

**19. MATERIAL FACTS:** To the best of Seller's knowledge and belief: *(Check only one box.)*

- A. Seller is not aware of any material defects to the Property except as stated in the attached Property Condition Statement.

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- B. Except as otherwise provided in this contract, Seller is not aware of:
  - (1) any subsurface structures, pits, waste, springs, or improvements;
  - (2) any pending or threatened litigation, condemnation, or assessment affecting the Property;
  - (3) any environmental hazards or conditions that materially affect the Property;
  - (4) whether the Property is or has been used for the storage or disposal of hazardous materials or toxic waste, a dump site or landfill, or any underground tanks or containers;
  - (5) whether radon, asbestos containing materials, urea-formaldehyde foam insulation, lead-based paint, toxic mold (to the extent that it adversely affects the health of ordinary occupants), or other pollutants or contaminants of any nature now exist or ever existed on the Property;
  - (6) any wetlands, as defined by federal or state law or regulation, on the Property;
  - (7) any threatened or endangered species or their habitat on the Property;
  - (8) any present or past infestation of wood-destroying insects in the Property's improvements;
  - (9) any contemplated material changes to the Property or surrounding area that would materially and detrimentally affect the ordinary use of the Property;
  - (10) any condition on the Property that violates any law or ordinance.

*(Describe any exceptions to (1)-(10) in Paragraph 12 or an addendum.)*

**20. NOTICES:** All notices between the parties under this contract must be in writing and are effective when hand-delivered, mailed by certified mail return receipt requested, or sent by facsimile transmission to the parties addresses or facsimile numbers stated in Paragraph 1. The parties will send copies of any notices to the broker representing the party to whom the notices are sent.

- A. Seller also consents to receive any notices by e-mail at Seller's e-mail address stated in Paragraph 1.
- B. Buyer also consents to receive any notices by e-mail at Buyer's e-mail address stated in Paragraph 1.

**21. DISPUTE RESOLUTION:** The parties agree to negotiate in good faith in an effort to resolve any dispute related to this contract that may arise. If the dispute cannot be resolved by negotiation, the parties will submit the dispute to mediation before resorting to arbitration or litigation and will equally share the costs of a mutually acceptable mediator. This paragraph survives termination of this contract. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.

**22. AGREEMENT OF THE PARTIES:**

- A. This contract is binding on the parties, their heirs, executors, representatives, successors, and permitted assigns.
- B. This contract is to be construed in accordance with the laws of the State of Texas.
- C. This contract contains the entire agreement of the parties and may not be changed except in writing.
- D. If this contract is executed in a number of identical counterparts, each counterpart is an original and all counterparts, collectively, constitute one agreement.
- E. Addenda which are part of this contract are: *(Check all that apply.)*
  - (1) Property Description Exhibit identified in Paragraph 2;
  - (2) Commercial Contract Financing Addendum;
  - (3) Commercial Property Condition Statement;
  - (4) Notice to Purchaser of Real Property in a Water District (MUD);
  - (5) Addendum for Coastal Area Property;
  - (6) Addendum for Property Located Seaward of the Gulf Intracoastal Waterway; and
  - (7) \_\_\_\_\_

*(Note: Counsel for the Texas Association of REALTORS® (TAR) has determined that any of the foregoing addenda which are promulgated by the Texas Real Estate Commission (TREC) or published by TAR are appropriate for use with this form.)*

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F. Buyer  may  may not assign this contract. If Buyer assigns this contract, Buyer will be relieved of any future liability under this contract only if the assignee assumes, in writing, all obligations and liability of Buyer under this contract.

**23. TIME:** Time is of the essence in this contract. The parties require strict compliance with the times for performance. If the last day to perform under a provision of this contract falls on a Saturday, Sunday, or legal holiday, the time for performance is extended until the end of the next day which is not a Saturday, Sunday, or legal holiday.

**24. EFFECTIVE DATE:** The effective date of this contract for the purpose of performance of all obligations is the date the escrow agent receipts this contract after all parties execute this contract.

**25. ADDITIONAL NOTICES:**

A. Buyer should have an abstract covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a title policy.

B. If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fees of the district before final execution of this contract.

C. Notice Required by §13.257, Water Code: "The real property, described below, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned purchaser hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in the notice or at closing of purchase of the real property." The real property is described in Paragraph 2 of this contract.

D. If the Property adjoins or shares a common boundary with the tidally influenced submerged lands of the state, §33.135 of the Texas Natural Resources Code requires a notice regarding coastal area property to be included as part of this contract.

E. If the Property is located seaward of the Gulf Intracoastal Waterway, §61.025, Texas Natural Resources Code, requires a notice regarding the seaward location of the Property to be included as part of this contract.

F. If the Property is located outside the limits of a municipality, the Property may now or later be included in the extra-territorial jurisdiction (ETJ) of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and ETJ. To determine if the Property is located within a municipality's ETJ, Buyer should contact all municipalities located in the general proximity of the Property for further information.

G. Brokers are not qualified to perform property inspections, surveys, engineering studies, environmental assessments, or inspections to determine compliance with zoning, governmental regulations, or laws. Buyer should seek experts to perform such services. Selection of inspectors and repairmen is the responsibility of Buyer and not the brokers.

**26. CONTRACT AS OFFER:** The execution of this contract by the first party constitutes an offer to buy or sell the Property. Unless the other party accepts the offer by 5:00 p.m., in the time zone in which the Property is located, on July 27, 2007, the offer will lapse and become null and void.

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Initialed for Identification by Buyer CP and Seller BE

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Commercial Contract - Unimproved Property Concerning 11.902 Acres on FM 967, Buda, Texas

**READ THIS CONTRACT CAREFULLY.** The brokers and agents make no representation or recommendation as to the legal sufficiency, legal effect, or tax consequences of this document or transaction. **CONSULT your attorney BEFORE signing.**

Buyer: Denison Construction, Inc. Seller: Rueben Investments, LLC

By: [Signature] By: [Signature]

Printed Name: Colby Denison Printed Name: Blake Rue

Title: President Title: Member

Buyer: \_\_\_\_\_ Seller: \_\_\_\_\_

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

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

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

**AGREEMENT BETWEEN BROKERS**

Principal Broker agrees to pay \_\_\_\_\_ (Cooperating Broker) a fee of \$ \_\_\_\_\_ or \_\_\_\_\_ % of the sales price when the Principal Broker's fee is received. Escrow agent is authorized and directed to pay Cooperating Broker from Principal Broker's fee at closing. This Agreement Between Brokers supersedes any prior offers and agreements for compensation between brokers.

Cooperating Broker By: \_\_\_\_\_ Principal Broker By: \_\_\_\_\_

**ATTORNEYS**

Buyer's attorney is: \_\_\_\_\_ Seller's attorney is: \_\_\_\_\_  
Name \_\_\_\_\_ Name: \_\_\_\_\_  
Address: \_\_\_\_\_ Address: \_\_\_\_\_

Phone & Fax: \_\_\_\_\_ Phone & Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_ E-mail: \_\_\_\_\_

Buyer's attorney requests copies of documents, notices, and other information:  
 the title company sends to Buyer.  
 Seller sends to Buyer.

Seller's attorney requests copies of documents, notices, and other information:  
 the title company sends to Seller.  
 Buyer sends to Seller.

**ESCROW RECEIPT**

Escrow agent acknowledges receipt of:  
 A. the contract on this day 7/26/2007 (effective date):  
 B. earnest money in the amount of \$ 10,000 in the form of ck 3158  
on 7/26/2007

Escrow Agent: LandAmerica Commercial Services Address: 1717 W 6th, Suite 100  
Austin, Tx 78703

By: [Signature] for Terri Nassour Phone & Fax: 512-481-9500 (F) 481-9570  
E-mail: tnassour@landam.com

**SUBJECT TO THE TERMS AND  
CONDITIONS ON THE ATTACHED  
RECEIPT FOR EARNEST MONEY.**



LandAmerica Commonwealth Title of Austin, Inc.  
1717 West 6th Street, Suite 100  
Austin, TX 78703  
Phone 512-481-9560 Fax 512-481-9570

**RECEIPT FOR EARNEST MONEY**

July 26, 2007

Order No.: 2519003074  
Buyer/Borrower(s): Denison Construction, Inc.  
Seller(s): Rueben Investments, LLC  
Property Address: FM 967, Buda, TX  
Escrow Agent: LandAmerica Commonwealth Title of Austin, Inc.  
Earnest Money \$ 10,000.00

Escrow Agent hereby acknowledges receipt of Earnest Money from Purchaser in the form of:  
 Company/Personal Check  Cashier's Check  Wire Transfer  Other \_\_\_\_\_

1. Earnest Money is to be held by Escrow Agent in accordance with the terms of the attached agreement or contract; however, Escrow Agent is not (a) a party to the attached agreement or contract and does not have liability for the performance or nonperformance of any party to this agreement or contract, (b) liable for collection of any check(s) receipted herein, (d) liable for interest on the Earnest Money and (d) liable for the loss of any Earnest Money caused by the failure of any financial institution in which the Earnest Money has been deposited.
2. Escrow Agent may, at its option, require the receipt, release and authorization in writing of all parties to the attached agreement or contract before paying the Earnest Money to any party.
3. In the event the transaction contemplated by the attached agreement or contract is cancelled or otherwise not completed, Escrow Agent's disbursement of Earnest Money may be reduced by the amount of unpaid expenses incurred on behalf of the party(ies) receiving the earnest money and escrow agent may pay the same to the creditors, including, without limitation, fees for tax certificates, document recording, delivery charges, copying fees, attorney's fees, document preparation fees, surveyor's fees and fees for abstracting services not related to the issuance of title insurance.
4. Escrow Agent shall not be liable for placing Earnest Money in an interest-bearing or investment account, unless all parties to the attached agreement or contract have previously executed the separate and specific Investment Authorization form required by Escrow Agent, regardless of any terms or conditions contained in the attached agreement or contract to the contrary. NOTE: Escrow Agent reserves the right to refuse to invest any sum which it anticipates will generate interest in an amount of \$50.00 or less for the projected period of the escrow.

LandAmerica Commonwealth Title of Austin, Inc.

By:   
for Terri Talley Nassour

09138



TEXAS ASSOCIATION OF REALTORS®  
COMMERCIAL CONTRACT - UNIMPROVED PROPERTY

USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS® IS NOT AUTHORIZED.  
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1. PARTIES: Seller agrees to sell and convey to Buyer the Property described in Paragraph 2. Buyer agrees to buy the Property from Seller for the sales price stated in Paragraph 3. The parties to this contract are:

Seller: Leander 2243 Investment, LLC  
Address: P.O. Box 302663, Austin, Tx 78703  
Phone: (512) 294-4017 Fax: \_\_\_\_\_  
E-mail: blake@rusainvestments.com

Buyer: DDC Belmont, Ltd.  
Address: 3701 N Lamar, Suite 206, Austin, Tx 78703  
Phone: (512) 732-1226 Fax: \_\_\_\_\_  
E-mail: colby@denisondevelopment.com

2. PROPERTY:

A. "Property" means that real property situated in Williamson County, Texas at \_\_\_\_\_ (address) and that is legally described on the attached Exhibit \_\_\_\_\_ or as follows: 12.3 acres out of lots 1,2,3 of the Leander 2243 Subdivision as shown on the attached Exhibit "A".

B. Seller will sell and convey the Property together with:  
(1) all rights, privileges, and appurtenances pertaining to the Property, including Seller's right, title, and interest in any minerals, utilities, adjacent streets, alleys, strips, gores, and rights-of-way;  
(2) Seller's interest in all leases, rents, and security deposits for all or part of the Property; and  
(3) Seller's interest in all licenses and permits related to the Property.

(Describe any exceptions, reservations, or restrictions in Paragraph 12 or an addendum.)

3. SALES PRICE:

A. At or before closing, Buyer will pay the following sales price for the Property:

(1) Cash portion payable by Buyer at closing ..... \$ 1,854,000.00  
(2) Sum of all financing described in Paragraph 4 ..... \$ \_\_\_\_\_  
(3) Sales price (sum of 3A(1) and 3A(2)) ..... \$ 1,854,000.00

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Commercial Contract - Unimproved Property Concerning \_\_\_\_\_

B. Adjustment to Sales Price: (Check (1) or (2) only.)

- (1) The sales price will not be adjusted based on a survey.
- (2) The sales price will be adjusted based on the latest survey obtained under Paragraph 6B.

(a) The sales price is calculated on the basis of \$ \_\_\_\_\_ per:

- (i) square foot of  total area  net area.
- (ii) acre of  total area  net area.

(b) "Total area" means all land area within the perimeter boundaries of the Property. "Net area" means total area less any area of the Property within:

- (i) public roadways;
- (ii) rights-of-way and easements other than those that directly provide utility services to the Property; and
- (iii) \_\_\_\_\_

(c) If the sales price is adjusted by more than \_\_\_\_\_ % of the stated sales price, either party may terminate this contract by providing written notice to the other party within \_\_\_\_\_ days after the terminating party receives the survey. If neither party terminates this contract or if the variance is less than the stated percentage, the adjustment to the sales price will be made to the cash portion of the sales price payable by Buyer.

4. **FINANCING:** Buyer will finance the portion of the sales price under Paragraph 3A(2) as follows:

- A. Third Party Financing: One or more third party loans in the total amount of \$ \_\_\_\_\_ This contract:
  - (1) is not contingent upon Buyer obtaining third party financing.
  - (2) is contingent upon Buyer obtaining third party financing in accordance with the attached Commercial Contract Financing Addendum.
- B. Assumption: In accordance with the attached Commercial Contract Financing Addendum, Buyer will assume the existing promissory note secured by the Property, which balance at closing will be \$ \_\_\_\_\_.
- C. Seller Financing: The delivery of a promissory note and deed of trust from Buyer to Seller under the terms of the attached Commercial Contract Financing Addendum in the amount of \$ \_\_\_\_\_.

5. **EARNEST MONEY:**

- A. Not later than 3 days after the effective date, Buyer must deposit \$ 10,000.00 as earnest money with Heritage Title Company (escrow agent) at 401 Congress, Suite 1500, Austin, Tx 78701 (address). If Buyer fails to timely deposit the earnest money, Seller may terminate this contract by providing written notice to Buyer before Buyer deposits the earnest money and may exercise Seller's remedies under Paragraph 15.
- B. Buyer will deposit an additional amount of \$ 10,000.00 with the escrow agent to be made part of the earnest money on or before:
  - (i) \_\_\_\_\_ days after Buyer's right to terminate under Paragraph 7B expires; or
  - (ii) March 31, 2009
 Buyer will be in default if Buyer fails to deposit the additional amount required by this Paragraph 5B within 3 days after Seller notifies Buyer that Buyer has not timely deposited the additional amount.
- C. Buyer may instruct the escrow agent to deposit the earnest money in an interest-bearing account at a federally insured financial institution and to credit any interest to Buyer.

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6. TITLE POLICY AND SURVEY:

A. Title Policy:

- (1) Seller, at Seller's expense, will furnish Buyer an Owner's Policy of Title Insurance (the title policy) issued by Heritage Title Company (title company) in the amount of the sales price, dated at or after closing, insuring Buyer against loss under the title policy, subject only to:
  - (a) those title exceptions permitted by this contract or as may be approved by Buyer in writing; and
  - (b) the standard printed exceptions contained in the promulgated form of title policy unless this contract provides otherwise.
- (2) The standard printed exception as to discrepancies, conflicts, or shortages in area and boundary lines, or any encroachments or protrusions, or any overlapping improvements:
  - (a) will not be amended or deleted from the title policy.
  - (b) will be amended to read "shortages in areas" at the expense of  Buyer  Seller.
- (3) Buyer may object to any restrictive covenants on the Property within the time required under Paragraph 6C.
- (4) Within 15 days after the effective date, Seller will furnish Buyer a commitment for title insurance (the commitment) including legible copies of recorded documents evidencing title exceptions. Seller authorizes the title company to deliver the commitment and related documents to Buyer at Buyer's address.

B. Survey: Within 200 days after the effective date:

- (1) Buyer will obtain a survey of the Property at Buyer's expense and deliver a copy of the survey to Seller. The survey must be made in accordance with the Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition.
- (2) Seller, at Seller's expense, will furnish Buyer a survey of the Property dated after the effective date. The survey must be made in accordance with the Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition.
- (3) Seller will deliver to Buyer and the title company a true and correct copy of Seller's existing survey of the Property dated \_\_\_\_\_ along with an affidavit required by the title company for approval of the survey. If the survey is not acceptable to the title company, Seller, at Seller's expense, will obtain a survey acceptable to the title company and deliver the acceptable survey to the Buyer and the title company within 15 days after Seller receives notice that the existing survey is not acceptable to the title company. The closing date will be extended daily up to 15 days if necessary for Seller to deliver an acceptable survey within the time required.

C. Buyer's Objections to the Commitment and Survey:

- (1) Within 21 days after Buyer receives the commitment, copies of the documents evidencing the title exceptions, and any required survey, Buyer may object in writing to matters disclosed in the items if: (a) the matters disclosed constitute a defect or encumbrance to title other than those permitted by this contract or liens that Seller will satisfy at closing or Buyer will assume at closing; or (b) the items show that any part of the Property lies in a special flood hazard area (an "A" or "V" zone as defined by FEMA). If Paragraph 6B(1) applies, Buyer is deemed to receive the survey on the earlier of: (i) the date of Buyer's actual receipt of the survey; or (ii) of the deadline specified in Paragraph 6B.

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- (2) Seller may, but is not obligated to, cure Buyer's timely objections within 15 days after Seller receives the objections. The closing date will be extended as necessary to provide such time to cure the objections. If Seller fails to cure the objections by the time required, Buyer may terminate this contract by providing written notice to Seller within 5 days after the time by which Seller must cure the objections. If Buyer terminates, the earnest money, less any independent consideration under Paragraph 7B(1), will be refunded to Buyer.
- (3) Buyer's failure to timely object or terminate under this Paragraph 6C is a waiver of Buyer's right to object except that Buyer will not waive the requirements in Schedule C of the commitment.

**7. PROPERTY CONDITION:**

A. Present Condition: Buyer accepts the Property in its present condition except that Seller, at Seller's expense, will complete the following before closing: \_\_\_\_\_

B. Feasibility Period: Buyer may terminate this contract for any reason within Aug. 1, '09 days after the effective date (feasibility period) by providing Seller written notice of termination. (Check only one box.)

(1) If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer less \$ 10,000.00 that Seller will retain as independent consideration for Buyer's unrestricted right to terminate. Buyer has tendered the independent consideration to Seller upon payment of the amount specified in Paragraph 5A to the escrow agent. The independent consideration is to be credited to the sales price only upon closing of the sale. If no dollar amount is stated in this Paragraph 7B(1) or if Buyer fails to timely deposit the earnest money, Buyer will not have the right to terminate under this Paragraph 7B.

(2) Not later than 3 days after the effective date, Buyer must pay Seller \$ \_\_\_\_\_ as independent consideration for Buyer's right to terminate by tendering such amount to Seller or Seller's agent. If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer and Seller will retain the independent consideration. The independent consideration will be credited to the sales price only upon closing of the sale. If no dollar amount is stated in this Paragraph 7B(2) or if Buyer fails to timely pay the independent consideration, Buyer will not have the right to terminate under this Paragraph 7B.

C. Inspections, Studies, or Assessments:

(1) During the feasibility period, Buyer, at Buyer's expense, may complete or cause to be completed any and all inspections, studies, or assessments of the Property (including all improvements and fixtures) desired by Buyer.

(2) Buyer must:

- (a) employ only trained and qualified inspectors and assessors;
- (b) notify Seller, in advance, of when the inspectors or assessors will be on the Property;
- (c) abide by any reasonable entry rules or requirements of Seller;
- (d) not interfere with existing operations or occupants of the Property; and
- (e) restore the Property to its original condition if altered due to inspections, studies, or assessments that Buyer completes or causes to be completed.

(3) Except for those matters that arise from the negligence of Seller or Seller's agents, Buyer is responsible for any claim, liability, encumbrance, cause of action, and expense resulting from

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Buyer's inspections, studies, or assessments, including any property damage or personal injury. Buyer will indemnify, hold harmless, and defend Seller and Seller's agents against any claim involving a matter for which Buyer is responsible under this paragraph. This paragraph survives termination of this contract.

D. Property Information:

(1) Delivery of Property Information: Within 15 days after the effective date, Seller will deliver to Buyer:

- (a) copies of all current leases pertaining to the Property, including any modifications, supplements, or amendments to the leases;
- (b) copies of all notes and deeds of trust against the Property that Buyer will assume or that Seller will not pay in full on or before closing;
- (c) copies of all previous environmental assessments, geotechnical reports, studies, or analyses made on or relating to the Property;
- (d) copies property tax statements for the Property for the previous 2 calendar years;
- (e) plats of the Property;
- (f) copies of current utility capacity letters from the Property's water and sewer service provider; and
- (g) \_\_\_\_\_

(2) Return of Property Information: If this contract terminates for any reason, Buyer will, not later than 10 days after the termination date: (a) return to Seller all those items described in Paragraph 7D(1) that Seller delivered to Buyer and all copies that Buyer made of those items; and (b) deliver copies of all inspection and assessment reports related to the Property that Buyer completed or caused to be completed. This Paragraph 7D(2) survives termination of this contract.

E. Contracts Affecting Operations: Until closing, Seller: (1) will operate the Property in the same manner as on the effective date under reasonably prudent business standards; and (2) will not transfer or dispose of any part of the Property, any interest or right in the Property, or any of the personal property or other items described in Paragraph 2B or sold under this contract. After the feasibility period ends, Seller may not enter into, amend, or terminate any other contract that affects the operations of the Property without Buyer's written approval.

8. **LEASES:**

A. Each written lease Seller is to assign to Buyer under this contract must be in full force and effect according to its terms. Seller may not enter into any new lease, fail to comply with any existing lease, or make any amendment or modification to any existing lease without Buyer's written consent. Seller must disclose, in writing, if any of the following exist at the time Seller provides the leases to the Buyer or subsequently occur before closing:

- (1) any failure by Seller to comply with Seller's obligations under the leases;
- (2) any circumstances under any lease that entitle the tenant to terminate the lease or seek any offsets or damages;
- (3) any advance sums paid by a tenant under any lease;
- (4) any concessions, bonuses, free rents, rebates, brokerage commissions, or other matters that affect any lease; and
- (5) any amounts payable under the leases that have been assigned or encumbered, except as security for loan(s) assumed or taken subject to under this contract.

B. Estoppel Certificates: Within N/A days after the effective date, Seller will deliver to Buyer estoppel certificates signed not earlier than \_\_\_\_\_ by each tenant that leases space in the Property. The estoppel certificates must state:

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- (1) that no default exists under the lease by the landlord or tenant as of the date the estoppel certificate is signed;
- (2) the amount of the scheduled rents to be paid through the end of the lease and any rental payments that have been paid in advance;
- (3) the amount of any security deposit;
- (4) the amount of any offsets tenant is entitled against rent;
- (5) the expiration date of the lease;
- (6) a description of any renewal options; and
- (7) \_\_\_\_\_

**9. BROKERS:**

A. The brokers to this sale are:

E Ted Davis & Associates  
 Cooperating Broker 0323139 License No.  
50 Briar Hollow, Suite 490E  
 Address  
Houston, Texas 77027  
(713) 552-1920  
 Phone

Oryx Commercial Properties, LLC  
 Principal Broker 0437687 License No.  
3701 N Lamar, Suite 206B  
 Address  
Austin, Texas 78755  
(512) 407-8907  
 Phone Fax

E-mail: \_\_\_\_\_

E-mail: britt@oryxproperties.net

Cooperating Broker represents buyer.

Principal Broker: (Check only one box.)

- represents Seller only.
- represents Buyer only.
- is an intermediary between Seller and Buyer.

B. Fees. (Check only one box.)

- (1) Seller will pay Principal Broker the fee specified by separate written commission agreement between Principal Broker and Seller. Principal Broker will pay Cooperating Broker the fee specified in the Agreement Between Brokers found below the parties' signatures to this contract.
- (2) At the closing of this sale, Seller will pay:

Cooperating Broker a total cash fee of:  
 3.000 % of the sales price.  
 \_\_\_\_\_

Principal Broker a total cash fee of:  
 3.000 % of the sales price.  
 \_\_\_\_\_

The cash fees will be paid in \_\_\_\_\_ County, Texas. Seller authorizes escrow agent to pay the brokers from the Seller's proceeds at closing.

NOTICE: Chapter 62, Texas Property Code, authorizes a broker to secure an earned commission with a lien against the Property.

C. The parties may not amend this Paragraph 9 without the written consent of the brokers affected by the amendment.

**10. CLOSING:**

A. The closing of the sale will be on or before September 1, 2009 or within 7 days after objections made under Paragraph 6C have been cured or waived, whichever date is later (the closing date).

B. If either party fails to close by the closing date, the non-defaulting party may exercise the remedies in Paragraph 15.

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- C. At closing, Seller will execute and deliver, at Seller's expense, a  general  special warranty deed. The deed must include a vendor's lien if any part of the sales price is financed. The deed must convey good and indefeasible title to the Property and show no exceptions other than those permitted under Paragraph 6 or other provisions of this contract. Seller must convey the Property:
- (1) with no liens, assessments, or other security interests against the Property which will not be satisfied out of the sales price, unless securing loans Buyer assumes;
  - (2) without any assumed loans in default; and
  - (3) with no persons in possession of any part of the Property as lessees, tenants at sufferance, or trespassers except tenants under the written leases assigned to Buyer under this contract.
- D. At closing, Seller, at Seller's expense, will also deliver to Buyer:
- (1) tax statements showing no delinquent taxes on the Property;
  - (2) an assignment of all leases to or on the Property;
  - (3) to the extent assignable, an assignment to Buyer of any licenses and permits related to the Property;
  - (4) evidence that the person executing this contract is legally capable and authorized to bind Seller;
  - (5) an affidavit acceptable to the escrow agent stating that Seller is not a foreign person or, if Seller is a foreign person, a written authorization for the escrow agent to: (i) withhold from Seller's proceeds an amount sufficient to comply applicable tax law; and (ii) deliver the amount to the Internal Revenue Service (IRS) together with appropriate tax forms; and
  - (6) any notices, statements, certificates, affidavits, releases, and other documents required by this contract, the commitment, or law necessary for the closing of the sale and issuance of the title policy, all of which must be completed by Seller as necessary.
- E. At closing, Buyer will:
- (1) pay the sales price in good funds acceptable to the escrow agent;
  - (2) deliver evidence that the person executing this contract is legally capable and authorized to bind Buyer;
  - (3) sign and send to each tenant in a lease for any part of the Property a written statement that:
    - (a) acknowledges Buyer has received and is responsible for the tenant's security deposit; and
    - (b) specifies the exact dollar amount of the security deposit;
  - (4) sign an assumption of all leases then in effect; and
  - (5) execute and deliver any notices, statements, certificates, or other documents required by this contract or law necessary to close the sale.
- F. Unless the parties agree otherwise, the closing documents will be as found in the basic forms in the current edition of the State Bar of Texas Real Estate Forms Manual without any additional clauses.
11. **POSSESSION:** Seller will deliver possession of the Property to Buyer upon closing and funding of this sale in its present condition with any repairs Seller is obligated to complete, ordinary wear and tear excepted. Any possession by Buyer before closing or by Seller after closing that is not authorized by a separate written lease agreement is a landlord-tenant at sufferance relationship between the parties.
12. **SPECIAL PROVISIONS:** *(Identify exhibit if special provisions are contained in an attachment.)*

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**13. SALES EXPENSES:**

- A. Seller's Expenses: Seller will pay for the following at or before closing:
- (1) releases of existing liens, other than those liens assumed by Buyer, including prepayment penalties and recording fees;
  - (2) release of Seller's loan liability, if applicable;
  - (3) tax statements or certificates;
  - (4) preparation of the deed;
  - (5) one-half of any escrow fee;
  - (6) costs to record any documents to cure title objections that Seller must cure; and
  - (7) other expenses that Seller will pay under other provisions of this contract.
- B. Buyer's Expenses: Buyer will pay for the following at or before closing:
- (1) all loan expenses and fees;
  - (2) preparation of any deed of trust;
  - (3) recording fees for the deed and any deed of trust;
  - (4) premiums for flood insurance as may be required by Buyer's lender;
  - (5) one-half of any escrow fee;
  - (6) other expenses that Buyer will pay under other provisions of this contract.

**14. PRORATIONS:**

- A. Prorations:
- (1) Interest on any assumed loan, taxes, rents, and any expense reimbursements from tenants will be prorated through the closing date.
  - (2) If the amount of ad valorem taxes for the year in which the sale closes is not available on the closing date, taxes will be prorated on the basis of taxes assessed in the previous year. If the taxes for the year in which the sale closes vary from the amount prorated at closing, the parties will adjust the prorations when the tax statements for the year in which the sale closes become available. This Paragraph 14A(2) survives closing.
  - (3) If Buyer assumes a loan or is taking the Property subject to an existing lien, Seller will transfer all reserve deposits held by the lender for the payment of taxes, insurance premiums, and other charges to Buyer at closing and Buyer will reimburse such amounts to Seller by an appropriate adjustment at closing.
- B. Rollback Taxes: If Seller changes the use of the Property before closing or if a denial of a special valuation on the Property claimed by Seller results in the assessment of additional taxes, penalties, or interest (assessments) for periods before closing, the assessments will be the obligation of the Seller. If this sale or Buyer's use of the Property after closing results in additional assessments for periods before closing, the assessments will be the obligation of Buyer. This Paragraph 14B survives closing.
- C. Rent and Security Deposits: At closing, Seller will tender to Buyer all security deposits and the following advance payments received by Seller for periods after closing: prepaid expenses, advance rental payments, and other advance payments paid by tenants. Rents prorated to one party but received by the other party will be remitted by the recipient to the party to whom it was prorated within 5 days after the rent is received. This Paragraph 14C survives closing.

**15. DEFAULT:**

- A. If Buyer fails to comply with this contract, Buyer is in default and Seller may:
- (1) terminate this contract and receive the earnest money as liquidated damages, thereby releasing the parties from this contract; or
  - (2) enforce specific performance, or seek other relief as may be provided by law, or both.

(TAR-1802) 10-18-05      Initialed for Identification by Buyer CD, \_\_\_\_\_ and Seller B.P., \_\_\_\_\_

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Commercial Contract - Unimproved Property Concerning \_\_\_\_\_

- B. If, without fault, Seller is unable within the time allowed to deliver the estoppel certificates, survey, or commitment, Buyer may:
  - (1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7B(1), as the sole remedy; or
  - (2) extend the time for performance up to 15 days and the closing will be extended as necessary.
- C. Except as provided in Paragraph 15B, if Seller fails to comply with this contract, Seller is in default and Buyer may:
  - (1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7B(1), as liquidated damages, thereby releasing the parties from this contract; or
  - (2) enforce specific performance, or seek such other relief as may be provided by law, or both.

**16. CONDEMNATION:** If before closing, condemnation proceedings are commenced against any part of the Property, Buyer may:

- A. terminate this contract by providing written notice to Seller within 15 days after Buyer is advised of the condemnation proceedings and the earnest money, less any independent consideration paid under Paragraph 7B(1), will be refunded to Buyer; or
- B. appear and defend in the condemnation proceedings and any award will, at Buyer's election, belong to:
  - (1) Seller and the sales price will be reduced by the same amount; or
  - (2) Buyer and the sales price will not be reduced.

**17. ATTORNEY'S FEES:** If Buyer, Seller, any broker, or any escrow agent is a prevailing party in any legal proceeding brought under or with relation to this contract or this transaction, such party is entitled to recover from the non-prevailing parties all costs of such proceeding and reasonable attorney's fees. This Paragraph 17 survives termination of this contract.

**18. ESCROW:**

- A. At closing, the earnest money will be applied first to any cash down payment, then to Buyer's closing costs, and any excess will be refunded to Buyer.
- B. If both parties make written demand for the earnest money, escrow agent may require payment of unpaid expenses incurred on behalf of the parties and a written release of liability of escrow agent from all parties.
- C. If one party makes written demand for the earnest money, escrow agent will give notice of the demand by providing to the other party a copy of the demand. If escrow agent does not receive written objection to the demand from the other party within 15 days after the date escrow agent sent the demand to the other party, escrow agent may disburse the earnest money to the party making demand, reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and escrow agent may pay the same to the creditors.
- D. Escrow agent will deduct any independent consideration under Paragraph 7B(1) before disbursing any earnest money to Buyer and will pay the independent consideration to Seller.
- E. If escrow agent complies with this Paragraph 18, each party hereby releases escrow agent from all claims related to the disbursement of the earnest money.
- F. Notices under this Paragraph 18 must be sent by certified mail, return receipt requested. Notices to escrow agent are effective upon receipt by escrow agent.

**19. MATERIAL FACTS:** To the best of Seller's knowledge and belief: *(Check only one box.)*

- A. Seller is not aware of any material defects to the Property except as stated in the attached Property Condition Statement.

(TAR-1802) 10-18-05 Initialed for Identification by Buyer OP and Seller E.R.

Commercial Contract - Unimproved Property Concerning \_\_\_\_\_

- B. Except as otherwise provided in this contract, Seller is not aware of:
  - (1) any subsurface: structures, pits, waste, springs, or improvements;
  - (2) any pending or threatened litigation, condemnation, or assessment affecting the Property;
  - (3) any environmental hazards or conditions that materially affect the Property;
  - (4) whether the Property is or has been used for the storage or disposal of hazardous materials or toxic waste, a dump site or landfill, or any underground tanks or containers;
  - (5) whether radon, asbestos containing materials, urea-formaldehyde foam insulation, lead-based paint, toxic mold (to the extent that it adversely affects the health of ordinary occupants), or other pollutants or contaminants of any nature now exist or ever existed on the Property;
  - (6) any wetlands, as defined by federal or state law or regulation, on the Property;
  - (7) any threatened or endangered species or their habitat on the Property;
  - (8) any present or past infestation of wood-destroying insects in the Property's improvements;
  - (9) any contemplated material changes to the Property or surrounding area that would materially and detrimentally affect the ordinary use of the Property;
  - (10) any condition on the Property that violates any law or ordinance.

(Describe any exceptions to (1)-(10) in Paragraph 12 or an addendum.)

**20. NOTICES:** All notices between the parties under this contract must be in writing and are effective when hand-delivered, mailed by certified mail return receipt requested, or sent by facsimile transmission to the parties addresses or facsimile numbers stated in Paragraph 1. The parties will send copies of any notices to the broker representing the party to whom the notices are sent.

- A. Seller also consents to receive any notices by e-mail at Seller's e-mail address stated in Paragraph 1.
- B. Buyer also consents to receive any notices by e-mail at Buyer's e-mail address stated in Paragraph 1.

**21. DISPUTE RESOLUTION:** The parties agree to negotiate in good faith in an effort to resolve any dispute related to this contract that may arise. If the dispute cannot be resolved by negotiation, the parties will submit the dispute to mediation before resorting to arbitration or litigation and will equally share the costs of a mutually acceptable mediator. This paragraph survives termination of this contract. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.

**22. AGREEMENT OF THE PARTIES:**

- A. This contract is binding on the parties, their heirs, executors, representatives, successors, and permitted assigns.
- B. This contract is to be construed in accordance with the laws of the State of Texas.
- C. This contract contains the entire agreement of the parties and may not be changed except in writing.
- D. If this contract is executed in a number of identical counterparts, each counterpart is an original and all counterparts, collectively, constitute one agreement.

E. Addenda which are part of this contract are: (Check all that apply.)

- (1) Property Description Exhibit identified in Paragraph 2;
- (2) Commercial Contract Financing Addendum;
- (3) Commercial Property Condition Statement;
- (4) Notice to Purchaser of Real Property in a Water District (MUD);
- (5) Addendum for Coastal Area Property;
- (6) Addendum for Property Located Seaward of the Gulf Intracoastal Waterway; and
- (7) \_\_\_\_\_

(Note: Counsel for the Texas Association of REALTORS® (TAR) has determined that any of the foregoing addenda which are promulgated by the Texas Real Estate Commission (TREC) or published by TAR are appropriate for use with this form.)

Commercial Contract - Unimproved Property Concerning \_\_\_\_\_

F. Buyer  may  may not assign this contract. If Buyer assigns this contract, Buyer will be relieved of any future liability under this contract only if the assignee assumes, in writing, all obligations and liability of Buyer under this contract.

23. **TIME:** Time is of the essence in this contract. The parties require strict compliance with the times for performance. If the last day to perform under a provision of this contract falls on a Saturday, Sunday, or legal holiday, the time for performance is extended until the end of the next day which is not a Saturday, Sunday, or legal holiday.

24. **EFFECTIVE DATE:** The effective date of this contract for the purpose of performance of all obligations is the date the escrow agent receipts this contract after all parties execute this contract.

25. **ADDITIONAL NOTICES:**

A. Buyer should have an abstract covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a title policy.

B. If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fees of the district before final execution of this contract.

C. Notice Required by §13.257, Water Code: "The real property, described below, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned purchaser hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in the notice or at closing of purchase of the real property." The real property is described in Paragraph 2 of this contract.

D. If the Property adjoins or shares a common boundary with the tidally influenced submerged lands of the state, §33.135 of the Texas Natural Resources Code requires a notice regarding coastal area property to be included as part of this contract.

E. If the Property is located seaward of the Gulf Intracoastal Waterway, §61.025, Texas Natural Resources Code, requires a notice regarding the seaward location of the Property to be included as part of this contract.

F. If the Property is located outside the limits of a municipality, the Property may now or later be included in the extra-territorial jurisdiction (ETJ) of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and ETJ. To determine if the Property is located within a municipality's ETJ, Buyer should contact all municipalities located in the general proximity of the Property for further information.

G. Brokers are not qualified to perform property inspections, surveys, engineering studies, environmental assessments, or inspections to determine compliance with zoning, governmental regulations, or laws. Buyer should seek experts to perform such services. Selection of inspectors and repairmen is the responsibility of Buyer and not the brokers.

26. **CONTRACT AS OFFER:** The execution of this contract by the first party constitutes an offer to buy or sell the Property. Unless the other party accepts the offer by 5:00 p.m., in the time zone in which the Property is located, on January 8, 2009, the offer will lapse and become null and void.

(TAR-1802) 10-18-05

Initialed for Identification by Buyer CD and Seller B.R.

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Commercial Contract - Unimproved Property Concerning \_\_\_\_\_

**READ THIS CONTRACT CAREFULLY.** The brokers and agents make no representation or recommendation as to the legal sufficiency, legal effect, or tax consequences of this document or transaction. CONSULT your attorney BEFORE signing.

Buyer: DDG Belmont, Ltd. Seller: Leander 243 Investment, LLC  
By: [Signature] By: [Signature]

Printed Name: Colby Denison Printed Name: Blake Rue

Title: President Authorized Representative Title: Managing Member

Buyer: \_\_\_\_\_ Seller: \_\_\_\_\_

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

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

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

**AGREEMENT BETWEEN BROKERS**

Principal Broker agrees to pay \_\_\_\_\_ (Cooperating Broker) a fee of \$ \_\_\_\_\_ or \_\_\_\_\_ % of the sales price when the Principal Broker's fee is received. Escrow agent is authorized and directed to pay Cooperating Broker from Principal Broker's fee at closing. This Agreement Between Brokers supersedes any prior offers and agreements for compensation between brokers.

Cooperating Broker By: \_\_\_\_\_ Principal Broker By: \_\_\_\_\_

**ATTORNEYS**

Buyer's attorney is: \_\_\_\_\_ Seller's attorney is: \_\_\_\_\_

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

Address: \_\_\_\_\_ Address: \_\_\_\_\_

Phone & Fax: \_\_\_\_\_ Phone & Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_ E-mail: \_\_\_\_\_

Buyer's attorney requests copies of documents, notices, and other information:

- the title company sends to Buyer.
- Seller sends to Buyer.

Seller's attorney requests copies of documents, notices, and other information:

- the title company sends to Seller.
- Buyer sends to Seller.

**ESCROW RECEIPT**

Escrow agent acknowledges receipt of:

A. the contract on this day \_\_\_\_\_ (effective date);

B. earnest money in the amount of \$ \_\_\_\_\_ in the form of \_\_\_\_\_ on \_\_\_\_\_

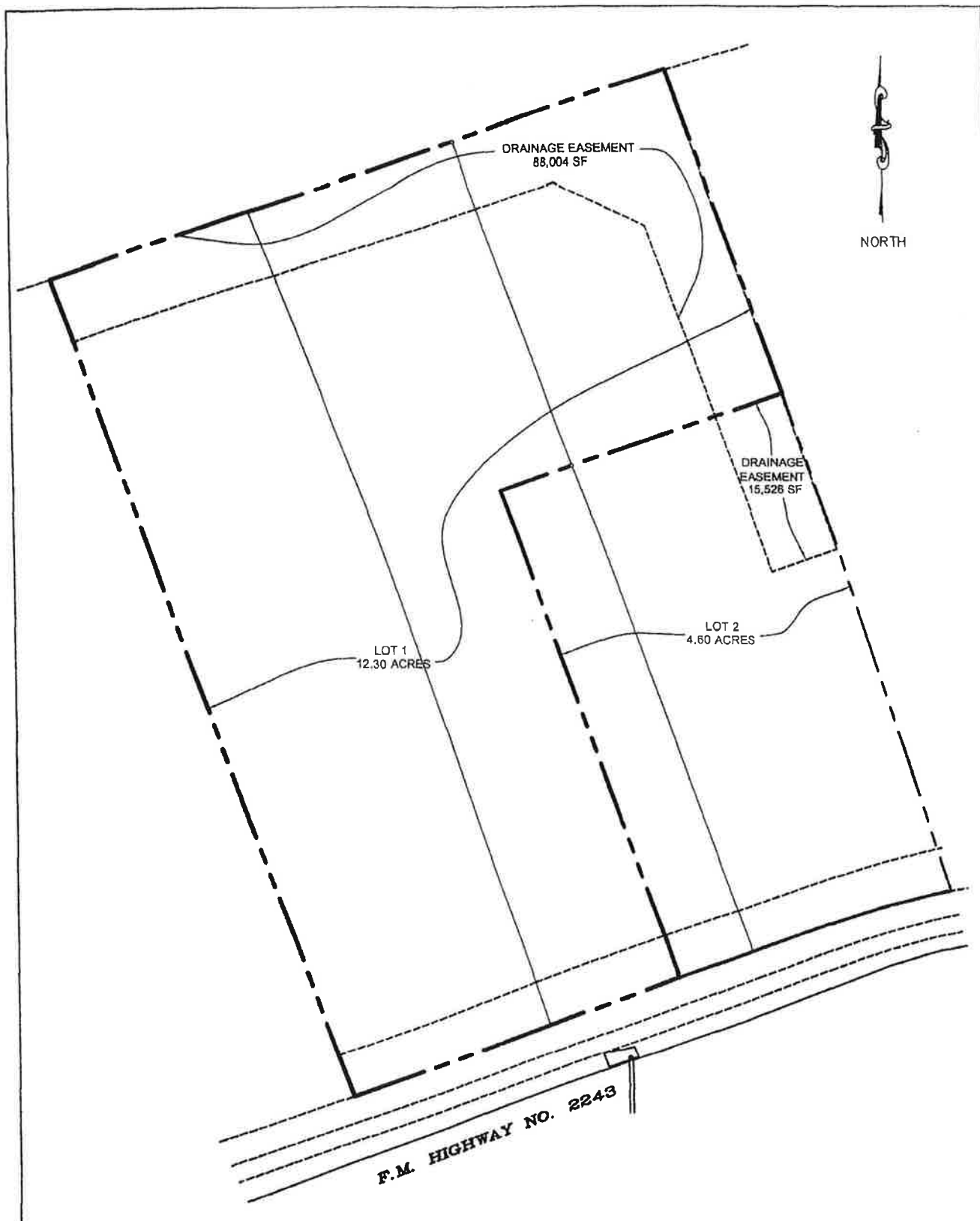
Escrow Agent: Heritage Title Company Address: 401 Congress, Suite 1300

Aurora, TX 78701

By: \_\_\_\_\_ Phone & Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

Exhibit #



STANDARD NO.	12.3 ACRES LEANDER, TX F.M. HIGHWAY No. 2243	AUSTIN CIVIL ENGINEERING, INC. 2708 SOUTH LAMAR BLVD. AUSTIN, TEXAS 78704 PHONE: (512) 306-0018 FAX: (512) 306-0048	
	SCALE: N.T.S.		



10040



TEXAS ASSOCIATION OF REALTORS®  
COMMERCIAL CONTRACT - UNIMPROVED PROPERTY

USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS® IS NOT AUTHORIZED.  
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1. **PARTIES:** Seller agrees to sell and convey to Buyer the Property described in Paragraph 2. Buyer agrees to buy the Property from Seller for the sales price stated in Paragraph 3. The parties to this contract are:

Seller: Oryx Development, LLC  
Address: P.O. Box 302663, Austin, Tx 78703  
Phone: (512) 294-4017 Fax: \_\_\_\_\_  
E-mail: blake@rueinvestments.com  
Buyer: Denison Construction, Inc.  
Address: 3701 N. Lamar, Suite 206, Austin, Tx 78705  
Phone: (512) 732-1226 Fax: \_\_\_\_\_  
E-mail: colby@denisondevelopment.com

2. **PROPERTY:**

A. "Property" means that real property situated in Guadalupe County, Texas at 10.629 Acres on Borgfeld Rd., Schertz, Texas 78154 (address) and that is legally described on the attached Exhibit \_\_\_\_\_ or as follows: See attached Exhibit "A"

B. Seller will sell and convey the Property together with:  
(1) all rights, privileges, and appurtenances pertaining to the Property, including Seller's right, title, and interest in any minerals, utilities, adjacent streets, alleys, strips, gores, and rights-of-way;  
(2) Seller's interest in all leases, rents, and security deposits for all or part of the Property; and  
(3) Seller's interest in all licenses and permits related to the Property.

(Describe any exceptions, reservations, or restrictions in Paragraph 12 or an addendum.)

3. **SALES PRICE:**

A. At or before closing, Buyer will pay the following sales price for the Property:

(1) Cash portion payable by Buyer at closing . . . . . \$ 1,388,214.00  
(2) Sum of all financing described in Paragraph 4 . . . . . \$ \_\_\_\_\_  
(3) Sales price (sum of 3A(1) and 3A(2)) . . . . . \$ 1,388,214.00

10.629 Acres on Borgfeld Rd., Schertz, Texas  
78154

Commercial Contract - Unimproved Property Concerning \_\_\_\_\_

B. Adjustment to Sales Price: (Check (1) or (2) only.)

- (1) The sales price will not be adjusted based on a survey.
- (2) The sales price will be adjusted based on the latest survey obtained under Paragraph 6B.
  - (a) The sales price is calculated on the basis of \$ \_\_\_\_\_ per:
    - (i) square foot of  total area  net area.
    - (ii) acre of  total area  net area.
  - (b) "Total area" means all land area within the perimeter boundaries of the Property. "Net area" means total area less any area of the Property within:
    - (i) public roadways;
    - (ii) rights-of-way and easements other than those that directly provide utility services to the Property; and
    - (iii) \_\_\_\_\_.
  - (c) If the sales price is adjusted by more than \_\_\_\_\_ % of the stated sales price, either party may terminate this contract by providing written notice to the other party within \_\_\_\_\_ days after the terminating party receives the survey. If neither party terminates this contract or if the variance is less than the stated percentage, the adjustment to the sales price will be made to the cash portion of the sales price payable by Buyer.

4. **FINANCING:** Buyer will finance the portion of the sales price under Paragraph 3A(2) as follows:

- A. Third Party Financing: One or more third party loans in the total amount of \$ \_\_\_\_\_ . This contract:
  - (1) is not contingent upon Buyer obtaining third party financing.
  - (2) is contingent upon Buyer obtaining third party financing in accordance with the attached Commercial Contract Financing Addendum.
- B. Assumption: In accordance with the attached Commercial Contract Financing Addendum, Buyer will assume the existing promissory note secured by the Property, which balance at closing will be \$ \_\_\_\_\_ .
- C. Seller Financing: The delivery of a promissory note and deed of trust from Buyer to Seller under the terms of the attached Commercial Contract Financing Addendum in the amount of \$ \_\_\_\_\_ .

5. **EARNEST MONEY:**

- A. Not later than 3 days after the effective date, Buyer must deposit \$ 10,000.00 as earnest money with Heritage Title Company Attn: Brenda Hindsman (escrow agent) at 401 Congress Ave, Austin, Tx 78701 (address). If Buyer fails to timely deposit the earnest money, Seller may terminate this contract by providing written notice to Buyer before Buyer deposits the earnest money and may exercise Seller's remedies under Paragraph 15.
- B. Buyer will deposit an additional amount of \$ 10,000.00 with the escrow agent to be made part of the earnest money on or before:
  - (i) \_\_\_\_\_ days after Buyer's right to terminate under Paragraph 7B expires; or
  - (ii) April 15, 2010
 Buyer will be in default if Buyer fails to deposit the additional amount required by this Paragraph 5B within 3 days after Seller notifies Buyer that Buyer has not timely deposited the additional amount.
- C. Buyer may instruct the escrow agent to deposit the earnest money in an interest-bearing account at a federally insured financial institution and to credit any interest to Buyer.

