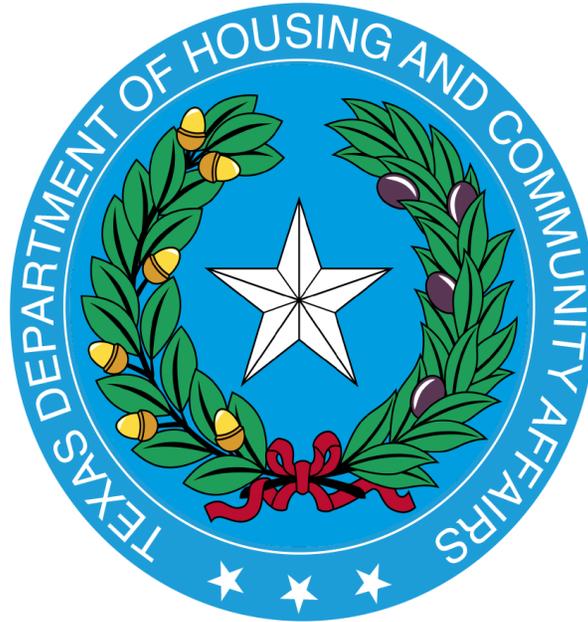


# BOARD BOOK OF AUGUST 25, 2016



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

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

**A G E N D A  
10:00 AM  
August 25, 2016**

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

**CALL TO ORDER**

**ROLL CALL**

**J. Paul Oxer, Chairman**

**CERTIFICATION OF QUORUM**

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

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

**CONSENT AGENDA**

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

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

**EXECUTIVE**

- a) Board Meeting Minutes summaries for the meetings of May 26, 2016; June 16, 2016; and June 30, 2016

**J. Beau Eccles**  
Board Secretary

**ASSET MANAGEMENT**

- b) Presentation, Discussion and Possible Action regarding Material Amendments to Housing Tax Credit Application

**Raquel Morales**  
Director

13281 Sunquest Apartments

Primera

13400 Villas at Colt Run

Houston

- c) Presentation, Discussion and Possible Action regarding Material Amendment to the Housing Tax Credit Land Use Restriction Agreement

98180 Delta Estates

Edcouch

**COMMUNITY AFFAIRS**

- d) Presentation, Discussion, and Possible Action on State Fiscal Year 2017 Homeless Housing and Services Program Awards

**Naomi Trejo**  
Coordinator,  
Homelessness Program

**MULTIFAMILY FINANCE**

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

**Teresa Morales**  
Manager

16423 Plano Artist's Lofts

Plano

16426 87th Apartments

Odessa

## RULES

- f) Presentation, Discussion, and Possible Action on the withdrawal of previously proposed amendments to 10 TAC Chapter 1 Administration, Subchapter B, concerning §1.204 Reasonable Accommodations and directing that it be published in the *Texas Register*

**Suzanne Hemphill**  
Project Manager, Fair  
Housing, Data  
Management, and  
Reporting

## CONSENT AGENDA REPORT ITEMS

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

- a) TDHCA Outreach Activities, July 2016
- b) Final Report On Activities Assisted under HOME Investment Partnerships Program (“HOME”) Reservation System Participant (“RSP”) Agreement No. 2011-0062 with EBENZ Inc. (“EBENZ”) for four single family homes located in Texas City and League City, Galveston County
- c) Report on appeal and conditional award on:  
16057 Silverleaf at Mason

**Michael Lyttle**  
Chief, External Affairs

**Jennifer Molinari**  
Director, HOME Division

**Brent Stewart**  
Director, Real Estate  
Analysis

## ACTION ITEMS

### ITEM 3: RULES

- a) Presentation, Discussion, and Possible Action on an order proposing new 10 TAC Chapter 7, Homelessness Programs: Subchapter A, General Provisions; Subchapter B, Homeless Housing and Services Program (“HHSP”); and Subchapter C, Emergency Solutions Grant (“ESG”), and directing that they be published for public comment in the *Texas Register*
- b) Presentation, Discussion, and Possible Action on an order proposing new 10 TAC Chapter 6, Community Affairs Programs: Subchapter A, General Provisions; Subchapter B, Community Services Block Grant (“CSBG”); Subchapter C, Comprehensive Energy Assistance Program (“CEAP”); Subchapter D, Weatherization Assistance Program (“WAP”), and directing that they be published for public comment in the *Texas Register*
- c) Presentation, Discussion, and Possible Action on an order proposing actions to 10 TAC Chapter 2, Enforcement, including the: 1) proposed amendment in Subchapter A, General, of §2.102, Definitions; 2) proposed repeal of Subchapter B, Enforcement Regarding Community Affairs Contract Subrecipients; and 3) proposed new Subchapter B, Enforcement for Noncompliance with Program Requirements of Chapters 6 and 7; and directing that they be published for public comment in the *Texas Register*
- d) Presentation, Discussion, and Possible Action on an order proposing actions to 10 TAC Chapter 1, Administration, including the: 1) proposed repeal of §1.3. Delinquent Audits and Related Issues; 2) proposed repeal of §1.21, Action by Department if Outstanding Balance Exists; 3) proposed new §1.21, Action by Department if Outstanding Balance Exists; 4) proposed repeal of §1.302, Previous Participation Reviews for CSBG, LIHEAP, and WAP; 5) proposed repeal of §1.303, Previous Participation Reviews for Department Program Awards Not Covered by §1.301 or §1.302 of This Subchapter; 6) proposed new §1.302, Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter; and 7) proposed new Subchapter D, Uniform Guidance for Recipients of Federal and State Funds; and directing that they be published for public comment in the *Texas Register*
- e) Presentation, Discussion, and Possible Actions on: first, withdrawal of previously proposed repeal and concurrent proposed new 10 TAC Chapter 10 Uniform Multifamily Rules, Subchapter F, Compliance Monitoring, §10.614 (concerning Utility Allowances); second, the proposed repeal of §10.614 (concerning Utility Allowances); and third, the proposed new §10.614 (concerning Utility Allowances) and directing that these be published for public comment in the *Texas Register*