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6. TITLE POLICY AND SURVEY:

A. Title Policy:

- (1) Seller, at Seller's expense, will furnish Buyer an Owner's Policy of Title Insurance (the title policy) issued by Heritage Title Company (title company) in the amount of the sales price, dated at or after closing, insuring Buyer against loss under the title policy, subject only to:
  - (a) those title exceptions permitted by this contract or as may be approved by Buyer in writing; and
  - (b) the standard printed exceptions contained in the promulgated form of title policy unless this contract provides otherwise.
- (2) The standard printed exception as to discrepancies, conflicts, or shortages in area and boundary lines, or any encroachments or protrusions, or any overlapping improvements:
  - (a) will not be amended or deleted from the title policy.
  - (b) will be amended to read "shortages in areas" at the expense of  Buyer  Seller.
- (3) Buyer may object to any restrictive covenants on the Property within the time required under Paragraph 6C.
- (4) Within 20 days after the effective date, Seller will furnish Buyer a commitment for title insurance (the commitment) including legible copies of recorded documents evidencing title exceptions. Seller authorizes the title company to deliver the commitment and related documents to Buyer at Buyer's address.

B. Survey: Within 225 days after the effective date:

- (1) Buyer will obtain a survey of the Property at Buyer's expense and deliver a copy of the survey to Seller. The survey must be made in accordance with the Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition.
- (2) Seller, at Seller's expense, will furnish Buyer a survey of the Property dated after the effective date. The survey must be made in accordance with the Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition.
- (3) Seller will deliver to Buyer and the title company a true and correct copy of Seller's existing survey of the Property dated \_\_\_\_\_ along with an affidavit required by the title company for approval of the survey. If the survey is not acceptable to the title company, Seller, at Seller's expense, will obtain a survey acceptable to the title company and deliver the acceptable survey to the Buyer and the title company within 15 days after Seller receives notice that the existing survey is not acceptable to the title company. The closing date will be extended daily up to 15 days if necessary for Seller to deliver an acceptable survey within the time required.

C. Buyer's Objections to the Commitment and Survey:

- (1) Within 30 days after Buyer receives the commitment, copies of the documents evidencing the title exceptions, and any required survey, Buyer may object in writing to matters disclosed in the items if: (a) the matters disclosed constitute a defect or encumbrance to title other than those permitted by this contract or liens that Seller will satisfy at closing or Buyer will assume at closing; or (b) the items show that any part of the Property lies in a special flood hazard area (an "A" or "V" zone as defined by FEMA). If Paragraph 6B(1) applies, Buyer is deemed to receive the survey on the earlier of: (i) the date of Buyer's actual receipt of the survey; or (ii) of the deadline specified in Paragraph 6B.

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Commercial Contract - Unimproved Property Concerning \_\_\_\_\_

(2) Seller may, but is not obligated to, cure Buyer's timely objections within 15 days after Seller receives the objections. The closing date will be extended as necessary to provide such time to cure the objections. If Seller fails to cure the objections by the time required, Buyer may terminate this contract by providing written notice to Seller within 5 days after the time by which Seller must cure the objections. If Buyer terminates, the earnest money, less any independent consideration under Paragraph 7B(1), will be refunded to Buyer.

(3) Buyer's failure to timely object or terminate under this Paragraph 6C is a waiver of Buyer's right to object except that Buyer will not waive the requirements in Schedule C of the commitment.

7. PROPERTY CONDITION:

A. Present Condition: Buyer accepts the Property in its present condition except that Seller, at Seller's expense, will complete the following before closing: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

B. Feasibility Period: Buyer may terminate this contract for any reason within 225 days after the effective date (feasibility period) by providing Seller written notice of termination. (Check only one box.)

(1) If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer less \$ 10,000.00 that Seller will retain as independent consideration for Buyer's unrestricted right to terminate. Buyer has tendered the independent consideration to Seller upon payment of the amount specified in Paragraph 5A to the escrow agent. The independent consideration is to be credited to the sales price only upon closing of the sale. If no dollar amount is stated in this Paragraph 7B(1) or if Buyer fails to timely deposit the earnest money, Buyer will not have the right to terminate under this Paragraph 7B.

(2) Not later than 3 days after the effective date, Buyer must pay Seller \$ \_\_\_\_\_ as independent consideration for Buyer's right to terminate by tendering such amount to Seller or Seller's agent. If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer and Seller will retain the independent consideration. The independent consideration will be credited to the sales price only upon closing of the sale. If no dollar amount is stated in this Paragraph 7B(2) or if Buyer fails to timely pay the independent consideration, Buyer will not have the right to terminate under this Paragraph 7B.

C. Inspections, Studies, or Assessments:

(1) During the feasibility period, Buyer, at Buyer's expense, may complete or cause to be completed any and all inspections, studies, or assessments of the Property (including all improvements and fixtures) desired by Buyer.

(2) Buyer must:

- (a) employ only trained and qualified inspectors and assessors;
- (b) notify Seller, in advance, of when the inspectors or assessors will be on the Property;
- (c) abide by any reasonable entry rules or requirements of Seller;
- (d) not interfere with existing operations or occupants of the Property; and
- (e) restore the Property to its original condition if altered due to inspections, studies, or assessments that Buyer completes or causes to be completed.

(3) Except for those matters that arise from the negligence of Seller or Seller's agents, Buyer is responsible for any claim, liability, encumbrance, cause of action, and expense resulting from

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Buyer's inspections, studies, or assessments, including any property damage or personal injury. Buyer will indemnify, hold harmless, and defend Seller and Seller's agents against any claim involving a matter for which Buyer is responsible under this paragraph. This paragraph survives termination of this contract.

D. Property Information:

- (1) Delivery of Property Information: Within 30 days after the effective date, Seller will deliver to Buyer:
  - (a) copies of all current leases pertaining to the Property, including any modifications, supplements, or amendments to the leases;
  - (b) copies of all notes and deeds of trust against the Property that Buyer will assume or that Seller will not pay in full on or before closing;
  - (c) copies of all previous environmental assessments, geotechnical reports, studies, or analyses made on or relating to the Property;
  - (d) copies property tax statements for the Property for the previous 2 calendar years;
  - (e) plats of the Property;
  - (f) copies of current utility capacity letters from the Property's water and sewer service provider; and
  - (g) \_\_\_\_\_

- (2) Return of Property Information: If this contract terminates for any reason, Buyer will, not later than 10 days after the termination date: (a) return to Seller all those items described in Paragraph 7D(1) that Seller delivered to Buyer and all copies that Buyer made of those items; and (b) deliver copies of all inspection and assessment reports related to the Property that Buyer completed or caused to be completed. This Paragraph 7D(2) survives termination of this contract.

E. Contracts Affecting Operations: Until closing, Seller: (1) will operate the Property in the same manner as on the effective date under reasonably prudent business standards; and (2) will not transfer or dispose of any part of the Property, any interest or right in the Property, or any of the personal property or other items described in Paragraph 2B or sold under this contract. After the feasibility period ends, Seller may not enter into, amend, or terminate any other contract that affects the operations of the Property without Buyer's written approval.

8. **LEASES:**

A. Each written lease Seller is to assign to Buyer under this contract must be in full force and effect according to its terms. Seller may not enter into any new lease, fail to comply with any existing lease, or make any amendment or modification to any existing lease without Buyer's written consent. Seller must disclose, in writing, if any of the following exist at the time Seller provides the leases to the Buyer or subsequently occur before closing:

- (1) any failure by Seller to comply with Seller's obligations under the leases;
- (2) any circumstances under any lease that entitle the tenant to terminate the lease or seek any offsets or damages;
- (3) any advance sums paid by a tenant under any lease;
- (4) any concessions, bonuses, free rents, rebates, brokerage commissions, or other matters that affect any lease; and
- (5) any amounts payable under the leases that have been assigned or encumbered, except as security for loan(s) assumed or taken subject to under this contract.

B. Estoppel Certificates: Within N/A days after the effective date, Seller will deliver to Buyer estoppel certificates signed not earlier than \_\_\_\_\_ by each tenant that leases space in the Property. The estoppel certificates must state:

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Commercial Contract - Unimproved Property Concerning

- (1) that no default exists under the lease by the landlord or tenant as of the date the estoppel certificate is signed;
- (2) the amount of the scheduled rents to be paid through the end of the lease and any rental payments that have been paid in advance;
- (3) the amount of any security deposit;
- (4) the amount of any offsets tenant is entitled against rent;
- (5) the expiration date of the lease;
- (6) a description of any renewal options; and
- (7) \_\_\_\_\_

9. BROKERS:

A. The brokers to this sale are:

<u>E. Ted Davis and Associates</u>	<u>Oryx Commercial Properties, LLC</u>
Cooperating Broker	Princlpal Broker
License No. _____	0437687 License No.
<u>50 Briar Hollow Ln, Ste 490E</u>	<u>2403 Rockmoor Ave.</u>
Address	Address
<u>Houston, Texas 77027</u>	<u>Ausitn, Texas 78703</u>
<u>(713) 552-1920</u>	<u>(512) 636-6076</u>
Phone	Phone
Fax _____	Fax _____
E-mail: _____	E-mail: <u>britt@oryxproperties.net</u>

Cooperating Broker represents buyer.

Principal Broker: (Check only one box.)

- represents Seller only.
- represents Buyer only.
- is an intermediary between Seller and Buyer.

B. Fees. (Check only one box.)

- (1) Seller will pay Principal Broker the fee specified by separate written commission agreement between Principal Broker and Seller. Principal Broker will pay Cooperating Broker the fee specified in the Agreement Between Brokers found below the parties' signatures to this contract.

(2) At the closing of this sale, Seller will pay:

Cooperating Broker a total cash fee of:	Principal Broker a total cash fee of:
<input checked="" type="checkbox"/> <u>3.000</u> % of the sales price.	<input checked="" type="checkbox"/> <u>3.000</u> % of the sales price.
<input type="checkbox"/> _____	<input type="checkbox"/> _____

The cash fees will be paid in Travis County, Texas. Seller authorizes escrow agent to pay the brokers from the Seller's proceeds at closing.

NOTICE: Chapter 62, Texas Property Code, authorizes a broker to secure an earned commission with a lien against the Property.

C. The parties may not amend this Paragraph 9 without the written consent of the brokers affected by the amendment.

10. CLOSING:

A. The closing of the sale will be on or before October 31, 2010 or within 7 days after objections made under Paragraph 6C have been cured or waived, whichever date is later (the closing date).

B. If either party fails to close by the closing date, the non-defaulting party may exercise the remedies in Paragraph 15.

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Initialed for Identification by Buyer CD, \_\_\_\_\_ and Seller BR

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10.629 Acres on Borgfeld Rd., Schertz, Texas  
78154

Commercial Contract - Unimproved Property Concerning

- C. At closing, Seller will execute and deliver, at Seller's expense, a  general  special warranty deed. The deed must include a vendor's lien if any part of the sales price is financed. The deed must convey good and indefeasible title to the Property and show no exceptions other than those permitted under Paragraph 6 or other provisions of this contract. Seller must convey the Property:
  - (1) with no liens, assessments, or other security interests against the Property which will not be satisfied out of the sales price, unless securing loans Buyer assumes;
  - (2) without any assumed loans in default; and
  - (3) with no persons in possession of any part of the Property as lessees, tenants at sufferance, or trespassers except tenants under the written leases assigned to Buyer under this contract.

- D. At closing, Seller, at Seller's expense, will also deliver to Buyer:
  - (1) tax statements showing no delinquent taxes on the Property;
  - (2) an assignment of all leases to or on the Property;
  - (3) to the extent assignable, an assignment to Buyer of any licenses and permits related to the Property;
  - (4) evidence that the person executing this contract is legally capable and authorized to bind Seller;
  - (5) an affidavit acceptable to the escrow agent stating that Seller is not a foreign person or, if Seller is a foreign person, a written authorization for the escrow agent to: (i) withhold from Seller's proceeds an amount sufficient to comply applicable tax law; and (ii) deliver the amount to the Internal Revenue Service (IRS) together with appropriate tax forms; and
  - (6) any notices, statements, certificates, affidavits, releases, and other documents required by this contract, the commitment, or law necessary for the closing of the sale and issuance of the title policy, all of which must be completed by Seller as necessary.

- E. At closing, Buyer will:
  - (1) pay the sales price in good funds acceptable to the escrow agent;
  - (2) deliver evidence that the person executing this contract is legally capable and authorized to bind Buyer;
  - (3) sign and send to each tenant in a lease for any part of the Property a written statement that:
    - (a) acknowledges Buyer has received and is responsible for the tenant's security deposit; and
    - (b) specifies the exact dollar amount of the security deposit;
  - (4) sign an assumption of all leases then in effect; and
  - (5) execute and deliver any notices, statements, certificates, or other documents required by this contract or law necessary to close the sale.

F. Unless the parties agree otherwise, the closing documents will be as found in the basic forms in the current edition of the State Bar of Texas Real Estate Forms Manual without any additional clauses.

**11. POSSESSION:** Seller will deliver possession of the Property to Buyer upon closing and funding of this sale in its present condition with any repairs Seller is obligated to complete, ordinary wear and tear excepted. Any possession by Buyer before closing or by Seller after closing that is not authorized by a separate written lease agreement is a landlord-tenant at sufferance relationship between the parties.

**12. SPECIAL PROVISIONS:** *(Identify exhibit if special provisions are contained in an attachment.)*

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10.629 Acres on Borgfeld Rd., Schertz, Texas

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**13. SALES EXPENSES:**

- A. Seller's Expenses: Seller will pay for the following at or before closing:
  - (1) releases of existing liens, other than those liens assumed by Buyer, including prepayment penalties and recording fees;
  - (2) release of Seller's loan liability, if applicable;
  - (3) tax statements or certificates;
  - (4) preparation of the deed;
  - (5) one-half of any escrow fee;
  - (6) costs to record any documents to cure title objections that Seller must cure; and
  - (7) other expenses that Seller will pay under other provisions of this contract.
- B. Buyer's Expenses: Buyer will pay for the following at or before closing:
  - (1) all loan expenses and fees;
  - (2) preparation of any deed of trust;
  - (3) recording fees for the deed and any deed of trust;
  - (4) premiums for flood insurance as may be required by Buyer's lender;
  - (5) one-half of any escrow fee;
  - (6) other expenses that Buyer will pay under other provisions of this contract.

**14. PRORATIONS:**

- A. Prorations:
  - (1) Interest on any assumed loan, taxes, rents, and any expense reimbursements from tenants will be prorated through the closing date.
  - (2) If the amount of ad valorem taxes for the year in which the sale closes is not available on the closing date, taxes will be prorated on the basis of taxes assessed in the previous year. If the taxes for the year in which the sale closes vary from the amount prorated at closing, the parties will adjust the prorations when the tax statements for the year in which the sale closes become available. This Paragraph 14A(2) survives closing.
  - (3) If Buyer assumes a loan or is taking the Property subject to an existing lien, Seller will transfer all reserve deposits held by the lender for the payment of taxes, insurance premiums, and other charges to Buyer at closing and Buyer will reimburse such amounts to Seller by an appropriate adjustment at closing.
- B. Rollback Taxes: If Seller changes the use of the Property before closing or if a denial of a special valuation on the Property claimed by Seller results in the assessment of additional taxes, penalties, or interest (assessments) for periods before closing, the assessments will be the obligation of the Seller. If this sale or Buyer's use of the Property after closing results in additional assessments for periods before closing, the assessments will be the obligation of Buyer. This Paragraph 14B survives closing.
- C. Rent and Security Deposits: At closing, Seller will tender to Buyer all security deposits and the following advance payments received by Seller for periods after closing: prepaid expenses, advance rental payments, and other advance payments paid by tenants. Rents prorated to one party but received by the other party will be remitted by the recipient to the party to whom it was prorated within 5 days after the rent is received. This Paragraph 14C survives closing.

**15. DEFAULT:**

- A. If Buyer fails to comply with this contract, Buyer is in default and Seller may:
  - (1) terminate this contract and receive the earnest money as liquidated damages, thereby releasing the parties from this contract; or
  - (2) enforce specific performance, or seek other relief as may be provided by law, or both.

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- B. If, without fault, Seller is unable within the time allowed to deliver the estoppel certificates, survey, or commitment, Buyer may:
    - (1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7B(1), as the sole remedy; or
    - (2) extend the time for performance up to 15 days and the closing will be extended as necessary.
  - C. Except as provided in Paragraph 15B, if Seller fails to comply with this contract, Seller is in default and Buyer may:
    - (1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7B(1), as liquidated damages, thereby releasing the parties from this contract; or
    - (2) enforce specific performance, or seek such other relief as may be provided by law, or both.
- 16. CONDEMNATION:** If before closing, condemnation proceedings are commenced against any part of the Property, Buyer may:
- A. terminate this contract by providing written notice to Seller within 15 days after Buyer is advised of the condemnation proceedings and the earnest money, less any independent consideration paid under Paragraph 7B(1), will be refunded to Buyer; or
  - B. appear and defend in the condemnation proceedings and any award will, at Buyer's election, belong to:
    - (1) Seller and the sales price will be reduced by the same amount; or
    - (2) Buyer and the sales price will not be reduced.
- 17. ATTORNEY'S FEES:** If Buyer, Seller, any broker, or any escrow agent is a prevailing party in any legal proceeding brought under or with relation to this contract or this transaction, such party is entitled to recover from the non-prevailing parties all costs of such proceeding and reasonable attorney's fees. This Paragraph 17 survives termination of this contract.
- 18. ESCROW:**
- A. At closing, the earnest money will be applied first to any cash down payment, then to Buyer's closing costs, and any excess will be refunded to Buyer.
  - B. If both parties make written demand for the earnest money, escrow agent may require payment of unpaid expenses incurred on behalf of the parties and a written release of liability of escrow agent from all parties.
  - C. If one party makes written demand for the earnest money, escrow agent will give notice of the demand by providing to the other party a copy of the demand. If escrow agent does not receive written objection to the demand from the other party within 15 days after the date escrow agent sent the demand to the other party, escrow agent may disburse the earnest money to the party making demand, reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and escrow agent may pay the same to the creditors.
  - D. Escrow agent will deduct any independent consideration under Paragraph 7B(1) before disbursing any earnest money to Buyer and will pay the independent consideration to Seller.
  - E. If escrow agent complies with this Paragraph 18, each party hereby releases escrow agent from all claims related to the disbursement of the earnest money.
  - F. Notices under this Paragraph 18 must be sent by certified mail, return receipt requested. Notices to escrow agent are effective upon receipt by escrow agent.
- 19. MATERIAL FACTS:** To the best of Seller's knowledge and belief: *(Check only one box.)*
- A. Seller is not aware of any material defects to the Property except as stated in the attached Property Condition Statement.

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Initialed for Identification by Buyer                      and Seller                     

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- B. Except as otherwise provided in this contract, Seller is not aware of:
  - (1) any subsurface: structures, pits, waste, springs, or improvements;
  - (2) any pending or threatened litigation, condemnation, or assessment affecting the Property;
  - (3) any environmental hazards or conditions that materially affect the Property;
  - (4) whether the Property is or has been used for the storage or disposal of hazardous materials or toxic waste, a dump site or landfill, or any underground tanks or containers;
  - (5) whether radon, asbestos containing materials, urea-formaldehyde foam insulation, lead-based paint, toxic mold (to the extent that it adversely affects the health of ordinary occupants), or other pollutants or contaminants of any nature now exist or ever existed on the Property;
  - (6) any wetlands, as defined by federal or state law or regulation, on the Property;
  - (7) any threatened or endangered species or their habitat on the Property;
  - (8) any present or past infestation of wood-destroying insects in the Property's improvements;
  - (9) any contemplated material changes to the Property or surrounding area that would materially and detrimentally affect the ordinary use of the Property;
  - (10) any condition on the Property that violates any law or ordinance.

(Describe any exceptions to (1)-(10) in Paragraph 12 or an addendum.)

**20. NOTICES:** All notices between the parties under this contract must be in writing and are effective when hand-delivered, mailed by certified mail return receipt requested, or sent by facsimile transmission to the parties addresses or facsimile numbers stated in Paragraph 1. The parties will send copies of any notices to the broker representing the party to whom the notices are sent.

- A. Seller also consents to receive any notices by e-mail at Seller's e-mail address stated in Paragraph 1.
- B. Buyer also consents to receive any notices by e-mail at Buyer's e-mail address stated in Paragraph 1.

**21. DISPUTE RESOLUTION:** The parties agree to negotiate in good faith in an effort to resolve any dispute related to this contract that may arise. If the dispute cannot be resolved by negotiation, the parties will submit the dispute to mediation before resorting to arbitration or litigation and will equally share the costs of mutually acceptable mediator. This paragraph survives termination of this contract. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.

**22. AGREEMENT OF THE PARTIES:**

- A. This contract is binding on the parties, their heirs, executors, representatives, successors, and permitted assigns.
- B. This contract is to be construed in accordance with the laws of the State of Texas.
- C. This contract contains the entire agreement of the parties and may not be changed except in writing.
- D. If this contract is executed in a number of identical counterparts, each counterpart is an original and all counterparts, collectively, constitute one agreement.

E. Addenda which are part of this contract are: (Check all that apply.)

- (1) Property Description Exhibit identified in Paragraph 2;
- (2) Commercial Contract Financing Addendum;
- (3) Commercial Property Condition Statement;
- (4) Notice to Purchaser of Real Property in a Water District (MUD);
- (5) Addendum for Coastal Area Property;
- (6) Addendum for Property Located Seaward of the Gulf Intracoastal Waterway; and
- (7) \_\_\_\_\_

(Note: Counsel for the Texas Association of REALTORS® (TAR) has determined that any of the foregoing addenda which are promulgated by the Texas Real Estate Commission (TREC) or published by TAR are appropriate for use with this form.)

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F. Buyer  may  may not assign this contract. If Buyer assigns this contract, Buyer will be relieved of any future liability under this contract only if the assignee assumes, in writing, all obligations and liability of Buyer under this contract.

23. **TIME:** Time is of the essence in this contract. The parties require strict compliance with the times for performance. If the last day to perform under a provision of this contract falls on a Saturday, Sunday, or legal holiday, the time for performance is extended until the end of the next day which is not a Saturday, Sunday, or legal holiday.

24. **EFFECTIVE DATE:** The effective date of this contract for the purpose of performance of all obligations is the date the escrow agent receipts this contract after all parties execute this contract.

25. **ADDITIONAL NOTICES:**

A. Buyer should have an abstract covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a title policy.

B. If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fees of the district before final execution of this contract.

C. Notice Required by §13.257, Water Code: "The real property, described below, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned purchaser hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in the notice or at closing of purchase of the real property." The real property is described in Paragraph 2 of this contract.

D. If the Property adjoins or shares a common boundary with the tidally influenced submerged lands of the state, §33.135 of the Texas Natural Resources Code requires a notice regarding coastal area property to be included as part of this contract.

E. If the Property is located seaward of the Gulf Intracoastal Waterway, §61.025, Texas Natural Resources Code, requires a notice regarding the seaward location of the Property to be included as part of this contract.

F. If the Property is located outside the limits of a municipality, the Property may now or later be included in the extra-territorial jurisdiction (ETJ) of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and ETJ. To determine if the Property is located within a municipality's ETJ, Buyer should contact all municipalities located in the general proximity of the Property for further information.

G. Brokers are not qualified to perform property inspections, surveys, engineering studies, environmental assessments, or inspections to determine compliance with zoning, governmental regulations, or laws. Buyer should seek experts to perform such services. Selection of inspectors and repairmen is the responsibility of Buyer and not the brokers.

26. **CONTRACT AS OFFER:** The execution of this contract by the first party constitutes an offer to buy or sell the Property. Unless the other party accepts the offer by 5:00 p.m., in the time zone in which the Property is located, on January 8, 2010, the offer will lapse and become null and void.

(TAR-1802) 10-18-05

Initialed for Identification by Buyer CD, \_\_\_\_\_ and Seller BR, \_\_\_\_\_

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**READ THIS CONTRACT CAREFULLY.** The brokers and agents make no representation or recommendation as to the legal sufficiency, legal effect, or tax consequences of this document or transaction. **CONSULT your attorney BEFORE signing.**

Buyer: Denison Construction, Inc. Seller: Oryx Development, LLC

By: [Signature] By: [Signature]

Printed Name: Colby Denison Printed Name: Blake A. Rue

Title: President Title: Managing Member

Buyer: \_\_\_\_\_ Seller: \_\_\_\_\_

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

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

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

**AGREEMENT BETWEEN BROKERS**

Principal Broker agrees to pay \_\_\_\_\_ (Cooperating Broker) a fee of \$ \_\_\_\_\_ or \_\_\_\_\_ % of the sales price when the Principal Broker's fee is received. Escrow agent is authorized and directed to pay Cooperating Broker from Principal Broker's fee at closing. This Agreement Between Brokers supersedes any prior offers and agreements for compensation between brokers.

Cooperating Broker \_\_\_\_\_ Principal Broker \_\_\_\_\_  
By: \_\_\_\_\_ By: \_\_\_\_\_

**ATTORNEYS**

Buyer's attorney is: \_\_\_\_\_ Seller's attorney is: \_\_\_\_\_  
Name: \_\_\_\_\_ Name: \_\_\_\_\_  
Address: \_\_\_\_\_ Address: \_\_\_\_\_  
Phone & Fax: \_\_\_\_\_ Phone & Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_ E-mail: \_\_\_\_\_

Buyer's attorney requests copies of documents, notices, and other information:  
 the title company sends to Buyer.  
 Seller sends to Buyer.

Seller's attorney requests copies of documents, notices, and other information:  
 the title company sends to S  
 Buyer sends to Seller.

**Heritage Title Company of Austin, Inc.**  
401 Congress Avenue, Suite 1500  
Austin, Texas 78701  
512.505.5000 • 512.505.5024 fax  
www.heritagetitleofaustin.com

**ESCROW RECEIPT**

Escrow agent acknowledges receipt of:  
 A. the contract on this day January 5, 2010 (effective date);  
 B. earnest money in the amount of \$ 10,000.00 in the form of business check no. 4142 on January 5, 2010.

Escrow Agent: Heritage Title Company Address: 401 Congress Ave  
Austin, Tx 78701

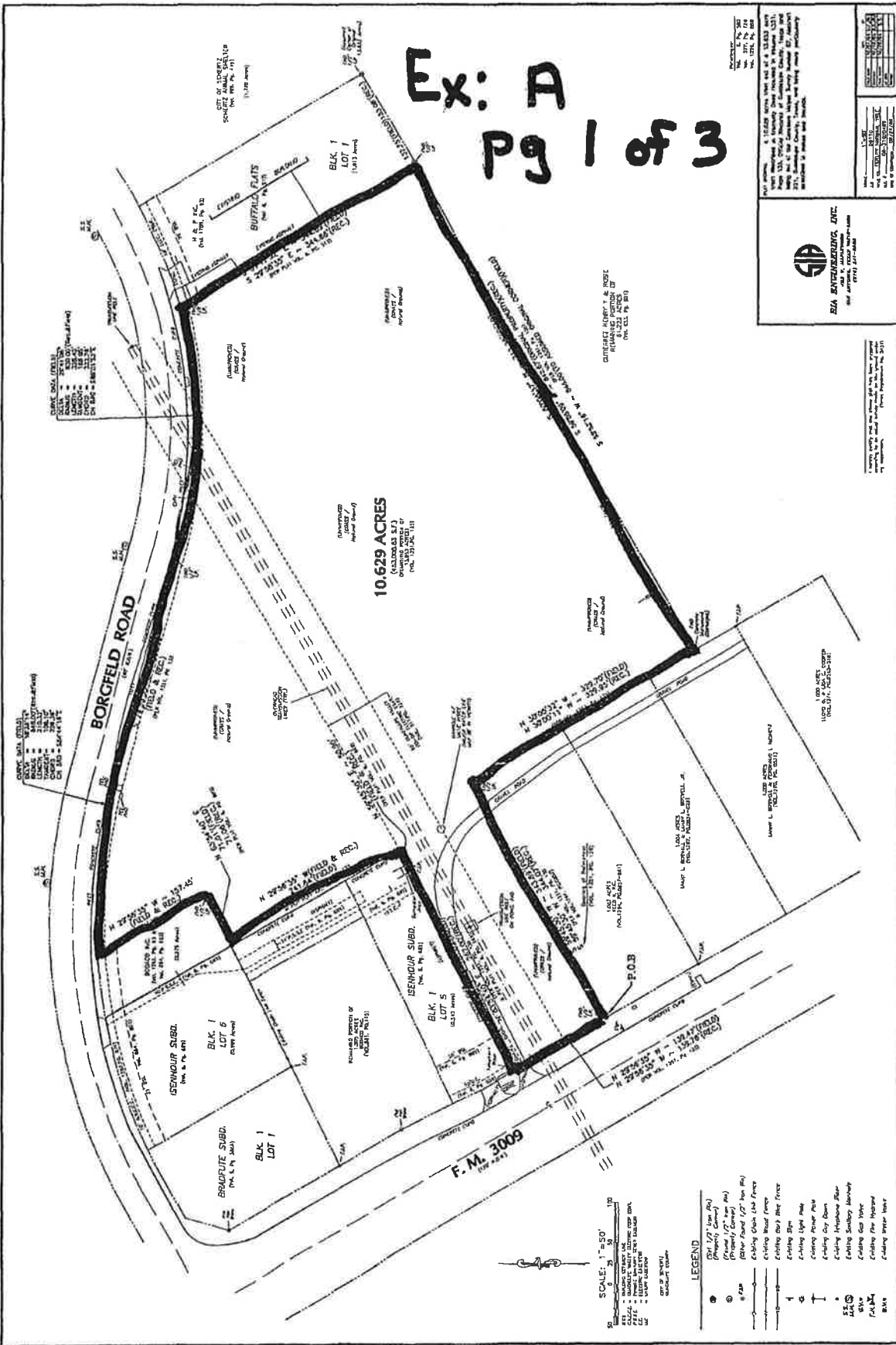
By: [Signature] Phone & Fax: \_\_\_\_\_

Attn: Brenda Hindsman E-mail: bhindsman@heritage-title.com  
Executive Vice President

(TAR-1802) 10/18/05

AND CONDITIONS CONTAINED  
IN THE ATTACHED EARNEST  
MONEY RECEIPT."

Ex: A  
Pg 1 of 3



NO.	DESCRIPTION	DATE	BY
1	PREPARED BY		
2	CHECKED BY		
3	APPROVED BY		
4	DATE		

**ZIA ENGINEERING, INC.**  
 1000 N. W. 10th St., Suite 100  
 Ft. Lauderdale, FL 33304  
 Tel: (954) 561-1111  
 Fax: (954) 561-1112  
 www.zia-engineering.com

THIS PLAN IS THE PROPERTY OF ZIA ENGINEERING, INC. AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF ZIA ENGINEERING, INC.

SCALE: 1" = 50'  
 1" = 50'  
 1" = 50'

**LEGEND**  
 (P.M. S. P. 1011)  
 (P.M. S. P. 1012)  
 (P.M. S. P. 1013)  
 (P.M. S. P. 1014)  
 (P.M. S. P. 1015)  
 (P.M. S. P. 1016)  
 (P.M. S. P. 1017)  
 (P.M. S. P. 1018)  
 (P.M. S. P. 1019)  
 (P.M. S. P. 1020)

BLK. 1  
 LOT 1  
 LOT 5  
 LOT 6  
 LOT 7

Ex: A  
Pg 2 of 3

**FIELD NOTES,**

For

A 10.629 Acres tract (463,008.83 square feet) tract of Land, more or less, being the remaining portion of a 13.653 Acres tract out of the Genobera Malpaz Survey No. 67, Abstract No. 221, recorded in Volume 1351, Page 135 of the Deed Records of Guadalupe County, Texas, and being more particularly described by metes and bounds as follows:

**BEGINNING** from a 1/2-inch iron pin found in the northeast Right-of-Way line of F.M. 3009, said point being the most westerly corner of a 1.067 acres tract, recorded in Volume 1264, Page 0857 of said Guadalupe County Deed Records, and being the most westerly southwest corner of said 13.653 Acres tract, and of this tract;

**THENCE**, N 29° 56' 35" W, with and along the northeast Right-of-Way line of said F.M. 3009, a distance of 139.47 feet, to a 1/2-inch iron pin set on the most southerly corner of Lot 5, Block 1, ISENHOUR Subdivision, recorded in Volume 6, Page 669 of the Plat Records of Guadalupe County, Texas, for the most westerly northwest corner of this tract;

**THENCE**, N 63° 54' 40" W, departing from the northeast Right-of-Way line of said F.M. 3009, and following with and along the southeast line of said Lot 5, a distance of 267.02 feet, to a 1/2-inch iron pin set, for an angle point;

**THENCE**, N 59° 45' 30" E, with and along the southeast line of said Lot 5, pass a 1/2-inch iron pin found at 30.00 feet, for a total distance of 50.90 feet, to a 1/2-inch iron pin set at the most easterly corner of said Lot 5, for an angle point of this tract;

**THENCE**, N 29° 56' 35" W, with and along the northeast line of said ISENHOUR Subdivision, a distance of 241.84 feet, to a 1/2-inch iron pin set on the northeast line of Lot 6, said point also being the most southerly corner of a 0.275 acre tract recorded in Volume 1592, Page 93 of said Deed Records, for an angle point of this tract;

**THENCE**, N 63° 54' 40" E, with and along the southeast line of said 0.275 acre tract, a distance of 71.01 feet, to a 1/2-inch iron pin found at the most easterly corner of said 0.275 acre tract, for an angle point of this tract;

**THENCE**, N 29° 56' 35" W, with and along the northeast line of said 0.275 acre tract, a distance of 157.45 feet, to a 1/2-inch iron pin set on the south Right-of-Way line of BORGFELD ROAD, on the line of a curve to the right, for the most northerly corner of said 0.275 acre tract, and also of this tract;

**THENCE**, continuing with and along the south Right-of-Way line of said BORGFELD ROAD, with said curve to the right, having a radius of 646.00 feet, an interior angle of 18° 39' 14", a tangent of 106.10 feet, an arc length of 210.32

Ex: A  
Pg 3 of 3

feet, a chord bearing of S 84° 44' 16" E, and a chord distance of 209.39 feet to a 1/2-inch iron pin set, for a corner;

THENCE, S 74° 56' 35" W, continuing with and along the south Right-of-Way line of said BORGFIELD ROAD, a distance of 302.28 feet, to a 1/2-inch iron pin found at the point of curvature of a curve to the left,

THENCE, continuing with and along the south Right-of-Way line of said BORGFIELD ROAD, with said curve to the left, having a radius of 630.00 feet, an interior angle of 29° 41' 06", a tangent of 166.95 feet, an arc length of 326.40 feet, a chord bearing of S 89° 01' 52" E, and a chord distance of 322.76 feet to a 1/2-inch iron pin found at the northwest corner of Lot 1, Block 1, BUFFALO FLATS Subdivision, recorded in Volume 6, Page 513 of said Plat Records of Guadalupe County, Texas, for the most northeasterly corner of this tract;

THENCE, S 31° 17' 32" E, departing from the south Right-of-Way line of said BORGFIELD ROAD, and following with and along the southwest line of said Lot 1, a distance of 344.69 feet, to a 1/2-inch iron pin found at the south corner of said Lot 1, for the most easterly corner of this tract;

THENCE, S 60° 06' 37" W, with and along the northerly line of the remaining portion of a 61.222 acres tract recorded in Volume 653, Page 801 of said Deed Records, to a found concrete monument (damaged), for the most southerly corner of this tract;

THENCE, N 30° 05' 32" W, a distance of 329.70 feet, to a 1/2-inch iron pin found at the most northerly corner of said 1.067 acres tract, for an angle point of this tract;

THENCE, S 59° 45' 30" W (Bearing of Reference), with and along the north line of said 1.067 acres tract, a distance of 343.89 feet, to the POINT OF BEGINNING.

Note: See attached Survey Plat.

Job: #06170

**L L & C PROPERTIES, INC.**

June 14, 2011

Mrs. Robbye Meyer  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, Texas 78701-2410

Re: Application Challenge- The Overlook at Plum Creek # 11217

Dear Mrs. Meyer:

It appears that the above referenced application has claimed, and based upon the latest scoring logs has received, three points for a development located within an area covered by a Community Revitalization Plan. Included with the application was a letter from the City of Kyle verifying that the proposed development site was located within the area covered by the City of Kyle's community revitalization plan, known as the City of Kyle's Comprehensive Plan. The letter further states that *"The plan encompasses the entirety of the City of Kyle and includes goals to revitalize downtown Kyle"*.

Had the applicant provided the entire City of Kyle Comprehensive Plan, it would have been evident that the proposed location for the Overlook at Plum Creek is NOT in the targeted Downtown area, but rather is located within the Ranch North District, a district that is in the new development corridor and the future growth area of the city and not in the older and established Town Center District where downtown is located. There is no indication or any discussion of "revitalization" whatsoever in the Ranch North District.

Comprehensive plans are very general in nature and cover a wide range of visionary planning and growth objectives including future land use and thoroughfare plans so that the timing of these growth objectives can be matched with a community's "vision of the future". For Kyle, the Comprehensive Plan was intended to provide *"guidance for increasing ad valorem tax revenues to fund service provision, protecting sensitive cultural and natural features in key locations to create nodal destinations, and ensuring a high quality of form and design in new development."* The plan projected a horizon of 30 years. Conversely, a Revitalization Plan is a plan that targets a very specific area for revitalization and redevelopment and typically has incentives to develop within such targeted area.



Mrs. Robbye Meyer

June 14, 2011

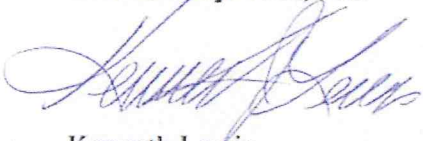
Page 2

As confirmed by the letter from the City, the only area targeted within the entire city for any revitalization is the downtown core area and this area is specifically identified in the Comprehensive Plan as "The Downtown Revitalization Plan". It is far reaching and improper to then assert that the Overlook at Plum Creek somehow qualifies for Community Revitalization points simply because a very small area of a city is targeted for revitalization therefore any site located anywhere else in the city must also qualify for revitalization, regardless if the comprehensive plan in its entirety is called a "Revitalization Plan" for the convenience of an application scoring letter. Indeed, to "revitalize" is "to give new life or vigor to" (Mirriam-Webster). A simple review of the City's growth patterns annexations, land use and history would show that the location of the proposed Overlook is not in need of "new life" but actually continues to grow and prosper naturally as a result of its location in the growth path of Kyle.

We respectfully request that staff reconsider the awarded points for Community Revitalization for this application. We have included under separate cover the complete City of Kyle Comprehensive Plan for review but due to its large size, we have only attached to this letter the relevant sections and maps that pertain to this challenge.

Sincerely,

**LL&C Properties, Inc.**

A handwritten signature in blue ink, appearing to read "Kenneth Lewis", written over a faint, illegible printed name.

Kenneth Lewis  
President



# CITY OF KYLE

100 W. Center • P.O. Box 40 • Kyle, Texas 78640 • (512) 262-1010 • FAX (512) 262-3800

February 8, 2011

Ms. Robbye Meyer  
Director of Multifamily Programs  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, TX 78701-2410

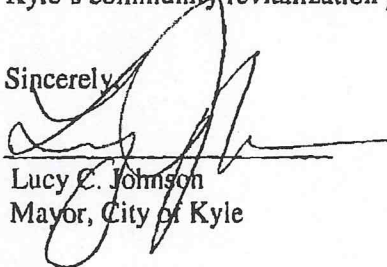
*RE: The Overlook at Plum Creek Housing Tax Credit Application  
Kyle, Texas 78640*

Dear Ms. Meyer,

Please consider this letter verification that *The Overlook at Plum Creek* development site is located within the area covered by the City of Kyle's community revitalization plan, known as the City of Kyle Comprehensive Plan. The City of Kyle Comprehensive Plan is the plan that establishes the vision for Kyle's future and provides a guide for the city's future development, economic vitality, transportation and mobility, and community identity. The plan was approved by the Kyle City Council in July 2010. **The plan encompasses the entirety of the City of Kyle and includes goals to revitalize downtown Kyle and to promote residential development that supports neighborhood identity and social interaction.**

Attached are the approved Kyle Regular Council Meeting Minutes from the City Council Meeting on July 6th, 2010. This document confirms the City of Kyle Comprehensive Plan, Kyle's community revitalization plan, was adopted on this date.

Sincerely,



Lucy C. Johnson  
Mayor, City of Kyle

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# INTRODUCTION TO THE COMPREHENSIVE PLAN

## The Importance of Planning

A Comprehensive Plan provides a clear record of the community's goals and visions and supplies guidance for future municipal decisions. A Comprehensive Plan is firmly grounded in assessments of the existing natural, physical, social, and economic conditions of the community. Public input, comments, and support are gathered at each stage of the planning process, in order to educate the public, foster local leadership, and ensure that the Plan is representative of the will of the people. Individual plan elements reflect these inputs and are synchronized to create coordinated directives for desired development in the future. Finally, an implementation strategy is prepared to guide realization of the Comprehensive Plan and of the community's vision. A Comprehensive Plan prepared with these methods and components will be a record of publicly derived vision that directs decision-making and actions by elected officials and City staff in matters of all scales.

## What the Plan does for Kyle

Kyle is experiencing rapid growth that applies a great deal of pressure on all systems within the City, including transportation systems, provision of utilities, and access to goods and services. Additionally, residents of Kyle express a desire for increasing the sense of community, connectivity, and civic institutions within the City. In order to ensure adequate provision of basic services and needs, while also fostering a high quality of life and preserving Kyle's unique community, it is necessary for the City to be proactive in planning for the future. This Comprehensive Plan for the City of Kyle provides guidance for increasing ad valorem tax revenues to fund service provision, protecting sensitive cultural and natural features representative of Kyle's history and character, directing growth in key locations to create nodal destinations, and ensuring a high quality of form and design in new development. The planning horizon of this Comprehensive Plan is 2040, when it is projected that approximately 90,000 residents will live in Kyle. The directives of this Plan will provide for these future residents within a framework that will make Kyle self-sufficient and prosperous.

## The Structure of the Plan

The Kyle Comprehensive Plan is divided into four main sections: Assessments, Visioning, Plan Elements, and Plan

Implementation. Each of these sections is described in greater detail below.

**Assessments.** This section provides context for the Comprehensive Plan by describing existing conditions in Kyle and evaluating how these conditions will impact future growth and development in the City. Assessments contain the following components: Regulatory Profile; Population, Demographics, and Market Analysis; Tax Gap Analysis; Development Trends; Infrastructure Profile; Circulation Analysis; Natural Systems; Form Analysis; and Workshop #1 Summary.

**Visioning.** The Visioning process creates a Planning Framework, based on Assessment data and public input, which will guide the Plan elements. Visioning contains the following components: compilation of community goals from Workshop #1; matrix analysis of goals to determine the most strategic goals; design of the highly graphical planning framework; and Workshop #2 summary.

**Plan Elements.** The Plan Elements identified for the Kyle Comprehensive Plan direct and facilitate future development that is in keeping with the vision manifest in the Planning Framework. The Plan Elements are: Future Land Use Plan; Open Space Plan; Public Facilities Plan; Transportation Plan Update; Urban Design Plan; and Downtown Revitalization Plan. This section also contains a summary of Workshop #3.

**Plan Implementation.** This section makes recommendations and details strategies that will foster realization of the individual Plan Elements. Components included in this section are: Economic Development Strategy and Plan Implementation.

Additionally, Appendices are included that provide a quick reference to some of the main components of the Comprehensive Plan, including a compilation of all key recommendations from each Plan Element and a zoning application table that details which zoning categories are appropriate in each Land Use District.

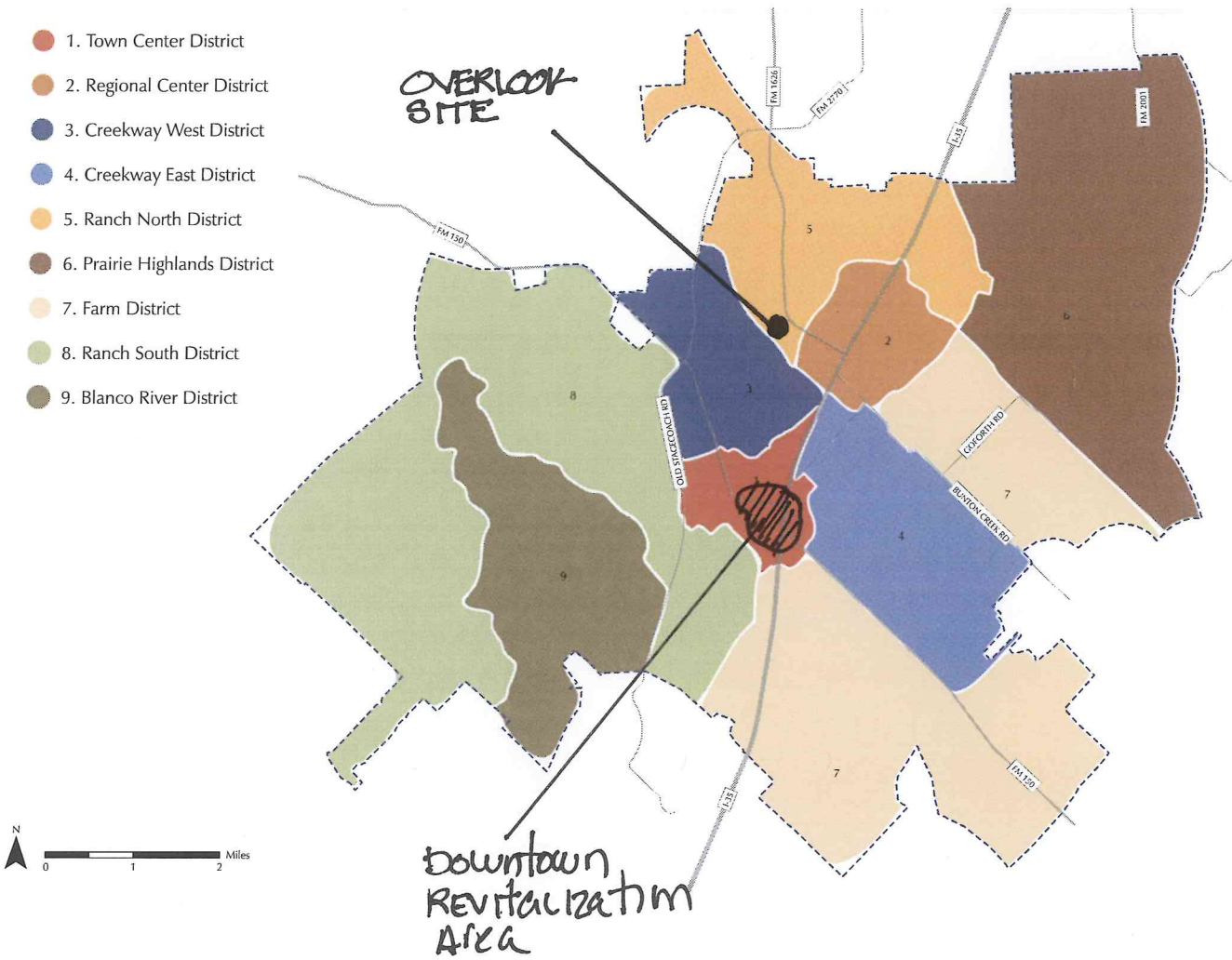
## FORM ANALYSIS

As the summation of the Assessments phase for the Kyle Comprehensive Plan, a Form Analysis is performed. Based on the history, current use, natural features, character, and feel of Kyle, the Form Analysis separates the City into nine distinct districts. Each district is described in the following pages as a way to explain the essence of Kyle and connect to the residents in each area. The nine Form Districts are as follows:

- Farm District: an agricultural and rural landscape that is being altered by residential development
- Creekway East District: flat land surrounding Plum Creek to the east of I-35
- Prairie Highlands District: rolling hills and lakes in the north-eastern portion of Kyle's ETJ

- Regional Center District: area of retail and healthcare services development at I-35 and FM 1626
- Ranch North District: rolling hills in the north of Kyle that is poised for development from the north
- Creekway West District: residential development nestled around Plum Creek to the west of I-35
- Ranch South District: tree-covered, rolling hills in the uplands surrounding the Blanco River in the south-west portion of Kyle's ETJ
- Town Center District: the historic downtown core of Kyle, located around the intersection of Center Street with I-35
- Blanco River District: alluvial bottomlands used for farming surrounding the Blanco River

form analysis



## RANCH NORTH

The Ranch North District is located along both sides of FM 1626. It is primarily undeveloped land north of the Plum Creek subdivision and west of the Prairie Highlands District, excluding the area of the Regional Center District. This District is characterized by rolling hills, with groves of trees scattered throughout the landscape and shallow drainage ways running generally south-southeast. A large cement factory can be seen in the distance, in contrast to the rural feel of the surrounding undeveloped prairie.

### OBSERVATIONS

FM 1626 is the only major arterial extending south from key growth areas in Buda and south Austin. Property owners in the Ranch North District recognize the likelihood of market-driven growth moving south out of Buda and Austin and have already attained entitlements for various commercial and retail developments (as evidenced by signs for such projects that line FM 1626 within Kyle). This growth is part of the expanding urban sphere of Austin and will endeavor to cling to the roadways and arterials that are part of that expansion. *Therefore...create a land use plan that effectively integrates regional and local scale development.*

As new development extends along FM 1626 and Kohler's Crossing, it will become important to establish a policy for land use transition, to avoid conflict between historic and future uses. Such transitions would encourage complementary, rather than conflicting adjacency conditions, thereby preserving land value and inviting desirable development. *Therefore...the land use plan should define appropriate transitions between the various categories of use in the Ranch North District.*

This District is poised to become a high value/high growth corridor between Kyle and Buda, as it provides connection to the Seton Hospital complex. The extension of FM 1626 has energized development in the area and in anticipation of retail activity moving along the corridor toward Buda, the City has already constructed streets with large rights of way, enhanced intersections, and large lane capacities. *Therefore...the land use plan should avoid "under-development" and protect the taxpayer's infrastructure investment.*



Signs along FM 1626 and Kohler's Crossing reveal the high level of mixed-use employment development planned for this area. This level of commercial development will stimulate residential growth and provide Kyle with greater residential options. This diversity of housing options is essential for Kyle and will help the City expand its residential base beyond the current dominance of price point and unit type. Key among these housing options should be various forms of higher density living, including town houses and high-end rental units. The

## RANCH NORTH

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presence of higher density forms of housing will enhance the potential for mixed-use development and creation of sub-districts within Kyle that enrich the City's quality of life. Higher density projects in the vicinity of employment centers will also reduce vehicular trips. Trip reduction and closer proximity between home and work is important because of Kyle's constrained internal movement as a result of limited I-35 crossings and limited railroad crossings. *Therefore...encourage higher density housing in proximity to employment.*

FM 1626 as it is currently laid out has little relevance to the operations of Kyle. It is instead a link to the north and a major structural element of the Ranch North District, which could make the District more a part of Buda and South Austin than a part of Kyle. Commercial and retail projects already developed along FM 1626 are regional in their form and visual character (similar to what is seen in other regional corridors of Austin). FM 1626 also flows to the new medical center, making this area more connected to the regional roadways than to the local system. In order for development along regional roadways from the north to benefit Kyle and enhance the economic value of the City fabric, those regional roadways must engage the local road system in ways that energize the City. The economic power of FM 1626 should energize Kyle's historic downtown core, as well as the hospital and the Regional Center District within which it resides. If FM 1626 terminates at the hospital, it will be difficult for Kyle to realize significant economic development in other areas. *Therefore...permit the influence of FM 1626 to extend to other cross-town movement routes to alleviate future traffic pressure.*

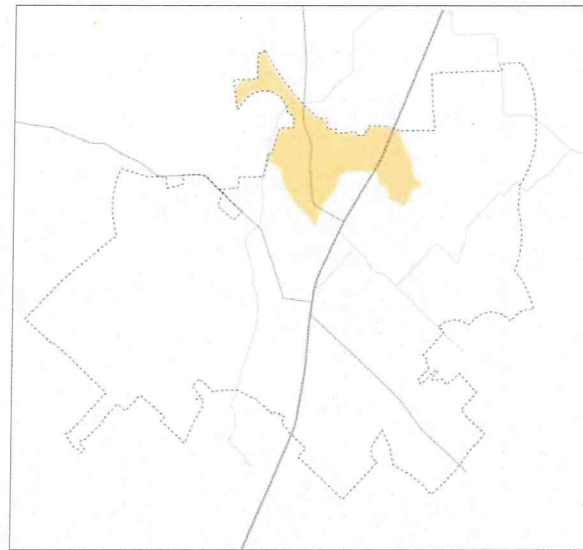
Currently, the hierarchy of street types in Kyle is fairly limited. In areas of the Ranch North District where residential subdivisions are large, greater street differentiation is important. It aids not only with traffic management, but with way-finding and place-making. *Therefore...a hierarchy of street types should be defined for Kyle to aid in traffic management, way-finding, and place-making.*

Future east-to-west movement will be constrained by the presence of the railroad, as a result of the limited number of rail crossings. Future crossings (in addition to the present crossings) will require agreement from the railroad or future commuter rail company. Failure to get a significant number of new crossings will necessitate road overpasses. Both of these options will inhibit and shape east-to-west movement and place greater traffic pressure on Kohler's Crossing and FM 1626 to I-35. All growth within this area will flow to these two streets, possibly creating traffic problems, unless other way to disperse trip volumes can be found. *Therefore...address the effect of limited railroad crossings on east-to-west movement*

The Ranch North District will likely experience larger developments than other areas of Kyle and realize the potential for attracting a higher price point. Such likelihoods are a result of the District's relationship to Austin growth and the rich natural landscape within which this growth will occur. However, the landscape vistas that make this district unique are experienced from the roadways, such as FM 1626 and Kohler's Crossing. As that roadscape fills in with the conventional form of regional development, this presentation of natural fabric could be lost to the ubiquitous appearance of Austin's outward expansion. The demand for larger projects and a higher price point is an opportunity to create a distinctive built product within the Ranch North District.

The rolling topography and drifts of native trees create a pastoral landscape that is truly unique and should be preserved as development moves forward. The design of neighborhoods and projects should express these natural qualities, such as with streets that engage landscape vistas instead of being totally defined by lot or building development.

Also, future development should not forget the ranch landscape that is part of the history of Kyle. Preservation of the ranch landscape includes preservation of artifacts and landscape forms remaining from the earlier ranch use. The challenge to growth will be to preserve the rural aspects of Kyle within the roadscape and development design. *Therefore...encourage growth that expresses qualities that are uniquely Kyle.*



supporting street network that will expand the capacity of the intersection to accommodate development. The present isolation of the performing arts center (off the road in an expanse of parking) in a suburban setting hinders the ability of this facility to contribute to the emergence of specialization. All the corners of the FM 1626 and Kohler's Crossing intersection should be brought into a single vision that includes the performing arts center and levels of specialization (in retail and residential development) that are possible for this location. *Therefore...encourage specialization at FM 1626 and Kohler's Crossing*

The intersection of Kohler's Crossing and FM 1626 will be an important center of development enhanced by the presence of the performing arts center. The unique relationship of this intersection to both rapid growth from the north and to the hospital in the south makes land at this location attractive to a level of retail specialization not available at I-35. However, the intersection alone will not make this specialization happen. The economic potential of roads flowing into the intersection must arrive at a place of distinction. The presence of a public/cultural use affords an opportunity to transform the intersection into a place with a greater expression of a public domain and a



## TOWN CENTER

The Town Center District comprises the historic downtown core of Kyle, the surrounding small residential blocks, early highway frontage along Old Highway 81 (south of Plum Creek), and the blocks fronting West Center Street (out to Old Stagecoach Road). The District extends to the north along North Burleson Road to its intersection with I-35. The Town Center District also includes the extension of Center Street east across I-35 to its intersection with FM 150.

### OBSERVATIONS

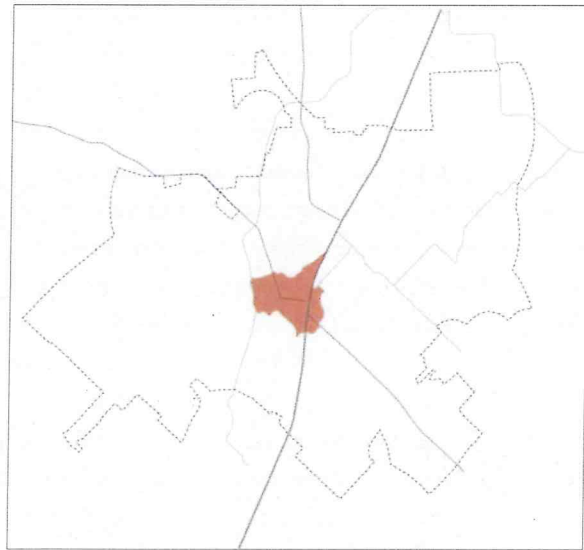
Downtown Kyle is comprised primarily of one story buildings, with the key exception of the new City Hall, and building plates are relatively small by the present day norms of retail construction. As a result, revitalization of downtown Kyle that includes preservation of its current physical fabric will require a high degree of retail specialization (e.g. the Texas Pie Company). A largely one story/small plate downtown fabric makes the economic future of downtown dependent on limited land use diversity. This means that any strategy for revitalization must be careful to put in place those physical features/qualities that retail specialization will find attractive. *Therefore...support retail specialization within the downtown core.*

Among these attractors would be the potential location of a commuter rail station within the Kyle downtown core. Such an asset will be most influential in this location because the forms of historic development are more supportive of an appropriate development response. Other areas of Kyle have not prepared for the station with commercial/mixed use aggregation, but instead have allowed low FAR's and auto-dominated commercial forms to proliferate. As a result, pedestrian use of the station in these areas would be difficult, as the economic benefit of a station is derived from the people that flow to and from the facility through retail/commercial spaces. *Therefore... consider locating a ASA rail station in Downtown Kyle.*

A mixture of land uses is present within the District, including commercial, institutional, civic, residential, and, to some extent, agricultural. These diverse uses are not present in distinctive clusters, but instead are intermingled.



This mixing is visually reinforced by the presence of commercial uses that are established in converted residential buildings. In this way, the distinction between residential and commercial uses is blurred, both by adjacent locations and by similar form. Some vacant lots are present in this District, and evidence of a gradual and continual pattern of development is found in the wide range of building dates, from the late 1800s to the present. *Therefore...as development and redevelopment occur within the Town Center District, attention should be paid to preserving the unique mixture of land uses.*



*of I-35 through common thematic elements to increase the economic potential along I-35 and attract visitors to downtown Kyle.*

The core of the Town Center District is defined by a generally uniform street grid with Center Street as the main east-west corridor. Moving east along Center Street from Old Stagecoach Road, there are elements of an approach sequence, cues that signal arrival and reinforce the primacy of Kyle's downtown as the center of the City. However, this sense of approach and arrival is not found on the other key roadways leading to the Town Center District, especially North Burleson Street and Old Highway 81. *Therefore... elements to signal arrival in Kyle, such as banners, sidewalks, distinctive paving, lighting, signage, and land uses that engage with the street, should be promoted along North Burleson Street and Old Highway 81.*

The Town Center District's connection to I-35 is hampered by the rail line that runs parallel to I-35 to the west. The rail line inhibits an economically beneficial relationship between downtown and the I-35 corridor. Attempts have been made to expand the Town Center District to the east of I-35 by extending Center Street across the Interstate. However, current land uses and transportation patterns on the eastern end of Center Street are quite different from the character of West Center Street. *Therefore...build communication between West Center Street and the portion of Center Street on either side*

There are two intersections along Center Street in the Town Center District that compete with each other for significance. One is at the intersection of Old Highway 81 and Center Street, which is the historical center of commercial activity in Kyle due to the adjacent railroad track and former station stop around which Kyle grew. The second is the intersection of Main Street and Center Street, which

## TOWN CENTER

has recently been given prominence by the location of the new City Hall and Visitor Center. However, Main Street makes no meaningful connections to either the north or south, weakening this location as a point of confluence. Additionally, neither of these intersections are adjacent to Kyle's City Square Park, diminishing the Park's ability to act as a point of significance for the City. *Therefore...establish points of significance within the Town Center District that do not compete with each other and that communicate with traffic patterns, land uses, and historical features in a meaningful way.*

Due to the mixture of land uses throughout the Town Center District, definition of the District is communicated through the street pattern, rather than by clusters of uses. The street pattern in the District is an approximately 200 foot by 200 foot block grid, which is quite urban in size and form. However, the road sections are quite rural in form, with open ditches for drainage and either flat concrete curbs or no curbs. This minimal demarcation at the roadway edges results in the road plane flowing seamlessly into the yard plane of the properties along the roadways. In this rural pattern, yard landscaping plays a large role in defining the street space. As the existing landscaping in the Town Center District is highly diversified and unresponsive to the roadway corridor, the streetscape has a disjointed character that is defined by the adjoining uses. The tension between the urban block pattern and the rural street edges and landscaping is reinforced by the irregularity of the built structures within the uniform blocks. Incremental growth that has occurred on a lot-by-lot basis rather than on a project basis has created a visual tension from the disparate building styles and lot placement imposed on the uniform grid. Overall, this situation reinforces the porosity of downtown Kyle, where the thin demarcation between what is urban and what is rural is an essential aspect of the form of the Town Center District. *Therefore...definition of the Town Center District must respect this historical blurring between urban and rural forms to retain the unique character of Kyle.*

Visibility within the ground plane of the Town Center District is unencumbered by opaque fences or other disruptions, creating a sense of open space and lower density within the development of the District. This open ground plane is a distinctive spatial condition that contributes to the unique character of Kyle. The sense of an open ground plane is contributed to by the significant amount of vacant land that is currently present in the Town Center District and that appears to have been a prevailing condition throughout much of Kyle's history. Growth pressures may soon cause infill development that, as it fills these vacant spaces, could urbanize the more rural character of the District. *Therefore...infill and redevelopment within the Town Center District must be designed to preserve the current and historical appearance, form, and ground plane emblematic of Kyle.*

Lack of a strong defining street wall within the heart of downtown blurs the distinction of residential and commercial, making downtown Main Street a distinctive combination of commercial and residential buildings. The clear mixture of residential and commercial structures prevents the downtown from attaining a clear definition. Definition of the downtown Kyle area is communicated through the street pattern rather than the structures. This pattern is a distinctly urban block grid that stands in stark contrast to the rest of Kyle, which is spread out over rural roadways and curvilinear subdivision streets. This grid is an important attribute of the Town Center District, which must be preserved and used to define a public domain that could be extremely appropriate for pedestrian use.

The urban-ness of the grid is challenged by the voids within the built form it hosts. The amount of vacant land that populates the fabric of Kyle's Town Center District has been a prevailing condition throughout Kyle's history and therefore is a spatial aspect of its image and identity. Town Center growth that fills the voids of this fabric would begin to alter the historically rural appearance. However, growth pressures and increasing value will logically precipitate fabric infill, and care should be taken that this type of infill development is performed with sensitivity. Also, within the downtown block grid is a mixture

of land uses that do not reside in distinctive clusters. *Therefore...preserve the distinct spatial character of downtown Kyle.*

One of the key spatial challenges of the downtown core is the lack of spatial focus. The City Square and the potential railroad station are not at the center of downtown activity. As a result, more common comprehensions of a downtown and how it is structured are not (and will not) be affirmed. This is especially true as downtown reaches across I-35 and north toward the Regional Center. This potential direction of growth means that the present downtown may actually be on the edge of a more commercial core. However, the train station would end up more centrally located. Historically, downtown Kyle grew from the railroad and the City Square never attained the form-giving influence normally associated with such spaces. For this reason, part of the Square frontage is residential.

Movement of the commercial core of downtown also addresses problems associated with downtown's relationship to I-35. The economic potential of this association has been largely nullified by the rail barrier that inhibits any economically meaningful connection to the I-35 corridor. The result has been an isolation of downtown from the new commercial areas emerging within the I-35 corridor. However, while there are economic benefits associated with shifting the commercial center toward the rail and freeway, a challenge for the historic downtown fabric is imposed. The key to overcoming this challenge is the design and significance of West Center Street and its place in the overall thoroughfare plan of the City. If downtown establishes and maintains a significance in the movement patterns of the City then the historic areas of the existing downtown core will not fall into further isolation. *Therefore...keep the historic downtown central to Kyle.*

The City Square Park and former City Hall site has an unusual relationship to downtown, as it is surrounded

by both residential and commercial structures. This mixture of adjacent uses and the informal form of the space itself are more evocative of a park rather than a traditional town square. However, it is an important public space and point of significance for the Town Center District that should be utilized for events and activities that celebrate Kyle. *Therefore...future plans for the City Square Park should seek to activate the space without altering its historic form and relationship to the City's fabric.*

The majority of the buildings within the core of the Town Center District are only one story tall and lot sizes are small and somewhat irregular. These conditions may pose limitations to future economic development in the District. *Therefore...creative land aggregation and redevelopment should be pursued to maximize economic development potential without drastically altering the historic fabric and form of the Town Center District.*



# DOWNTOWN REVITALIZATION PLAN

Downtown Kyle is the oldest part of the City, with historic built fabric and local character, and also one of the keys to the future vision of Kyle established by its citizens in the comprehensive planning process. Downtown's street grid, the historic commercial buildings, and residences set it apart from the rest of today's growing City, which is predominantly residential in character with areas of commercial concentration. While the heritage character of Downtown is unique today, the district must address existing challenges in order to ensure that new public and private development reinforce and strengthen the character, even as the district is reborn to serve as a thriving commercial and civic center of the City of Kyle.

The intent of the Downtown Revitalization Plan is to identify and document critical issues facing Downtown today, present strategies and initiatives that will address those issues, and to assemble a toolkit of implementation approaches. Downtown Kyle presents a remarkable opportunity to establish a district of civic identity that citizens of Kyle and visitors will reference to define the City and its culture.

## HISTORY

Kyle was founded in 1880 on 200 acres of land donated to the International-Great Northern Railroad by local landowners Fergus Kyle and David Moore. The local economy was dominated by agriculture, and the new railroad opened up new markets for goods produced in and around Kyle. The original town plat contained eighteen blocks, which were auctioned off under the Kyle Auction Oak, which still stands on Sledge Street. Commercial and residential lots were sold, and the first business opened soon after on the public square.

While new commercial development was made possible by the arrival of the railroad, the economic engine of Kyle remained agriculturally-oriented. As an agricultural community, Kyle's downtown served the needs of the City's population and the infrastructural demands of the goods and services exchanged there. Given this level of economic exchange, Downtown developed to serve Kyle's population of several hundred to a few thousand people and to direct their goods to market via rail connections to regional cities. Rural residential housing types dominated, with a few local businesses present. This Downtown character continues to the present time, with some additions to the built fabric placed on the same street grid and infrastructural base that has been in place since Kyle was founded.

The advent of the automobile influenced a new spatial reality for urban development, with new road widths, turning radii, demands for parking spaces, and traffic control measures necessary to direct the flow of automobiles. With the new built environment also came new patterns of accompanying economic development, with new commercial forms oriented to sites along high-volume roadways. Interstate 35 was completed in Central Texas in the 1960s, which brought higher speed travel and new volumes of automobile traffic to the alignment formerly occupied by the old U.S. 81 corridor that passed directly adjacent to Downtown Kyle. New commercial development in Downtown did not accompany the arrival of I-35 to a significant degree, due to the small population of Kyle and the lack of developable land to be easily and cheaply assembled for commercial development scaled to the demands of the age of the automobile. The historic residential fabric and limited commercial uses of Downtown Kyle therefore remained essentially unchanged.

Despite limited new development, Downtown Kyle continues to play an important role in the civic and cultural functions of the City. Kyle's City Hall, constructed within the downtown area, is evidence of this sustained meaning. However, the core area's unique spatial conditions, coupled with the dominance of a single traffic spine, hinder economic development efforts aimed at attracting conventional development investment. Downtown's special and historic qualities and the desire to preserve them make it increasingly difficult for the downtown area to compete with areas offering greater visibility, access, and traffic movement convenience. Therefore, downtown Kyle must attract a more specialized form of investment by encouraging a more specialized form of retail. However, even this investment requires resolution of certain hindrances to development. These include the barrier presented by the rail line, congestion along Center Street, and awkward parcel configuration in land adjacent to Interstate 35. Recommendations for revitalization of downtown Kyle must set out a series of physical initiatives, programmatic endeavors, and implementation strategies that preserve the best of what history has provided and remove key impediments that restrain downtown's ability to attract investment.

The built fabric of the town as drawn in the original plat largely remains, and even today the Auction Oak, public square, and historic residential and commercial buildings are present in Downtown Kyle. The qualitative feel of the City is of a rural residential township, where single family houses are the dominant land use, along with a small commercial strip.

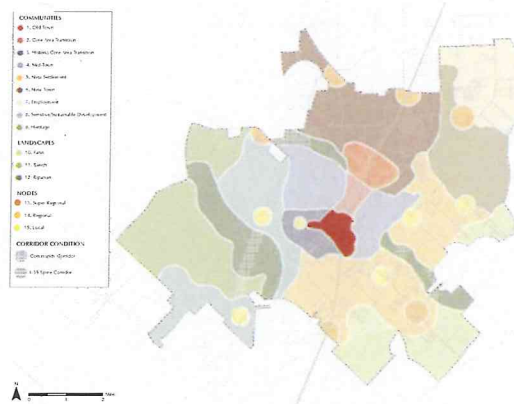


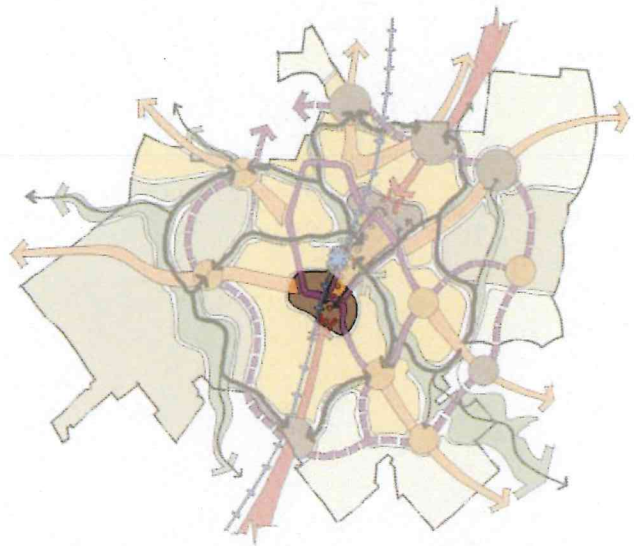
Figure 1. Downtown Kyle in the Land Use Plan.

## FUTURE ROLE

The vision for downtown Kyle is rooted in the Goals that grew out of the community's input and participation in three Comprehensive Plan Workshops. Downtown is a living reference to the past, a district central to Kyle's present, and a keystone district for the future growth and development of the City. This essential centrality is evidenced in the breadth of Goals that address issues related to downtown Kyle. Many of the Goals also relate to the entire City and the role to be played by Downtown Kyle in the future of Kyle.

The Planning Framework calls for articulation of the Downtown as an anchor to the commercial and community core of Kyle, while reinforcing its historic significance. The convergence of the transportation network within Downtown adds an additional element of complexity to this area.

Interstate 35 delivers value to Downtown in the form of automobile traffic and the consumer demand and spending power associated with that flow. The Framework references the need for a roadway system to connect these regional flows with local traffic, distributing the value throughout Kyle and not limiting the potential for economic value capture to the interstate frontage. A loop road system is present, connecting Downtown Kyle with other regional and local nodes in the City. Pedestrian movement, which is vital to a thriving Downtown, is enhanced via a network of pedestrian routes that converge in Downtown Kyle.



downtown plan

Downtown Kyle in the Planning Framework graphic.

- Goal 3. Connect Downtown Kyle to surrounding neighborhoods.
- Goal 8. Create integrated and inter-connected mixed use districts.
- Goal 20. Encourage regional centers that include public facilities.
- Goal 23. Encourage trail system connections to the Downtown and other commercial centers.
- Goal 45. Improve accessibility for residents to local goods and services.
- Goal 46. Establish commercial centers that provide transition between commercial and residential use.
- Goal 58. Preserve the uses and character of Downtown Kyle.
- Goal 72. Provide linkages between Downtown and new commercial centers.
- Goal 74. Reduce current traffic congestion and promote a street identity that remembers the rural heritage of Kyle.
- Goal 76. Reduce congestion in the Downtown area by providing alternate routes and improving linkages to other commercial areas.
- Goal 83. Utilize sidewalks to connect residential areas to commercial areas and other destinations.

Figure 2. Strategic Community Goals related to downtown revitalization.

## EXISTING CONDITIONS

Downtown Kyle is a representation of the historic fabric of the original settlement of the City, including single-family residential fabric and a small strip of commercial uses. This positions Downtown as a point of interest in Kyle, but does not promote Downtown's emergence as a destination. Downtown should not seek to compete with the regional node that includes Seton Hospital but should seek to define itself as an integrated community with destination significance.

Other challenges imposed by the existing urban form relate to its isolation from other districts of the City and surrounding regional centers. Downtown lacks a convenient connection to I-35, which impedes the ability to benefit from proximity to the interstate. It also heightens traffic congestion along Center Street and cuts Downtown off from many other areas of Kyle. In addition to isolation, Downtown offers few true amenities for patrons and lacks critical commercial mass to successfully serve as a commercial destination. The number of vacant lots, the lack of visual continuity, the lack of clear

edges, and the dissipation of commercial land uses around the railroad track all detract from its destination potential. Without place-making characteristics such as edges, portals, landmarks, nodes, and paths to stitch the interesting pieces of Downtown Kyle together into a destination and specialized commercial center, the district has little opportunity to fulfill the need for a unique place in Kyle.

Another area of concern relates to the voids in the urban fabric and divisions inserted by the railroad line and I-35. Each of these transportation corridors divides the Downtown, creates irregular land parcels, and exacerbates the lack of cohesion and traffic problems in the district. The lack of a coherent street hierarchy and a street grid uninterrupted by transportation corridors of a larger size, along with their associated irregular parcels, makes land assembly for development difficult and creates a challenge to economic value capture and commercial viability in Downtown Kyle. Therefore, a unique form must be defined for downtown, requiring a more specialized type of commercial/retail investment.

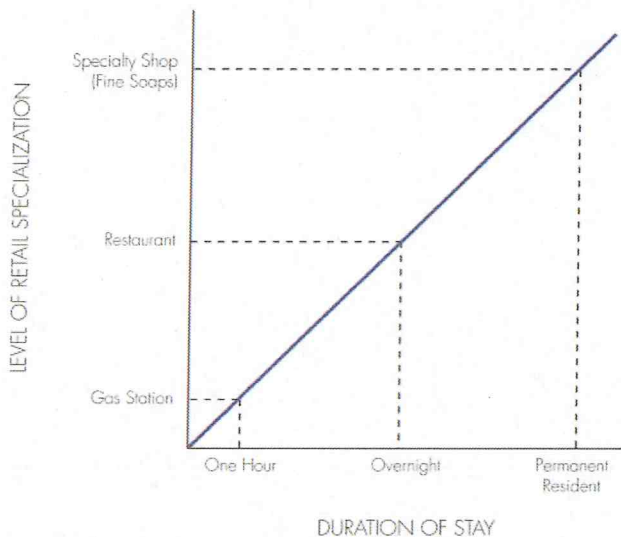


Figure 3. Duration of stay influences the level of retail specialization.

Only specialized forms of development will find a place in Downtown, and the future success of Downtown Kyle will be found in higher degrees of specialization. Figures 3 and 4 illustrate the relationship of specialized uses and determined duration of stay. Figure 4, in particular, shows how components of the Downtown Plan relate directly to duration of stay.

### **Downtown Plan Components**

<b>Duration of Stay</b>	Connections	Plaza	Thematic Streets	Use Clustered Sub Districts	Events, Festivals	Local Scale Retail
four hours						
overnight						
housing						

Figure 4. Elements of downtown revitalization that impact duration of stay.



In order to create a Downtown that is a cohesive point of interest functioning as a commercial and civic node, the following issues must be addressed:

- Locational disadvantage causing lack of significance and character within the City
- Cognitive isolation from other districts in the City
- Low levels of service
- Lack of nodal intersection
- Lack of destination due to voids in urban fabric



downtown plan

## APPROACH

In order to address the various challenges facing Downtown Kyle, it is necessary to formulate a body of strategic objectives which in turn will serve to further organize and direct the Downtown Revitalization Plan towards assembly of a toolbox of implementation approaches to ensure success. While numerous impediments to commercial development and economic value capture currently confront Kyle, the character of the impediments is largely similar and interrelated. Correspondingly, a family of related strategic objectives will address the impediments and establish Downtown Kyle as a specialized commercial node with significant civic presence and cultural identity for the City.

Improving Downtown's locational advantage and significance as a commercial and civic destination is a primary objective, and can be addressed by connecting Downtown streets to each other and a larger grid of transportation corridors such as I-35 and its access ramps. Redefining and extending the existing Downtown street grid to the edge of I-35 and across to the eastern side of the interstate would provide additional connectivity, as well as additional reliever routes to mitigate traffic congestion. This approach would also activate and enliven what are now second-tier streets in relation to Center Street, which would help the district and its commercial viability as a whole. A connection from Center Street that

bridges I-35 and flows into a regional road network on the east side of I-35 allows for greater potential value capture.

The void in Kyle's urban fabric caused by the railroad line and I-35 can be bridged through the creation of a rail plaza, in which the existing Center Street crossing is reconfigured to create a large public space, streetscape, and pedestrian trail within one unified ground plane. This is represented by the green area in Figure 6. The rail plaza addresses the void and allows for the spatial relationship between City Hall and the traffic flows of Center Street and the rail line to co-exist within a new organizing feature that is accessible to pedestrians as well. The plaza would be an identifiable and iconic place that supports the goals of the Comprehensive Plan process and knits together Downtown's disparate urban forms and uses. Such a crossroads creates a destination for people and commerce and resolves conflicts between Downtown and the railroad by making the present under-utilized space a meaningful centerpiece for future development.

Additional public spaces in Kyle, both existing and newly proposed, must be incorporated into the central identity of Kyle as well. Public open spaces at the center and termini of the Downtown spine of Center Street would work in conjunction with an improved streetscape experience and

Issue	Resolution	Outcome
Lack of destination due to voids in urban fabric	Create identifiable plaza at major intersection: place along rail corridor and Center Street maintain unified ground plane	Creates spatial relationship between existing buildings, streets and rail line Becomes destination for future development Knits together urban forms and uses
Locational disadvantage causing lack of significance and character within the City	Create public spaces and provide enhanced streetscapes: place along major spine (Center Street) as center and termini use special monumentation, signage, paving and landscaping	Creates unique sense of place one can identify
Lack of nodal Intersection	Connect downtown street grid across interstate: allow secondary streets in relation to Center Street to connect to east side of I-35	Allows for greater potential value capture in the Downtown district as a whole Creates energy and critical mass
Low levels of service	Connect downtown street grid to larger grid of transportation : join grid to service roads extend grid to east side of I-35	Creates easier access in and out of Downtown Alleviates traffic congestion Connects to regional districts
Cognitive isolation from other districts in the City	Connect downtown development and civic presence: create pedestrian connections create public spaces	Knits together urban forms and uses of the Downtown district to regional districts

Figure 5. Top Five Issues, Resolutions and Outcomes, Downtown Kyle.

defined district identity to knit the whole of Downtown together. As Downtown is currently contained by residential fabric on its western edge, in order to grow it must expand to the east. A new public space to the east of I-35, along with an improved historic City Square, would form termini to the central spine of Downtown. Each of these two could be marked by entry monumentation. The five major issues, resolutions and outcomes are described in Figure 5.

The identity of Downtown and its character must also relate to the rest of the City of Kyle and surrounding context. Along with the new rail plaza and open spaces, a pedestrian trail that connects to a wider network would move through Downtown along the rail right-of-way. Even as Downtown connects to the City through improved vehicular and pedestrian corridors, the district must maintain its distinct identity and level of commercial specialization. Downtown must function in relation to the regional node at Seton Hospital so that these two endpoints define a district in between oriented to complementary economic value capture from I-35. Figure 6 breaks down the intended organizing structure using existing corridors in Downtown Kyle while Figure 7 shows the suggested sub-districts as they relate to the proposed organizing structure. Economic energy is predicted to increase and plateau in the core of downtown where civic and commercial sub-districts merge along the primary connection. As the secondary connections expand to other sub-districts, the economic energy subsides as the commercial sub-districts fade into the residential sub-districts.

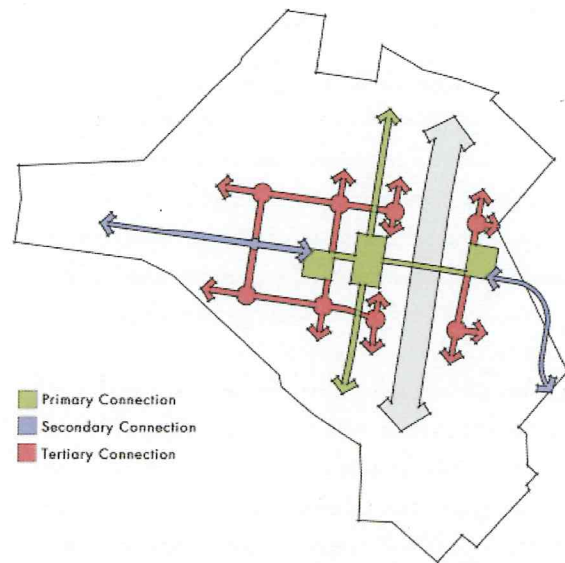


Figure 6. Proposed organizing structure, Downtown Kyle.

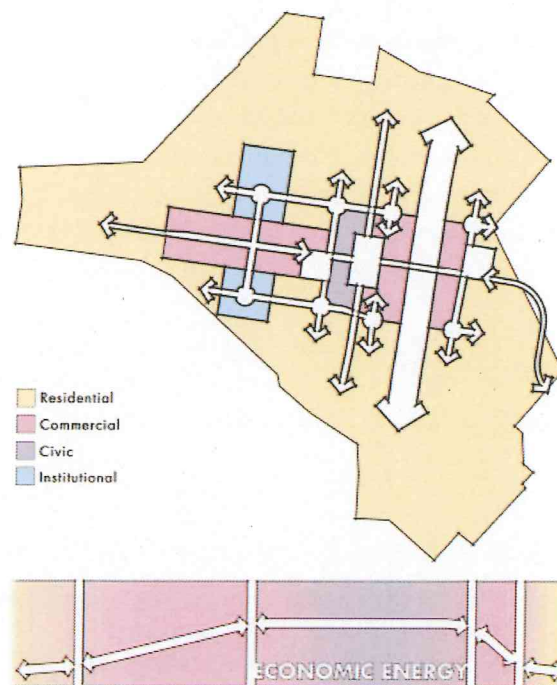


Figure 7. Proposed sub-districts and level of economic energy, Downtown Kyle.

downtown plan



Figure 9. Enhanced Downtown streetscape, Primary Section.

Located in the core of Downtown, this enhanced streetscape unifies historic and future downtown. There is expected heavy pedestrian and vehicular use due to its proximity to the interstate. Enhancements include large sidewalks to encourage pedestrian movement and cafe seating, pedestrian scale lighting and signage, and charming use of landscape plants.

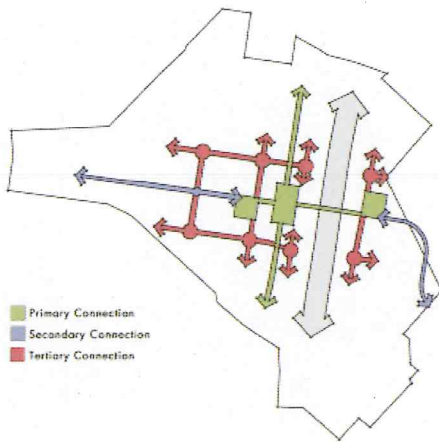


Figure 8. Proposed organizing structure and section reference.



Figure 10. Enhanced Downtown streetscape, Secondary Section.

This enhanced Downtown streetscape serves as the spine linking the primary connections to districts beyond the Downtown district. With commercial and civic uses lining these corridors, there is expected heavy pedestrian and vehicular use. Enhancements include large sidewalks with buffering vegetation to separate pedestrian use from vehicular use, large scale lighting, and pedestrian scale signage.



Figure 11. Enhanced Downtown streetscape, Tertiary Section.

This enhanced Downtown streetscape occurs throughout the downtown grid to connect urban uses and create opportunity for economic development. There is expected medium pedestrian and vehicular use. Enhancements include neighborhood sidewalks, street trees, and pedestrian scale lighting.

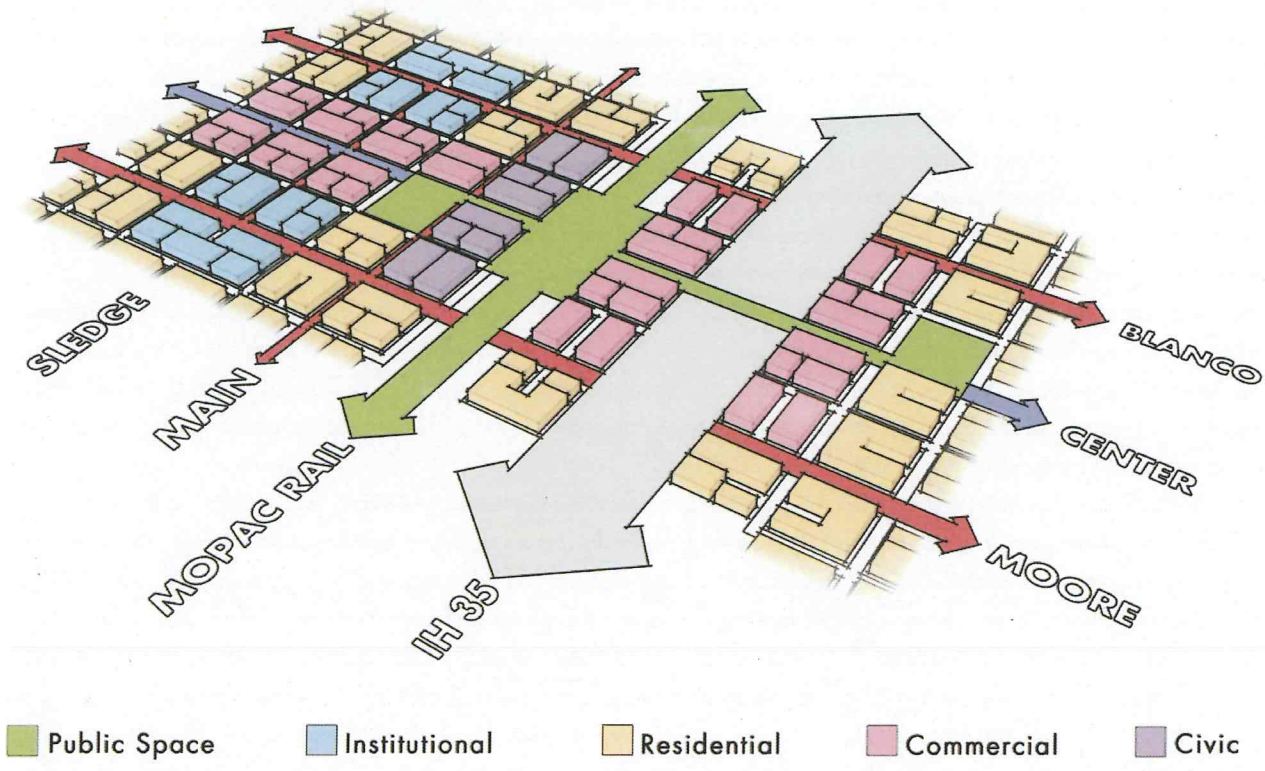


Figure 12. Proposed structure and sub-districts composite.

Figure 12 demonstrates how the enhanced Downtown streetscapes influence the use that abuts it. The primary connection shown in green joins the east and west sides of downtown and reaches to regional districts through a suggest greenway along side the Mopac Rail Line. The tertiary connections extend over I-35 to employ the existing street grid further unifying Downtown urban uses. Infill allows for the correction of void and encourages economic development and growth thus creating an identifiable downtown node within the City of Kyle.

downtown plan

## PUBLIC PLAZA

The void in Kyle's Downtown fabric caused by the railroad line and I-35 can be bridged through the creation of a rail plaza, in which the existing Center Street crossing is reconfigured to create a large public space, streetscape, and pedestrian trail within one unified ground plane. The plaza would be an identifiable and iconic place that supports the goals of the Comprehensive Plan process and knits together Downtown's disparate urban forms and uses. The rail plaza addresses the void and allows for the spatial relationship between City Hall and the traffic flows of Center Street and the rail line to co-exist within a new organizing feature that is accessible to pedestrians as well.



Figure 13. Proposed Rail Plaza, Downtown Kyle.

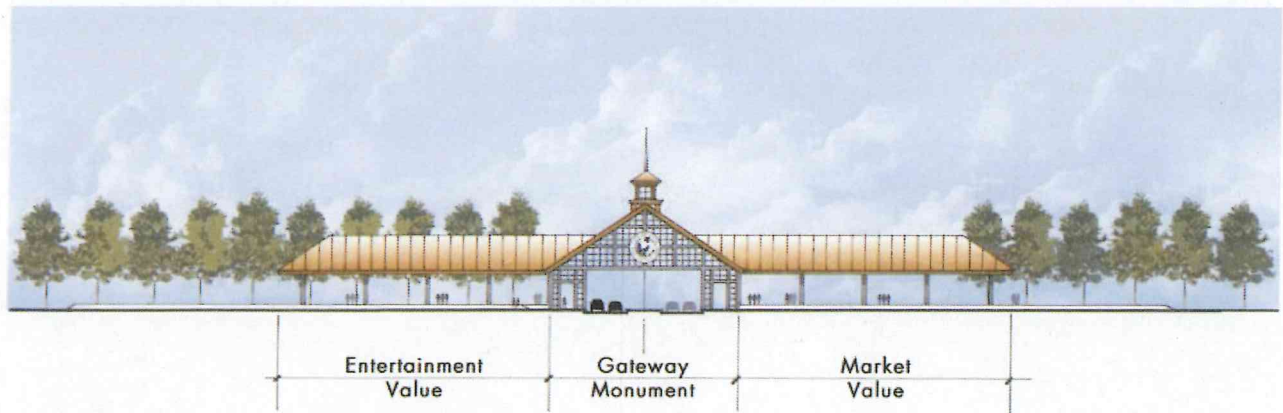


Figure 14. Proposed elevation, Rail Plaza.

## DISTRICTS

By creating District Designations within Downtown Kyle, a policy framework can be established that is compatible within the City's larger municipal planning efforts. Policy parameters, appropriate development activity, and funding mechanisms are important considerations in district designations. In this report, eight special districts will be considered, with an included description of their opportunities and constraints. A comparative table of district application in Kyle and a recommendation regarding the most suitable district designations will be included in this section. The districts summarized here include:

- Targeted Planning Zones (Sub-area Plans)
- Design Overlay District
- Historic Districts
- Municipal Management District
- Tax Increment Finance District
- Capital Improvement District
- Public Improvement District
- Business Improvement District
- Planned Development District

## TARGETED PLANNING ZONES

Targeted Planning Zones are designated when a particular area requires a greater level of detail than can be obtained through a City's Comprehensive Plan or when unique actions are necessary in the area. A Sub-area Plan would remain consistent with the City's Comprehensive Plan and would include tools and mechanisms tailored directly to the targeted area. By designating the area a Targeted Planning Zone, an additional level of public participation, review, and input can be incorporated into the design of the area. After the Targeted Planning Zone is defined, the plan is adopted, implemented, and overseen by the Planning Commission and the City Council. A Targeted Planning Zone could be eligible for Community Development Block Grant funds for activities related to the removal of blight and the provision of low-income housing in the zone.

### Description of Functions

- Design review procedures
- Zoning regulations
- Streetscape element standards
- Character and design guidelines
- Development strategies
- Creation of incentives
- Public review and input

## SUB-DISTRICTS

The creation of Sub-Districts within Downtown Kyle allows for the formulation of a more detailed level of proposed policy and design initiatives that respond to and build upon the existing fabric of Downtown. Areas of commercial, civic, and institutional concentration are present, with residential uses continuing to account for the a significant portion of the Downtown area.

- Residential Sub-District
- Commercial Sub-District
- Civic Sub-District
- Institutional Sub-District

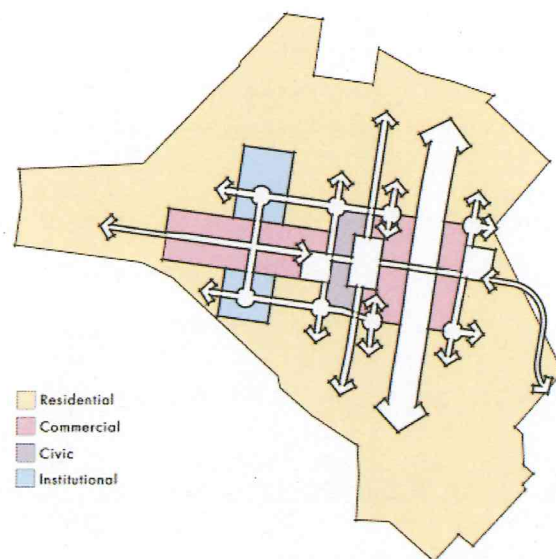


Figure 16. Proposed sub-districts, Downtown Kyle.

## DESIGN OVERLAY DISTRICT

Design Overlay Districts do not change existing, underlying zoning categories, but rather provide requirements and incentives to preserve a defined district form or character and to encourage development of a certain quality. They provide guidance for private entities (developers, designers, and investors) as they embark upon projects in the designated district. It also provides standards for the visual form and appearance to which property owners and occupants must comply, in order to preserve the visual form and overall appearance within the District. Overlay Districts can also be established so as to provide effective land use planning and facilitate traffic flow. Guidelines typically articulated in a Design Overlay District would address such components as:

### Typical Elements Defined and Regulated through Design Overlay Districts:

- Landscaping
- Architecture
- Lighting
- Signage
- Parking lots
- Transportation elements (intersections, trails, transit stops)

## CAPITAL IMPROVEMENT DISTRICT

The creation of a Capital Improvement District allows cities and counties to provide new public facilities and expand existing facilities in order to accommodate existing and anticipated growth. Funding for these Districts typically stems from capital improvement revenue funds, state and federal sources, grants, development exactions and impact fees, dedications of land, taxes, assessments, and charges. Physical, environmental, and topographical constraints must be considered when designating areas for the expansion of public facilities.

A Capital Improvement District's functions are as follows:

- Prioritize the new public facilities
- Estimate the cost of improvements or repairs
- Analyze the fiscal capacity of the city or county to finance and construct improvements
- Establish financial policies to provide for the funding of improvements
- Schedule the funding, prioritization, and construction of improvements to ensure that public facilities are provided when required based on needs identified in the Comprehensive Plan.

POSSIBLE DISTRICT DESIGNATIONS FOR DOWNTOWN KYLE

FUNCTION	Due Process	Regulatory Control	Shared Governance	Targeted Public Funding	General Public Funding	Premium Funding
<b>DESCRIPTION OF FUNCTION</b>	Provide public deliberation for the purpose of preventing capricious actions on part of council, while permitting specific actions within a targeted area	Target enforcement or regulatory oversight in a specified area	Establish governmental subdivisions for the purpose of executing specific tasks normally assigned to general governance	Redirect public revenues within a particular zone to a target area/set of targeted projects	Focus general revenues to targeted area/targeted projects	Create revenue streams in addition to normal public sources
<b>DISTRICTS</b>	Land Use areas (entertainment, school, hospital, etc.)	Design Overlay Districts	Municipal Management Districts	Tax Increment Finance District	Capital Improvement District	Public Improvement District
	Target Planning Zones (Sub-area plan)	Planned Development Districts	Legislated Districts			Business Improvement District
		Historic Districts				
	Reinvestment Zones	Code Enforcement Districts				

 Recommended for Downtown Kyle

Figure 17. Possible District Designations, Kyle, Texas



## HISTORIC DISTRICTS

The creation of Historic Districts is a way to target the preservation of historic buildings, streets, features, and the fabric of an area. The National Parks Service maintains the National Register of Historic Places, which recognizes districts, sites, buildings, structures, and objects that are significant to American history, architecture, archeology, engineering, and culture. The process of obtaining National Register designation can be lengthy and requires extensive documentation of a site's merits.

The Texas Historical Commission administers the Certified Local Government (CLG) program, which provides support to cities in creating Historic Districts. In order to qualify as a CLG, a city must:

1. Enforce state or local legislation that protects historic properties
2. Establish a qualified review commission composed of professional and lay members
3. Maintain a system for surveying and inventorying historic properties
4. Provide for public participation in the historic preservation process, including recommending properties to the National Register of Historic Places.

Once certified, a CLG becomes eligible for grant funds to support:

- Training for local preservation commissions
- Completing or updating surveys of historic resources
- Producing historical walking or driving tour brochures, videos or other educational materials
- Preparing preservation plans
- Preparing National Register of Historic Places nominations

## MUNICIPAL MANAGEMENT DISTRICT

Municipal Management Districts, also referred to as Downtown Management Districts, can be created within an existing commercial area to finance facilities, infrastructure, and services beyond those already provided by individual property owners, or by the municipality. Municipal Management Districts are created to supplement, not supplant, the municipal services in the designated district. A Municipal Management District actually functions under dual provisions of rights, powers, privileges, authority, and functions. It functions as both a conservation and reclamation district, and as a road and road utility district.

Projects and services approved for Municipal Management Districts:

- Landscaping
- Streets/Sidewalks/Signage
- Marinas
- drainage improvements
- pedestrian malls
- solid waste/water/sewer/power facilities
- parks and plazas
- lakes, rivers, ponds, bayous
- recreation/scenic areas
- historic areas
- fountains/art
- off-street parking
- bus terminals, heliports, and mass transit systems
- demolition costs associated with designated improvements
- property acquisition in connection with an improvement project
- supplemental services for improvement projects (advertising, economic development, health and sanitation, security, etc.)
- administrative expenses incurred in district management

Funding options provided through Municipal Management Districts include:

- Self-imposed property taxes
- Special assessments
- Impact Fees
- Other charges to property owners

## TAX INCREMENT FINANCE DISTRICT (TIF)

Tax Increment Finance Districts are useful primarily in the funding of structural and infrastructural improvements within a designated Reinvestment Zone.

### Approved Appropriations of Funds

The governing body/board of directors may regulate/restrict the use of land by imposing conditions, restrictions, or covenants that run with the land. In a Tax Increment Financing District, the “increment” of increased tax value created by new development (increase over present value) is directed toward approved projects documented in a TIF Plan. These funds are administered by a TIF Board. TIF Districts are set up by City Ordinance and typically last 10 to 20 years.

The governing body/board of directors may use funds for project costs that benefit the reinvestment zone, including those relating to:

- railroad or transit facilities
- affordable housing
- the remediation of conditions that contaminate public or private land or buildings
- the preservation of the facade of a private or public building
- the demolition of public or private buildings
- providing affordable housing or areas of public assembly in or out of the zone
- paying a neighborhood enterprise association for providing services or carrying out authorized projects in the zone
- activities that benefit the zone and stimulate business and commercial activity in the zone

## PUBLIC IMPROVEMENT DISTRICT (PID)

Public Improvement Districts offer cities and counties a means for improving their infrastructure to promote economic growth in a designated area, by levying and collecting special assessments on properties within the city or its ETJ. Public improvements typically funded through use of a PID include improvements in areas such as infrastructure, civic space, and business-related services.

### Authorized Improvement Projects

- landscaping
- erection of fountains, distinctive lighting, and signs
- acquiring, constructing, improving, widening, narrowing, closing, or rerouting of sidewalks or of streets, any other roadways, or their rights-of-way
- construction or improvement of pedestrian malls
- acquisition and installation of pieces of art
- acquisition, construction, or improvement of libraries
- acquisition, construction, or improvement of off-street parking facilities
- acquisition, construction, improvement, or rerouting of mass transportation facilities
- acquisition, construction, or improvement of water, wastewater, or drainage facilities or improvements
- the establishment or improvement of parks
- acquisition, by purchase or otherwise, of real property in connection with an authorized improvement
- special supplemental services for improvement and promotion of the district, including services relating to advertising, promotion, health and sanitation, water and wastewater, public safety, security, business recruitment, development, recreation, and cultural enhancement
- payment of expenses incurred in the establishment, administration, and operation of the district

## BUSINESS IMPROVEMENT DISTRICT (BID)

A Business Improvement District (BID) is an organizing and financing mechanism used by property owners and merchants to determine the future of their retail, commercial and industrial areas. The BID is based on state and local law, which permits property owners and merchants to band together to use the city's tax collection powers to assess properties, thereby creating a reliable, multi-year source of funds for economic development. These funds are collected by the city and returned in their entirety to the BID and are used for supplemental services (maintenance, sanitation, security, promotions and special events) and capital improvements (street furniture, trees, signage, special lighting) beyond those services and improvements provided by the municipal government. In essence, the program is one of self-help through self-assessment and business-led management. In the BID era, business leaders assume that by acting collectively they themselves can correct as many of the problems that affect their economic self-interest as they can afford. There are 1,200 BIDs in North America in central business districts and other commercial areas of all sizes, from tiny Hampton, Virginia, to Times Square in New York City.

BIDs typically serve 10 functions:

1. Maintenance. Collecting rubbish, removing litter and graffiti, washing sidewalks, shoveling snow, cutting grass, trimming trees, planting flowers in public places.
2. Security and hospitality. Hiring uniformed security and street "guides" or "ambassadors"; buying and installing electronic security equipment or special police equipment, staffing sidewalk tourism kiosks.
3. Consumer marketing. Producing festivals and events; coordinating sales promotions, producing maps and newsletters; launching image enhancement and advertising campaigns; erecting directional signage.
4. Business recruitment and retention. Conducting market research; producing data-oriented reports; offering financial incentives for new and expanding businesses; marketing to investors.
5. Public space regulation. Managing sidewalk vending, street performances, street furniture, code compliance.
6. Parking and transportation management. Managing the public parking system; maintaining transit shelters; operating ridesharing programs.
7. Urban design. Developing urban design guidelines; managing facade improvement programs.
8. Social services. Creating or aiding help-the-homeless, job training, and youth services programs.
9. Visioning. Developing a vision or strategic plan.
10. Capital improvements. Installing pedestrian-scale lighting and street furniture; planting and maintaining trees and flowers.

## A STRATEGY FOR DOWNTOWN REVITALIZATION

Relationships describe the interconnection of the internal and external organizational structures that act upon the implementation strategy. Acts (or actions) necessary to implementation include funding, implementation/construction, and maintenance. Gathering/generating funds, expending funds to create value, and maintaining that value is a broad set of relationships that define the interconnecting relationships between those agencies, boards, commissions, committees, associations, and tasks forces associated within the implementation strategy. To make the collective body of organizations (such as those specified above) functional, it is necessary to set them in a hierarchical association which ultimately defines a community under the leadership of elected officials (the City Council). In this way the operations of the implementation strategy maintain public accountability and respect the rights of public due process and uniform/non-capricious application of laws/policies/procedures.

The following is a sequence of actions recommended for Downtown Revitalization in Kyle. These actions integrate both public and private actions, involving policy, regulatory, and form-based mechanisms. There are five recommendations in total.

1. Adopt the Kyle Downtown Revitalization Plan
2. Create special districts
3. Create district committees and boards
4. Craft guidelines and pass ordinances that codify the guidelines
5. Begin detailed design work on the downtown design projects (see Figure 18 below):
  - a. Create identifiable plaza at major intersection. Place along rail corridor and Center Street and maintain unified ground plane.
  - b. Create public spaces and provide enhanced streetscapes. Place along major spine (Center Street) as center and termini and use special monumentation, signage, paving and landscaping.
  - c. Connect downtown street grid across interstate. Allow secondary streets in relation to Center Street to connect to east side of I-35.
  - d. Connect downtown street grid to larger grid of transportation. Join grid to service roads and extend grid to east side of I-35.
  - e. Connect downtown development and civic presence. Create pedestrian connections and public spaces.

Issue	Resolution	Outcome
Lack of destination due to voids in urban fabric	Create identifiable plaza at major intersection: place along rail corridor and Center Street maintain unified ground plane	Creates spatial relationship between existing buildings, streets and rail line Becomes destination for future development Knits together urban forms and uses
Locational disadvantage causing lack of significance and character within the City	Create public spaces and provide enhanced streetscapes: place along major spine (Center Street) as center and termini use special monumentation, signage, paving and landscaping	Creates unique sense of place one can identify
Lack of nodal Intersection	Connect downtown street grid across interstate: allow secondary streets in relation to Center Street to connect to east side of I-35	Allows for greater potential value capture in the Downtown district as a whole Creates energy and critical mass
Low levels of service	Connect downtown street grid to larger grid of transportation : join grid to service roads extend grid to east side of I-35	Creates easier access in and out of Downtown Aleviates traffic congestion Connects to regional districts
Cognitive isolation from other districts in the City	Connect downtown development and civic presence: create pedestrian connections create public spaces	Knits together urban forms and uses of the Downtown district to regional districts

Figure 18. Top Five Issues, Resolutions and Outcomes, Downtown Kyle.

**LL & C PROPERTIES, INC.**

June 15, 2011

Mrs. Robbye Meyer  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, Texas 78701-2410

RE: Supplement to Application Challenge – The Overlook at Plum Creek, #11217

Dear Mrs. Meyer,

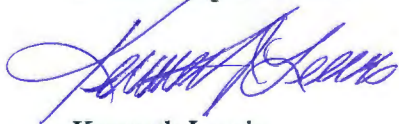
Please accept this letter as a supplement to the original Application Challenge submission sent to your office via Federal Express on June 14, 2011. We represent the housing tax credit applicant for Allegre Point, TDHCA No. 11123 in Urban Region 7.

Please note the following contact information should you require additional information in regards to the above-mentioned Application Challenge:

Kenneth Lewis  
2211 Norfolk Suite 1030  
Houston, Texas 77098  
(713) 403-2000 office  
(713) 403-2009 fax  
[kjl@alumni.utexas.net](mailto:kjl@alumni.utexas.net)

Sincerely,

LL&C Properties, Inc.



Kenneth Lewis  
President



June 15, 2011

Ms. Robbye Meyer  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, Texas 78711-3941

Subject: Challenge of TDHCA Application #11227  
Dolphin's Landing Apartments

Dear Ms. Meyer:

Please accept this letter as a challenge to the points applied for and awarded to TDHCA Application #11227 (Dolphin's Landing Apartments) under Sections 49.9(a)(26) *Leveraging of Private, State, and Federal Resources* and 49.9(a)(27) *Third Party Funding Outside of Qualified Census Tracts* of the 2011 *Qualified Allocation Plan* (Regulations). The Regulations require that in order for an applicant to be eligible for points under each of these sections the identified funding source cannot be an affiliate of the Applicant. Additionally, the Regulation sections require the Applicant to attest that the funding source is not the Applicant, Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed application. Based on information obtained from publicly-available resources, it appears the funding source reflected in the Subject's application to garner points under Sections 49.9(a)(26) & (27) is affiliated with the Applicant and Developer and is also affiliated with an individual or entity that is acting on behalf of the proposed application. Therefore, it appears the Applicant is ineligible to receive the points associated with each of these two sections of the Regulations.

**Arlington Capital Corporation (Funding Source)**

Please see **Exhibit A** that contains a copy of Volume 4, Tabs 26 & 27 that was included in the Subject's application to evidence the funding source represented by the Applicant to garner points under Regulation Sections 49.9(a)(26) & (27). Each of these Application Tabs reflect Arlington Capital Corporation as the committed funding source. Additionally, the commitment is executed by Mr. Tom D. McVay, President of Arlington Capital Corporation, and includes an attestation by Mr. McVay that such Company is not affiliated with the Applicant or Developer or any individual or entity acting on behalf of the proposed application.

**Atlantic Housing Foundation, Inc. (Member of General Partner and Developer)**

Please see **Exhibit B** that contains copies of selected documents from Volume 1, Tab 5 and Volume 3, Tab 8 of the Subject's application. Such documents reflect that Mr. Richard Whaley is a Board Member/Trustee of Atlantic Housing Foundation, Inc., which is a Member of both the General Partner and Developer of the Applicant Entity. The documents further disclose and contain a certification that Mr. Whaley is an affiliate of the Applicant and Development Team.

**Arlington Capital Corporation (Affiliation to Applicant)**

Please see **Exhibit C** that contains select pages from a Dun and Bradstreet report on Arlington Capital Corporation that reflect Mr. Richard Whaley as an officer and owner of Arlington Capital Corporation, along with Mr. Tom D. McVay. **Exhibit C** additionally contains select pages from a Dun and Bradstreet report on MAS Apartment Corporation dba MAS Properties, a company in which Mr. Whaley and Mr. McVay are officers, and information on such company obtained from (i) the Florida Department of State Division of Corporations, (ii) the MAS Companies website, and (iii) the Better Business Bureau website. The documents obtained on MAS Properties reflect that both Mr. Richard Whaley and Mr. Tom D. McVay are officers of MAS Properties, and that Arlington Capital Corporation is an affiliate of MAS Properties. The documents on both entities further reflect the entities share the same office space and telephone number and that there is a link between the two companies.

**Summary**

Due to the apparent relationship between (i) Mr. Richard Whaley, as Board Member/Trustee of the General Partner and Developer of the Applicant, and as owner/officer of Arlington Capital Corporation and/or (ii) Mr. Richard Whaley, as Board Member/Trustee of the General Partner and Developer of the Applicant, and Mr. Tom D. McVay as an officer of Arlington Capital Corporation and as a co-officer (with Mr. Whaley) of MAS Properties, we request TDHCA Staff to re-evaluate the Applicant's eligibility for points under Sections *49.9(a)(26) Leveraging of Private, State, and Federal Resources* and *49.9(a)(27) Third Party Funding Outside of Qualified Census Tracts* of the *2011 Qualified Allocation Plan*.

Please feel free to call if I can be of any further assistance on this matter or if you desire a copy of an unabbreviated set of the documents included herein. My contact information is included on this letterhead and my email address is [p.patierno@highlandcompanies.com](mailto:p.patierno@highlandcompanies.com).

Sincerely,



Paul Patierno

Encl.

cc: Raquel Morales (TDHCA)

# Exhibit A



**Volume 4, Tab 26**

**LEVERAGING OF PRIVATE, STATE AND FEDERAL RESOURCES (§49.9(a)(26))**

Complete the following information for 1 point under §49.9(a)(26) of the 2011 QAP. Applicants may submit enough sources to substantiate the point request. For example, two sources may be submitted if each is for an amount equal to 1% of the Total Housing Development Cost.

The funding must be equal to or greater than 2% of the Total Housing Development Costs, without rounding, reflected in the Volume 1, Tab 3, Part A. Development Cost Schedule. In addition, the Volume 1, Tab 2, Part B. Rent Schedule must show that at least 3% of all low-income Units are designated to serve individuals or families with incomes at or below 30% AMGI.

**IMPORTANT! Funding sources used for points under §49.9(a)(5) may be used for this point item but funding may not earn points twice. Funds committed must be enough so that both requests can be covered by the committed funds without counting any of the funds more than once.**

Complete one form for each score. Use additional pages if necessary.

1. Name of Private, State or Federal Funding Entity: Arlington Capital Corporation

2. Funding Source. Refer to HTC Procedures Manual and 2011 QAP for specific requirements of each funding source. Check one box.

Loan

Source:	<u>Arlington Capital Corporation</u>	<u>\$490,000</u>
Source:	<u></u>	<u></u>
Source:	<u></u>	<u></u>

Total Loan Amount attributed to the Total Housing Development Costs: \$490,000

Grant

Source:	<u></u>	<u></u>
Source:	<u></u>	<u></u>
Source:	<u></u>	<u></u>

Total Grant Amount attributed to the Total Housing Development Costs: \$0

TDHCA HOME Funds

TDHCA HOME funds will only qualify if there is a Notice of Funding Availability (NOFA) out for available funds and the Applicant is eligible under that NOFA.

Total Amount attributed to the Total Housing Development Costs:

In-kind Contribution

For in-kind contributions, evidence must be submitted from a private, state or federal resource which substantiates the value of the in-kind contribution.

Source:	<u></u>	<u></u>
Source:	<u></u>	<u></u>
Source:	<u></u>	<u></u>

Total Amount attributed to the Total Housing Development Costs (from August 1, 2011 through Placed in Service date): \$0

Type of in-kind contribution:

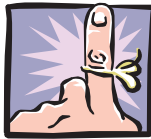
**Volume 4, Tab 26****LEVERAGING OF PRIVATE, STATE AND FEDERAL RESOURCES (§49.9(a)(26)) (cont.)**

- Development Based Rental Subsidy  
Development based rental subsidies from private, state or federal resource may qualify under this section if evidence of the remaining value of the contract is submitted from the source. In this case, the value of the contract does not include past subsidies

Total Amount of Remaining Subsidy (August 1, 2011 through expiration of contract):

**3. Evidence of Funding. One of the following must be submitted.**

- Copy of commitment of funds. The commitment must include a statement that the provider of funds is not the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application and that none of the funds committed were first provided to the entity by the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application, unless the Applicant itself is a Unit of General Local Government or Governmental Instrumentality.
- Copy of the application to the funding entity and a letter from the funding entity indicating that the application was received. The Application should include the amount and terms of the proposed funding. For in-kind contributions and development based rental subsidies, a letter from the funding entity substantiating the anticipated value must be provided.



**REMEMBER TO SUBMIT YOUR EVIDENCE BEHIND THIS FORM**

# Arlington Capital Corporation

1105 SCHROCK ROAD, SUITE 206

COLUMBUS, OHIO 43229

*COMMITMENT FOR LOAN TO  
VDC CORPUS CHRISTI RESERVE I, LP  
SUMMARY OF TERMS AND CONDITIONS  
February 28, 2011*

**BORROWER:** VDC CORPUS CHRISTI RESERVE I, LP.

**PRINCIPAL AMOUNT:** \$490,000 (the "Loan").

**LENDER:** Arlington Capital Corporation Inc.  
*Lender is not a commercial lender.*

**PROJECT:** Dolphin's Landing, *The Project is located outside of a Qualified Census Tract.*

**TAX CREDITS:** Development of the Project will be financed, in part, with the proceeds of low-income housing tax credits ("Tax Credits") authorized under Section 42 of the Internal Revenue Code of 1986, as amended. Borrower has applied for a commitment of Tax Credits from the Texas Department of Housing and Community Affairs pursuant to its 2011 Qualified Allocation Plan [10 T.A.C. Chapter 50] (the "QAP"). This Loan allows Borrower to qualify for certain points under its Tax Credit application (the "Application") and Borrower and Lender intend this Loan to comply with the QAP.

**SOURCES:** The funds used to make this Loan will not be: (1) first provided to Lender by Borrower or by the Applicant, Developer, Consultant, Related Party, or any individual or entity acting on behalf of the Application (as such terms are defined in the QAP). Lender is not the Applicant, Developer, Consultant, Related Party, or any individual or entity acting on behalf of the Application

**TERM:** 15 <sup>MONTHS</sup> ~~years~~ from the date of execution of the promissory note (the "Note") evidencing the Loan (the "Maturity Date").

**INTEREST RATE:** The annual rate of 12 %.

**REPAYMENT:** All principal and accrued interest will be due and payable at the Maturity Date with no prepayment penalty.


**GUARANTOR:** BORROWER

**COLLATERAL:** 3<sup>RD</sup> LIEN.

This Summary of Terms and Conditions constitutes the commitment of Lender to make a loan to Borrower on the terms and conditions described above. Such commitment is conditioned upon: (1) Lender's receipt and approval of final form loan documents; (2) establishment of collateral in a manner acceptable to Lender; (3) Borrower's receipt of low-income housing tax credits for the development of the Project; (4) no material adverse change in Borrower or the Project or the circumstances surrounding Borrower's development of the Project that would, in Lender's reasonable discretion, make the Loan unacceptable to Lender; and (5) final approval of the transaction by Lender's counsel.

Agreed as of the date first written above.

LENDER:

  
ArHington Capital Corporation, Inc.  
Tom D. McVay, President

BORROWER:

  
Authorized Representative  
VDC Corpus Christi Reserve I, LP

**Volume 4, Tab 27**

**THIRD-PARTY FUNDING COMMITMENT OUTSIDE OF QUALIFIED CENSUS TRACTS  
(\$49.9(a)(27))**

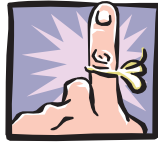
Complete the following information for 1 point under §49.9(a)(27) of the 2011 QAP. Use additional pages if necessary. For all sources, submit the funding commitment behind this tab. All sources must be included in the Volume 1, Tab 4, Part A. Summary of Sources and Uses form and Volume 1, Tab 4, Part B. Financing Narrative. Funding must equal at least 2% of the Total Housing Development Costs, without rounding, reflected in the Volume 1, Tab 3, Part A. Development Cost Schedule. The Development must be located outside a qualified census tract and have at least 10% of the units in the Development serving households at 30% AMGI or below. The funding source can not be a commercial lender. Funds from the Department's HOME and Housing Trust Fund sources are not eligible for these points.

Funding Source: Arlington Capital Corporation

Total Amount: \$490,000

Percentage of Development Cost: 2%

- Copy of commitment of funds is attached. The commitment must include a statement that the provider of funds is not the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application and that none of the funds committed were first provided to the entity by the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application.



**REMEMBER TO SUBMIT EVIDENCE BEHIND THIS FORM**

# Arlington Capital Corporation

1105 SCHROCK ROAD, SUITE 206

COLUMBUS, OHIO 43229

*COMMITMENT FOR LOAN TO  
VDC CORPUS CHRISTI RESERVE I, LP  
SUMMARY OF TERMS AND CONDITIONS  
February 28, 2011*

**BORROWER:** VDC CORPUS CHRISTI RESERVE I, LP.

**PRINCIPAL AMOUNT:** \$490,000 (the "Loan").

**LENDER:** Arlington Capital Corporation Inc.  
*Lender is not a commercial lender.*

**PROJECT:** Dolphin's Landing, *The Project is located outside of a Qualified Census Tract.*

**TAX CREDITS:** Development of the Project will be financed, in part, with the proceeds of low-income housing tax credits ("Tax Credits") authorized under Section 42 of the Internal Revenue Code of 1986, as amended. Borrower has applied for a commitment of Tax Credits from the Texas Department of Housing and Community Affairs pursuant to its 2011 Qualified Allocation Plan [10 T.A.C. Chapter 50] (the "QAP"). This Loan allows Borrower to qualify for certain points under its Tax Credit application (the "Application") and Borrower and Lender intend this Loan to comply with the QAP.

**SOURCES:** The funds used to make this Loan will not be: (1) first provided to Lender by Borrower or by the Applicant, Developer, Consultant, Related Party, or any individual or entity acting on behalf of the Application (as such terms are defined in the QAP). Lender is not the Applicant, Developer, Consultant, Related Party, or any individual or entity acting on behalf of the Application

**TERM:** 15 <sup>MONTHS</sup> ~~years~~ from the date of execution of the promissory note (the "Note") evidencing the Loan (the "Maturity Date").

**INTEREST RATE:** The annual rate of 12 %.

**REPAYMENT:** All principal and accrued interest will be due and payable at the Maturity Date with no prepayment penalty.


**GUARANTOR:** BORROWER

**COLLATERAL:** 3<sup>RD</sup> LIEN.

This Summary of Terms and Conditions constitutes the commitment of Lender to make a loan to Borrower on the terms and conditions described above. Such commitment is conditioned upon: (1) Lender's receipt and approval of final form loan documents; (2) establishment of collateral in a manner acceptable to Lender; (3) Borrower's receipt of low-income housing tax credits for the development of the Project; (4) no material adverse change in Borrower or the Project or the circumstances surrounding Borrower's development of the Project that would, in Lender's reasonable discretion, make the Loan unacceptable to Lender; and (5) final approval of the transaction by Lender's counsel.

Agreed as of the date first written above.

LENDER:

  
ArHington Capital Corporation, Inc.  
Tom D. McVay, President

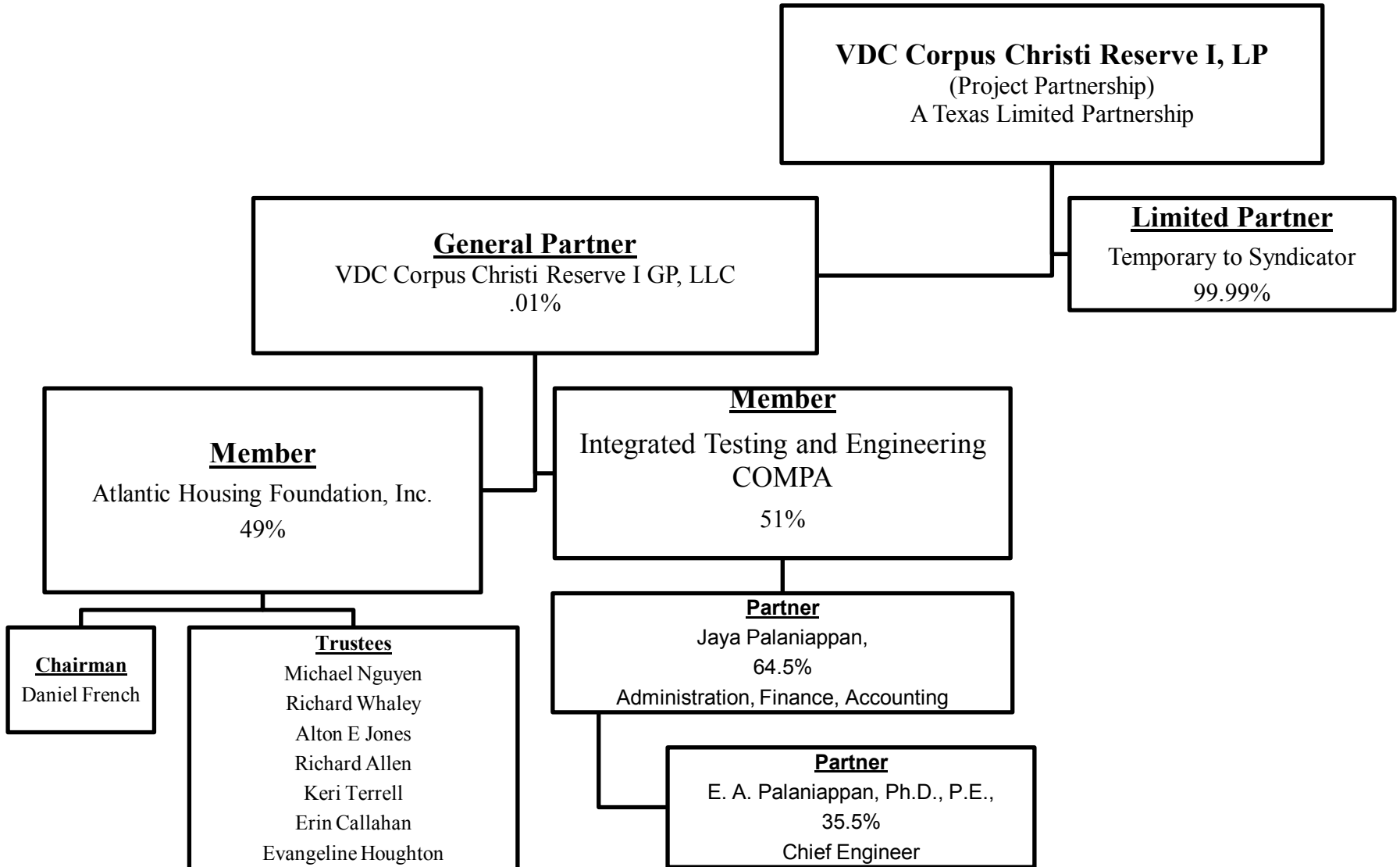
BORROWER:

  
Authorized Representative  
VDC Corpus Christi Reserve I, LP

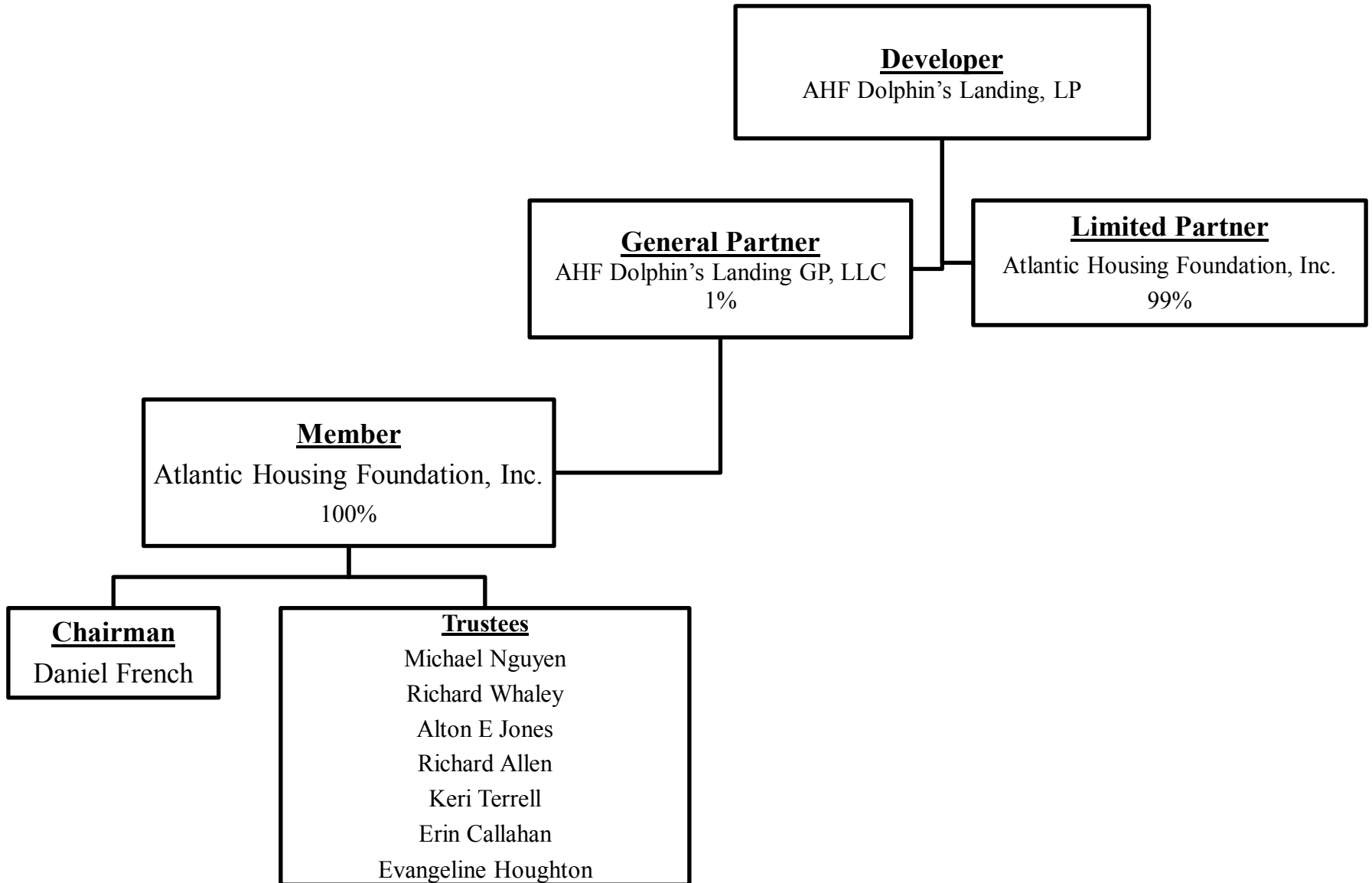
# Exhibit B



# Dolphin's Landing - Owner



# Dolphin's Landing - Developer



VOLUME 1, TAB 5

**PART C. LIST OF PRINCIPALS OF ORGANIZATIONS WITH AN OWNERSHIP OR SPECIAL INTEREST IN THE APPLICANT**

This form must include **all organizations and natural persons** with an ownership interest in the Development Owner, Developer, or Guarantor or that will receive more than 10% of the developer fee. This form must also include the executive directors and board members of nonprofits, corporations and government instrumentalities (even if the executives and board members own "0%" of the organization.) **Note:** you must submit *Part E. Previous Participation and Background Certification Form* for each person/entity identified as having previous participation on this form.

If the Person or entity has previous experience with TDHCA funding, then this should be noted by checking the "Yes" box. If the Person or entity has no previous experience with TDHCA funding, then this should be noted by checking the "No" box.

Organization Name	Principal Name:	Role/Title	% Interest in the Org.	Principal has Previous Participation with Funding from TDHCA: (mark with an "X")	
				Yes	No
Organization 1.1	(blank if space to left is not blank)	Development Owner	100%	Yes	No
	Principal 1	General Partner	100%	Yes	No
Organization 1.2	(blank if space to left is not blank)	General Partner	100%	Yes	No
	Principal 1	Executive Director	0%	Yes	No
	Principal 2	Board Member	0%	Yes	No
				Yes	No
VDC Corpus Christi Reserve I, LP		Development Owner	100%	Yes	No
	VDC Corpus Christi Reserve I GP, LLC	General Partner	0.01%	Yes	No
				Yes	No
VDC Corpus Christi Reserve I GP, LLC		General Partner		Yes	No
	Atlantic Housing Foundation, Inc.	Member	49%	Yes	No
	Integrated Testing and Engineering COMPA	Member	51%	Yes	No
Atlantic Housing Foundation, Inc.				Yes	No
	Board Members			Yes	No
	Daniel French	Chairman	0%	Yes	No
	Michael Nguyen	Trustee	0%	Yes	No
	Richard Whaley	Trustee	0%	Yes	No
	Alton E. Jones	Trustee	0%	Yes	No
	Richard Allen	Trustee	0%	Yes	No
	Keri Terrell	Trustee	0%	Yes	No
	Angeline Houghton	Trustee	0%	Yes	No
	Erin Callahan	Trustee	0%	Yes	No
				Yes	No
				Yes	No
Integrated Testing and Engineering COMPA				Yes	No
	Jaya Palaniappan	Partner	64.5%	Yes	No
	E. A. Palaniappan	Partner	35.5%	Yes	No
				Yes	No
				Yes	No
				Yes	No
				Yes	No
				Yes	No
				Yes	No
				Yes	No
				Yes	No
				Yes	No
				Yes	No
				Yes	No
				Yes	No



**VOLUME 1, TAB 5****PART E. CERTIFICATION OF PRINCIPAL or DEVELOPMENT OWNER**

Development Name: Dolphin's Landing Apartments Development City: Corpus Christi

All defined terms used in this certification and not specifically defined herein have the meanings ascribed to them in the 2011 Qualified Allocation Plan of the Texas Department of Housing and Community Affairs (the "Department"), 10 TAC Chapter 49 (the "QAP") or the Department's Definitions for Housing Program Activities regarding multifamily applications, 10 TAC §1.1.

The undersigned, in each and all of the following capacities in which it may serve or exist -- Applicant, Development Owner, Developer, Guarantor of any obligation of the Applicant, and/or Principal of the Applicant and hereafter referred to as "Applicant," whether serving in one or more such capacities, is hereby submitting its Application to the Department for consideration of an allocation of Housing Tax

Applicant hereby represents, warrants, agrees, acknowledges and certifies to the Department and to the State of Texas that:

- 1) This Application and all materials submitted to the Department constitute records of the Department subject to Chapter 552, Texas Government Code, the Texas Public Information Act.
- 2) All representations, undertakings and commitments made by Applicant in the Application process for a Development, whether with respect to Threshold Criteria, Selection Criteria or otherwise, expressly constitute conditions to any Commitment, Determination Notice, or Carryover Allocation 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, or Carryover Allocation 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.
- 3) Applicant has not been or is not barred, suspended, or terminated from procurement in a state or federal program or listed in the List of Parties Excluded from Federal Procurement or Non-Procurement Programs.
- 4) Applicant has not 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 deadline.
- 5) Applicant is not subject to an enforcement or disciplinary action under state or federal securities law or by the NASD; is not subject to a federal tax lien; and is not the subject of an enforcement proceeding with any Governmental Entity.
- 6) Applicant has no past due audits, has submitted all previous audits to the Department in a satisfactory format and has demonstrated fiscal, programmatic, and contractual compliance on previously awarded Department contracts or loan agreements and resolution of any previous audit findings, and has no outstanding monetary obligation to the Department.
- 7) At all times 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 not or has not been:
  - (a) A member of the Board; or
  - (b) The Executive Director, a Deputy Executive Director, the Director of Multifamily Finance Production, the Director of Portfolio Management and Compliance, the Director of Real Estate Analysis, or a manager over Housing Tax Credits
  - (c) In violation of §2306.6733 of the Texas Government Code
- 8) The Development Owner has not contracted and will not contract for any aspect of the proposed Development with any Developer that is on the Department's debarred list, including any parts of that list that are derived from the debarred list of the United States Department of Housing and Urban Development; has not breached a contract with a public agency and failed to cure that breach; and has not 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.

**VOLUME 1, TAB 5**

**PART E. CERTIFICATION OF PRINCIPAL or DEVELOPMENT OWNER (cont.)**

Development Name: Dolphin's Landing Apartments Development City: Corpus Christi

- 9) All the instances in which the Developer or Principal of the Applicant has been voluntarily or involuntarily removed by the lender, equity provider, or any other owners or investors, however designated, or any combination thereof or if any litigation to effectuate such removal is instituted in the past ten years for its failure to perform its obligations under the loan documents or limited partnership agreement have been fully disclosed. Applicant understands that if the Department learns at a later date that removal did take place as described and was not disclosed, the Application will be terminated and any Allocation or Award made will be . . .
- 10) Applicant does not employ and will not knowingly employ any undocumented worker, meaning an individual who, at the time of employment, is not lawfully admitted for permanent residence to the United States or authorized under law to be employed in that manner in the United States. If, after receiving a public subsidy, Applicant, or a branch, division, or department of Applicant is convicted of a violation under 8 U.S.C Section 1324a(f), Applicant shall repay the amount of the public subsidy with interest, at the rate and according to the other terms provided by an agreement under Tex. Gov't Code §2264.053, not later than the 120th day after the date the Department notifies Applicant of the violation.
- 11) All housing developments with which Applicant, Development owner, Developer, Guarantor and/or Principle thereof participating, are in compliance with:
  - (a) 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. Section 3601 et seq.); and the Fair Housing Amendments Act of 1988 (42 U.S.C. Section 3601 et seq.),
  - (b) the Civil Rights Act of 1964 (42 U.S.C. Section 2000a et seq.),
  - (c) the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.), and
  - (d) the Rehabilitation Act of 1973 (29 U.S.C. Section 701 et seq.).
- 12) The Department staff reviewing the Application or its Governing Board may, in its sole and reasonable discretion, request additional information and/or documentation in its evaluation of this Application.
- 13) The making of an allocation or award by the Department does not constitute a finding or determination that the Development is deemed qualified to receive such allocation or award. Applicant agrees that the Department or any of its directors, officers, employees, and agents will not be held responsible or liable for any representations made to the undersigned or its investors relating to the Housing Tax Credit Program; therefore, Applicant assumes the risk of all damages, losses, costs, and expenses related thereto and agrees to indemnify and hold harmless the Department and any of its officers, employees, and agents against any and all claims, suits, losses, damages, costs, and expenses of any kind and of any nature that the Department may hereinafter suffer, incur, or pay arising out of its decisions and actions concerning this Application for Housing Tax Credits or the use of information concerning the Housing Tax Credit Program.
- 14) No issue of ineligibility for the Applicant, the Application or the Development exists or potentially exists pursuant to §49.4 of the 2011 QAP or described above except the following (disclosure of potential ineligibility below is subject to review and consideration by the Department including timely appeal reconsideration, before a final determination of ineligibility is made):
  - (a) \_\_\_\_\_
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_
  - (d) \_\_\_\_\_
- 15) Applicant, Development Owner, Developer, Guarantor or other Related Party is not subject to any criminal proceedings and if any such proceeding or any other charges which would invalidate the certifications herein occur prior to Carryover, the Applicant will immediately notify the Department. Such notification must be presented to the Board for consideration at the next available Board meeting.

**VOLUME 1, TAB 5****PART E. CERTIFICATION OF PRINCIPAL or DEVELOPMENT OWNER (cont.)**

Development Name: Dolphin's Landing Apartments Development City: Corpus Christi

**16) Basic Amenities**

At least the minimum point threshold for amenities as further described in §49.8(5)(A) of the 2011 QAP (Common Amenities) will

**17) Unit Amenities**

The Development will have all of the following Amenities as further described in §49.4(c)(14) of the 2011 QAP at no charge to the tenants.

- All New Construction Units must be wired with RG-6 COAX or better and CAT3 phone cable or better, wired to each bedroom, dining room, and living room
- Laundry Connections
- Blinds or window coverings for all windows
- Screens on all operable windows
- Disposal and Energy-Star rated dishwasher (not required for TRDO-USDA Developments; SRO Developments; Rehabilitation Developments exempt from dishwasher if one was not originally in the unit)
- Energy-Star rated Refrigerator (Not required for SRO Developments)
- Oven/Range
- Exhaust/vent fans (vented to the outside) in bathrooms
- Energy-Star rated ceiling fans in living areas and bedrooms
- Energy-Star rated lighting fixtures in all Units which may include compact florescent bulbs
- Plumbing fixtures (toilets and faucets) must meet design standards at 30 TAC §290.252
- All Units must be air-conditioned
- Fire sprinklers in all Units where required by local code

**18) Minimum Unit Size**

The Development will satisfy the minimum threshold for size of Units as further described in §49.8(5)(B) of the 2011 QAP.

**19) Texas Property Code**

The Development will adhere to the Texas Property Code as further described in §49.8(5)(C) of the 2011 QAP.

**20) Compliance with State and Federal Laws**

The Applicant is in compliance with state and federal laws as further described in §49.8(5)(D) of the 2011 QAP.

**21) Attempting to Ensure Involvement of Minority Owned Businesses**

The Applicant will attempt to ensure that at least 30% of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses as further described in §49.8(5)(E) of the 2011 QAP.

**22) Accessibility**

The Development will comply with the accessibility standards as further described in §49.8(5)(F) and §49.8(5)(G) of the 2011

**23) Minimum Standard Energy Saving Devices**

The Development will be equipped with energy saving devices as further described in §49.8(5)(H) of the 2011 QAP.

**24) General Contractor Requirement (Not Applicable to HOME)**

I (We) certify that the Development will be built by a General Contractor as further described in §49.8(5)(I) of the 2011 QAP.

**25) Reserve Account**

The Development Owner agrees to establish a reserve account as further described in §49.8(5)(J) of the 2011 QAP.

**26) Neighborhood Organizations (Not Applicable to HOME)**

The Applicant, Developer, or any employee or agent of the Applicant has not formed a Neighborhood Organization for purposes of §49.9(a)(2) of the 2011 QAP, as further described in §49.8(5)(K) of the 2011 QAP.

VOLUME 100005  
PART E. CERTIFICATION OF PRINCIPAL or DEVELOPMENT OWNER (cont.)

Development Name: Dolphin's Landing Apartments Development City: Corpus Christi

27) Cooperation with Local Housing Authorities

I (we) will operate in accordance with the requirements pertaining to rental assistance in §60 of the Texas Administrative Code as further described in §49.8(5)(L) of the 2011 QAP.

28) Criminal Background Checks

I (we) will contract with a Management Company through out the Compliance Period that will perform criminal background checks on all adult tenants, head and co-head of households as further described in §49.8(5)(M) of the 2011 QAP.

29) Marketing to Veterans

I (We) will affirmatively market to veterans as further described in §49.8(5)(N) of the 2011 QAP.

The individual whose name is subscribed hereto, in his or her individual capacity, on behalf of Applicant, and in all other related capacities described above, as applicable, expressly represents, warrants, and certifies that all information contained in this certification and in the Application, including any and all supplements, additions, clarifications, or other materials or information submitted to the Department in connection therewith as required or deemed necessary by the materials governing the Housing Tax Credit Program are true and correct and the Applicant has undergone sufficient investigation to affirm the validity of the statements made. Further, the Applicant hereby expressly represents, warrants, and certifies that the individual whose name is subscribed hereto has read and understands all the information contained in Part E, (this section) of the Application. By signing this document, the undersigned, in their individual capacity, on behalf of Applicant, and in all other related capacities described above, is affirming under penalty of Chapter 37 of the Texas Penal Code titled Perjury and Other Falsification and subject to criminal penalties as defined by the State of Texas, TEX. PENAL CODE ANN. §§37.01 et seq. (Vernon 2003 & Supp. 2007) and subject to any and all other state or federal laws regarding the making of false statements to governmental bodies or the false statements or the providing of false information in connection with the procurement of allocations or awards that the Application and all materials relating thereto constitute government documents and that the Application and all materials relating thereto are true, correct, and complete in all material respects.

Check all capacities in which you are signing:

- Applicant/Development Owner
- Principal of Development Owner

- Principal of Developer
- Principal of Guarantor

Richard Whaley  
Signature

Richard Whaley  
Printed Name

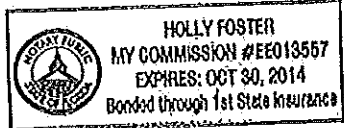
2-23-2011  
Date

STATE OF: Florida  
COUNTY OF: Orange

I, the undersigned, a Notary Public in and for said County and State, do hereby certify that Richard Whaley, whose name is signed to the foregoing statement, and who is known to be one in the same, has acknowledged before me on this date, that being informed of the contents of this statement, executed the same voluntarily on the date same foregoing statement bears.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 23<sup>rd</sup> day of February, 2011.

(Seal)



Holly Foster  
Notary Public Signature

Notary Public, State of Florida  
County of Orange  
My commission expires: 10/30/2014



**Volume 3, Tab 8 (Not Applicable to HOME)**

**PART B. LIST OF THE NONPROFIT ORGANIZATION'S BOARD MEMBERS, DIRECTORS AND OFFICERS**

**Development Name:** Dolphin's Landing Apartments **Development City:** Corpus Christi

Name:	<u>Daniel French</u>		Title:	<u>Chairman</u>	
Address:	<u>412 Timberline</u>	City:	<u>Keller</u>	State:	<u>TX</u> Zip: <u>78248</u>
Phone:	<u>8174107712</u>	Ext:	<u></u>	Fax:	<u></u> Occupation: <u>Chairman</u>
Does the individual :					
(1) serve as a private individual acting in a private capacity? <sup>2</sup> <u></u>					
(2) have a relationship as Affiliate or otherwise, w/members of the Applicant or Development Team? <sup>3</sup> <u>Yes</u>					

Name:	<u>Michael Nguyen</u>		Title:	<u>President &amp; CEO</u>	
Address:	<u>1310 N. White Chapel Blvd.</u>	City:	<u>Southlake</u>	State:	<u>TX</u> Zip: <u>76092</u>
Phone:	<u>8174107712</u>	Ext:	<u></u>	Fax:	<u>8144107712</u> Occupation: <u>CEO of AHF</u>
Does the individual :					
(1) serve as a private individual acting in a private capacity? <sup>2</sup> <u></u>					
(2) have a relationship as Affiliate or otherwise, w/members of the Applicant or Development Team? <sup>3</sup> <u>Yes</u>					

Name:	<u>Richard Whaley</u>		Title:	<u>Member</u>	
Address:	<u>1105 Schrock Rd.</u>	City:	<u>Colombus</u>	State:	<u>TX</u> Zip: <u>43229</u>
Phone:	<u>6144310722</u>	Ext:	<u></u>	Fax:	<u></u> Occupation: <u>Principal, MAS Partment Co.</u>
Does the individual :					
(1) serve as a private individual acting in a private capacity? <sup>2</sup> <u></u>					
(2) have a relationship as Affiliate or otherwise, w/members of the Applicant or Development Team? <sup>3</sup> <u>Yes</u>					

Name:	<u>Alton E. Jones</u>		Title:	<u>Senior Executive of Ginn Companies</u>	
Address:	<u>31 Lupi Court</u>	City:	<u>Palm Coast</u>	State:	<u>FL</u> Zip: <u></u>
Phone:	<u>7723707423</u>	Ext:	<u></u>	Fax:	<u></u> Occupation: <u>Executive, Ginn Companies</u>
Does the individual :					
(1) serve as a private individual acting in a private capacity? <sup>2</sup> <u></u>					
(2) have a relationship as Affiliate or otherwise, w/members of the Applicant or Development Team? <sup>3</sup> <u>Yes</u>					

Name:	<u>Richard Allen</u>		Title:	<u>Member</u>	
Address:	<u>10 Palmetto Business Pkwy</u>	City:	<u>Hilton Head</u>	State:	<u>SC</u> Zip: <u>29928</u>
Phone:	<u>8437853311</u>	Ext:	<u></u>	Fax:	<u></u> Occupation: <u></u>
Does the individual :					
(1) serve as a private individual acting in a private capacity? <sup>2</sup> <u></u>					
(2) have a relationship as Affiliate or otherwise, w/members of the Applicant or Development Team? <sup>3</sup> <u>Yes</u>					

Name:	<u>Keri Terrell</u>		Title:	<u>member</u>	
Address:	<u>12365 Old Paino Rd.</u>	City:	<u>Dallas</u>	State:	<u>TX</u> Zip: <u>75243</u>
Phone:	<u>9722316904</u>	Ext:	<u></u>	Fax:	<u></u> Occupation: <u>Student SMU</u>
Does the individual :					
(1) serve as a private individual acting in a private capacity? <sup>2</sup> <u></u>					
(2) have a relationship as Affiliate or otherwise, w/members of the Applicant or Development Team? <sup>3</sup> <u>Yes</u>					

<sup>2</sup>An individual is considered to be acting in a private capacity if the individual is not an employee of a public body and is not being paid by a public body while performing functions in connection with the nonprofit organization. A public body is any state, city, county, town, township, village or other unit of general local government.

<sup>3</sup>If "Yes" attach explanation of such relationship to this form.

## Exhibit C

# Arlington Capital Corporation Documents

Report Printed: April 01, 2011

## Live Report : ARLINGTON CAPITAL CORP

D-U-N-S® Number:

Endorsement/Billing Reference:

D&B Address	
<b>Address</b>	1105 Schrock Rd Ste 206 Columbus, OH - 43229
<b>Phone</b>	614 431-0722
<b>Fax</b>	
<b>Location Type</b>	Headquarters
<b>Web</b>	

**Endorsement :**

## Company Summary

Currency: Shown in USD unless otherwise indicated 

### Score Bar

PAYDEX®	
Commercial Credit Score Class	
Financial Stress Class	
Credit Limit - D&B Conservative	
D&B Rating	

### Company News

**Today: Friday, April 01, 2011**

This company is not currently tracked for Company News.

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### Detailed Trade Risk Insight™

Days Beyond Terms Past 3 Months  
There is not sufficient reporting trading activity to generate 3 months Days Beyond Terms (a minimum of 3 trade experiences from at least 2 suppliers)

#### Recent Derogatory Events

<b>Placed for Collection</b>	-	-	-
<b>Bad Debt Written Off</b>	-	-	-

### Public Filings

The following data includes both open and closed filings found in D&B's database on this company.

Record Type	Number of Records	Most Recent Filing Date
Bankruptcies	0	-
Judgments	0	-
Liens	0	-
Suits	0	-
UCCs	0	-

The public record items contained herein may have been paid, terminated, vacated or released prior to today's date.

### D&B Company Overview

This is a headquarters location

Branch(es) or Division(s) exist **Y**

<b>Chief Executive</b>	TOM D MC VAY, PRESIDENT
<b>Year Started</b>	1986
<b>Employees</b>	12 (2 Here)

<b>SIC</b>	6163 , 6552
<b>Line of business</b>	Loan agents, mortgage brokers & real estate consulting
<b>NAICS</b>	522310
<b>History Status</b>	CLEAR

RCVD Wednesday, June 15, 2011 11:40 AM

## Predictive Scores

**Currency:** Shown in USD unless otherwise indicated 

### Credit Capacity Summary

This credit rating was assigned because of D&Bs assessment of the companys creditworthiness. For more information, see the [D&B Rating Key](#)

**D&B Rating :**

**Number of employees:  
Composite credit appraisal:**

The 1R and 2R ratings categories reflect company size based on the total number of employees for the business. They are assigned to business files that do not contain a current financial statement. In 1R and 2R Ratings, the 2, 3, or 4 creditworthiness indicator is based on analysis by D&B of public filings, trade payments, business age and other important factors. 2 is the highest Composite Credit Appraisal a company not supplying D&B with current financial information can receive.

**Below is an overview of the companys rating history since 01-05-1991**

**Number of  
Employees Total:** 12 (2 here)

D&B Rating	Date Applied
------------	--------------

#### Payment Activity:

**Average High Credit:**

**Highest Credit:**

**Total Highest Credit:**

### D&B Credit Limit Recommendation

**Conservative credit Limit**

**Aggressive credit Limit:**

**Risk category for this business :**

This recommended Credit Limit is based on the company profile and on profiles of other companies with similarities in size, industry, and credit usage.

Risk is assessed using D&Bs scoring methodology and is one factor used to create the recommended limits. See Help for details.

### Financial Stress Class Summary


The Financial Stress Score predicts the likelihood of a firm ceasing business without paying all creditors in full, or reorganization or obtaining relief from creditors under state/federal law over the next 12 months. Scores were calculated using a statistically valid model derived from D&Bs extensive data files.

A check of D&B's public records database indicates that no filings were found for ARLINGTON CAPITAL CORP at 1105 Schrock Rd Ste 206 , Columbus OH .

D&B's extensive database of public record information is updated daily to ensure timely reporting of changes and additions. It includes business-related suits, liens, judgments, bankruptcies, UCC financing statements and business registrations from every state and the District of Columbia, as well as select filing types from Puerto Rico and the U.S. Virgin Islands.

D&B collects public records through a combination of court reporters, third parties and direct electronic links with federal and local authorities. Its database of U.S. business-related filings is now the largest of its kind.

## History & Operations

Currency: Shown in USD unless otherwise indicated 

### Company Overview

<b>Company Name:</b>	ARLINGTON CAPITAL CORP
<b>Street Address:</b>	1105 Schrock Rd Ste 206 Columbus , OH 43229
<b>Phone:</b>	614 431-0722 Note: same phone number as MAS Properties
<b>History</b>	Is clear
<b>Present management control</b>	25 years

### History

The following information was reported: **03/02/2011**

**Officer(s):** TOM D MC VAY, PRESIDENT

**DIRECTOR(S) :** THE OFFICER(S)

Business started Apr 1986 by Tom D Mc Vay and Richard J Whaley. 100% of capital stock is owned by Mc Vay and Whaley. TOM D MC VAY. Work history unknown.

**Affiliates :**

The following are related through common ownership and/or financial interest.

**Tom Mc Vay & Company, Inc, Columbus, OH, started 1977. Operates as real estate mortgage brokers and appraisers. Intercompany relations :**

Consist of shared facility.

**M.A.S. One Ltd, Columbus, OH, started 1986. DUNS #** Operates as non residential building operator. Intercompany relation :

Consist of shared facility.

### Business Registration

CORPORATE AND BUSINESS REGISTRATIONS REPORTED BY THE SECRETARY OF STATE OR OTHER OFFICIAL SOURCE AS OF Mar 25 2011

<b>Registered Name:</b>	ARLINGTON CAPITAL CORP.
<b>Business type:</b>	CORPORATION
<b>Corporation type:</b>	PROFIT
<b>Date incorporated:</b>	Apr 14 1986
<b>State of incorporation:</b>	OHIO
<b>Filing date:</b>	Apr 14 1986
<b>Registration ID:</b>	675562
<b>Status:</b>	ACTIVE
<b>Where filed:</b>	SECRETARY OF STATE/CORPORATIONS DIVISION , COLUMBUS , OH
<b>Registered agent:</b>	TOM D MCVAY , 1105 SCHROCK RD SUITE 206 , COLUMBUS , OH , 432290000 Agent appointed: Apr 13 1998

**Principals:** TOM D MCVAY , INCORPORATOR

**Common stock:**

Authorized shares: 500

Par value: \$NO PAR VALUE

## Operations

---

03/02/2011

Loan agents, arranging commercial real estate loans, real estate development and joint venture of commercial properties, and real estate consulting (100%).

**Description:**

Operates on a fee and commission basis. Sells to commercial accounts. Territory : Local.

Nonseasonal.

**Employees:**

12 which includes officer(s). 2 employed here.

**Facilities:**

Rents 2,000 sq. ft. on second floor of an eight story brick building.

**Branches:**

Branches are located at: 600 Cleveland St Ste 900, Clearwater, FL DUNS:

## SIC & NAICS

---

**SIC:**

Based on information in our file, D&B has assigned this company an extended 8-digit SIC. D&B's use of 8-digit SICs enables us to be more specific about a company's operations than if we use the standard 4-digit code.

The 4-digit SIC numbers link to the description on the Occupational Safety & Health Administration (OSHA) Web site. Links open in a new browser window.

6163 9903 Loan agents

6163 9904 Mortgage brokers arranging for loans, using money of others

6552 9901 Land subdividers and developers, commercial

**NAICS:**

522310 Mortgage and Nonmortgage Loan Brokers

522310 Mortgage and Nonmortgage Loan Brokers

237210 Land Subdivision

## Banking

---

09/10 Loans granted to medium 5 figures. Now owing nothing.

## Financials

---

**Currency:** Shown in USD unless otherwise indicated 

### Company Financials: D&B

---

D&B currently has no financial information on file for this company.  
You can ask D&B to make a personalized request to this company on your behalf to obtain its latest financial information by clicking the Request Financial Statements button below.

### Additional Financial Data

---

The name and address of this business have been confirmed by D & B using available sources.

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## ARLINGTON CAPITAL CORP

**Address:**  
1105 SCHROCK RD STE 206  
Columbus, Ohio 43229  
USA  
**Phone:** (614) 431-0722  
**Website:** No information provided.

Is this your business?

**Classification:**  
Land Subdivision  
Mortgage and Nonmortgage Loan Brokers

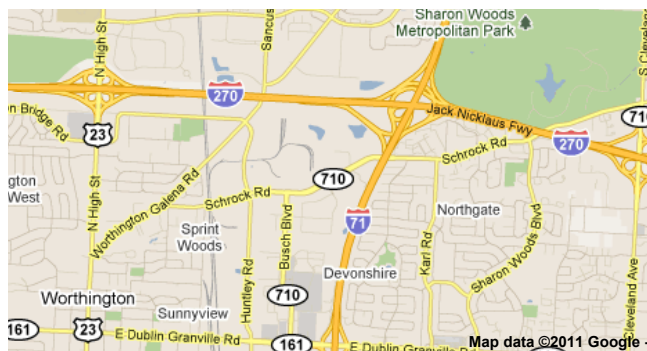
**Contact:** TOM D MC VAY, PRESIDENT  
**Contact 2:** RICHARD J WHALEY  
**State of Incorporation:** OH  
**Est. Total Employees:** 12  
**Est. Employees Here:** 2  
**Est. Years in Business:** 25

[Send an email message to ARLINGTON CAPITAL CORP.](#)

**ARLINGTON CAPITAL CORP** is a Land Subdivision company located in Columbus, Ohio.



**Are The Feds buying what you're selling?**  
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Map of ARLINGTON CAPITAL CORP

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- CASHLAND FINANCIAL SERVICES INC.
- RECASA FINANCIAL GROUP
- C N A C
- JD BYRIDER

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Exhibit C  
MAS Properties Documents



Report Printed: June 03, 2011

## Live Report : MAS APARTMENT CORPORATION

D-U-N-S® Number:

Trade Names: MAS PROPERTIES

Endorsement/Billing Reference:

D&B Address	
<b>Address</b>	1105 Schrock Rd Ste 206 Columbus, OH - 43229
<b>Phone</b>	614 431-0722
<b>Fax</b>	
<b>Location Type</b>	Headquarters
<b>Web</b>	

Endorsement :

## Company Summary

Currency: Shown in USD unless otherwise indicated 

### Score Bar

PAYDEX®

Commercial Credit Score Class

Financial Stress Class

Credit Limit - D&B Conservative

D&B Rating

### Company News

**Today: Friday, June 03, 2011**

This company is not currently tracked for Company News.

Powered by FirstRain

### Detailed Trade Risk Insight™

Days Beyond Terms Past 3 Months

There is not sufficient reporting trading activity to generate 3 months Days Beyond Terms (a minimum of 3 trade experiences from at least 2 suppliers)

Recent Derogatory Events

Placed for Collection

Bad Debt Written Off

### Public Filings

The following data includes both open and closed filings found in D&B's database on this company.

Record Type	Number of Records	Most Recent Filing Date
Bankruptcies		
Judgments		
Liens		
Suits		
UCCs		

The public record items contained herein may have been paid, terminated, vacated or released prior to today's date.

### D&B Company Overview

This is a headquarters location

Branch(es) or Division(s) exist Y

Chief Executive RICHARD WHALEY, PRES

Year Started 1986

<b>Management Control</b>	1992
<b>Employees</b>	13 (10 Here)
<b>Financing</b>	SECURED
<b>SIC</b>	6512 , 8742
<b>Line of business</b>	Nonresidential building operator, management consulting services
<b>NAICS</b>	531120
<b>History Status</b>	CLEAR


RCVD Wednesday, June 15, 2011 11:40 AM

## Corporate Linkage

### Branches (Domestic)

Company	City , State	D-U-N-S® NUMBER
MAS APARTMENT CORPORATION	CLEARWATER , Florida	
MAS APARTMENT CORPORATION	CLEARWATER , Florida	

## Predictive Scores

Currency: Shown in USD unless otherwise indicated 

### Credit Capacity Summary

This credit rating was assigned because of D&Bs assessment of the companys creditworthiness. For more information, see the [D&B Rating Key](#)

**D&B Rating :**

The 1R and 2R ratings categories reflect company size based on the total number of employees for the business. They are assigned to business files that do not contain a current financial statement. In 1R and 2R Ratings, the 2, 3, or 4 creditworthiness indicator is based on analysis by D&B of public filings, trade payments, business age and other important factors. 2 is the highest Composite Credit Appraisal a company not supplying D&B with current financial information can receive.

**Below is an overview of the companys rating history since 01-01-1991**

D&B Rating	Date Applied
------------	--------------

**Sales:**

**Number of Employees  
Total:**

**Payment Activity:**

**Average High Credit:**

**Highest Credit:**

**Total Highest Credit:**

## History & Operations

---

Currency: Shown in USD unless otherwise indicated 

### Company Overview

---

<b>Company Name:</b>	MAS APARTMENT CORPORATION
<b>Doing Business As :</b>	MAS PROPERTIES
<b>Street Address:</b>	1105 Schrock Rd Ste 206 Columbus , OH 43229
<b>Phone:</b>	614 431-0722 Note: same phone number as Arlington Capital
<b>History</b>	Is clear
<b>Present management control</b>	19 years
<b>Annual Sales</b>	

### History

---

The following information was reported: **08/30/2007**

<b>Officer(s):</b>	RICHARD WHALEY, PRES DENNIS E DEAN, V PRES
--------------------	---

**DIRECTOR(S) :****THE OFFICER(S)**

Incorporated in Florida in 1992.  
 Business started 1986 by Tom Mc Vay. 100% of capital stock is owned by the officers.  
 RICHARD WHALEY born 1947. 1986-present active here.  
 DENNIS E DEAN born 1947. 1986-present active here.

MIDLAND MUTUAL LIFE INSURANCE COMPANY, business started in 1905, it was incorporated in Ohio on Sep 30 1905. Operates as a mutual life insurance company. They are located 250 E Broad Street, Columbus, OH. There are no intercompany relations

M.A.S. ONE GENERALS, business started in 1986. Operates as a general partner in subject.

**Affiliates :**

The following are related through common ownership and/or financial interest.  
 Tom Mc Vay and Company, Columbus, OH, started 1967. Real estate mortgage brokers and appraisers. Intercompany relations consist of shared facilities.

**Arlington Capital Corp, Columbus, OH, started 1986. DUNS #-** . Operates as a loan agent, mortgage broker and real estate consultant. Intercompany relations :  
 Consist of shared facility.

**Operations**

08/30/2007

Operates nonresidential buildings (100%). Provides management consulting services, specializing in real estate.

**Description:** Terms are cash, check or credit card. Sells to general public. Territory : Local.

Nonseasonal.

**Employees:** 13 which includes officer(s) and 1 part-time. 10 employed here.

**Facilities:** Rents 2,500 sq. ft. on second floor of an eight story concrete block building.

**Location:** Suburban business section on well traveled street.

**Branches:** Maintains branch locations at ClearWater, FL.

**SIC & NAICS**

**SIC:**  
 Based on information in our file, D&B has assigned this company an extended 8-digit SIC. D&B's use of 8-digit SICs enables us to be more specific about a company's operations than if we use the standard 4-digit code.  
 The 4-digit SIC numbers link to the description on the Occupational Safety & Health Administration (OSHA) Web site. Links open in a new browser window.

6512 0000 Nonresidential building operators

8742 0406 Real estate consultant

**NAICS:**

531120 Lessors of Nonresidential Buildings (except Miniwarehouses)

541611 Administrative Management and General Management Consulting Services

**Banking**

05/11

**Financials**

**Currency:** Shown in USD unless otherwise indicated 

**Company Financials: D&B**

**D&B currently has no financial information on file for this company.**  
**You can ask D&B to make a personalized request to this company on your behalf to obtain its latest financial information by clicking the Request Financial Statements button below.**

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Entity Name Search

No Events

No Name History

## Detail by Entity Name

### Florida Profit Corporation

MAS APARTMENT CORPORATION

### Filing Information

**Document Number****FEI/EIN Number****Date Filed** 10/23/1992**State** FL**Status** ACTIVE

### Principal Address

1105 SCHROCK ROAD  
SUITE 206  
COLUMBUS OH 43229 US

Changed 05/01/2003

### Mailing Address

1105 SCHROCK ROAD  
SUITE 206  
COLUMBUS OH 43229 US

Changed 04/24/2007

### Registered Agent Name & Address

WINTERS, ELISE K  
1006 DREW STREET  
CLEARWATER FL 33755 US

Name Changed: 05/01/1995

Address Changed: 04/03/2006

### Officer/Director Detail

**Name & Address**

Title VPAS

MCVAY, TOM D  
601 CLEVELAND STREET STE 360  
CLEARWATER FL 33755

## Title VPS

DEAN, DENNIS E  
601 CLEVELAND STREET SUITE 360  
CLEARWATER FL 33755

## Title PT

WHALEY, RICHARD J  
1105 SCHROCK RD., #206  
COLUMBUS OH 43229

## Annual Reports

**Report Year Filed Date**

2009	04/07/2009
2010	04/23/2010
2011	04/19/2011

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State of Florida, Department of State

# 2011 FOR PROFIT CORPORATION ANNUAL REPORT

RCVD Wednesday, June 15, 2011 11:40 AM

FILED  
Apr 19, 2011  
Secretary of State

DOCUMENT# V74167

Entity Name: MAS APARTMENT CORPORATION

**Current Principal Place of Business:**

1105 SCHROCK ROAD  
SUITE 206  
COLUMBUS, OH 43229 US

**New Principal Place of Business:**

**Current Mailing Address:**

1105 SCHROCK ROAD  
SUITE 206  
COLUMBUS, OH 43229 US

**New Mailing Address:**

FEI Number: FEI Number Applied For ( ) FEI Number Not Applicable ( ) Certificate of Status Desired ( )

**Name and Address of Current Registered Agent:**

WINTERS, ELISE K  
1006 DREW STREET  
CLEARWATER, FL 33755 US

**Name and Address of New Registered Agent:**

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: \_\_\_\_\_

Electronic Signature of Registered Agent

\_\_\_\_\_ Date

**OFFICERS AND DIRECTORS:**

Title: VPAS  
Name: MCVAY, TOM D  
Address: 601 CLEVELAND STREET STE 360  
City-St-Zip: CLEARWATER, FL 33755

Title: VPS  
Name: DEAN, DENNIS E  
Address: 601 CLEVELAND STREET SUITE 360  
City-St-Zip: CLEARWATER, FL 33755

Title: PT  
Name: WHALEY, RICHARD J  
Address: 1105 SCHROCK RD., #206  
City-St-Zip: COLUMBUS, OH 43229

I hereby certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am an officer or director of the corporation or the receiver or trustee empowered to execute this report as required by Chapter 607, Florida Statutes; and that my name appears above, or on an attachment with all other like empowered.

SIGNATURE: RICHARD J WHALEY

P

04/19/2011

Electronic Signature of Signing Officer or Director

\_\_\_\_\_ Date



RCVD Wednesday, June 15, 2011 11:40 AM



## Staff biographies

[Introduction](#)

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*strong leadership*

**The experienced team at MAS Companies** knows what it takes to turn a piece of property into a valuable and successful venture. The company's rigorous market research, analytical site selection and strong fiscal background have been the foundation for their developments. Quality construction, distinct architectural design, and extensive site planning have added to the company's reputation for results-oriented project involvement.



**Richard J. Whaley**  
**Chairman, CEO**  
**MAS Companies**

Mr. Whaley has more than 40 years experience developing or acquiring real estate throughout most regions of the United States . During his career, Mr. Whaley has successfully overseen as Chairman or General Partner more than 80 developments, totaling more than \$150 million of residential real estate in addition to office and industrial. His strong relationships with European investors have additionally led to success for the firm.

As Chairman of MAS Companies, Mr. Whaley's responsibilities include identifying and maintaining all equity relationships and spearheading new product development. With a strong focus on research integration and market trends, he devises corporate strategies and structure as well as allocates company resources.

Mr. Whaley has been or is currently involved in a number of professional and civic associations, including Founding Trustee, Dalhberg Center; Founding Member, [Ohio State Advocates](#); Former Director, [Affordable Housing Tax Credit Coalition](#), Former Board of Directors, [National Housing and Rehabilitation Association](#), Board of Trustee, [Nightingale Home Care, Inc.](#), member of the [NAIOP - National Association of Industrial and Office Properties Central Florida Chapter](#), member of [FIABCI - The International Real Estate Federation](#). As a Founding Trustee, Mr. Whaley also is passionately involved with [Atlantic Housing Foundation](#), holding an expanded role by assisting with the foundation's \$750 million refinance.



**Tom D. McVay**  
**Principal**  
**President, Arlington Capital  
Corporation**

Mr. McVay has had an active role in owning, developing and financing real estate for over three decades in a broad spectrum of projects ranging from multi-family housing, industrial and commercial

RCVD Wednesday, June 15, 2011 11:40 AM

developments. During that time he has had experience financing through some of the nation's most prestigious financial institutions including Met Life, Prudential, Bank of America, US Bank and BB&T. He also has the privilege of working with highly respected international financial institutions including SwissRe.

As Chief Financial Officer of MAS Companies, Mr. McVay is responsible for overseeing all financial activity including the supervision of corporate lines of credit and the development of banking and lender relationships. During recent years Mr. McVay has been responsible for securing more than \$250 million of construction loans, has managed the financing for more than \$300 million in MAS real estate developments and has handled more than \$600 million in third party financing.

Mr. McVay is currently a member of [National Association of Review Appraisers and Mortgage Underwriters](#) and is a Registered Mortgage Underwriter (RMU) and a Certified Review Appraiser – Administrative (CRA).



**Dennis E. Dean**

**Principal**

**President, Four Star  
Construction Co. - A MAS  
Company**

Mr. Dean has been actively involved in the construction and development of residential and commercial real estate for more than 30 years. During his career, he has supervised more than 3 million square feet of real estate with a value totaling over \$1 billion.

Through detailed, hands-on supervision of the construction process, he upholds MAS's reputation for completing projects on time and on budget. During that process, Mr. Dean coordinates multi-disciplines of construction professionals including architects, engineers (civil, MEP, structural, Geo-tech), contractors and government building agencies (code, zoning, environmental).

Mr. Dean's diverse experience includes design work with U.S. Steel Corporation and construction supervision on facilities at Disney World, multi-family housing, industrial and mini-warehouses, tenant build-outs and Class-A office towers.

Mr. Dean is a licensed CPM, a licensed contractor and a registered engineer. He has long been recognized for his timeliness in delivery, construction efficiencies and high-quality products.



**Robert W. McLaughlin**

**Executive Vice President, COO**

**MAS Companies**

Mr. McLaughlin has 23 years of experience in real estate and banking. He has a broad background in finance and development in both the private as well as the public sectors. During his career Mr. McLaughlin has served as a Regional President for U.S. Bank, as Senior Vice President and Commercial Real Estate Lending Manager for Huntington National Bank, and as head of the Downtown Development Office for the City of Columbus, Ohio. He has also previously served as Senior Vice President of MAS Companies before joining the Mayor of Columbus in leading the city's downtown revitalization effort. Mr. McLaughlin's wealth of experience also includes service as a retired Commander in the United State Naval Reserve.

As Chief Operating Officer of MAS Companies, Mr. McLaughlin is responsible for the day-to-day operations and business affairs of the company. Mr. McLaughlin has been or is currently involved with a number of professional and civic organizations, including service on

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This is Google's cache of <http://www.bbb.org/centralohio/business-reviews/real-estate-developers/mas-apartment-corporation-in-columbus-oh-13000124>. It is a snapshot of the page as it appeared on Mar 13, 2011 04:04:17 GMT. The [current page](#) could have changed in the meantime. [Learn more](#)

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- Length of time business has been operating.
- No complaints filed with BBB.
- BBB has sufficient background information on this business.

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#### Business Contact and Profile for MAS Apartment Corporation

Name: MAS Apartment Corporation

Phone: (614) 431-0722

Fax: (614) 431-1536

Address: 1105 Schrock Rd Ste 206

Columbus, OH 43229-1174

Website: [www.mascompanies.com](http://www.mascompanies.com)

Original Business  
Start Date: April 1986

Principal: [Mr. Richard J. Whaley, Chairman](#)

Customer Contact: Mrs. Pamela Landolfo, Office Manager -  
(614) 431-0722

Email Address: [admin@mascompanies.com](mailto:admin@mascompanies.com)

Entity: Corporation

Incorporated: November 1992, FL

Type of Business: Real Estate Developers

BBB Accreditation: MAS Apartment Corporation is not a BBB  
Accredited business.

Additional DBA: [Arlington Capital Corporation](#)

Names: MAS Properties Corporation  
Four Star Construction Company  
MAS Cumberland Corporation  
MAS Development Corporation

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#### Products and Services of MAS Apartment Corporation

This company states that they buy and develop land

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#### Additional Locations and Phone Numbers

##### Additional Phone Numbers

Tel: (614) 431-0722

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#### Customer Complaint History for MAS Apartment Corporation

INDUSTRY COMPARISON

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# **Housing and Community Services, Inc.**



8610 North New Braunfels, Suite 500  
San Antonio, Texas 78217-6397

Phone 210.821.4300  
Fax 210.821.4303 • Toll Free 888.732.3394  
Email: gilp@hcscorp.org

Gilbert M. Piette  
Executive Director  
and CEO

**Board of Directors**

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Diamantina Garcia  
Nancy Hard  
Adolph D. Jacobson  
Lucy Martinez  
Anthony Nanes  
Rafael Torres  
Ernestine Trujillo

June 14, 2011

Robbye Meyer  
Director of Multifamily Finance  
Texas Department of Housing and Community Affairs  
P.O. Box 13941  
Austin, Texas 78711-3941

Re: Low Income Housing Tax Credit Applications:  
11227 Dolphin's Landing Apartments  
11115 Castle Manor Apartments  
11045 Lexington Vista  
11050 Palm Gardens  
Clarification QAP -- 49.9(a)(5) Commitment of Development Funding  
by Units of General Local Government Clarification of economic  
viability

Dear Ms. Meyer:

The purpose of this letter is to request clarification and justification for the points awarded to the above noted applications under 49.9(a)(5) and to inquire how these applications are economically viable without an award of Corpus Christi HOME funds. Region 10 of the 2011 Texas Qualified Allocation Plan incorporates the City of Corpus Christi where six of the project applications are located.

First and foremost, the City of Corpus Christi has not supported the above four referenced applications with any funds. On February 22, 2011 the City Council of Corpus Christi passed a resolution supporting tax credit application 11166, The Palms at Leopard (see Exhibit 1). Further emphasizing this project as a priority for the City, on April 26, 2011 the Corpus Christi City Council awarded all of its 2011 funding for housing (HOME funds) to tax credit application 11166, The Palms at Leopard as it meets multiple housing priorities for the City (see Exhibit 2), including but not limited to, building a new project in an area targeted for redevelopment, transferring residents from an obsolete property which in turn will be torn down, and transferring the project based

section 8 subsidy to the new location. Consequently, none of the above four referenced applications have local funding nor are they a priority for the City.

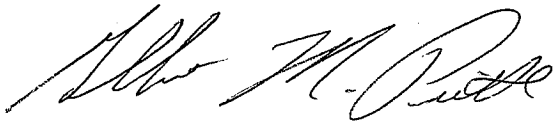
Second, none of the four referenced applications have obtained consent from the applicable Unit of General Local Government as evidenced by an executed Inter-local Agreement. The City of Corpus has not executed an Inter-local Agreement and does not intend to execute one that would allow another application to circumvent the 2011 top priority established by the Corpus Christi City Council at its meeting on February 22, 2011.

In addition, please verify the financial feasibility of applications 11227, 11045 and 11050 each of which included funding from the City of Corpus Christi as part of their financial feasibility. It appears that without funding from the City of Corpus Christi these applications are not financially feasible.

We respectfully request that you deduct the 18 points for the commitment of development funding by units of general local government as the local Governing Body (City of Corpus Christi) where the four referenced projects are located has not provided 2011 general local government support. If these points are deducted from these applications then tax credit application 11166 The Palms at Leopard, which the City of Corpus Christi has designated as its highest priority, would be the top application in Region 10 and would qualify for tax credit funding.

Your earliest consideration of this matter would be greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Gilbert M. Piette". The signature is fluid and cursive, with the first name being the most prominent.

Gilbert M. Piette  
Executive Director

Attachments: Exhibits 1 and 2

**EXHIBIT 1**

**City of Corpus Christi  
Council Resolution**



**RESOLUTION**

**DECLARING THE CITY OF CORPUS CHRISTI'S SUPPORT OF THE DEVELOPMENT OF THE PALMS AT LEOPARD STREET**

**WHEREAS**, The Palms at Leopard Street, Ltd. Has proposed a development for affordable rental housing on a tract of land on Palm Avenue between Lipan Street and Leopard Street named The Palms at Leopard Street in the City of Corpus Christi, Texas; and,

**WHEREAS**, The Palms at Leopard Street, Ltd. Intends to submit an application to the Texas Department of Housing and Community Affairs (TDHCA) for 2011 Housing Tax Credits funds; and,

**WHEREAS**, The Palms at Leopard Street is intended to serve as a replacement site for the units at the existing Northside Manor Apartments which is in dire need of demolition and relocation of families due to substandard living conditions and deterioration of the neighborhood; and,

**WHEREAS**, the development of The Palms at Leopard Street will bring much needed reinvestment to a major Urban Core area of the City marked by a medium and high density residential and commercial uses;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CORPUS CHRISTI, TEXAS THAT:**

**Section 1.** The City of Corpus Christi supports the development of The Palms at Leopard Street as its first priority application in the Region 10-Urban area designated by the State of Texas that includes the City.

DULY adopted at a regular meeting of the City Council of the City on the 22nd day of February, 2011.

**ATTEST:**

**CITY OF CORPUS CHRISTI**

By: Armando Chapa  
Armando Chapa  
City Secretary

By: Joe Adame  
Joe Adame, Mayor

**APPROVED AS TO LEGAL FORM:**

FEBRUARY 17, 2011

By:

Carlos Valdez

Carlos Valdez, City Attorney

Corpus Christi, Texas

22<sup>nd</sup> day of February, 2011

The above Resolution was passed by the following vote:

Joe Adame	<u>Aye</u>
Chris N. Adler	<u>Aye</u>
Larry R. Elizondo, Sr.	<u>Aye</u>
Kevin Kieschnick	<u>Aye</u>
Priscilla Leal	<u>Aye</u>
John E. Marez	<u>Aye</u>
Nelda Martinez	<u>Aye</u>
Mark Scott	<u>Absent</u>
Linda Strong	<u>Aye</u>

028973

## **EXHIBIT 2**

### **Excerpts from Corpus Christi City Council Meeting – 4/26/2011 Award of HOME Funds to The Palms at Leopard**

MINUTES

CITY OF CORPUS CHRISTI, TEXAS  
Regular Council Meeting  
April 26, 2011 - 12:00 p.m.

PRESENT

Mayor Joe Adame  
Mayor Pro Tem Nelda Martinez

Council Members:

Chris Adler  
Larry Elizondo, Sr.\*\*  
Kevin Kieschnick  
John Marez  
Mark Scott  
Linda Strong\*

City Staff:

Interim City Manager Margie C. Rose  
City Attorney Carlos Valdez  
City Secretary Armando Chapa

ABSENT

Priscilla Leal

\*Arrived at 12:32 p.m.

\*\*Arrived at 1:38 p.m.

Mayor Adame called the meeting to order in the Council Chambers of City Hall.

The invocation was delivered by Council Member Martinez and the Pledge of Allegiance to the United States flag was led by Council Member Marez.

City Secretary Chapa called the roll and verified that the necessary quorum of the Council and the required charter officers were present to conduct the meeting.

Mayor Adame called for approval of the minutes of the Workshop meeting of April 12, 2011 and the regular Council meeting of April 19, 2011. A motion was made and passed to approve the minutes as presented.

\*\*\*\*\*

Mayor Adame called for consideration of the consent agenda (Items 2 - 18). There were no comments from the public. Council members requested that Items 4, 5, 7, 8, 12 and 15 be pulled for individual consideration. City Secretary Chapa polled the Council for their votes as follows:

2. MOTION NO. 2011-096

Motion approving a supply agreement with Ferguson Enterprises, Corpus Christi, Texas for approximately 3,755 non-shear flexible couplings ranging in size from 3" to 10", in accordance with Bid Invitation No. BI-0030-11, based on low bid, for an estimated annual expenditure of \$76,069.52 of which \$19,017.38 is budgeted for FY10-11. The term of the contract is for twelve months with options to extend for up to two additional twelve-month periods, subject to the approval of the contractor and the City Manager, or designee. These items are purchased into the Warehouse Inventory and charged out to the Wastewater Department.

The foregoing motion was passed and approved with the following vote: Adame, Adler, Kieschnick, Marez, Martinez, and Scott, voting "Aye"; Elizondo, Leal, and Strong were absent.

Minutes – Regular Council Meeting  
April 26, 2011 – Page 11

owners were not informed by the City that there were problems with the property at 1414 Leopard and so the property owners concentrated their efforts to demolish the property at 1420 Leopard.

The following topics pertaining to this item were discussed: the date of the last inspection; the anticipated costs to restructure the property; whether the owner has received bids that include a structural analysis; the proposed use for the property; when the property owner would begin improvements to the property if an appeal is granted; concern with the deterioration of the property; and notification to the property owner for 1414 Leopard.

Mayor Adame called for comments from the audience. Abel Alonzo, 1701 Thames, stated that it is not easy to demolish someone's property however based on the presentation by staff the City has no choice but to deny the appeal.

Mr. Kieschnick made a motion to deny the appeal. The motion was seconded by Ms. Martinez. City Secretary Chapa polled the Council for their votes as follows:

23. MOTION NO. 2011-104

Motion to deny an appeal by Mr. Manuel N. Cantu, Jr., of the Building Standards Board's decision to require demolition of a structure(s) located at Lot 4, Block 1, West End, commonly known as 1414 Leopard Street.

The foregoing motion was passed and approved with the following vote: Adame, Adler, Elizondo, Kieschnick, Marez, Martinez, Scott, and Strong, voting "Aye"; Leal was absent.

Mayor Adame opened discussion on Item 25 regarding the Downtown Street (Chaparral) project. Director of Engineering Services Pete Anaya introduced the presentation team including Raymond Gignac with Gignac & Associates and Carl Crull with HDR Engineering. Mr. Anaya explained that this item is for the design of the project and allows the City to go out for bids on Chaparral Street. Mr. Anaya reported that the project would be bid two ways including a complete closure and a partial closure. Mr. Anaya also stated that the City is going to resubmit the U.S. Department Economic Development Administration (EDA) grant in the amount of \$3.7 million. Mr. Gignac referred to a powerpoint presentation including the proposed design for the crosswalks, intersections parking and travel lanes; sidewalk paving; an aerial view; a realistic view of intersection; example of catenary lighting; and the proposed schedule.

The following topics pertaining to this item were discussed: the EDA grant funding; status of the kiosks at the Bayfront Park; start of construction date; and landscaping.

Council Member Martinez requested a future agenda item on the kiosks at the Bayfront Park. There were no comments from the audience. City Secretary Chapa polled the Council for their votes as follows:

25. MOTION NO. 2011-103

Motion authorizing the City Manager or designee to execute Amendment No. 2 to the Contract for Professional Services with Gignac Architects of Corpus Christi, Texas, in the amount of \$407,503, for a total re-stated fee of \$757,883 for the Downtown Street (Chaparral) project. (BOND ISSUE 2008)

The foregoing motion was passed and approved with the following vote: Adame, Adler, Elizondo, Kieschnick, Marez, Martinez, Scott, and Strong, voting "Aye"; Leal was absent.

Minutes – Regular Council Meeting  
April 26, 2011 – Page 12

Mayor Adame opened discussion on Item 24 regarding the adoption of the FY2011-2012 Consolidated Annual Action Plan. Director of Neighborhood Services Eddie Ortega reported that the City has received the further estimates from the U.S. Department of Housing and Urban Development with a reduction of 16 ½ % and highlighted the following changes: an additional reduction for CDBG- Program Administration in the amount of \$30,315 for a total funding level of \$401,309; a reduction of CDBG-Code Enforcement Program in the amount of \$25,000; a reduction of \$25,000 for the CDBG- Comprehensive Planning Assistance Program; funding of \$100,000 for the CDBG-Ethel Eyerly Senior Center by eliminating funding from the CDBG-Neighborhood Initiative Program & Model Block Revitalization Program in the amount of \$100,000 (working on the assumption that have available funding from previous years to support this year); reduction of \$25,000 for CDBG-Rehabilitation Services; funding for CDBG-Amistad Community Health Center in the amount of \$31,024; reduction from CDBG-Coastal Bend Alcohol & Drug Rehabilitation Center d/b/a Charlie's Place in the amount of \$31,024; and a reduction of \$5,766 to all of the agencies recommended for funding with the exception of CDBG-Boys and Girls Club which was reduced in the amount of \$5,756.

Mr. Ortega announced that the Emergency Shelter Grant (ESG) program received an additional \$56,424 and each ESG program received an additional \$5,936 with the exception of the ESG-Administrative Costs which received an additional \$2,811. Mr. Ortega announced that the HOME program received an additional \$4,174 and highlighted the following changes: HOME Administration/Technical Assistance receiving an additional \$7,745 for a total of \$156,662; HOME-Major Rehabilitation program receiving a total of \$764,965; HOME-Nueces County Community Action Agency receiving a total of \$300,000; and The Palms at Leopard will be recommended for funding in the amount of \$865,000. Mr. Ortega reported that after the last meeting, staff recommended funding Dolphin's Landing and The Palms at Leopard equally, however, after checking with the Texas Department of Housing and Community Affairs, it was determined that the City essentially needs to support one project so that the project can receive the 16 points for tax credits.

Mayor Adame called for comments from the audience. Abel Alonzo, 1701 Thames, stated that MHMR is extremely grateful for the funding that was provided. Eric Martinez, Association Coordinator for the World Changers Projects, thanked Mr. Ortega and Neighborhood Services employees Diana Garza and Tony Recio for their support of the World Changers Project and the CDBG-Neighborhood Initiative Program & Model Block Revitalization Project. Mr. Martinez asked the Council to continue to support the use of anticipated funds available for the Model Block Program. Therese Perez, Corpus Christi Hope House, expressed gratitude for the funding provided for the shelter. Michael Wynn, Atlantic Housing, spoke on behalf of Dolphin's Landing and thanked the Council for listening to concerns during the April 12<sup>th</sup> meeting. Council Member Martinez reiterated that staff was not supporting funding for Dolphin's Landing. Jaime Nodarse, Amistad Community Health Center, thanked the Council for their reconsideration for funding CDBG-Amistad Community Health Center. Mark Lechner, Lexington Vista and Palm Gardens, stated that it was hard to argue with staff's recommendation for their support to one HOME project to receive tax credits. Mr. Lechner provided information on both proposed projects and requested that Council consider a mechanism to transfer HOME funds to the project that gets awarded by TDHCA. Jose Mascorro, Housing and Community Services, spoke regarding The Palms at Leopard Project and thanked staff for their hard work on this project and the importance of the City supporting the project 100% to ensure tax funding does come to the City of Corpus Christi.

Mr. Scott made a motion to amend the Consolidated Annual Action Plan to include changes as recommended by staff in today's handout. The motion was seconded by Mr. Elizondo.

Minutes – Regular Council Meeting  
April 26, 2011 – Page 13

The foregoing motion was passed and approved with the following vote: Adame, Adler, Elizondo, Kieschnick, Marez, Martinez, Scott, and Strong, voting "Aye"; Leal was absent.

City Secretary Chapa polled the Council for their votes as follows:

24. RESOLUTION NO. 029047

Resolution adopting the Fiscal Year 2011-12 Consolidated Annual Action Plan ("CAAP") which includes the Community Development Block Grant (CDBG), Emergency Shelter Grant (ESG), and Home Programs (HOME); authorizing the City Manager or designee to submit the Fiscal Year 2011-12 CAAP to the U. S. Department of Housing and Urban Development ("HUD"); and authorizing the City Manager or designee to execute all necessary documents to make changes in the Fiscal Year 2011-12 CAAP if required by HUD.

The foregoing resolution was passed and approved as amended with the following vote: Adame, Adler, Elizondo, Kieschnick, Marez, Martinez, Scott, and Strong, voting "Aye"; Leal was absent.

\*\*\*\*\*

Mayor Adame returned to discussion on Item 8 regarding the acceptance of an anonymous donation for the decorative lighting of the Harbor Bridge project. City Secretary Chapa polled the Council for their votes as follows:

8.a. RESOLUTION NO. 029036

Resolution authorizing the City Manager or designee to accept an anonymous donation in the amount of \$300,000 for support of the decorative lighting of the Harbor Bridge project.

The foregoing resolution was passed and approved with the following vote: Adame, Adler, Elizondo, Marez, Martinez, Scott, and Strong, voting "Aye"; Kieschnick voting "No"; Leal was absent.

8.b. ORDINANCE NO. 029037

Ordinance appropriating \$300,000 from an anonymous donation into the No. 1020 General Fund for support of the decorative lighting of the Harbor Bridge project; changing the FY 2010-2011 Operating Budget adopted by Ordinance No. 028683 to increase revenues and appropriations by \$300,000 each.

An emergency was declared, and the foregoing ordinance was passed and approved with the following vote: Adame, Adler, Elizondo, Marez, Martinez, Scott, and Strong, voting "Aye"; Kieschnick voting "No"; Leal was absent.

Mayor Adame opened discussion on Item 12 regarding the Memorial Coliseum Demolition Project. Director of Engineering Services Pete Anaya provided a project budget showing the construction liquidated damages in the amount of \$70,000 and the \$28,000 for Amendment No. 1 to the contract with R.H. Shackelford, Inc. In response to Council Member Scott, the net savings on the project is approximately \$42,000. City Secretary Chapa polled the Council for their votes as follows:





MF RCVD Friday, June 03, 2011 5:35 PM

The City of  
*San Angelo, Texas*  
Community & Housing Support Division • 622 S. Oakes, Suite G, 76903

June 3, 2011

Ms Robbye Meyer, Director of Multifamily Finance  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup>  
Austin, Texas 78711  
[Robbye.meyer@tdhca.state.tx.us](mailto:Robbye.meyer@tdhca.state.tx.us)

Dear Ms Meyer,

This letter is to challenge the claim by the proposed Summer Crest Senior Development (application 11237) located on Summer Crest Drive, San Angelo, Texas which is competing for Low Income Housing Tax Credits in 2011. Our understanding is that the developer is requesting points for the project being located in a community revitalization zone designated by the city. The project is not located in such a zone. If fact, the project will be located in one of the more affluent areas of the city.

I've attached a map of our neighborhoods targeted for revitalization as approved by the City of San Angelo City Council. Please direct questions to myself at 325-657-4274.

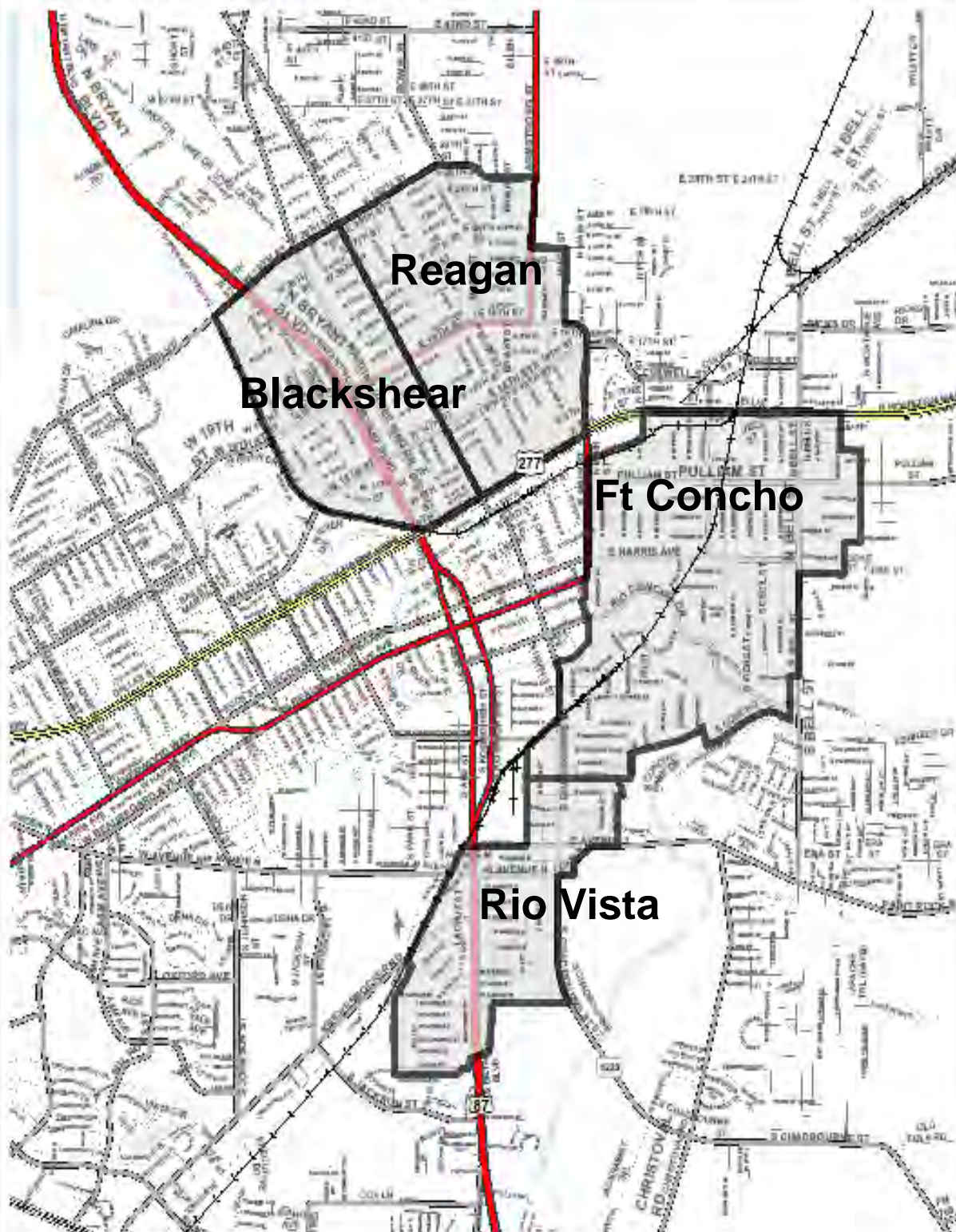
Sincerely,

Robert Salas  
Director  
Neighborhood and Family Services Department

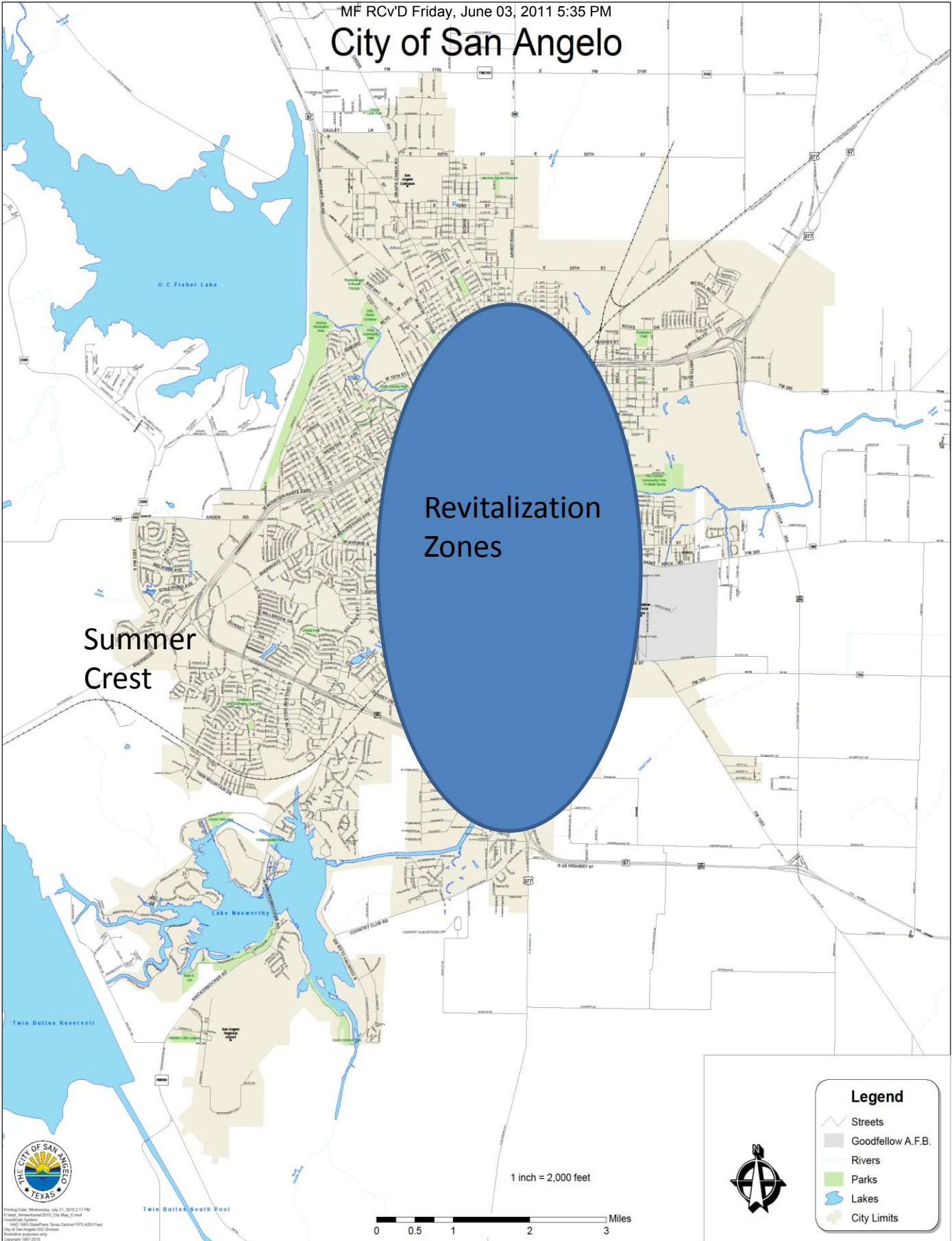


Community Development  
Target Area Map

1 inch equals 3,600 feet



# City of San Angelo



Revitalization  
Zones

Summer  
Crest

### Legend

-  Streets
-  Goodfellow A.F.B.
-  Rivers
-  Parks
-  Lakes
-  City Limits

1 inch = 2,000 feet



SUMMER CREST SENIORS, LP  
5307 East Mockingbird Lane, Suite 1010  
Dallas, Texas 75206  
817.742.1851

June 10, 2011

Ms. Robbye Meyer  
Director, Multifamily Finance Production Division  
Texas Department of Housing and Community Affairs  
PO Box 13941  
Austin, TX 78711

RE: Response to Challenge to 11237 Summer Crest Senior Development

Dear Ms. Meyer:

This letter is in response to the challenge presented by Mr. Robert Salas with the City of San Angelo regarding the 3 points awarded to application 11237 Summer Crest Senior Development for "The Development is New Construction and is proposed to be located in an area that is part of a Community Revitalization Plan."

Mr. Salas claims that the Summer Crest Development is not located within the City of San Angelo's targeted revitalization area. This is correct. However, points for this scoring item do not state that the development must be located within the targeted revitalization area—the scoring item states that the development is "proposed to be located in an area that is part of a Community Revitalization Plan." This is not the same thing.

First, we believe that the City of San Angelo Consolidated Plan meets the definition of "Community Revitalization Plan" because (a) the plan was approved by the governing body and (b) the plan targets specific geographic areas for revitalization and the development of residential developments. Documentation regarding both of these points was provided to TDHCA.

Second, the scoring item states that the development is "proposed to be located in an area that is part of a Community Revitalization Plan." The City of San Angelo Consolidated Plan meets the definition of Community Revitalization Plan. The Plan covers the revitalization target areas as well as all areas within the city limits. Because the plan covers all of the city limits and the Summer Crest development is located within the city limits, we believe that it complies with the language of the QAP that says "located in an area that is part of a Community Revitalization Plan." The QAP language does not say that the site needs to be within a "target area," only that the site is within "an area that is part of" the plan. Because the development is located within the city limits of San Angelo and that area is part of the Plan, we believe that this application is eligible for points under this scoring item.

It is important to note that language regarding specific target areas was found in the 2010 QAP and was removed in the 2011 QAP; therefore, we believe that our interpretation of the QAP is consistent with the Department's intent regarding this matter. The 2011 QAP specifically changed with regard to Community Revitalization Plans and removed previous requirements that the development be in a target area. See language from the 2010 QAP below.

**2010 QAP Language**

*Evidence of the Community Revitalization Plan (such evidence must include an ordinance, resolution, or otherwise recorded documentation of a vote taken by the local elected Governing Body specifically adopting the Community Revitalization Plan) and a letter from the chief executive officer or other local official with appropriate jurisdiction of the local Governing Body stating that the Development Site is located within the targeted development areas outlined in the Community Revitalization Plan must be submitted*

TDHCA staff contacted us about this scoring item during the supervisory scoring review. These emails are attached. Staff also agreed with our interpretation during the supervisory scoring review and points for this scoring item were awarded in the final scoring notice. In summary, based on the language of the QAP, we believe that this application is eligible for points under this scoring item.

Thank you for your attention to this matter. Please contact me with any questions.

Sincerely,

A handwritten signature in cursive script that reads "Chuck Hammonds". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

Chuck Hammonds

**From:** Raquel Morales [mailto:[raquel.morales@tdhca.state.tx.us](mailto:raquel.morales@tdhca.state.tx.us)]  
**Sent:** Tuesday, May 24, 2011 9:29 AM  
**To:** Christina Schwartz  
**Subject:** RE: 11237, Summercrest Senior Development

Thanks Christina, I think after I read and reviewed the consolidated plan in more detail I got to the points. Just for future reference with this particular item, what we look for in determining whether any published document, such as a consolidated plan, qualifies for these points is that it meet our definition of Community Revitalization Plan. The Consolidated Plan for San Angelo does have specific target areas which you confirm in your email below the proposed development is not a part of. However, given that the City's Plan includes several objectives that is targeted to the entire City versus in the targeted areas, I got comfortable with awarding these points on that basis.

Thanks for the response.

**Raquel Morales**

9% Housing Tax Credit Administrator

Texas Department of Housing and Community Affairs

221 E. 11th Street | Austin, TX 78701

Office: [512.475.1676](tel:512.475.1676)

Fax: [512.475.0764](tel:512.475.0764)

**From:** Christina Schwartz [mailto:[CSchwartz@integratedreg.com](mailto:CSchwartz@integratedreg.com)]  
**Sent:** Tuesday, May 24, 2011 9:15 AM  
**To:** 'Raquel Morales'  
**Subject:** RE: 11237, Summercrest Senior Development

Hello Raquel,

The property is not located on the map that you attached. I have attached another map from the Consolidated Plan that has the site identified. The map shows that the site is located within the city limits of San Angelo. The Consolidated Plan covers all areas within the city limits of San Angelo, not just the "target areas" on the map that you originally attached. The language from the QAP says that

***"The Development is New Construction and is proposed to be located in an area that is part of a Community Revitalization Plan."***

Because the Community Revitalization Plan covers both the target areas and all areas within the city limits, we believe that it complies with the language of the QAP that says "**located in an area that is part of a Community Revitalization Plan.**" The QAP language does not say that the site needs to be within a "target area," only that the site is within "an area that is part of" the plan. Because the development is located within the city limits of San Angelo and that area is part of the Plan, we believe that this application is eligible for points under this scoring item.

It is important to note that language regarding specific target areas was removed in the 2011 QAP and we believe that our interpretation of the QAP is consistent with the Department's intent regarding this matter. As you can see, the 2011 QAP specifically changed with regard to Community Revitalization Plans and removed previous requirements that the development be in a target area. See language from the 2010 QAP below.

#### **2010 QAP Language**

*Evidence of the Community Revitalization Plan (such evidence must include an ordinance, resolution, or otherwise recorded documentation of a vote taken by the local elected Governing Body specifically adopting the Community Revitalization Plan) and a letter from the chief executive officer or other local official with appropriate jurisdiction of the local Governing Body stating that the Development Site is located within the targeted development areas outlined in the Community Revitalization Plan must be submitted*

Please confirm receipt and let me know if you have any additional questions.

Best regards,

**Christina Schwartz**

**Development Assistant**

**3110 West Southlake Boulevard, Suite 120**

**Southlake, Texas 76092**

[817.742.1851](tel:817.742.1851) x 15

[817.742.1852](tel:817.742.1852) fax

**From:** Raquel Morales [mailto:[raquel.morales@tdhca.state.tx.us](mailto:raquel.morales@tdhca.state.tx.us)]  
**Sent:** Thursday, May 19, 2011 4:48 PM  
**To:** [chammon@southbayltd.com](mailto:chammon@southbayltd.com)  
**Cc:** Christina Schwartz  
**Subject:** 11237, Summercrest Senior Development  
**Importance:** High

Mr. Hammonds,

I'm performing a supervisory review of your application and have a question regarding your point selection made under V4,T13 – Community Revitalization for the above referenced development. I've reviewed the consolidated plan for the City of San Angelo provided within the application and would appreciate your clarification on where exactly the development is located in relation to the targeted areas referenced in the plan. Can you please identify the location of the proposed development on the attached map that I was able to locate on the City of San Angelo's website and return to me at your earliest convenience?

Thank you for your help and if you have any questions please feel free to give me a call.

**Raquel Morales**

9% Housing Tax Credit Administrator

Texas Department of Housing and Community Affairs

221 E. 11th Street | Austin, TX 78701

Office: [512.475.1676](tel:512.475.1676)

Fax: [512.475.0764](tel:512.475.0764)





100 Congress, Suite 300  
Austin, TX 78701  
Telephone: 512-305-4700  
Fax: 512-305-4800  
www.lockelord.com

Cynthia L. Bast  
Direct Telephone: 512-305-4707  
Direct Fax: 512-391-4707  
cbast@lockelord.com

June 14, 2011

**VIA EMAIL**

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

Re: Park Hudson, TDHCA No. 11241 (the "Application")

Dear Raquel:

We represent the housing tax credit applicant for Merritt Bryan Station Senior Village, TDHCA No. 11169 in Urban Region 8 (the "Client"). Contact information for the Client is as follows:

Colby Denison  
3701 North Lamar  
Suite 206  
Austin, TX 78705  
(512) 732-1276 (fax)  
colby@denisondevelopment.com

On behalf of the Client, and in accordance with Section 49.10(e) of the Qualified Allocation Plan, we present the following questions or concerns about the scoring for Quantifiable Community Participation in the Application referenced above. Capitalized terms used but not defined in this letter will have the meanings given them in the Qualified Allocation Plan.

Maximum points were awarded for a letter of support from the Park Hudson Property Owners Association, Inc. (the "Association"). Our Client questions that award, given the following:

1. Inconsistent Information as to the Boundaries of the Association. The Bylaws for the Association refer to a 50.25 acre tract and "such additional lands that subsequently become subject to the Park Hudson Protective Covenants." The Bylaws refer to an Exhibit A attachment that would provide a legal description of the 50.25 acres. However, that attachment is not provided in the Applicant's submission. Moreover, the Park Hudson Protective Covenants (the "Covenants") refer to a 48.37 acre tract. The copy of the Covenants provided by the Applicant

Ms. Raquel Morales  
June 14, 2011  
Page 2

is missing page 9 and one of more pages following page 10, including the signature page. Taken together, it is clear that the Association relates to only that land restricted by the Covenants.

Yet, the Association claims its boundaries encompass almost 352 acres. There is no documentation that the Covenants were expanded to include the additional acreage. Such documentation should be filed in the real property records. If the land was properly added, did the addition occur prior to applicable TDHCA deadlines? Were all required notices given to the land owners of the additional acres?

In order to establish that the Development site is within the boundaries of the Association, the Association needs to submit either: (i) evidence that the site is in the 48.37 acre tract described in the Covenants or (ii) evidence that the Covenants were expanded to include the additional acreage prior to applicable TDHCA deadlines. That is the only way the Association can include the proposed Development.

2. Single Family Use is Inconsistent with the Park Hudson Restrictive Covenants. The Covenants indicate an intent for the restricted property to be a "first-class, multi-use commercial development." To this end, single family residences are not permitted in the uses described in Section 2 of the Covenants. It is acknowledged that the master developer, acting as the Administrator of the Covenants, can expressly approve another use. However, there is no evidence that the master developer has done so. It is simply inconsistent that the Association would be classified as a Neighborhood Organization when single family residences are not included as a permitted use in the fundamental legal documentation.

3. Association is not a Neighborhood Organization. Presumably, the Association was formed under the authority of the Covenants in Section 14. Note that the Covenants say that the Association may be formed "for the sole purpose of enforcing and administering these Protective Covenants" (emphasis added). If the purpose of the Association is only to enforce the Covenants, does it really qualify as a Neighborhood Organization? A Neighborhood Organization is defined as:

an organization of persons living near one another within the organization's defined boundaries that contain the proposed Development Site and that has a primary purpose of working to maintain or improve the general welfare of the neighborhood.

How is the Association working for the welfare of the neighborhood when its sole authorized purpose is to enforce the Covenants?

4. No Ability to Participate. The QAP provides that "a Neighborhood Organization must take reasonable measures to provide notice to persons eligible to join or participate in the affairs of the organization of that right." According to the Bylaws of the Association, anyone who owns land subject to the Covenants is a member of the Association. However, these members have no rights to participate in the Association. The business of the Association is conducted by its board of directors, but the members currently have no right to elect those directors. The board of directors is elected solely by the master developer that is serving as the Administrator under the Covenants. Because the board of directors has all operational authority, only the

Ms. Raquel Morales  
June 14, 2011  
Page 3

master developer has a voice at this time. The members will not have a voice until the master developer sells off all of its ownership of the land restricted by the Covenants.

The Association asserts that the owners of single family residences within the 352 acres are also members of the Park Meadow Homeowners Association or the Park Village Homeowners Association and that these two homeowners associations are members of the Association. Since membership in the Association is limited to owners of real property, do the homeowners associations own property that qualifies them to be members of the Association? It seems the single family homeowners would have their primary voice through these two homeowners associations. Yet, there is no mechanism evident in the organizational documents for the Association whereby the homeowners associations can coordinate with the Association or otherwise represent the will of the homeowners.

Finally, the Association did not notify its members of the intent to support the Park Hudson Development until after the master developer had submitted the letter of support and after the Association received a notice of deficiency from TDHCA that inquired about resident participation. The letter to members, dated March 14, indicates that the Association is informing the members of the support for the Development and seeking any input for the first time. The QAP provides:

While not required, the organization is encouraged to hold a meeting to which all the members of the organization are invited to consider whether the organization should support, oppose, or be neutral on the proposed Development, and to have the membership vote on whether the organization should support, oppose, or be neutral on the proposed Development.

and

A Neighborhood Organization must take reasonable measures to provide notice to persons eligible to join or participate in the affairs of the organization of that right. Examples of reasonable measure would be giving notice in a newsletter distributed where residents will likely see them; posting notice (in compliance with local signage requirements); or distribution flyers.

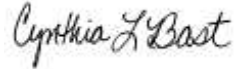
The Association's failure to seek advance input from the homeowners reiterates the point that the Association is not a Neighborhood Organization, created for the benefit of the neighbors within a neighborhood. Rather, it is organized for the purpose of commercial development and controlled by one party, the master developer.

In conclusion, it seems the Association is trying to take what is a master association for commercial development and turn it into a Neighborhood Organization to benefit the Park Hudson Application. While our Client appreciates that the master developer and surrounding commercial property owners may very well want to support this Development, the Association does not have the qualities of a Neighborhood Organization to qualify for these particular points in the Application Round.

Ms. Raquel Morales  
June 14, 2011  
Page 4

We appreciate the opportunity to present this information and trust that TDHCA will consider it as appropriate in the allocation process.

Sincerely,

A handwritten signature in cursive script that reads "Cynthia L. Bast".

Cynthia L. Bast

cc: Robbye Meyer  
Colby Denison

# ANSON PARK III LIMITED PARTNERSHIP

8455 Lyndon Lane  
Austin, TX 78729  
Office (512) 249-6240 Fax (512) 249-6660

June 14, 2011

Mr. Tom Gouris, Deputy  
Executive Director  
Texas Department of Housing and  
Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, TX 78701

**RECEIVED**

June 15, 2011

**DEPUTY ED.**

Re: Challenge of Applications #11245, 11246 and 11248

Dear Mr. Gouris:

We hereby challenge the determination that applications #11245, 11246 and 11248 are not subject as a group to the \$2,000,000 credit limitation under Section 49.5(b) of the 2011 QAP. Further, we contend that all three applications should be terminated under Section 49.4(b)(1) of the 2011 QAP.

In support of our challenge, enclosed please find the following:

1. A cover memo detailing the facts and documentation that supports our challenge.
2. A filing with the Florida Secretary of State filed 3/25/11 detailing the managers of Pinnacle Housing Group, LLC.
3. A filing with the Florida Secretary of State filed 2/22/10 detailing the managers of Pinnacle Housing Group, LLC.
4. A copy from a Florida tax credit application that shows the Officers/Managers/Members Of Pinnacle Housing Group, LLC.
5. Pertinent pages from application #11245.
6. Pertinent pages from application #11246.
7. Pertinent pages from application #11248.
8. Pertinent pages from application #11246 QCP submission.
9. Pertinent pages from application #11248 QCP submission.
10. Pertinent pages from the records of the Florida Secretary of State showing that the names of the managing GPs for each application were changed in February 2011 to remove any references to PHG (Pinnacle Housing Group).

Based upon the facts in this challenge, we respectfully request that applications #11245, 11246 and 11248 be terminated.

Thank you for your consideration. If you have any questions, please contact us.

Sincerely,

  
Jay Collins  
General Partner

05-15-11P12:41 RCVD

06-15-11 P12:41 RCVD

**Questions**

1. Did Pinnacle Housing Group, LLC attempt to violate the \$2 Million credit limit in QAP Section 49.5(b)? See pages 11 and 12 of 2011 QAP.
2. Should all of the applications filed by principals of Pinnacle Housing Group, LLC be terminated under QAP Section 49.4(b)(1) for the provision of negligent material misrepresentation? See page 8 of 2011 QAP.

**Facts**

1. Pinnacle Housing Group, LLC (PHG) is a Developer of affordable housing based in Miami, Florida. Per the attached annual reports filed with the State of Florida on 2/22/10 and 3/25/11, the members of PHG are Louis Wolfson III, Michael D. Wohl, Mitchell M. Friedman and David O. Deutch. All four are also officers of PHG per the attached exhibit from an application filed by PHG with the Florida Housing Finance Corporation.
2. Per application #11245, Michael D. Wohl filed an application with TDHCA as a separate owner of an LLC and as a developer separate and apart from PHG. In particular, the Applicant Credit Limit Documentation and Certification does not show any of the other members of PHG as Related Parties and/or Affiliates. The application has many instances where it references PHG, such as the email address for Michael Wohl, the fact that the managing member of the GP of the Applicant is David O. Deutch, and the GP's official mailing address is the offices of PHG. Also, in their application to CAHFC for local government contribution, it categorically states that Michael Wohl is a partner in PHG.
3. Per application #11246, Louis Wolfson III filed an application with TDHCA as a separate owner of an LLC and as a developer separate and apart from PHG. In particular, the Applicant Credit Limit Documentation and Certification does not show any of the other members of PHG as Related Parties and/or Affiliates. The application has many instances where it references PHG, such as the email address for Louis Wolfson III, the fact that the managing member of the GP of the Applicant is David O. Deutch, and the GP's official mailing address is the offices of PHG. Also, in their application to CAHFC for local government contribution, it categorically states that Louis Wolfson III is a partner in PHG.
4. Per application #11248, Mitchell Friedman filed an application with TDHCA as a separate owner of an LLC and as a developer separate and apart from PHG. In particular, the Applicant Credit Limit Documentation and Certification does not show any of the other members of PHG as Related Parties and/or Affiliates. The application has many instances where it references PHG, such as the email address for Mitchell Friedman, the fact that the managing member of the GP of the Applicant is David O. Deutch, and the GP's official mailing address is the offices of PHG.
5. Please note the following in the pertinent pages attached from QCP submission #11246: on the sign-in sheet, Lisa Stephens is identified by her email as being part of PHG; the meeting minutes identify Lisa Stephens as being with Tylor Grand Development, the "separate" developer of the property that is the subject of the application; and the minutes document that the principal of Tylor Grand was involved with one application in 2010 that was awarded funding (Pinnacle at North Chase, which was owned and developed by PHG).

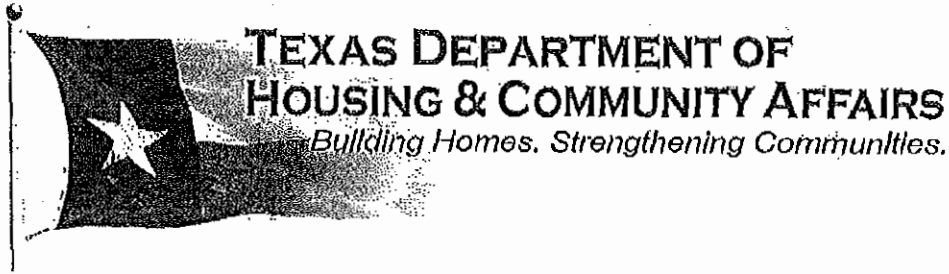
6. Please note the following in the pertinent pages attached from QCP submission #11248: on the sign-in sheet, Lisa Stephens is identified by her email as being part of PHG; she is signed-in as "Pinnacle and Singing Oak"; and the meeting minutes identify Lisa Stephens as being with Singing Oaks Development, the "separate" developer of the property that is the subject of the application.

### **Discussion**

1. Section 49.5(b) of the QAP states that "The Department shall not allocate more than \$2 million of tax credits to any Applicant, Developer, Related Party, Affiliate, or Guarantor...". It also states that "All entities that share a Principal are Affiliates."
2. Principals are defined by TDHCA as "In the case of:...limited liability companies, Principals include...any officer authorized to act on behalf of the limited liability company."
3. Related Party is defined by TDHCA as "(B) Nothing in this definition is intended to constitute the Department's determination as to what relationship might cause entities to be considered "related" for various purposes...". Therefore, TDHCA has great latitude in determining if two parties are related based upon the facts and circumstances.
4. By their filing for PHG on 3/25/11, Wohl, Wolfson and Friedman have attested that they operate together as one development company. They are trying to say that they are separate in Texas, yet they are co-owners and co-developers of a property that won HTC in Texas in 2010.
5. By their changing of the names on the managing GP of each Applicant in February 2011 it appears that this was a planned action on the part of Wohl, Wolfson and Friedman. Please note that the original names of the managing GPs all made reference to PHG.

### **Conclusions**

1. All of Michael Wohl, Louis Wolfson III and Mitchell Friedman are Principals of PHG under the definitions promulgated by TDHCA. Therefore, they are all Affiliates and are collectively subject to the \$2 million limitation and that should have been disclosed in applications 11245, 11246 and 11248.
2. The facts and circumstances dictate that Wohl, Wolfson and Friedman operate as one development company and that they are Related Parties. Therefore, they are collectively subject to the \$2 million limitation and that should have been disclosed in applications 11245, 11246 and 11248.
3. All three took positive steps to disguise their Affiliation and that they were Related Parties by using different mailing addresses in their Applications and by changing the names of the managing GPs to remove any reference to PHG. That at least rises to the level of negligent material misrepresentation, and all three applications should be terminated.



2011 Multifamily Uniform Application Certification  
Mailing Address: P.O. Box 13941, Austin, TX 78711-3941  
Physical Address: 221 East 11th Street, Austin, TX 78701

Development Name: Bar T Apartments Development City: Longview

The undersigned hereby makes an Application to Texas Department of Housing and Community Affairs. The Applicant affirms that they have read and understand the 2011 Qualified Allocation Plan, and in particular understands the requirements under §49.12(a), Adherence to Obligations, as well as IRC Section 42. By signing this document, Applicant is affirming that all statements and representations made in this document, including all supporting materials, are true and correct under penalty of Chapter 37 of the Texas Penal Code titled Perjury and Other Falsification and subject to criminal penalties as defined by the State of Texas. TEX. PENAL CODE ANN. §§37.01 et seq. (VERNON 2003 & SUPP. 2007).

By: [Signature] Signature of Applicant  
Michael Wohl Printed Name  
2/22/11 Date

STATE OF: Florida  
COUNTY OF: Miami-Dade

I, the undersigned, a Notary Public in and for said County and State, do hereby certify that Michael Wohl whose name is signed to the foregoing statement, and who is known to be one in the same, has acknowledged before me on this date, that being informed of the contents of this statement, executed the same voluntarily on the date same foregoing statement bears.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 22 day of February, 2011  
(Seal)

[Signature] Notary Public Signature

NOTARY PUBLIC, STATE OF FLORIDA  
Lisa M. Gonzalvo  
Commission # EE040668  
Expires: NOV. 08, 2014  
BONDED THRU ATLANTIC BONDING CO., INC.

Notary Public, State of Florida  
County of Miami-Dade  
My commission expires: 11/8/14

06-15-11P12:41 RCVD



## PART A. ACTIVITY OVERVIEW

## 1. Multifamily Rental Development Name and Location

Development Name: Bar T Apartments Region: 4  
 Address: NW Quadrant of Bill Owens and Heather  
 City: Longview County: Gregg ZIP: 75604  
 If a Pre-Application was submitted, enter TDHCA assigned Development number: 11245

## 2. Target Population (Select by Placing a "x"):

General  Supportive Housing  
 Elderly

## 3. Construction Type (Select Only One by Placing a "x"):

New Construction  Adaptive Reuse  
 Rehabilitation  Single Room Occupancy  
 Reconstruction

## PART B. APPLICANT INFORMATION

Provide the contact information for the Applicant's staff person who is responsible for Application and contract administration. This primary contact will not be the consultant or the end service provider.

## 1. Applicant Contact Information

Applicant Legal Name: Bar T Apartments, LLC  
 Applicant Contact Name: Michael Wohl  
 Mailing Address: 1921 Abbey Road  
 City: West Palm Beach State: FL Zip: 33415-0000  
 Phone: (561) 627-2820 Fax: (561) 627-3285 Email: mwohl@pinnaclehousing.com

If Applicant's "Physical Address" is different from the "Mailing Address," provide physical address below:

Physical Address: N/A  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 2nd Contact Name: Alyssa Carpenter  
 Phone: (512) 789-1295 Fax: (512) 233-2269 Email: ajcarpen@gmail.com

## 2. Applicant Legal Description

Is Applicant Legally formed? No  
 Legal form of Applicant is/will be a (select only one): Limited Liability Company  
 Other Designation (select all that apply): N/A  
N/A  
 Applicant is in good standing with the Secretary of State? Yes State Filing #: to be formed

## 3. Application Technical Assistance and Capacity Building

Has the Applicant or its Principals received technical assistance or capacity building training for their organization in completing this Application or for the activity for which this Application is being made? yes

If "Yes" it was sponsored by: TDHCA  
 If "Other Sponsor" provide name here: NA  
 The activity was: Workshop  
 If "Other" describe activity here: NA

Was a Consultant or Administering Agent used to complete the Applicant? Yes  
 If "Yes" provide Consultant/Agent Name here: S2A Development Consulting, LLC  
 Phone: (512) 698-3369 Fax: (512) 233-2269 Email: sarah@s2adevelopment.com

**Volume 1 Tab 4 Part B**  
**FINANCING PLAN**  
**Bar T Apartments**

**Construction Loan**

The partnership will obtain a loan in the amount of \$2,085,823 through Wells Fargo for the construction of the improvements. The interest rate was calculated at 7.5%. The construction lender will have first lien on the land and the improvements. The letter confirming this is combined with the permanent lending letter and is included in the application.

**Equity**

Equity will be advanced from Wells Fargo in the estimated amount of \$11,027,567 with 80% of this amount projected to be disbursed during the construction phase. The exact amount may be adjusted based on adjusters to be defined in the partnership agreement. The syndication proceeds are to be based on \$0.79 per dollar of tax credits and a projected tax credit allocation of \$1,396,034. This letter of intent has been received and is enclosed in the application.

**Permanent Loan**

A permanent mortgage loan will be obtained through Wells Fargo. The amount of the loan will be \$2,341,588. The interest rate is 7.5%. This rate will not be locked until closing. Payments are based on a 30-year amortization and a term of 18 years. The developer has received conditional approval for this loan and the letter is enclosed in the application.

**Other**

The developer has applied to Capital Area Housing Finance Corporation for a loan in the amount of \$525,000. The terms are to be determined but will conform to all TDHCA standards, per the QAP. These funds are intended as interim financing. A letter of commitment is attached to this application and also included in Volume 4.

Adam Rubin will provide an interim loan in the amount of \$320,000 or 2% of the development costs. These funds will be used for pre development expenses and are intended to qualify as 2% of the total development cost. Terms are to be determined if an award of Tax Credits is received but they will confirm to all TDHCA guidelines per the QAP.

Finally, in the event that sources will not be adequate to cover all anticipated costs, the developer has committed to defer a portion of the developer fee. These funds will be structured as a cash-flow loan to the project, at the Applicable Federal Rate. Currently, this amount is projected at \$62,602 and can be paid back from cash flow within the first fifteen years of the project.

Wells Fargo Community Lending and Investment  
301 South College Street  
Charlotte, NC 28268-5040  
704.374.3488



**WELLS FARGO  
PRELIMINARY LOAN COMMITMENT AGREEMENT  
FOR CONSTRUCTION AND PERMANENT FINANCING**

February 22, 2011

Mr. Michael D. Wohl  
Bar T Apartments, LLC  
1921 Abbey Road.  
West Palm Beach, FL 33415

*Re: Bar T Apartments—116 units  
Longview, Gregg County, Texas*

Dear Mr. Wohl:

We are pleased to advise you that, on or before the date set forth above, we have preliminarily approved a construction and permanent loan for the above referenced development. This preliminary commitment is made based upon the financial information and projections provided to us in support of your loan application, and under the following terms and conditions:

**Borrower:** Bar T. Apartments, LLC, a Florida limited liability company.

**Guaranty:** The unconditional joint and several guaranty of payment and performance of the construction loan and permanent loan (described below) by Michael D. Wohl, Bar T Region 4 Holding, LLC and any such other entity/individual deemed appropriate following Wells Fargo due diligence review. The permanent loan (described below) is non-recourse.

**Loan Amount:** Construction - \$2,085,823  
Permanent - \$2,341,588

February 22, 2011  
Page 2 of 4

**Interest Rate:** Construction - LIBOR plus 500 basis points with a floor of 7.50% and a rate fixed at closing.  
Permanent - 10-year treasury plus 150 basis points with a floor of 7.50% and a rate fixed at closing.

The construction debt was underwritten at 7.50% interest. The permanent debt was underwritten at 7.50% interest. Actual rate may be negotiated by the payment of additional points set at closing.

**Repayable:** Construction - Interest only payable monthly.  
Permanent - Principal and interest payable monthly

**Term:** Construction - 24 months  
Permanent - 18 years  
Amortization - 30 years

**Commitment Fee:** 1.0% of the Construction loan payable at closing.  
1.0% of the Permanent loan payable at closing.

**Security:** Construction and Permanent - A first mortgage lien on the above proposed development.

**Conditions to Funding Construction Loans:**

Successful award and allocation of annual low income housing tax credits from the TDHCA.

Complete plans and specifications.

Firm cost estimates with Wells Fargo's independent analysis.

Appraisal acceptable to Wells Fargo

Soils analysis and environmental report acceptable to Wells Fargo

The general contractor and the construction contract shall be subject to approval by Wells Fargo.

Such other conditions which are customary and reasonable for a loan of this nature and amount

February 22, 2011  
Page 3 of 4

**Conditions to Funding Permanent Loan:**

Construction of the project is 100% complete.

Property has reached stabilized occupancy for at least 90 days.

All certificates of occupancy have been issued and remain in effect.

A final allocation of low-income housing tax credits has been received.

Such other conditions which are customary and reasonable for a loan of this nature and amount

All third-party beneficiary rights are expressly negated. No person who is not a party to this preliminary commitment shall have or enjoy any rights under this letter. No change, amendment or modification of this preliminary commitment shall be valid unless made in writing, addressed to the Borrower and signed by a duly authorized officer of Wells Fargo.

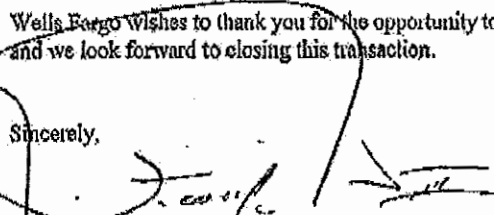
Each development financed by Bank must have an appropriate amount of financial liquidity and net worth, in the Bank's opinion, to cure potential deficiencies and/or short falls. The Bank has reviewed the Applicant's financial position and credit worthiness. Bank has determined that based on information provided by the Applicant, the Applicant has a net worth of at least \$1,000,000 which meets the applicable net worth standards that the Bank would require in connection with the proposed Development.

By executing this letter, the Applicant agrees (a) to indemnify and hold harmless Bank and its affiliates and their respective officers, directors, employees, advisors, and agents from and against any and all losses, claims, damages and liabilities to which any such indemnified person may become subject arising out of or in connection with its issuance of this letter, and to reimburse each indemnified person upon demand for any legal or other expenses incurred in connection with investigating or defending any of the foregoing.

This commitment will expire on December 31, 2011 if not extended by Wells Fargo.

Wells Fargo wishes to thank you for the opportunity to provide financing for the development, and we look forward to closing this transaction.

Sincerely,

  
J. Frederick Davis, III  
Managing Director

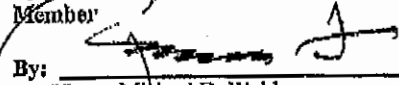
Signatures continued on following page.

February 22, 2011  
Page 4 of 4

Agreed and Accepted this Day:

By: Bar T Apartments, LLC

By: Bar-T Region 4 Holdings, LLC, a Florida limited liability company as its Managing Member

By:   
Name: Michael D. Wohl  
Title: Member

Date: 2 / 26 / 2011

Division of Corporations

**L10000130349**

Florida Department of State  
Division of Corporations  
Electronic Filing Cover Sheet

Note: Please print this page and use it as a cover sheet. Type the fax audit number (shown below) on the top and bottom of all pages of the document.

((H10000273241 3)))



H1000027324134BCU

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**L. SELLERS**

DEC 22 2010

**EXAMINER**

To: Division of Corporations  
Fax Number : (850) 617-6383

From: Account Name : STEARNS WEAVER MILLER WEISSLER ALHADEFF & STITTESON  
Account Number : 120060000135  
Phone : (305) 789-3200  
Fax Number : (305) 789-3395

\*\*Enter the email address for this business entity to be used for future annual report mailings. Enter only one email address please.\*\*

Email Address: \_\_\_\_\_

FLORIDA LIMITED LIABILITY CO.  
PHG TX REGION 4, LLC

Certificate of Status	1
Certified Copy	1
Page Count	02
Estimated Charge	\$160.00

RECEIVED

10 DEC 21 AM 10:44

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

Electronic Filing Menu Corporate Filing Menu Help

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

19 DEC 21 AM 11:06

FILED

**ARTICLES OF ORGANIZATION OF  
PHG TX REGION 4, LLC**

The undersigned, for the purpose of forming a limited liability company under the Florida Limited Liability Company Act, Florida Statutes Chapter 608, as amended, hereby makes, acknowledges and files the following Articles of Organization.

ARTICLE I - NAME

The name of the limited liability company is PHG TX Region 4, LLC (the "Company").

ARTICLE II - ADDRESS

The mailing address and street address of the principal office of the Company is 9400 S. Dadeland Boulevard, Suite 100, Miami, Florida 33156.

ARTICLE III - DURATION

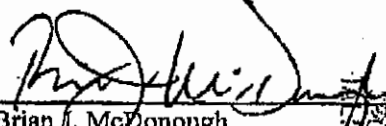
The period of duration for the Company shall be perpetual.

ARTICLE IV - REGISTERED OFFICE AND AGENT AND ADDRESS

The name and street address of the registered agent of the Company in the State of Florida are:

<u>Name</u>	<u>Address</u>
Brian J. McDonough	2200 Museum Tower 150 West Flagler Street Miami, Florida 33130

IN WITNESS WHEREOF, the undersigned has made and subscribed these Articles of Organization for the foregoing uses and purposes this 21 day of December 2010.

  
 Brian J. McDonough  
 Authorized Representative

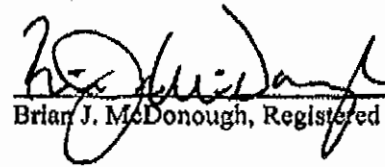
19 DEC 21 AM 11:06  
 FILED  
 STATE OF FLORIDA



**REGISTERED AGENT'S ACCEPTANCE**

Having been named as registered agent and to accept service of process for PHG TX Region 4, LLC at the place designated in this certificate, the undersigned hereby accepts the appointment as registered agent and agrees to act in this capacity. The undersigned further agrees to comply with the provisions of all statutes relating to the proper and complete performance of his duties, and is familiar with and accepts the obligations of his position as registered agent as provided for in Chapter 608, Florida Statutes.

Dated: December 21, 2010

  
\_\_\_\_\_  
Brian J. McDonough, Registered Agent

L10000130349

Florida Department of State  
Division of Corporations  
Electronic Filing Cover Sheet

Note: Please print this page and use it as a cover sheet. Type the fax audit number (shown below) on the top and bottom of all pages of the document.

((H11000040344 3)))



H110000403443ABCR

Note: DO NOT hit the REFRESH/RELOAD button on your browser from this page. Doing so will generate another cover sheet.

To: Division of Corporations  
 Fax Number : (850) 617-6383

From: Account Name : STEARNS WEAVER MILLER WEISSLER ALHADEFF & SJTTERSON  
 Account Number : I20060000135  
 Phone : (305) 789-3200  
 Fax Number : (305) 789-3395

\*\*Enter the email address for this business entity to be used for future annual report mailings. Enter only one email address please.\*\*

Email Address: \_\_\_\_\_

LLC AMND/RESTATE/CORRECT OR M/MG RESIGN  
PHG TX REGION 4, LLC

Certificate of Status	0
Certified Copy	1
Page Count	01
Estimated Charge	\$55.00

RECEIVED  
11 FEB 15 PM 12:36  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

11 FEB 15 AM 9:00  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA  
FILED

Electronic Filing Menu Corporate Filing Menu Help

**ARTICLES OF AMENDMENT  
TO  
ARTICLES OF ORGANIZATION  
OF  
PHG TX REGION 4, LLC**

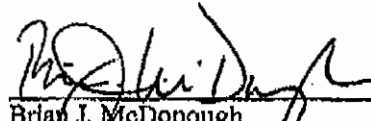
1. The Articles of Organization of PHG TX Region 4, LLC, a Florida limited liability company, were filed on December 21, 2010 and assigned document number L10000130349.

2. This amendment is submitted to amend the following:

**ARTICLE I - NAME**

The name of the limited liability company is Bar T Region 4 Holding, LLC.

IN WITNESS WHEREOF, the undersigned has executed these Articles of Amendment as of the 15 day of February 2011.

  
\_\_\_\_\_  
Brian J. McDonough  
Authorized Representative

**FILED**  
11 FEB 15 AM 9:00  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

**2011 LIMITED LIABILITY COMPANY ANNUAL REPORT**

DOCUMENT# L10000130349

**FILED  
Apr 29, 2011  
Secretary of State**

**Entity Name:** BAR T REGION 4 HOLDING, LLC

**Current Principal Place of Business:**

9400 S. DADELAND BLVD., STE. 100  
MIAMI, FL 33156

**New Principal Place of Business:**

**Current Mailing Address:**

9400 S. DADELAND BLVD., STE. 100  
MIAMI, FL 33156

**New Mailing Address:**

**FEI Number:**                      **FEI Number Applied For (X)**                      **FEI Number Not Applicable ( )**                      **Certificate of Status Desired (X)**

**Name and Address of Current Registered Agent:**

MCDONOUGH, BRIAN J  
2200 MUSEUM TOWER  
150 W. FLAGLER STREET  
MIAMI, FL 33130 US

**Name and Address of New Registered Agent:**

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: \_\_\_\_\_

Electronic Signature of Registered Agent

\_\_\_\_\_ Date

**MANAGING MEMBERS/MANAGERS:**

Title: VP  
Name: DEUTCH, DAVID O  
Address: 9400 S. DADELAND BLVD., STE. 100  
City-St-Zip: MIAMI, FL 33156

I hereby certify that the information indicated on this report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am a managing member or manager of the limited liability company or the receiver or trustee empowered to execute this report as required by Chapter 608, Florida Statutes.

SIGNATURE: DAVID O. DEUTCH

VP

04/29/2011

\_\_\_\_\_  
Electronic Signature of Signing Managing Member, Manager, or Authorized Representative / Date

Wells Fargo Community Lending and Investment  
301 South College Street  
Charlotte, NC 28288-5640  
704.374.3468



**WELLS FARGO BANK  
EQUITY LETTER OF INTENT**

February 22, 2011

Mr. Michael D. Wohl  
Bar T Apartments, LLC  
1921 Abbey Road,  
West Palm Beach, FL 33415

**Re: Bar T Apartments— 116 units  
Longview, Gregg County, Texas**

Dear Mr. Wohl:

We are pleased to advise you that we have preliminarily approved an equity investment in Bar T Apartments, LLC, a Texas Limited Liability Company, which will own and operate a 116-unit affordable housing community to be known as Bar T Apartments, located in Longview, Gregg County, Texas. This preliminary commitment is made based upon the financial information provided to us in support of your request, and under the following terms and conditions:

**Investment Entity:** Bar T Apartments, LLC, a Texas Limited Liability Company (the "Company"), with Bar T Region 4 Holding, LLC as Managing Member and Wells Fargo Bank ("Wells Fargo") as Investor Member with a 99.99% ownership interest in the Partnership.

**Annual Housing Credit Allocation:** \$1,396,034\*

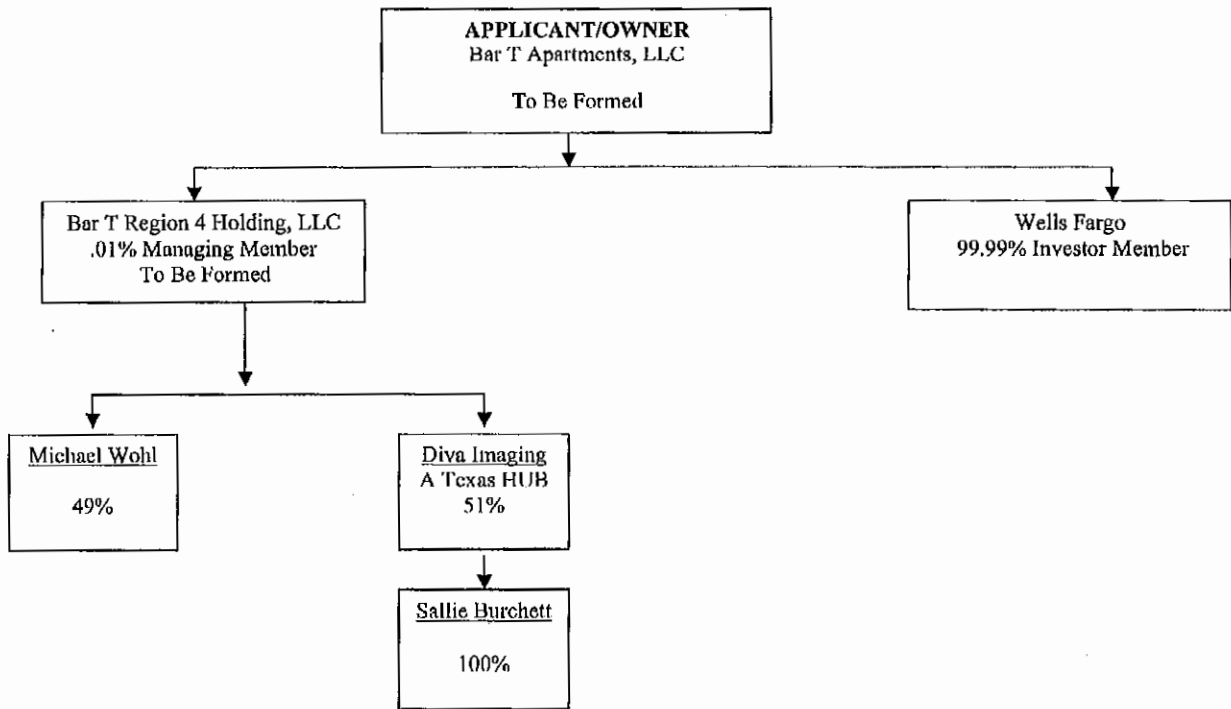
**Housing Credits Purchased:** \$13,958,946 (\$13,960,342 x 99.99 %)\*

**Syndication Rate:** \$0.79\*

**Net Capital Contribution:** \$11,027,567\*  
\* All numbers are rounded.

**Equity Proceeds Paid Prior to Construction Completion:** \$8,822,054\* (80%)  
\* All numbers are rounded to the nearest dollar.

ORGANIZATIONAL CHART FOR APPLICANT/OWNER





**PART C. APPLICANT CREDIT LIMIT DOCUMENTATION AND CERTIFICATION (HTC 9% ONLY)**

Pursuant to §49.5(b) of the 2011 QAP, the Department shall not allocate more than \$2 million of tax credits from the 2011 Application Round to any Applicant, Developer, Related Party, Affiliate or Guarantor (unless the Guarantor is also the General Contractor, and is not a Principal of the Applicant, Developer, Related Party or Affiliate of the Development Owner). Applicants are eligible to submit multiple tax credit Applications for which the aggregate requested credits exceed \$2 million; however, all Applications must be identified herein to ensure that the Department is advised of all Applications, Applicants, Affiliates, Developers, General Partners, Related Parties or Guarantors involved to avoid any statutory violation of Texas Government Code, §2306.6711.

**Instructions:**

Complete Part I of this form. For each person or entity identified in Part I, a Part II form must be submitted (i.e. if 4 persons/entities are listed in Part I, then 4 separate Part II forms must be provided).

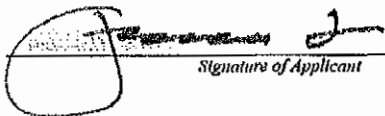
**Part I. Applicant Credit Limit Documentation**

- A. Development Name: Bar T Apartments
- B. Applicant Name: Bar T Apartments, LLC
- C. Applicant, Developers, Related Parties, Affiliates and Guarantors- List below all entities or Persons meeting the definition of Applicant, Affiliate, Developer, Related Party, or Guarantor.

1. Bar T Apartments, LLC
2. Bar T Region 4 Holding, LLC
3. Diva Imaging
4. Sallie Dureheit
5. Michael Wohl
6. Bar T Development, LLC
7. \_\_\_\_\_
8. \_\_\_\_\_
9. \_\_\_\_\_
10. \_\_\_\_\_
11. \_\_\_\_\_
12. \_\_\_\_\_
13. \_\_\_\_\_
14. \_\_\_\_\_
15. \_\_\_\_\_

Individually, or as the general partner(s) or officer(s) of the Applicant entity, I (we) certify that we are submitting behind this tab one signed Credit Limit Certification form for each person and entity that meet the definition of Applicant, Developer, Related Party, Affiliate or Guarantor.

By:

  
Signature of Applicant

2/20/11  
Date

Its: Michael Wohl



**Part II. Credit Limit Certification**

**Instructions:**

Each Person or Entity indicated on the Development Owner's and Developer's organizational charts must complete this form, including the Applicant, Developer, Related Party, Affiliate or Guarantor, nonprofit entities, public housing authorities, publicly traded corporations, individual board members, and executive directors.

Application Development Name: Bar T Apartments

Applicant Name: Bar T Apartments, LLC

Name and role of Person or Entity Completing this form (must match Part I): Bar T Apartments, LLC

- which is:
- the Applicant (Entity that generally manages or controls the "Applicant", i.e. General Partner, Managing Partner, etc..)
  - a Special Limited Partner or Class B Limited Partner or equivalent of the Applicant
  - a Developer for the Applicant for this specific Application
  - a Related Party to the Applicant
  - an Affiliate to the Applicant
  - a Guarantor on the Application

Address: 1921 Abney Road City: West Palm Beach State: FL Zip: 33415

The Rules of the Texas Department of Housing and Community Affairs (the "Department") provide in §49.5(b) of the QAP that the Department shall not allocate more than \$2 million of tax credits from the 2011 Application Round to any Applicant, Developer, Related Party, Affiliate or Guarantor. The undersigned represents to the Department that the following is a list of all developments for which the Applicant, the Developer, Related Party, Affiliate or Guarantor, has applied for an allocation of 2011 tax credit authority from the Department in the 2011 Application Round.

Development Name	City	% Ownership	% of Dev. Fee	Joint Venture?
<u>Bar T Apartments</u>	<u>Longview</u>	<u>100%</u>		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
				<input type="checkbox"/> Yes <input type="checkbox"/> No
				<input type="checkbox"/> Yes <input type="checkbox"/> No
				<input type="checkbox"/> Yes <input type="checkbox"/> No
				<input type="checkbox"/> Yes <input type="checkbox"/> No

I acknowledge that Michael Wohl is the person with the authority to withdraw or terminate the Application in the event of a conflict in accordance with §49.5(b) of the Qualified Allocation Plan and Rules.

I hereby certify that the foregoing is a complete list of Developments with respect to which I am seeking an allocation of 2011 tax credit authority from the Department. I certify that, if the Department makes a recommendation to the Board or issues a commitment which may cause Applications for which I am the Applicant, the Developer, Related Party, Affiliate or Guarantor, to receive credits in excess of \$2 million, I will notify the Department in writing within three business days of the recommendation or issuance of the commitment.

I acknowledge that if the Department determines that an Applicant, Developer, Related Party, Affiliate or Guarantor, has received (in the aggregate) allocations in the 2011 Application Round from the Department exceeding \$2 million, the Department must refuse to issue one or more Commitment Notices or Carryover Allocations, or must terminate one or more Commitment Notices or Carryover Allocations.

Under penalty of perjury, I certify that this information and these statements are true, complete and accurate:

By:  Michael Wohl 2/22/11  
Signature of Applicant, Developer, Related Party, Affiliate or Guarantor (as appropriate) Printed Name Date

**Part II. Credit Limit Certification**

**Instructions:**

Each Person or Entity indicated on the Development Owner's and Developer's organizational charts must complete this form, including the Applicant, Developer, Related Party, Affiliate or Guarantor, nonprofit entities, public housing authorities, publicly traded corporations, individual board members, and executive directors.

Application Development Name: Bar T Apartments

Applicant Name: Bar T Apartments, LLC

Name and role of Person or Entity Completing this form (must match Part I): Bar T Region 4 Holding, LLC

- which is:  the Applicant (Entity that generally manages or controls the "Applicant", i.e. General Partner, Managing Partner, etc.)  
 a Special Limited Partner or Class B Limited Partner or equivalent of the Applicant  
 a Developer for the Applicant for this specific Application  
 a Related Party to the Applicant  
 an Affiliate to the Applicant  
 a Guarantor on the Application

Address: 1921 Abbey Road City: West Palm Beach State: FL Zip: 33415

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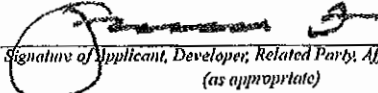
Development Name:	City:	% Ownership:	% of Dev. Fee:	Joint Venture?
<u>Bar T Apartments</u>	<u>Longview</u>	<u>100%</u>		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
				<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
				<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
				<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
				<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
				<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

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I hereby certify that the foregoing is a complete list of Developments with respect to which I am seeking an allocation of 2011 tax credit authority from the Department. I certify that, if the Department makes a recommendation to the Board or issues a commitment which may cause Applications for which I am the Applicant, the Developer, Related Party, Affiliate or Guarantor, to receive credits in excess of \$2 million, I will notify the Department in writing within three business days of the recommendation or issuance of the commitment.

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Under penalty of perjury, I certify that this information and these statements are true, complete and accurate:

By:  Michael Wohl 2/22/11  
 Signature of Applicant, Developer, Related Party, Affiliate or Guarantor Printed Name Date  
 (as appropriate)

**Part II. Credit Limit Certification**

**Instructions:**

Each Person or Entity indicated on the Development Owner's and Developer's organizational charts must complete this form, including the Applicant, Developer, Related Party, Affiliate or Guarantor, nonprofit entities, public housing authorities, publicly traded corporations, individual board members, and executive directors.

Application Development Name: Bar T Apartments  
 Applicant Name: Bar T Apartments, LLC  
 Name and role of Person or Entity Completing this form (must match Part I): Michael Wohl

- which is:
- the Applicant (Entity that generally manages or controls the "Applicant", i.e. General Partner, Managing Partner, etc..)
  - a Special Limited Partner or Class B Limited Partner or equivalent of the Applicant
  - a Developer for the Applicant for this specific Application
  - a Related Party to the Applicant
  - an Affiliate to the Applicant
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Address: 1921 Abbey Road City: West Palm Beach State: TX Zip: 33415

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Development Name:	City:	% Ownership:	% of Dev. Fee:	Joint Venture?
<u>Bar T Apartments</u>	<u>Longview</u>	<u>100%</u>	<u>100%</u>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No

I acknowledge that Michael Wohl is the person with the authority to withdraw or terminate the Application in the event of a conflict in accordance with §49.5(b) of the Qualified Allocation Plan and Rules.

I hereby certify that the foregoing is a complete list of Developments with respect to which I am seeking an allocation of 2011 tax credit authority from the Department. I certify that, if the Department makes a recommendation to the Board or issues a commitment which may cause Applications for which I am the Applicant, the Developer, Related Party, Affiliate or Guarantor, to receive credits in excess of \$2 million, I will notify the Department in writing within three business days of the recommendation or issuance of the commitment.

I acknowledge that if the Department determines that an Applicant, Developer, Related Party, Affiliate or Guarantor, has received (in the aggregate) allocations in the 2011 Application Round from the Department exceeding \$2 million, the Department must refuse to issue one or more Commitment Notices or Carryover Allocations, or must terminate one or more Commitment Notices or Carryover Allocations.

Under penalty of perjury, I certify that this information and these statements are true, complete and accurate:

By: [Signature] Michael Wohl 2/20/11  
 Signature of Applicant, Developer, Related Party, Affiliate or Guarantor Printed Name Date  
 (as appropriate)



**Office of the Secretary of State**

**CERTIFICATE OF RESERVATION OF  
ENTITY NAME  
OF**

Bar T Apartments, LLC

The undersigned, as Secretary of State of Texas, hereby certifies that the above entity name has been reserved in this office pursuant to the provisions of Section 5.101 of the Texas Business Organizations Code for the exclusive use of

Bar T Apartments, LLC  
9400 S. Dadeland Blvd., Ste. 100, Miami, FL 33156

for a period of one hundred twenty days after the date hereof.

This name reservation does not authorize the use of a name in this state in violation of the rights of another under the federal Trademark Act of 1946, the Texas trademark law, the Assumed Business or Professional Name Act, or the common law.

Dated: 02/07/2011



A handwritten signature in black ink, appearing to read "Hope Andrade".

Hope Andrade  
Secretary of State



## Office of the Secretary of State

### CERTIFICATE OF RESERVATION OF ENTITY NAME OF

Bar T Region 4 Holding, LLC

The undersigned, as Secretary of State of Texas, hereby certifies that the above entity name has been reserved in this office pursuant to the provisions of Section 5.101 of the Texas Business Organizations Code for the exclusive use of

Bar T Region 4 Holding, LLC  
9400 S. Dadeland Blvd., Ste. 100, Miami, FL 33156

for a period of one hundred twenty days after the date hereof.

This name reservation does not authorize the use of a name in this state in violation of the rights of another under the federal Trademark Act of 1946, the Texas trademark law, the Assumed Business or Professional Name Act, or the common law.

Dated: 02/10/2011



A handwritten signature in black ink, appearing to read "Hope Andrade".

Hope Andrade  
Secretary of State



**Office of the Secretary of State**

**CERTIFICATE OF RESERVATION OF  
ENTITY NAME  
OF**

Bar T Development, LLC

The undersigned, as Secretary of State of Texas, hereby certifies that the above entity name has been reserved in this office pursuant to the provisions of Section 5.101 of the Texas Business Organizations Code for the exclusive use of

Bar T Development, LLC  
9400 S. Dadeland Blvd., Ste. 100, Miami, FL 33156

for a period of one hundred twenty days after the date hereof.

This name reservation does not authorize the use of a name in this state in violation of the rights of another under the federal Trademark Act of 1946, the Texas trademark law, the Assumed Business or Professional Name Act, or the common law.

Dated: 02/07/2011



A handwritten signature in black ink, appearing to read "Hope Andrade".

Hope Andrade  
Secretary of State

See Attachment 3 for firm brochures and resumes.

8. Summarize prior development, ownership and management experience of the Applicant or its principals, indicating date of project, type of project, location of project and method of financing.

**Lisa Stephens**

Lisa Stephens, Vice President for Tylor Region Holding, LLC is responsible for oversight of the development of Bar T. With more than 12 years of progressive experience in multi-family real estate development and construction, Ms. Stephens brings these qualities to bear in each and every opportunity she undertakes. She is responsible for carrying out strategic corporate goals of product and location diversification through the ongoing development, acquisition and construction of multi-family housing. A 1996 graduate of the University of Florida's prestigious Fisher School of Accounting, Ms. Stephens's educational background provides her the skills set necessary to manage and best utilize diverse financial resources available to the affordable housing industry. During her tenure in the affordable housing industry, Ms. Stephens has secured and closed in excess of \$125M of federal, state and local competitive funds across the southeastern United States. She has structured creative financing strategies to create recurring long term income and negotiated complex sales transactions involving nearly 100 developments in multiple states. Her fortitude and ability to successfully adapt to an ever changing environment have been the hallmark of her career. In 2009, Ms. Stephens was named by Affordable Housing Finance as one of twelve Young Leaders nationwide. This magazine, an influential trade publication serving the affordable housing industry, annually honors 12 individuals under the age of 40 who have been nominated by their peers and colleagues as the next generation of affordable housing and community development leaders. They represent for-profit and nonprofit developers, financial providers and policy makers within the affordable housing community. A resume for Ms. Stephens is attached as Attachment 4.

**Michael Wohl**

Mr. Michael Wohl is the member of Bar T Region 4 Holding, LLC, the managing member of Bar T Apartments, L.L.C. A partner in Pinnacle Housing Group, Mr. Wohl has participated in the development and construction of more than 5,000 affordable multi-family housing units. Mr. Wohl's abilities are enhanced by his in-depth familiarity with real estate and law. He is a second-generation real estate developer, carrying on his family's successful tradition of quality development first started in New York and carried down to South Florida with Mr. Wohl's relocation in 1975.

Mr. Wohl is well versed in project financing and leasing. He is a recognized industry leader in devising approaches to developing affordable housing in an urban environment. Mr. Wohl is chairman of the distinguished Urban Land Institute's Center for Workforce Housing, which continually works to solve the persistent affordable housing problems. He earned both his B.A. and J.D. Degrees at Syracuse University and is a Licensed Real Estate Broker and Mortgage Broker. A resume for Mr. Wohl is attached as Attachment 5.

**2010 LIMITED LIABILITY COMPANY ANNUAL REPORT**

DOCUMENT# L01000017798

**FILED**  
**Feb 22, 2010**  
**Secretary of State**

**Entity Name:** PINNACLE HOUSING GROUP, LLC

**Current Principal Place of Business:**

9400 SOUTH DADELAND BLVD., STE. 100  
MIAMI, FL 33156

**New Principal Place of Business:**

**Current Mailing Address:**

9400 SOUTH DADELAND BLVD., STE. 100  
MIAMI, FL 33156

**New Mailing Address:**

**FEI Number:** 85-1149801      **FEI Number Applied For ( )**      **FEI Number Not Applicable ( )**      **Certificate of Status Desired ( )**

**Name and Address of Current Registered Agent:**

MCDONOUGH, BRIAN J  
2200 MUSEUM TOWER  
150 WEST FLAGLER ST.  
MIAMI, FL 33130 US

**Name and Address of New Registered Agent:**

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: \_\_\_\_\_

Electronic Signature of Registered Agent

\_\_\_\_\_ Date

**MANAGING MEMBERS/MANAGERS:**

**Title:** MGR  
**Name:** WOLFSON, LOUIS III  
**Address:** 9400 SOUTH DADELAND BLVD., STE. 100  
**City-St-Zip:** MIAMI, FL 33156

**Title:** MGR  
**Name:** WOHL, MICHAEL D  
**Address:** 9400 SOUTH DADELAND BLVD., STE. 100  
**City-St-Zip:** MIAMI, FL 33156

**Title:** MGR  
**Name:** DEUTCH, DAVID O  
**Address:** 9400 SOUTH DADELAND BLVD., STE. 100  
**City-St-Zip:** MIAMI, FL 33156

**Title:** MGR  
**Name:** FRIEDMAN, MITCHELL M  
**Address:** 9400 SOUTH DADELAND BLVD., STE. 100  
**City-St-Zip:** MIAMI, FL 33156

I hereby certify that the information indicated on this report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am a managing member or manager of the limited liability company or the receiver or trustee empowered to execute this report as required by Chapter 608, Florida Statutes.

SIGNATURE: DAVID O DEUTCH

MGR

02/22/2010

\_\_\_\_\_  
Electronic Signature of Signing Managing Member, Manager, or Authorized Representative / Date



# 2011 LIMITED LIABILITY COMPANY ANNUAL REPORT

DOCUMENT# L01000017798

FILED  
Mar 25, 2011  
Secretary of State

Entity Name: PINNACLE HOUSING GROUP, LLC

**Current Principal Place of Business:**

**New Principal Place of Business:**

9400 SOUTH DADELAND BLVD., STE. 100  
MIAMI, FL 33156

**Current Mailing Address:**

**New Mailing Address:**

9400 SOUTH DADELAND BLVD., STE. 100  
MIAMI, FL 33156

FEI Number: 28-2099515      FEI Number Applied For ( )      FEI Number Not Applicable ( )      Certificate of Status Desired (X)

**Name and Address of Current Registered Agent:**

**Name and Address of New Registered Agent:**

MCDONOUGH, BRIAN J  
2200 MUSEUM TOWER  
150 WEST FLAGLER ST.  
MIAMI, FL 33130 US

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: \_\_\_\_\_

Electronic Signature of Registered Agent

\_\_\_\_\_ Date

**MANAGING MEMBERS/MANAGERS:**

Title: MGR  
Name: WOLFSON, LOUIS III  
Address: 9400 SOUTH DADELAND BLVD., STE. 100  
City-St-Zip: MIAMI, FL 33156

Title: MGR  
Name: WOHL, MICHAEL D  
Address: 9400 SOUTH DADELAND BLVD., STE. 100  
City-St-Zip: MIAMI, FL 33156

Title: MGR  
Name: DEUTCH, DAVID O  
Address: 9400 SOUTH DADELAND BLVD., STE. 100  
City-St-Zip: MIAMI, FL 33156

Title: MGR  
Name: FRIEDMAN, MITCHELL M  
Address: 9400 SOUTH DADELAND BLVD., STE. 100  
City-St-Zip: MIAMI, FL 33156

I hereby certify that the information indicated on this report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am a managing member or manager of the limited liability company or the receiver or trustee empowered to execute this report as required by Chapter 608, Florida Statutes.

SIGNATURE: DAVID O. DEUTCH

VP

03/25/2011

\_\_\_\_\_  
Electronic Signature of Signing Managing Member, Manager, or Authorized Representative / Date

L10006130105

Florida Department of State  
Division of Corporations  
Electronic Filing Cover Sheet

Note: Please print this page and use it as a cover sheet. Type the fax audit number (shown below) on the top and bottom of all pages of the document.

((H11000040340 3)))



H110000403403ABCN

Note: DO NOT hit the REFRESH/RELOAD button on your browser from this page. Doing so will generate another cover sheet.

To: Division of Corporations  
Fax Number : (850) 617-6383

From: Account Name : STEARNS WEAVER MILLER WEISSLER ALHADEFF & SITTERSON  
Account Number : I20060000135  
Phone : (305) 789-3200  
Fax Number : (305) 789-3395

\*\*Enter the email address for this business entity to be used for future annual report mailings. Enter only one email address please.\*\*

Email Address: \_\_\_\_\_

LLC AMND/RESTATE/CORRECT OR M/MG RESIGN  
PHG TX REGION 2, LLC

Certificate of Status	0
Certified Copy	1
Page Count	01
Estimated Charge	\$55.00

RECEIVED  
11 FEB 15 PM 12:36  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

FILED  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
11 FEB 15 AM 8:17

Electronic Filing Menu Corporate Filing Menu

T. HAMPTON

FEB 10 2011

EXAMINER

ARTICLES OF AMENDMENT  
TO  
ARTICLES OF ORGANIZATION  
OF  
PHG TX REGION 2, LLC

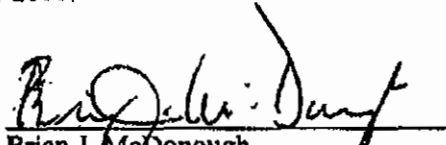
1. The Articles of Organization of PHG TX Region 2, LLC, a Florida limited liability company, were filed on December 21, 2010 and assigned document number L10000130105.

2. This amendment is submitted to amend the following:

ARTICLE I - NAME

The name of the limited liability company is Tylor Region 2 Holding, LLC.

IN WITNESS WHEREOF, the undersigned has executed these Articles of Amendment as of the 14 day of February 2011.

  
\_\_\_\_\_  
Brian J. McDonough  
Authorized Representative

FILED  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
11 FEB 15 AM 8:11

L10000130349

Florida Department of State  
Division of Corporations  
Electronic Filing Cover Sheet

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(((H11000040344 3)))



H110000403443ABCR

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To: Division of Corporations  
Fax Number : (850) 617-6383

From: Account Name : STEARNS WEAVER MILLER WEISSLER ALHADEFF & SITTERSON  
Account Number : I20060000135  
Phone : (305) 789-3200  
Fax Number : (305) 789-3395

\*\*Enter the email address for this business entity to be used for future annual report mailings. Enter only one email address please.\*\*

Email Address: \_\_\_\_\_

LLC AMND/RESTATE/CORRECT OR M/MG RESIGN  
PHG TX REGION 4, LLC

Certificate of Status	0
Certified Copy	1
Page Count	01
Estimated Charge	\$55.00

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11 FEB 15 PM 12:36  
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TALLAHASSEE, FLORIDA

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

11 FEB 15 AM 9:00

FILED

Electronic Filing Menu Corporate Filing Menu Help

ARTICLES OF AMENDMENT  
TO  
ARTICLES OF ORGANIZATION  
OF  
PHG TX REGION 4, LLC

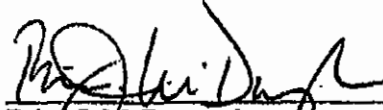
1. The Articles of Organization of PHG TX Region 4, LLC, a Florida limited liability company, were filed on December 21, 2010 and assigned document number L10000130349.

2. This amendment is submitted to amend the following:

ARTICLE I - NAME

The name of the limited liability company is Bar T Region 4 Holding, LLC.

IN WITNESS WHEREOF, the undersigned has executed these Articles of Amendment as of the 15 day of February 2011.

  
\_\_\_\_\_  
Brian J. McDonough  
Authorized Representative

11 FEB 15 AM 9:00  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

FILED

#L 10000/30348

02/16/2011 12:19 FAX

STEARNS WEAVER MILLER

000000002

Division of Corporations

Page 1 of 1

Florida Department of State  
Division of Corporations  
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((H11000040347 3)))



H110000403473ABCU

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11 FEB 15 AM 8:20  
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TALLAHASSEE, FLORIDA

To: Division of Corporations  
Fax Number : (850) 617-6383

From: Account Name : STEARNS WEAVER MILLER WEISSLER ALHADEFF & SITTERSON  
Account Number : I20060000135  
Phone : (305) 789-3200  
Fax Number : (305) 789-3395

\*\*Enter the email address for this business entity to be used for future annual report mailings. Enter only one email address please.\*\*

Email Address: \_\_\_\_\_

LLC AMND/RESTATE/CORRECT OR M/MG RESIGN  
PHG TX REGION 3, LLC

Certificate of Status	0
Certified Copy	1
Page Count	01
Estimated Charge	\$55.00

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11 FEB 15 PM 12:37  
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TALLAHASSEE, FLORIDA

K. SALLY  
EXAMINER  
FEB 16 2011

Electronic Filing Menu Corporate Filing Menu Help

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11 FEB 15 AM 8:20

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

**ARTICLES OF AMENDMENT  
TO  
ARTICLES OF ORGANIZATION  
OF  
PHG TX REGION 3, LLC**

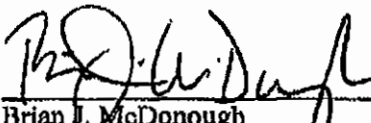
1. The Articles of Organization of PHG TX Region 3, LLC, a Florida limited liability company, were filed on December 21, 2010 and assigned document number L10000130348.

2. This amendment is submitted to amend the following:

**ARTICLE I - NAME**

The name of the limited liability company is Singing Oaks Region 3 Holding, LLC.

IN WITNESS WHEREOF, the undersigned has executed these Articles of Amendment as of the 15 day of February 2011.

  
\_\_\_\_\_  
Brian J. McDonough  
Authorized Representative

L10000130105

Florida Department of State  
Division of Corporations  
Electronic Filing Cover Sheet

Note: Please print this page and use it as a cover sheet. Type the fax audit number (shown below) on the top and bottom of all pages of the document.

(((H10000273238 3)))



H10000273238ARC-

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To: Division of Corporations  
Fax Number : (850) 617-6383

From: Account Name : STEARNS WEAVER MILLER WEISSLER ALHADEFF & SITTERSON  
Account Number : I20060000135  
Phone : (305) 789-3200  
Fax Number : (305) 789-3395

\*\*Enter the email address for this business entity to be used for future annual report mailings. Enter only one email address please.\*\*

Email Address: \_\_\_\_\_

FLORIDA LIMITED LIABILITY CO.  
PHG TX REGION 2, LLC

Certificate of Status	1
Certified Copy	1
Page Count	02
Estimated Charge	\$160.00

FILED  
10 DEC 21 AM 11:06  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

RECEIVED  
10 DEC 21 AM 10:44  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

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G. MCLEOD

DEC 22 2010

EXAMINER



**ARTICLES OF ORGANIZATION OF  
PHG TX REGION 2, LLC**

The undersigned, for the purpose of forming a limited liability company under the Florida Limited Liability Company Act, Florida Statutes Chapter 608, as amended, hereby makes, acknowledges and files the following Articles of Organization.

ARTICLE I - NAME

The name of the limited liability company is PHG TX Region 2, LLC (the "Company").

ARTICLE II - ADDRESS

The mailing address and street address of the principal office of the Company is 9400 S. Dadeland Boulevard, Suite 100, Miami, Florida 33156.

ARTICLE III - DURATION

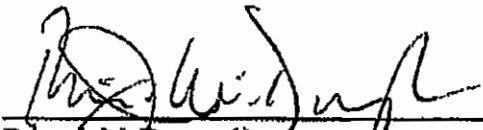
The period of duration for the Company shall be perpetual.

ARTICLE IV - REGISTERED OFFICE AND AGENT AND ADDRESS

The name and street address of the registered agent of the Company in the State of Florida are:

<u>Name</u>	<u>Address</u>
Brian J. McDonough	2200 Museum Tower 150 West Flagler Street Miami, Florida 33130

IN WITNESS WHEREOF, the undersigned has made and subscribed these Articles of Organization for the foregoing uses and purposes this 21 day of December 2010.

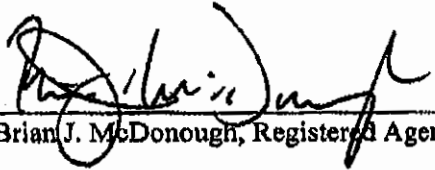
  
\_\_\_\_\_  
Brian J. McDonough  
Authorized Representative

FILED  
10 DEC 21 AM 11:06  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

**REGISTERED AGENT'S ACCEPTANCE**

Having been named as registered agent and to accept service of process for PHG TX Region 2, LLC at the place designated in this certificate, the undersigned hereby accepts the appointment as registered agent and agrees to act in this capacity. The undersigned further agrees to comply with the provisions of all statutes relating to the proper and complete performance of his duties, and is familiar with and accepts the obligations of his position as registered agent as provided for in Chapter 608, Florida Statutes.

Dated: December 21, 2010

  
\_\_\_\_\_  
Brian J. McDonough, Registered Agent

**L10060130348**

Florida Department of State  
Division of Corporations  
Electronic Filing Cover Sheet

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((H10000273239 3))



H10000273239ABC.

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**L. SELLERS**

DEC 22 2010

To: Division of Corporations  
Fax Number : (850) 617-6383

From: Account Name : STEARNS WEAVER MILLER WESSON, LINDSEY S. PERSON  
Account Number : I20060000135  
Phone : (305) 789-3200  
Fax Number : (305) 789-3395

**EXAMINER**

\*\*Enter the email address for this business entity to be used for future annual report mailings. Enter only one email address please.\*\*

Email Address: \_\_\_\_\_

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10 DEC 21 AM 10:44  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

FLORIDA LIMITED LIABILITY CO.  
PHG TX REGION 3, LLC

Certificate of Status	1
Certified Copy	1
Page Count	02
Estimated Charge	\$160.00

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA  
10 DEC 21 AM 11:04

**FILED**

Electronic Filing Menu Corporate Filing Menu Help

**ARTICLES OF ORGANIZATION OF  
PHG TX REGION 3, LLC**

The undersigned, for the purpose of forming a limited liability company under the Florida Limited Liability Company Act, Florida Statutes Chapter 608, as amended, hereby makes, acknowledges and files the following Articles of Organization.

ARTICLE I - NAME

The name of the limited liability company is PHG TX Region 3, LLC (the "Company").

ARTICLE II - ADDRESS

The mailing address and street address of the principal office of the Company is 9400 S. Dadeland Boulevard, Suite 100, Miami, Florida 33156.

ARTICLE III - DURATION


The period of duration for the Company shall be perpetual.

ARTICLE IV - REGISTERED OFFICE AND AGENT AND ADDRESS

The name and street address of the registered agent of the Company in the State of Florida are:

<u>Name</u>	<u>Address</u>
Brian J. McDonough	2200 Museum Tower 150 West Flagler Street Miami, Florida 33130

IN WITNESS WHEREOF, the undersigned has made and subscribed these Articles of Organization for the foregoing uses and purposes this 21 day of December 2010.


  
\_\_\_\_\_  
Brian J. McDonough  
Authorized Representative

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA  
19 DEC 21 AM 11:04  
FILED

**REGISTERED AGENT'S ACCEPTANCE**

Having been named as registered agent and to accept service of process for PHG TX Region 3, LLC at the place designated in this certificate, the undersigned hereby accepts the appointment as registered agent and agrees to act in this capacity. The undersigned further agrees to comply with the provisions of all statutes relating to the proper and complete performance of his duties, and is familiar with and accepts the obligations of his position as registered agent as provided for in Chapter 608, Florida Statutes.

Dated: December 21, 2010

  
\_\_\_\_\_  
Brian J. McDonough, Registered Agent

Division of Corporations

**L10000130349**

Florida Department of State  
Division of Corporations  
Electronic Filing Cover Sheet

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((H10000273241 3))



H100002732413A5CU

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**L. SELLERS**

DEC 22 2010

**EXAMINER**

To: Division of Corporations  
Fax Number : (850) 617-6383

From: Account Name : STEARNS WEAVER MILLER WEISSLER ALHADEFF & SITTERSON  
Account Number : 120060000135  
Phone : (305) 789-3200  
Fax Number : (305) 789-3395

\*\*Enter the email address for this business entity to be used for future annual report mailings. Enter only one email address please.\*\*

Email Address: \_\_\_\_\_

FLORIDA LIMITED LIABILITY CO.  
PHG TX REGION 4, LLC

Certificate of Status	1
Certified Copy	1
Page Count	02
Estimated Charge	\$160.00

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10 DEC 21 AM 10:44

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

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SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

19 DEC 21 AM 11:06

**FILED**

**ARTICLES OF ORGANIZATION OF  
PHG TX REGION 4, LLC**

The undersigned, for the purpose of forming a limited liability company under the Florida Limited Liability Company Act, Florida Statutes Chapter 608, as amended, hereby makes, acknowledges and files the following Articles of Organization.

ARTICLE I - NAME

The name of the limited liability company is PHG TX Region 4, LLC (the "Company").

ARTICLE II - ADDRESS

The mailing address and street address of the principal office of the Company is 9400 S. Dadeland Boulevard, Suite 100, Miami, Florida 33156.

ARTICLE III - DURATION

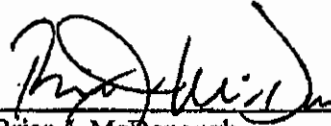
The period of duration for the Company shall be perpetual.

ARTICLE IV - REGISTERED OFFICE AND AGENT AND ADDRESS

The name and street address of the registered agent of the Company in the State of Florida are:

<u>Name</u>	<u>Address</u>
Brian J. McDonough	2200 Museum Tower 150 West Flagler Street Miami, Florida 33130

IN WITNESS WHEREOF, the undersigned has made and subscribed these Articles of Organization for the foregoing uses and purposes this 21 day of December 2010.

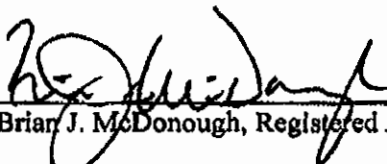
  
 Brian J. McDonough  
 Authorized Representative

FILED  
 10 DEC 21 AM 11:06  
 SECRETARY OF STATE  
 FLORIDA

**REGISTERED AGENT'S ACCEPTANCE**

Having been named as registered agent and to accept service of process for PHG TX Region 4, LLC at the place designated in this certificate, the undersigned hereby accepts the appointment as registered agent and agrees to act in this capacity. The undersigned further agrees to comply with the provisions of all statutes relating to the proper and complete performance of his duties, and is familiar with and accepts the obligations of his position as registered agent as provided for in Chapter 608, Florida Statutes.

Dated: December 21, 2010

  
\_\_\_\_\_  
Brian J. McDonough, Registered Agent



**2011 LIMITED LIABILITY COMPANY ANNUAL REPORT**

DOCUMENT# L10000130105

**FILED**  
**Apr 29, 2011**  
**Secretary of State**

**Entity Name:** TYLOR REGION 2 HOLDING, LLC

**Current Principal Place of Business:**

9400 S DADELAND BLVD STE 100  
MIAMI, FL 33156

**New Principal Place of Business:**

**Current Mailing Address:**

9400 S DADELAND BLVD STE 100  
MIAMI, FL 33156

**New Mailing Address:**

**FEI Number:**                      **FEI Number Applied For (X)**                      **FEI Number Not Applicable ( )**                      **Certificate of Status Desired (X)**

**Name and Address of Current Registered Agent:**

MCDONOUGH, BRIAN J  
2200 MUSEUM TOWER  
150 WEST FLAGLER STREET  
MIAMI, FL 33130 US

**Name and Address of New Registered Agent:**

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: \_\_\_\_\_

Electronic Signature of Registered Agent

\_\_\_\_\_ Date

**MANAGING MEMBERS/MANAGERS:**

**Title:** VP  
**Name:** DEUTCH, DAVID O  
**Address:** 9400 S. DADELAND BLVD., STE. 100  
**City-St-Zip:** MIAMI, FL 33156

I hereby certify that the information indicated on this report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am a managing member or manager of the limited liability company or the receiver or trustee empowered to execute this report as required by Chapter 608, Florida Statutes.

SIGNATURE: DAVID O. DEUTCH

VP

04/29/2011

\_\_\_\_\_  
Electronic Signature of Signing Managing Member, Manager, or Authorized Representative / Date

**2011 LIMITED LIABILITY COMPANY ANNUAL REPORT**

**FILED  
Apr 29, 2011  
Secretary of State**

**DOCUMENT# L10000130349**

**Entity Name:** BAR T REGION 4 HOLDING, LLC

**Current Principal Place of Business:**

9400 S. DADELAND BLVD., STE. 100  
MIAMI, FL 33156

**New Principal Place of Business:**

**Current Mailing Address:**

9400 S. DADELAND BLVD., STE. 100  
MIAMI, FL 33156

**New Mailing Address:**

**FEI Number:**                      **FEI Number Applied For (X)**                      **FEI Number Not Applicable ( )**                      **Certificate of Status Desired (X)**

**Name and Address of Current Registered Agent:**

MCDONOUGH, BRIAN J  
2200 MUSEUM TOWER  
150 W. FLAGLER STREET  
MIAMI, FL 33130 US

**Name and Address of New Registered Agent:**

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: \_\_\_\_\_

Electronic Signature of Registered Agent

\_\_\_\_\_ Date

**MANAGING MEMBERS/MANAGERS:**

Title: VP  
Name: DEUTCH, DAVID O  
Address: 9400 S. DADELAND BLVD., STE. 100  
City-St-Zip: MIAMI, FL 33156

I hereby certify that the information indicated on this report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am a managing member or manager of the limited liability company or the receiver or trustee empowered to execute this report as required by Chapter 608, Florida Statutes.

SIGNATURE: DAVID O. DEUTCH

VP

04/29/2011

\_\_\_\_\_  
Electronic Signature of Signing Managing Member, Manager, or Authorized Representative / Date





CITY OF DALLAS

May 16, 2011

Robbye Meyer  
Director of Multifamily Finance  
Texas Dept. of Housing & Community Affairs  
P.O. Box 13941  
Austin, Texas 78711-3941

Re: Low Income Housing Tax Credit Application #11258 Brook Village Apts

Dear Ms Meyer:

The purpose of this letter is to request clarification and justification for points awarded to LIHTC application #11258 Brook Village Apts under the 2011 Qualified Allocation Plan 50.9(i) Selection (5) Local Political Subdivision Funding.

After the application for Brook Village Apts was reviewed by the Dallas City Council on February 23, 2011, the Council voted not to support the project (see attached). The project is not in keeping with the priorities for the City of Dallas. As we understand the nature of the language in the QAP under 50.9(i) Selection (5)(A)(ix), the Governing Body of the Local Political Subdivision should be the City of Dallas, where the project is located. This particular applicant provided a letter of commitment from an Austin based Housing Corporation, Capital Area Housing Finance Corporation. We do not believe that an Austin company should be able to approve projects for Dallas.

Additionally, this particular corporation's by-laws state that their assistance is conditioned on the "consent of the applicable Local Political Subdivision as evidenced by an executed Interlocal Agreement" (see attached). The City of Dallas has not executed an Interlocal Agreement nor do we intend to execute such an agreement.

The City of Dallas would ask TDHCA to deduct the 18 points for Local Political Subdivision Funding for this application given that the Governing Body where the project is located does not support the project.

Sincerely,

  
A.C. Gonzalez, Assistant City Manager  
City Manager's Office

C: Kent Conine, TDHCA Board Chairman  
Michael Gerber, Executive Director

05-18-11A08:45 RCVD



City of Dallas

STATE OF TEXAS           §  
COUNTY OF DALLAS       §  
CITY OF DALLAS           §

I, **DEBORAH WATKINS**, City Secretary of the City of Dallas, Texas, do hereby certify that the attached is a complete true and correct copy of:

**FILE NO. 11-0599**

filed in my office as official records of the City of Dallas, and that I have custody and control of said records.

WITNESS MY HAND AND THE SEAL OF THE CITY OF DALLAS, TEXAS,  
this the 28<sup>th</sup> day of **February, 2011**.

A handwritten signature in cursive script, reading "Deborah Watkins".

**DEBORAH WATKINS**  
**CITY SECRETARY**  
**CITY OF DALLAS, TEXAS**

PREPARED BY G. S. Ruelas

05-13-11A08:47 RCVD

**WHEREAS**, on February 10, 2010, the City Council approved a modification to the policy for the acceptance of applications seeking City of Dallas support for low income housing tax credit financing, when the State of Texas does not require direct City of Dallas approval by Resolution No. 10-0498; and

**WHEREAS**, the Applicant, Deepak P. Sulakhe, submitted an application to the City of Dallas on behalf of Dallas Brook Village Apartments, L.P., for support of their application to TDHCA for the 2011 Low Income Housing Tax Credit Program; and

**WHEREAS**, on February 7, 2011 and February 22, 2011, the Brook Village Apartments Low Income Housing Tax Credit multifamily project was briefed to the Housing Committee; and

**WHEREAS**, as a condition for being considered for the award of the 9% tax credit, the Applicant has committed to renting 213 units or 100% of the units to tenants with household incomes 60% or below the area median family income (AMFI) with rents affordable to tenants whose household incomes are 60% or below the AMFI; and

**WHEREAS**, as with the City of Dallas funding and endorsement of the TDHCA LIHTC application for Brook Village Apartments, the owner of the project will provide social services with the project approved by the Housing/Community Services Department, if the owner is utilizing City funding in the financing of the low income housing tax credit project; and

**WHEREAS**, the City of Dallas desires to provide approval of the TDHCA LIHTC application for the Brook Village Apartments project located at 6852 Shady Brook Lane;  
**NOW, THEREFORE**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:**

**SECTION 1.** That the City of Dallas supports the Texas Department of Housing and Community Affairs (TDHCA) 9% low-income housing tax credit allocation for Brook Village Apartments project located at 6852 Shady Brook Lane for the acquisition and rehabilitation of the 213-unit multifamily residential development for low income family housing, provided, however, that the City's approval of the tax credit financing for this project shall be contingent upon, among other things, future City Council approval of zoning.

February 23, 2011

**SECTION 2.** That the City of Dallas' funding and endorsement of the TDHCA LIHTC application for Brook Village Apartments will be contingent on the following if the owner is utilizing City funding in financing of the low income housing tax credit project: (1) the Project Owner expending a minimum of \$40,000 (a minimum of \$40,000 or \$200 per unit per year, whichever is greater) for social services for, and at no cost to, the residents of the development, based on a survey of residents needs, to be implemented within three months of project completion; (2) inclusion of this requirement in the Land Use Restriction Agreement (LURA) by the Texas Department of Housing and Community Affairs (TDHCA) and the City's Deed Restrictions containing the social services requirement; and, (3) if the LURA does not require the social services expenditures to be made prior to debt service payment, a separate guarantee by an entity or individual acceptable to the City that the social services expenditures will be made. Up to 50% of the social service requirement can be fulfilled with in kind social services provided the Housing/community services department gives prior approval of the social service plan.

**SECTION 3.** That prior to receiving a conditional City of Dallas building permit required by TDHCA prior to closing on the tax credits, the Project Developer will consult with the City of Dallas Sustainable Development and Construction Department with regard to security related design standards.

**SECTION 4.** That the City of Dallas' funding and endorsement for this project will be contingent on the Project Owner paying to the City an annual monitoring review fee in the amount of \$500, beginning on the anniversary of the closing on the 9% tax credits and ending at the end of the tax credit compliance period, for the cost of monitoring compliance with the social service requirement, if the Project Owner is utilizing City funding in the financing of the low income housing tax credit project.

**SECTION 5.** That the City of Dallas authorizes the applicant to act on behalf of the City in applying for HOME funds from TDHCA to specifically accommodate disabled persons for the particular application.

**SECTION 6.** That this resolution shall take effect immediately from and after its passage in accordance with the Charter of the City of Dallas, and it is accordingly so resolved.

**DISTRIBUTION:**

Housing/Community Services Department  
City Attorney's Office  
Office of Financial Services/Community Development, 4FN

**KEY FOCUS AREA:** Economic Vibrancy  
**AGENDA DATE:** February 23, 2011  
**COUNCIL DISTRICT(S):** 13  
**DEPARTMENT:** Housing/Community Services  
**CMO:** A. C. Gonzalez, 671-8925  
**MAPSCO:** 26T

---

**SUBJECT**

Authorize a resolution in support of the Texas Department of Housing and Community Affairs (TDHCA) 9% low-income housing tax credit (LIHTC) allocation for Brook Village Apartments located at 6852 Shady Brook Lane for the acquisition and rehabilitation of the proposed 213-unit multifamily residential development for low income families - Financing: No cost consideration to the City  
Recommendation of Staff: Denial

**DENIED**

**BACKGROUND**

On February 10, 2010, the City Council approved an action item authorizing a modification to the City of Dallas' policy for accepting applications seeking City of Dallas support for low income housing tax credit financing, when the State of Texas does not require direct City of Dallas approval to: 1) allow for only one application to be submitted; and 2) require applicants to submit a \$1,000 fee with the single application to cover administrative costs associated with reviewing the applications for City consideration of funding and endorsement by the City Council.

On January 19, 2011, the Applicant, Deepak Sulakhe, submitted an application to the City of Dallas on behalf of Dallas Brook Village Apartments, L.P., for support of their application to TDHCA for the 2011 Low Income Housing Tax Credit Program.



**BACKGROUND (continued)**

The Applicant has committed to 22 units or 10% of the units to tenants with household incomes capped at 30% or below the AMFI with rents affordable to tenants whose household incomes are 30% or below the AMFI and 75 units or 35% of the units to tenants with household incomes capped at 50% or below the AMFI with rents affordable to tenants whose household incomes are 50% or below the AMFI and 116 units or 55% of the units to tenants with household incomes capped at 60% or below the AMFI with rents affordable to tenants whose household incomes are 60% or below the AMFI.

As a requirement for City of Dallas' funding and endorsement of low income housing tax credit projects, the Applicant(s) are required to conduct a survey of the needs of the tenants as each lease is signed and will provide some or all of the following social services at no cost to the tenants, such as: after-school and summer break care for children, health screenings; counseling/domestic crisis intervention; emergency assistance, computer education, adult education programs (such as: ESL, life skills and nutrition classes, etc.); and social and recreational activities. This requirement only applies if the Applicant(s) is utilizing City funding in the financing of the low income housing tax credit project.

This project is not located within one mile of another proposed LIHTC multifamily project that proposes to serve the same population. State law prohibits approval of new tax credit projects that are located less than a mile from another tax credit project funded within the same year unless the projects are serving different clientele. However, if the project serving the same population was funded between one and three years, then the municipality has the authority to provide a resolution waiving the one mile three year rule.

The Housing/Community Services Department is not recommending that City Council grant endorsement of the application to TDHCA for Brook Village Apartments for the LIHTC program.

**PRIOR ACTION/REVIEW (Council, Boards, Commissions)**

On February 10, 2010, the City Council approved a modification to the policy for the acceptance of applications seeking City of Dallas support for low income housing tax credit financing, when the State of Texas does not require direct City of Dallas approval by Resolution No. 10-0498.

**PRIOR ACTION/REVIEW (Council, Boards, Commissions) (continued)**

On February 7, 2011, the Housing Committee of the City Council was briefed on the Low Income Housing Tax Credit Program.

On February 22, 2011, the Brook Village Apartments Low Income Housing Tax Credit multifamily project was briefed to the Housing Committee.

**FISCAL INFORMATION**

No cost consideration to the City.

**OWNER(S)**

**Dallas Brook Village Apartments, LP**

**Dallas Brook Village Development, LLC**

**OM Housing, LLC**

Deepak P. Sulakhe, Managing Member

**DEVELOPER**

**OM Housing, LLC**

Deepak P. Sulakhe, Managing Member

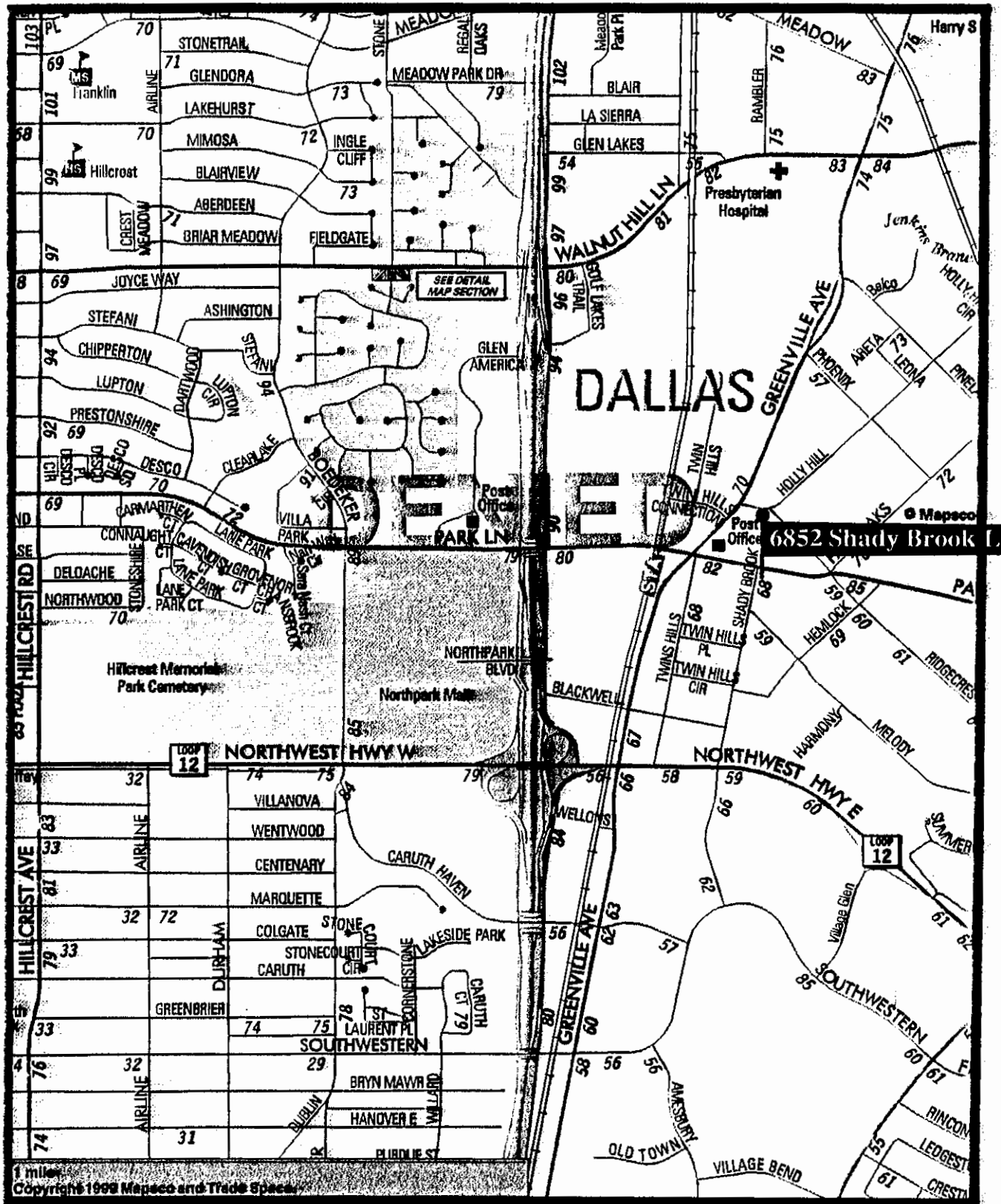
**Spectrum Housing Corporation**

John D. Mathews, Executive Director

**DENIED**

**MAP**

Attached



MAPSCO 26T



Rules for 9% Tax Credit Loans

**ABOUT CAHFC**

- Mission
- Board Members & Staff
- Service Area / Data
- Contact Us
- Capital Area Affordable Housing, LLC
- Capital Area Multi-Housing

**Capital Area Housing Finance Corporation**

Rules for Loans  
in Connection with Obtaining Tax Credits for  
Multifamily Residential Rental Projects

**NEWS / RESOURCES**

- Publications
- Website Links

**Article I. Purpose and Scope**

**BUYERS & RENTERS**

- Homes For Sale
- First Time Home Buyer Program
- Find an Affordable Apartment

Capital Area Housing Finance Corporation (the “*Corporation*”) was created as a public non-profit corporation under the provisions of the Texas Housing Finance Corporations Act, Texas Local Government Code, Chapter 394, as amended (the “*Act*”). The Corporation’s primary purpose is to assist individuals of low and moderate income to obtain decent, safe, sanitary, and affordable housing. The Corporation is authorized by the Act to make loans to further its purposes thereunder. Applications for loans will be considered in connection with developments located in one or more of the following: Counties of Bastrop, Blanco, Burnet, Caldwell, Fayette, Hays, Lee, Llano and Williamson (collectively, the “*Program Area*”) or in locations outside of the Program Area with the consent of the applicable Local Political Subdivision as evidenced by an executed Interlocal Agreement. The Corporation has adopted these Rules to set forth the general requirements and procedures applicable to qualifying for a loan in connection with obtaining tax credits from the Texas Department of Housing and Community Affairs (the “*TDHCA*”) in connection with applicant’s residential development. The Corporation makes no representation or warranty that the loan will comply with the rules and regulations of the TDHCA.

**HOUSING PROGRAMS**

- Multi-Family Finance
- Previously Financed Projects

**APPLICATIONS**

- Financing Qualified Residential Rental Property
- Rules for 9% Tax Credit Loans.

A. *Application of Rules.* These Rules apply to specific multifamily rental residential developments for which an applicant or a Local Political Subdivision on behalf of an applicant requests the Corporation to make a loan to obtain tax credits in connection with such development

B. *Waiver of Rules.* Specific provisions of these Rules may be waived by a majority vote of the Board of Directors of the Corporation

C. *Amendment of Rules.* These Rules may be amended, revised, repealed or otherwise altered by a majority of the Board of Directors of the Corporation at any time and from time to time and with or without notice.

**Article II. General Requirements**

The Corporation will not make a loan of funds to any applicant in connection with any financing for any residential development that has not satisfied, as determined by the

May 26, 2011

Ms. Robbye Meyer  
Director, Multifamily Finance Production Division  
Texas Department of Housing and Community Affairs  
PO Box 13941  
Austin, TX 78711

RE: Response to Challenge of 11258 Brook Village Apartments

Dear Ms. Meyer:

This letter is in response to the challenge presented by Mr. A.C. Gonzalez with the City of Dallas regarding the Commitment of Development Funding by Government Instrumentality for application # 11258 Brook Village Apartments. Mr. Gonzalez argues that points under section 50.9(i)(5) should not be awarded to this application because the City of Dallas does not support the project and does not intend to execute an inter local agreement with the Capital Area Housing Finance Corporation (CAHFC).

Per section 50.9(i)(5)(viii) of the QAP, an applicant may provide either (a) a copy of the commitment of funds, (b) a copy of the application to the funding entity, or (c) or a letter from the funding entity indicating that the award of funds with respect to the funding cycle for which the Applicant intends to apply for will be made by August 1, 2011. Option (c), A letter from CAHFC indicating that a funding decision will be made by August 1, 2011, is included with the HTC Full Application for this scoring item.

Per the QAP, the application for Brook Village met the submission requirements under section 50.9(i)(5)(viii) of the QAP with the submission of a letter from CAHFC. Therefore, points should be awarded for this scoring item.

We believe that this challenge is premature in that the inter local agreement referenced in the challenge is not due until Commitment Notice. Per section 50.9(i)(5)(IX) of the QAP, the final commitment of funding, which would include an inter local agreement, is not required until Commitment Notice. The exact language of the QAP reads as follows:

*If not already provided, at the time the executed Commitment Notice is required to be submitted, the Applicant or Development Owner must provide evidence of a commitment approved by the Governing Body of the Local Political Subdivision for the Development Funding to the Department.*

There is ample time for Applicant to continue working with the neighborhood, City Council, and City staff to garner additional support for this application. We believe that it is premature to rule that this development will not obtain an inter local agreement with the local government instrumentality at this time.

In summary, we believe that points for this scoring item should be awarded to the application based on the language of the QAP. Furthermore, because an inter local agreement is not due until Commitment Notice, it would be premature to rule on that part of the challenge at this time.

Thank you for your attention to this matter. Please contact me with any questions.

Regards,

*Deepak P. Sulakhe*

Deepak P. Sulakhe

# **1400 Belleview, L.P.**

June 15, 2011

Email to [michael.gerber@tdhca.state.tx.us](mailto:michael.gerber@tdhca.state.tx.us)

Mr. Michael Gerber, Executive Director  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, TX 78701-2410

RE: TDHCA # 11258– Brook Village Apartments – Challenge to Development Location Points.

Dear Mr. Gerber:

We hereby challenge the award of four points to Brook Village Apartments for Development Location in an “Urban Core” area. We wish to direct your attention to the following considerations:

1. Brook Village Apartments has applied for points under §49.9(a)(16)(D) of the QAP, which permits four points for being located in an “urban core” area as defined below:

The proposed Development is located in an urban core, on a site where the proposed use is not prohibited by the Unit of General Local Government via ordinance or regulation. For purposes of this item, an urban core is defined as a compact and contiguous geographical area that is located in a Metropolitan Statistical Area within the city limits with a population of no less than 150,000 composed of adjacent block groups of which is zoned to accommodate a mix of medium or high density residential and commercial uses **and at least 50% of such land is actually being used for such purposes based on high density residential structures and/or commercial structures already constructed.** Evidence must be submitted in the form of zoning maps and a certification provided in the Application. [emphasis added]

We believe that Brook Village Apartments does not meet the requirements that (i) the adjacent block groups be zoned to accommodate a mix of medium or high density residential and commercial uses, and (ii) that at least 50% of the land in the adjacent block groups be actually used for such purposes based on high density residential structures and/or commercial structures in place. The only evidence provided behind Tab 16 was a certification by the applicant and a zoning map. The evidence provided therefore cannot be said to address the requirement (ii) in any manner whatsoever.

2. The Brook Village Apartments application does not qualify for points because the zoning information provided in the application behind Volume 4, Tab 16 does not show adjacent block groups zoned to accommodate a mix of medium or high density residential and commercial uses. Please see the attachments which provide the location of the relevant census tract and then an aerial photo of the census tract with the current development indicated. The project is to be located in Block Group 1, Census Tract 78.18, which is currently 100% multifamily, consisting of 1, 2 and 3-story walk up apartments. The adjacent block groups consist of (i) Block Group 1, Census Tract 78.19, which is primarily zoned commercial and is developed with one-story retail with extensive parking lots, 1, 2 and 3-story multifamily walk-up apartments and an area on

## ***1400 Belleview, L.P.***

Skillman Street which is currently under construction; (ii) Block Group 3, Census Tract 78.15 is primarily developed with a middle school, 1,2 and 3-story walk-up apartments and single story commercial development; and (iii) Block Group 4, Census Tract 78.16, which is entirely developed with 1, 2 and 3-story walk-up apartments.

3. The Downtown Dallas 360 Plan was adopted by Dallas City Council on April 13, 2011 to provide an action-oriented development plan for the city center. Enclosed is a copy of a slide from the presentation to Dallas City Council which shows the type of development associated with medium and high density residential development. The same table appears on page 75 of the adopted 360 Plan and indicates that appropriate product types include medium density development through mid-rise flats with 5-10 stories, 60-100 unit/acre and high density development through high-rise flats with 10+ stories and 100+ units/acre. Nowhere in the specified Block Groups is there any residential development which approaches this density.
4. The site for Brook Village Apartments, as shown in the zoning map behind Volume 4, Tab 16 of the application, is surrounded by Planned Developments, most being zoned MF-2(A) (multifamily residential with 36 foot height limitation) with a small MR-3(A) component (multifamily residential with 90 foot height limitation). There is some GO(A) zoning (general office use – up to 20 stories), some MU-2 and MU-3 areas (mixed use with up to 14 or 20 stories respectively), and NS(A) (neighborhood services - two stories).
5. Notwithstanding the zoning, current development is almost entirely 1, 2 and 3-story walk-up apartments with some single story commercial development in Census Tract 78.19. It is clear that the existing development falls far short of having 50% of the use being high density and/or commercial use.

Since the application for Brook Village Apartments did not provide any evidence of qualification under §49.9(a)(16)(D) except for a certification by the applicant and a zoning map without any explanation of the use requirements, we believe the Selection Criterion for Development Location has not been met. We accordingly request that the four points for Development Location be denied to Brook Village Apartments.

Thank you for your consideration of this challenge.









Sincerely,







Kristian Teleki  
Senior Vice President

CC: Raquel Morales – 9% Housing Tax Credit Administrator

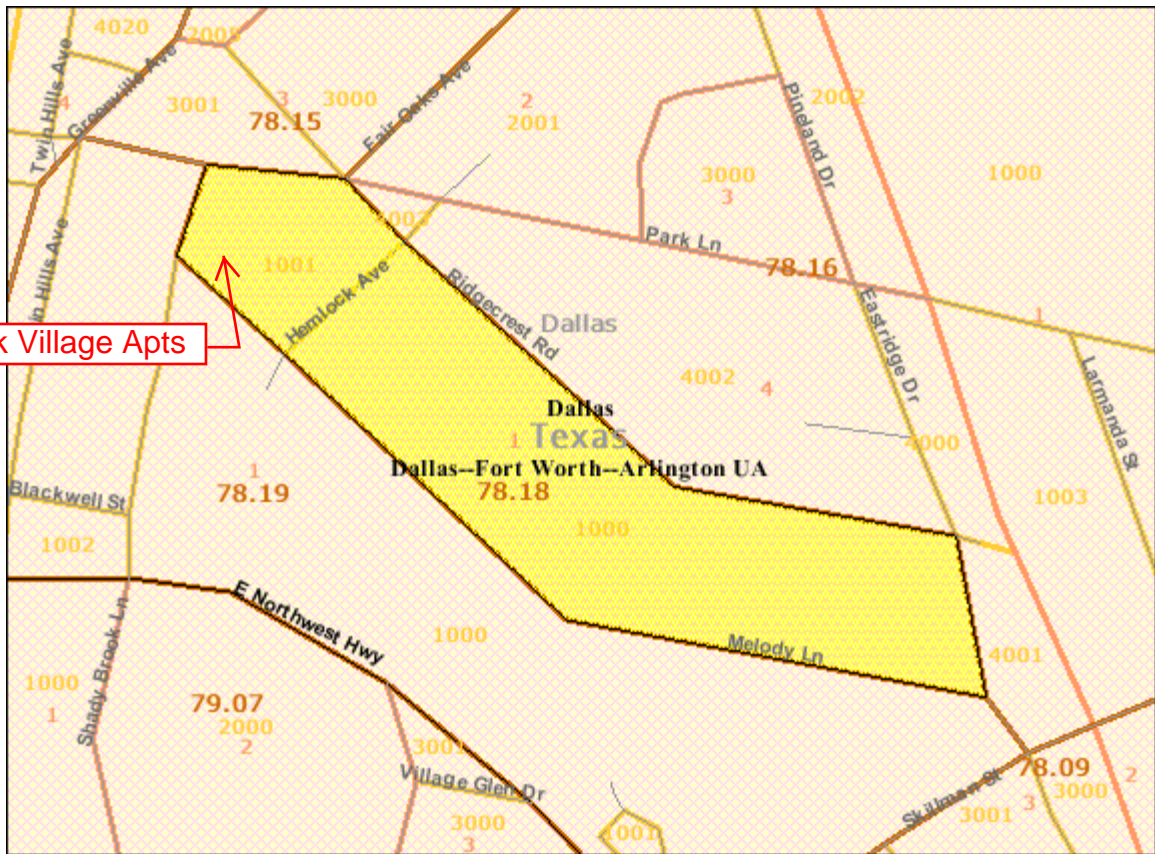
**Boundaries**

-  State
-  '00 County
-  '00 Census Tract
-  '00 Block Group
-  '00 Block
-  '00 Place
-  '00 Urban Area
-  '00 Urban Area

**Features**

-  Major Road
-  Street
-  Stream/Waterbody
-  Stream/Waterbody

Brook Village Apts



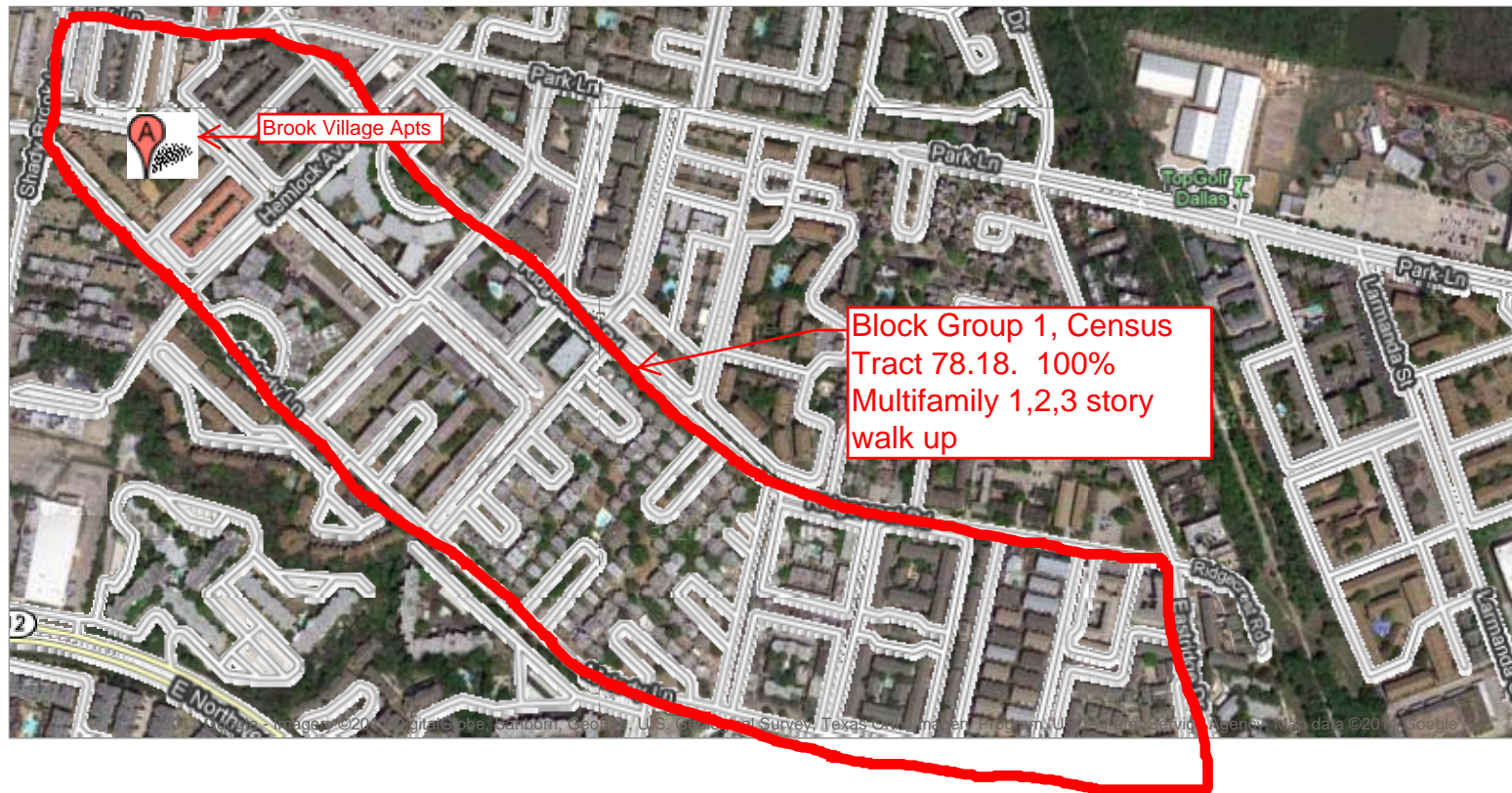
1.1 mile across

Close











MF RCV'D June 15, 2011 2:28 PM

To see all the details that are visible on the screen, use the "Print" link next to the map.







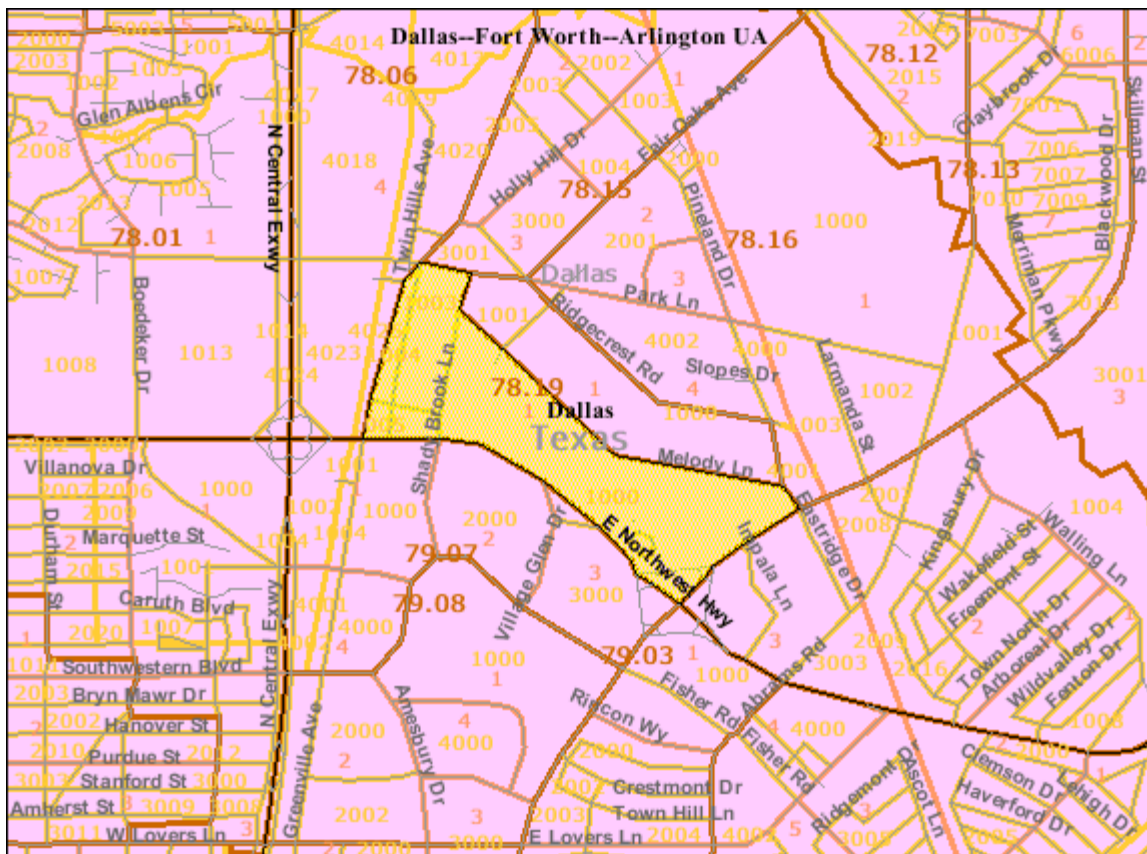
Block Group 1, Census Tract 78.19, Dallas County, Texas

**Boundaries**

-  State
-  '00 County
-  '00 Census Tract
-  '00 Block Group
-  '00 Block
-  '00 Place
-  '00 Urban Area
-  '00 Urban Area

**Features**

-  Major Road
-  Street
-  Stream/Waterbody
-  Stream/Waterbody



2.8 miles across









Close

MF RCV'D June 15, 2011 2:28 PM





To see all the details that are visible on the screen, use the "Print" link next to the map.

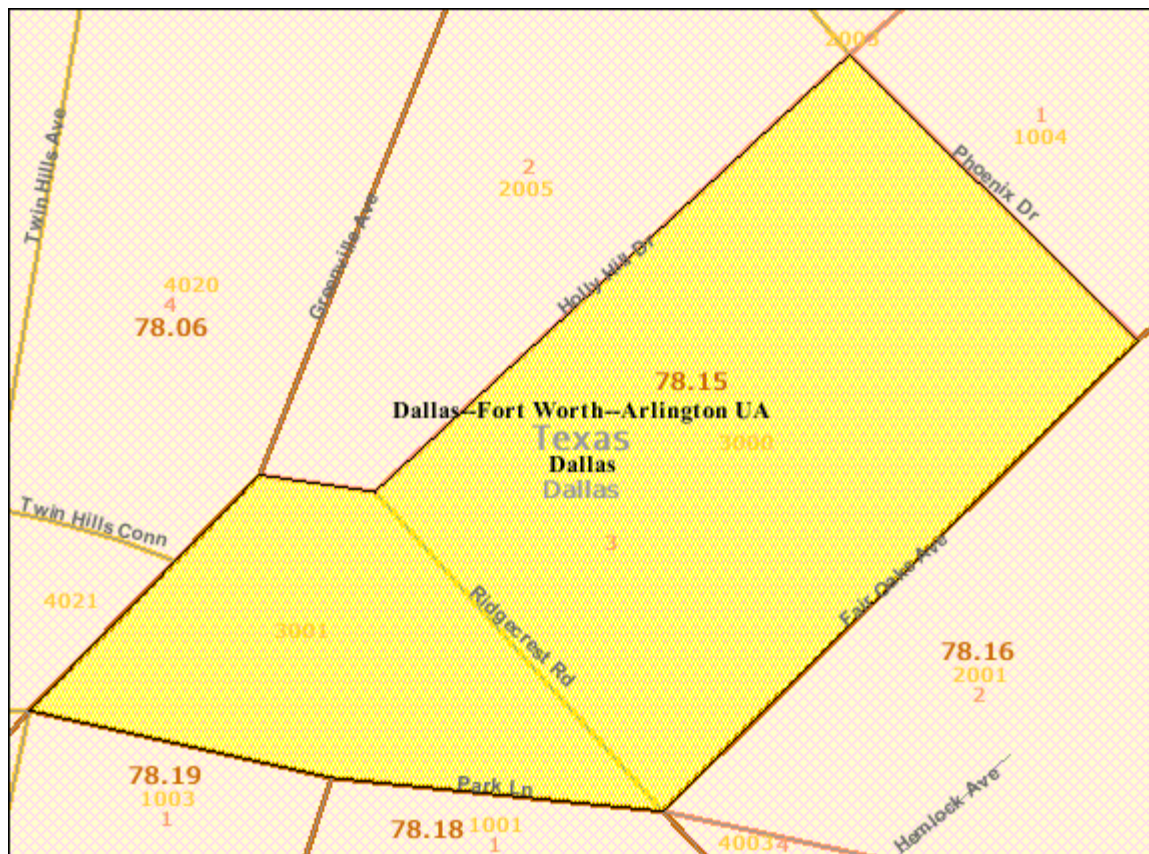


**Boundaries**

-  State
-  '00 County
-  '00 Census Tract
-  '00 Block Group
-  '00 Block
-  '00 Place
-  '00 Urban Area
-  '00 Urban Area

**Features**

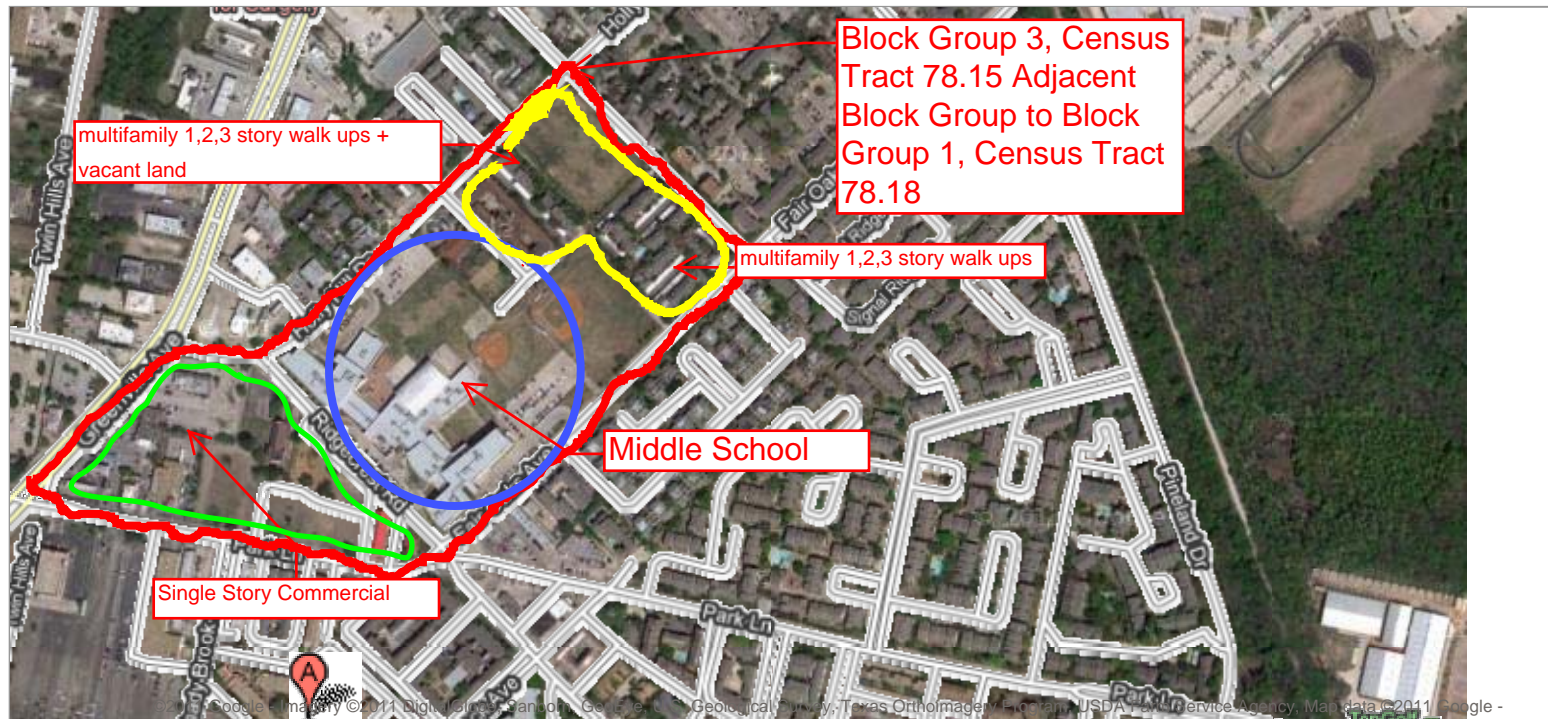
-  Major Road
-  Street
-  Stream/Waterbody
-  Stream/Waterbody



0.5 mile across

Close

To see all the details that are visible on the screen, use the "Print" link next to the map.



multifamily 1,2,3 story walk ups + vacant land

Block Group 3, Census Tract 78.15 Adjacent Block Group to Block Group 1, Census Tract 78.18









multifamily 1,2,3 story walk ups

Middle School





Single Story Commercial

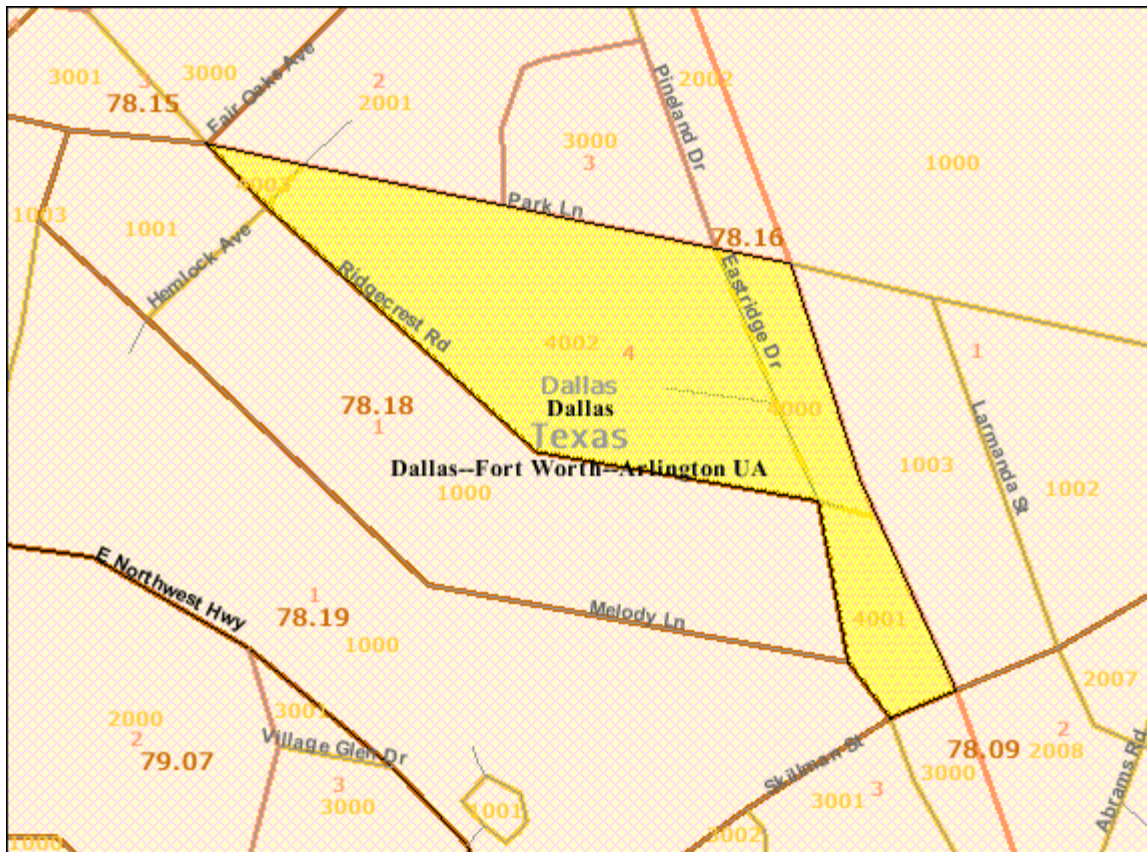
Brook Village Apts Block Group 1, Tract 78.18

**Boundaries**

-  State
-  '00 County
-  '00 Census Tract
-  '00 Block Group
-  '00 Block
-  '00 Place
-  '00 Urban Area
-  '00 Urban Area

**Features**

-  Major Road
-  Street
-  Stream/Waterbody
-  Stream/Waterbody



1.1 mile across

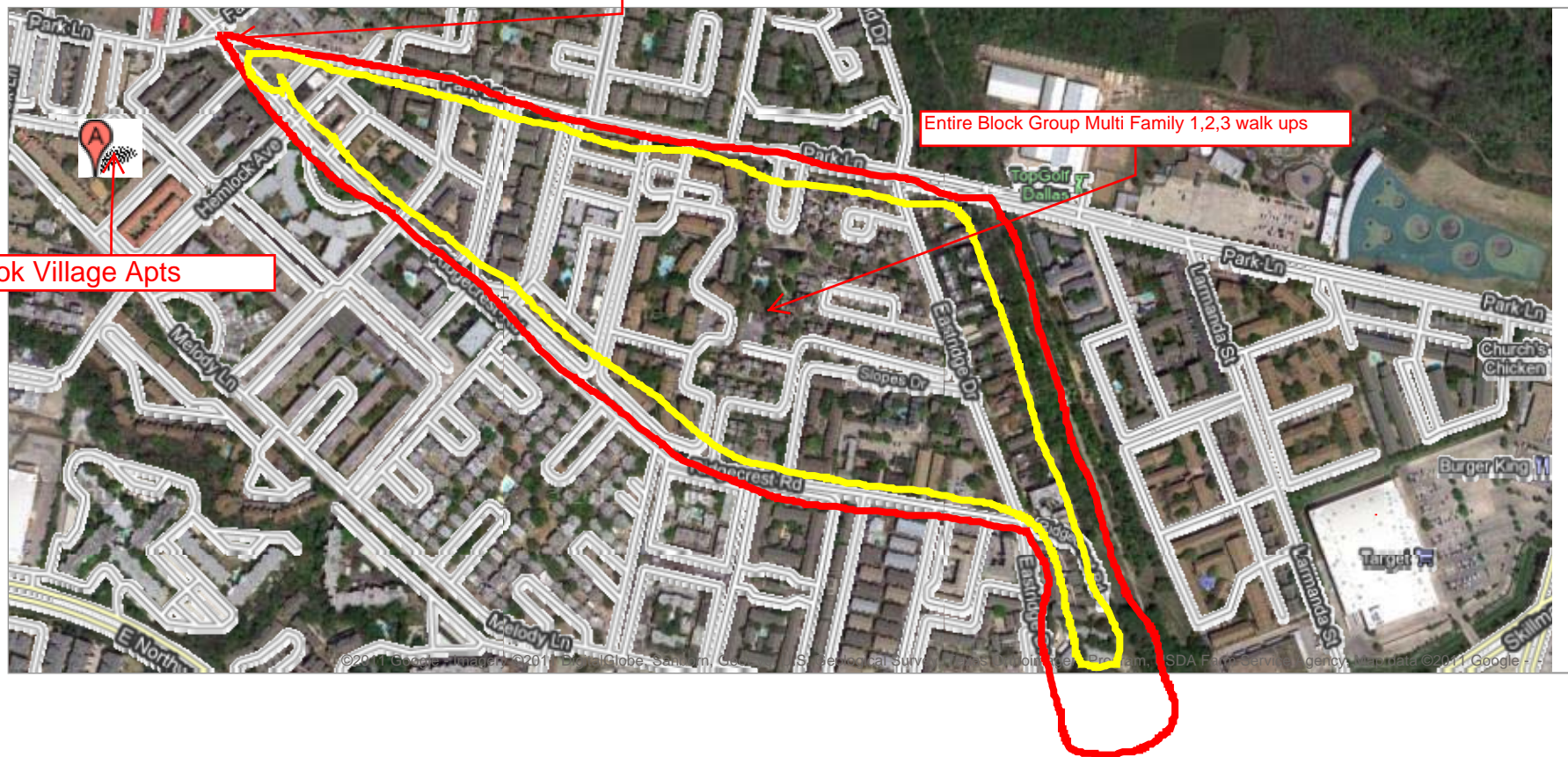
Close

MF RCV'D June 15, 2011 2:28 PM



To see all the details that are visible on the screen, use the "Print" link next to the map.

Block Group 4, Census Tract 78.16, Adjacent Block Group to Block Group 1, Census Tract 78.18



Brook Village Apts

Entire Block Group Multi Family 1,2,3 walk ups





City of Dallas Zoning Website

Find Address Print FindParcel

Results

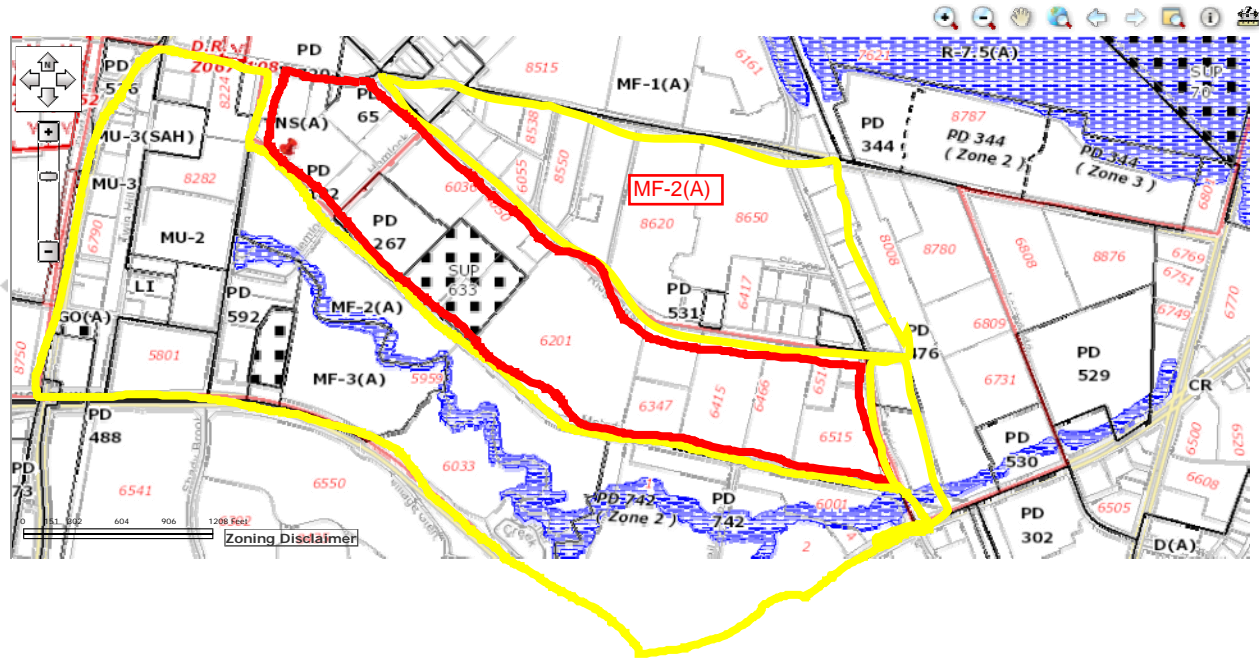
[Clear All](#)

- 5929 Melody Lane (1)
  - 5929 MELODY LN
- 5929 Melody Lane (1)
  - 5929 MELODY LN

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Map Contents

- DallasZoning
  - GIS\_DATA
  - ZONING LAYERS
  - Airport Noise Contours
  - ALCOHOL LAYERS
- CensusTracts2000
  - Census Tracts 2000
- DallasRoads
  - Highways
  - Major Streets



**THE ZONING RULES**

**HIGHLIGHTS OF 51A**

- No change in District regulations for the following districts: A, R-5, R-7.5, R-10, R-13, R-16, R-1/2ac, R-1ac, TH-1, TH-2, TH-3, D, MH, P, CA-1, CA-2.
- Nonresidential districts revised to focus the uses and design standards on the purpose of the district.
- No residential uses allowed in nonresidential districts except for mixed use districts.
- Heights and Floor Ratio related to principal uses allowed in district.  
-e.g. retail districts have heights and FAR that accommodate all types of retail uses.
- Added provisions for reduced height of structures when next to SF, D, TH, districts for each foot in height over 26', buildings must be 3 feet further away from low density residential development.
- The following charts summarize districts in Chapter 51A. Please note that many districts have significant changes in permitted height, density, and coverage.

	DISTRICT	SETBACKS		Density	Height	Lot Coverage	Special Standards	PRIMARY Uses	
		Front	Side/Rear						
RESIDENTIAL	A(A) Agricultural	50'	20'/50'	1 Dwelling Unit 3 Acres	24'	10%		Agricultural and residential uses	
	Single Family	R-1ac(A) Residential	40'	10'	1 Dwelling Unit 1 Acres	36'	40%		Single family residential uses
		R-1/2ac(A) Residential	40'	10'	1 Dwelling Unit 1/2 Acres	36'	40%		Single family residential uses
		R-16(A) Residential	35'	10'	1 Dwelling Unit 16,000 sq. ft.	30'	40%		Single family residential uses
		R-13(A) Residential	30'	8'	1 Dwelling Unit 13,000 sq. ft.	30'	45%		Single family residential uses
		R-10(A) Residential	30'	6'	1 Dwelling Unit 10,000 sq. ft.	30'	45%		Single family residential uses
		R-7.5(A) Residential	25'	5'	1 Dwelling Unit 7,500 sq. ft.	30'	45%		Single family residential uses
		R-5(A) Residential	20'	5'	1 Dwelling Unit 5,000 sq. ft.	30'	45%		Single family residential uses
		DUPLEX / TOWNHOUSE	D(A) Duplex	25'	5'	1 Dwelling Unit 6,000 sq. ft.	36'	60%	
	TH-1(A) Townhouse Residential		0'	0'	6 DU Acre	36'	60%		Single family residential uses
	TH-2(A) Townhouse Residential		0'	0'	9 DU Acre	36'	60%		Single family residential uses
TH-3(A) Townhouse Residential	0'		0'	12 DU Acre	36'	60%		Single family residential uses	

NOTE: Additional conditions may apply. Consult the Dallas Development Code.

		DISTRICT	SETBACKS		Density	Height	Lot Coverage	Special Standards	PRIMARY Uses
			Front	Side/Rear					
RESIDENTIAL	CLUSTERED HOUSING / MULTIFAMILY	CH Clustered Housing	0'	0'	18 DU Per Acre	36'	60%	Proximity y Slope	Single family and multifamily residential uses
		MF-1(A) Multifamily residential	15'	15'	Min lot 3,000 sq ft 1,000 sq ft - E 1,400 - 1 BR 1,800 - 2 BR + 200 sq ft each add BR	36'	60%	Proximity y Slope	Multifamily residential uses
		MF-2(A) Multifamily residential	15'	15'	Min lot 1,000 sq ft 800 sq ft - E 1,000 - 1 BR 1,200 - 2 BR + 150 sq ft each add BR	36'	60%	Proximity y Slope	Multifamily residential uses
		MF-3(A) Multifamily residential	15'	10'	Min lot 6,000 sq ft 450 sq ft - E 500 - 1 BR 550 - 2 BR + 50 sq ft each add BR	90'	60%	Proximity Slope U-form setback Tower spacing	Multifamily residential; supporting limited retail and personal service uses
		MF-4(A) Multifamily residential	15'	10'	Min lot 6,000 sq ft 225 sq ft - E 275 - 1 BR 325 - 2 BR + 50 sq ft each add BR	240'	80%	Proximity Slope U-form setback Tower spacing	Multifamily residential; supporting limited retail and personal service uses
		MH(A) Mobile home	20'	10'	1 DU/ 4,000 sq ft	24'	20%	Proximity Slope	Manufactured homes
NONRESIDENTIAL	office	NO(A) Neighborhood office	15'	20' adjacent to residential OTHER: No Min.	0.5 Floor Area Ratio	30' 2 stories	50%	Proximity Slope Visual intrusion	Office
		LO-1 Limited office - 1	15'	20' adjacent to residential OTHER: No Min.	1.0 FAR	70' 5 stories	80%	Proximity Slope U-form setback Tower spacing Visual intrusion	Office; retail and personal service uses as limited uses
		LO-2 Limited office - 2	15'	20' adjacent to residential OTHER: No Min.	1.5 FAR	95' 7 stories	80%	Proximity Slope U-form setback Tower spacing Visual intrusion	Office; retail and personal service uses as limited uses
		LO-3 Limited office - 3	15'	20' adjacent to residential OTHER: No Min.	1.75 FAR	115' 9 stories	80%	Proximity Slope U-form setback Tower spacing Visual intrusion	Office; retail and personal service uses as limited uses
		MO-1 Mid-range office - 1	15'	20' adjacent to residential OTHER: No Min.	2.0 FAR	135' 10 stories	80%	Proximity Slope U-form setback Tower spacing Visual intrusion	Office; lodging; retail and personal service uses as limited uses
		MO-2 Mid-range office - 2	15'	20' adjacent to residential OTHER: No Min.	3.0 FAR	160' 12 stories	80%	Proximity Slope U-form setback Tower spacing Visual intrusion	Office; lodging; retail and personal service uses as limited uses
		GO(A) General office	15'	20' adjacent to residential OTHER: No Min.	4.0 FAR	270' 20 stories	80%	Proximity Slope U-form setback Tower spacing Visual intrusion	Office; lodging; retail and personal service uses as limited uses
	Retail	NS(A) Neighborhood service	15'	20' adjacent to residential OTHER: No Min.	0.5 FAR	30' 2 stories	40%	Proximity Slope Visual intrusion	Retail and personal service; and office uses
		CR Community retail	15'	20' adjacent to residential OTHER: No Min.	0.75 overall 0.5 office	54' 4 stories	60%	Proximity Slope Visual intrusion	Retail and personal service; and office uses
		RR Regional retail	15'	20' adjacent to residential OTHER: No Min.	1.5 overall 0.5 office	70' 5 stories	80%	Proximity Slope U-form setback Visual intrusion	Retail and personal service; and office uses

NOTE: Additional conditions may apply. Consult the Dallas Development Code.

	DISTRICT	SETBACKS		Density FAR	Height	Lot Coverage	Special Standards	PRIMARY Uses	
		Front	Side/Rear						
NONRESIDENTIAL	COMMERCIAL / INDUSTRIAL	CS COMMERCIAL SERVICE	15' 0' on minor	20' adjacent to residential OTHER: No Min.	0.75 overall 0.5 office/lodging/ retail combined	45' 3 stories	80%	Proximity Slope Visual intrusion	Commercial and business service; supporting retail and personal service, and office
		LI Light industrial	15'	30' adjacent to residential OTHER: No Min.	1.0 overall 0.75 office/retail 0.5 retail	70' 5 stories	80%	Proximity Slope Visual intrusion	Industrial; wholesale distribution and storage; supporting office and retail
		IR Industrial research	15'	30' adjacent to residential OTHER: No Min.	2.0 overall 0.75 office/retail 0.5 retail	200' 15 stories	80%	Proximity Slope Visual intrusion	Industrial; wholesale distribution and storage; supporting office and retail
		IM Industrial manufacturing	15' 0' on minor	30' adjacent to residential OTHER: No Min.	2.0 overall 0.75 office/retail 0.5 retail	110' 8 stories	80%	Proximity Slope Visual intrusion	Industrial; wholesale distribution and storage; supporting office and retail
	Central area	CA - 1(A) Central area - 1	0'	0'	20.0 FAR	Any legal height	100%		All but the heaviest industrial uses
		CA - 2(A) Central area - 2	0'	0'	20.0 FAR	Any legal height	100%		All but the heaviest industrial uses
	Mixed use	MU - 1 Mixed use - 1	15'	20' adjacent to residential OTHER: No Min.	0.8 base 1.0 max + bonus for residential	90' 7 stories 120' 9 stories with retail	80%	Proximity Slope U-form setback Tower spacing Visual intrusion	Office; retail and personal service; lodging; residential
		MU - 2 Mixed use - 2	15'	20' adjacent to residential OTHER: No Min.	1.6 base 2.0 max + bonus for residential	135' 10 stories 180' 14 stories with retail	80%	Proximity Slope U-form setback Tower spacing Visual intrusion	Office; retail and personal service; lodging; and residential
		MU - 3 Mixed use - 3	15'	20' adjacent to residential OTHER: No Min.	3.2 base 4.0 max + bonus for residential	270' 20 stories	80%	Proximity Slope U-form setback Tower spacing Visual intrusion	Office; retail and personal service; lodging; residential; trade center
	Multiple commercial	MC - 1 Multiple commercial - 1	15' Urban Form	20' adjacent to residential OTHER: No Min.	0.8 base 1.0 max	70' 5 stories	80%	Proximity Slope U-form setback Tower spacing Visual intrusion	Office; retail and personal service; lodging
		MC - 2 Multiple commercial - 2	15' Urban Form	20' adjacent to residential OTHER: No Min.	0.8 base 1.0 max	90' 7 stories	80%	Proximity Slope U-form setback Tower spacing Visual intrusion	Office; retail and personal service; lodging
		MC - 3 Multiple commercial - 3	15' Urban Form	20' adjacent to residential OTHER: No Min.	1.2 base 1.5 max	115' 9 stories	80%	Proximity Slope U-form setback Tower spacing Visual intrusion	Office; retail and personal service; lodging
		MC - 4 Multiple commercial - 4	15' Urban Form	20' adjacent to residential OTHER: No Min.	1.6 base 2.0 max	135' 10 stories	80%	Proximity Slope U-form setback Tower spacing Visual intrusion	Office; retail and personal service; lodging
	PARKING	P(A) Parking							Surface parking

NOTE: Additional conditions may apply. Consult the Dallas Development Code.

# Memorandum



CITY OF DALLAS

DATE February 10, 2011

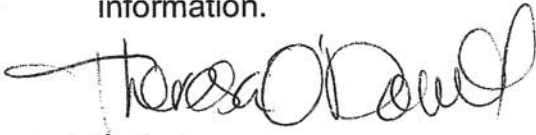
TO The Mayor and City Council

SUBJECT Downtown Dallas 360 Plan

At the Full Council briefing on Wednesday, February 16, 2011, there will be a briefing on the Downtown Dallas 360 Plan. The attached presentation highlights the key features of the plan vision and implementation priorities and marks the culmination of an eighteen month process of developing the plan through extensive stakeholder involvement in collaboration with Downtown Dallas Inc.

The draft plan document will be provided to the City Council in two weeks. A final Council Economic Development Committee briefing will also be held prior to scheduling the plan for council action in April 2011.

Please feel free to contact Theresa O'Donnell at 214 671 9293 if you need additional information.

  
for A.C. Gonzalez  
Assistant City Manager

c: Mary K. Suhm, City Manager  
Thomas P. Perkins, Jr. City Attorney  
Deborah Watkins, City Secretary  
Craig Kinton, City Auditor  
Judge C. Victor Lander, Administrative Judge  
Ryan S. Evans, First Assistant City Manager  
Jill A. Jordan, P.E., Assistant City Manager  
Forest E. Turner, Assistant City Manager  
Jeanne Chipperfield, Chief Financial Officer  
Edward Scott, Director, Controller's Office  
Frank Libro, Public Information Office  
Karl Zavitkovsky, Director, Office of Economic Development  
Theresa O'Donnell, Director, Sustainable Development and Construction  
Helena Stevens-Thompson, Assistant to the City Manager – Council Office

# Priority Action 3

## Create an Intown Housing Development Strategy and Public-Private Incentive Guidelines

- Enhance financial incentives for middle and lower income housing
- Promote family-friendly amenities and services in Farmers Market and Cedars

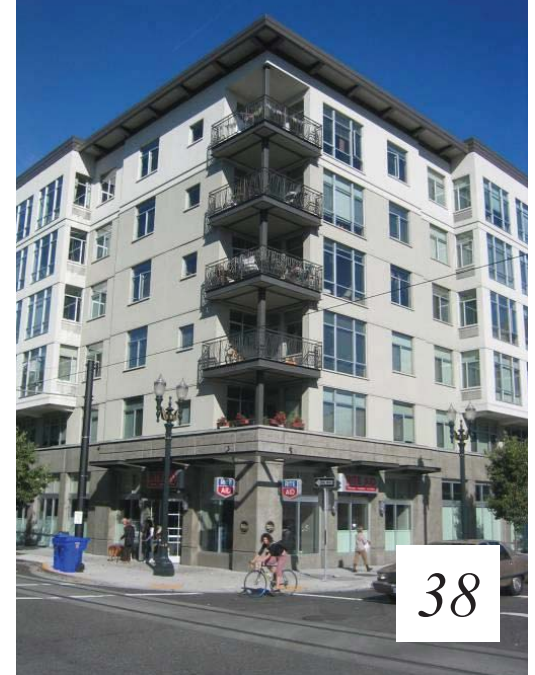


Mid to High Density is 5+ stories with 60+ units/acre  
City of Dallas 360 Plan

Product Type	Typical Height (Stories)	Typical Density (Units/Acre)	District							
			Arts District	Civic Center	Farmers Market	Financial District	Main Street	Reunion/Union Station	South Arts District	West End
High-Rise Flats	10+	100+	■	□		■	■	■	■	
Mid-Rise Flats	5-10	60-100	■	■	□	■	■	■	■	■
Low-Rise Flats/Lofts	3-5	40-75	□	□	■	□		□	□	■
Townhomes	2-3	15-30		□	■					

### Priority Housing Types by District (Inside Loop)

■ = Generally appropriate  
□ = Appropriate at select locations



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Address **8254 Park Lane**

Address is approximate

**Save trees. Go green!**  
Download Google Maps on your phone at [google.com/gmm](http://google.com/gmm)



Park Lane heading East towards Shady Brook

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Address **8292 Park Lane**

Address is approximate

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Download Google Maps on your phone at [google.com/gmm](http://google.com/gmm)



Park Lane at Shady Brook



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Address **5981 Ridgecrest Road**

Address is approximate

**Save trees. Go green!**  
Download Google Maps on your phone at [google.com/gmm](http://google.com/gmm)



Ridgecrest at Park Lane

MF RCV'D June 15, 2011 2:28 PM



Address **Greenville Avenue**

Address is approximate

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Download Google Maps on your phone at [google.com/gmm](http://google.com/gmm)



Park Lane and Greenville NE

MF RCV'D June 15, 2011 2:28 PM



Address **Park Lane**

Address is approximate

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Download Google Maps on your phone at [google.com/gmm](http://google.com/gmm)



Park Lane near Shady Brook

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Address **6696 Shady Brook Lane**

Address is approximate

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NWHY at Shady Brook looking East



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To see all the details that are visible on the screen, use the "Print" link next to the map.

Greenville Avenue N of NWHwy





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To see all the details that are visible on the screen, use the "Print" link next to the map.

Twin Hills at NWHY  
looking North





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To see all the details that are visible on the screen, use the "Print" link next to the map.

School





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To see all the details that are visible on the screen, use the "Print" link next to the map.

Hollyhill and Phoenix - East







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To see all the details that are visible on the screen, use the "Print" link next to the map.

Phoenix and Fair Oaks-South



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Address **6712 Shady Brook Lane**

Address is approximate

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Shady Brook looking South from Melody Lane

**Save trees. Go green!**  
Download Google Maps on your phone at [google.com/gmm](http://google.com/gmm)



Park Lane Heading East from Shady Brook



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To see all the details that are visible on the screen, use the "Print" link next to the map.

Park and Shady Brook - East



MF RCV'D June 15, 2011 2:28 PM



Address **Melody Lane**  
Address is approximate

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Download Google Maps on your phone at [google.com/gmm](http://google.com/gmm)



Southside Melody Lane



Address **Hemlock Avenue / Ridgecrest Road**  
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Address is approximate

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Ridgecrest Road and Hemlock Avenue



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To see all the details that are visible on the screen, use the "Print" link next to the map.

Ridgecrest looking E  
towards Eastridge





MF RCV'D June 15, 2011 2:28 PM

To see all the details that are visible on the screen, use the "Print" link next to the map.

NWHY near Shady Brook - East