**Brooke Boston**  
Deputy Executive Director

**Stephanie Naquin**  
Director, Multifamily  
Compliance

#### ITEM 4: MULTIFAMILY FINANCE

- a) Presentation, Discussion and Possible Action Regarding the Issuance of Multifamily Housing Revenue Bonds (Skyline Place Apartments) Series 2016 Resolution No. 16-024 and Determination Notice of Housing Tax Credits
- b) Presentation, Discussion, and Possible Action on Inducement Resolution No. 16-025 for Multifamily Housing Revenue Bonds Regarding Authorization for Filing Applications for Private Activity Bond Authority on the 2016 Waiting List for Piney Woods Village
- c) Presentation, Discussion, and Possible Action on Inducement Resolution No. 16-026 for Multifamily Housing Revenue Bonds Regarding Authorization for Filing Applications for Private Activity Bond Authority on the 2016 Waiting List for Robert E. Lee Apartments
- d) Presentation, Discussion, and Possible Action on Timely Filed Underwriting Appeals under the Department's Multifamily Program Rules  
16274 Rockview Manor Fort Hancock

**Marni Holloway**  
Director

**Brent Stewart**  
Director, Real Estate  
Analysis

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

##### EXECUTIVE SESSION

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

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

**J. Paul Oxer**  
Chairman

##### OPEN SESSION

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

##### ADJOURN

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

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

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

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

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

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

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

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

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

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

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

# CONSENT AGENDA

1a

BOARD ACTION REQUEST  
BOARD SECRETARY  
AUGUST 25, 2016

Presentation, Discussion, and Possible Action on Board Meeting Minutes Summaries for May 26, 2016; June 16, 2016; and June 30, 2016

RECOMMENDED ACTION

Approve the Board Meeting Minutes Summaries for May 26, 2016; June 16, 2016; and June 30, 2016

RESOLVED, that the Board Meeting Minutes Summaries for May 26, 2016; June 16, 2016; and June 30, 2016, are hereby approved as presented.

Texas Department of Housing and Community Affairs Governing Board  
Board Meeting Minutes Summary  
May 26, 2016

On Thursday, the twenty-sixth day of May 2016, at 10:00 a.m., the regular monthly meeting of the Governing Board ("Board") of the Texas Department of Housing and Community Affairs ("TDHCA" or the "Department") was held in Room JHR 140, John H. Reagan Building, 105 W. 15<sup>th</sup> Street, Austin, Texas.

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

- J. Paul Oxer
- Dr. Juan Muñoz
- Leslie Bingham Escareño
- Tom H. Gann
- JB Goodwin

J. Paul Oxer served as Chair, and James "Beau" Eccles served as secretary.

1) Michael Lyttle, TDHCA Chief of External Affairs, read into the record a resolution in honor of June being Homeownership Month. The Board by acclaim unanimously adopted the resolution.

2) Following public comment (listed below), the Board unanimously approved the Consent Agenda as presented.

- Deborah Dennis, WREM Literacy Group, Inc., thanked the Board and staff for their assistance in helping her organization build 22 homes for low-income families

3) Action Item 3(a) – Presentation, Discussion and Possible Action regarding material amendment to the Housing Tax Credit/HOME Application for #15234 Merritt Leisure in Midland – was presented by Raquel Morales, TDHCA Director of Asset Management.

- Colby Denison, Denison Development and Construction, thanked the Board for its consideration of the item and the staff for its work on the item

4) Action Item 3(b) – Presentation, Discussion and Possible Action regarding Placed in Service Deadline Extension pursuant to the Force Majeure provision in the 2015 Qualified Allocation Plan for #13119 Emma Finke Villas in Midland – was presented by Ms. Morales. The Board unanimously approved staff recommendation to grant the extension request.

5) Action Item 4(a) – Presentation, Discussion, and Possible Action on an Award of Direct Loan Funds for #16501 Garden Terrace Phase III in Austin – was presented by Marni Holloway, TDHCA Director of Multifamily Finance. The Board unanimously approved staff recommendation to approve the award of funds.

6) Action Item 4(b) – Presentation, Discussion, and Possible Action on Timely Filed Appeals and Waivers under the Department's Multifamily Program Rules for #16029 Baxter Lofts in Harlingen, #16130 Cottages at San Saba in San Saba, and #16260 Churchill at Golden Triangle Community in Fort Worth – was presented by Ms. Holloway with additional information from Tim Irvine, TDHCA Executive Director, and

Mr. Eccles. Following public comment (listed below), the Board unanimously voted to table further consideration on #16029 Baxter Lofts until its meeting of June 16, 2016; and the Board voted unanimously to approve staff recommendation of denying the appeals from #16130 Cottages at San Saba and #16260 Churchill at Golden Triangle Community.

- (Baxter Lofts) Mr. Lyttle read a letter into the record from State Senator Eddie Lucio, Jr., in opposition to staff recommendation
- (Baxter Lofts) Cynthia Bast, Locke Lord, testified in opposition to staff recommendation
- (Baxter Lofts) Sallie Burchitt, Structure Development, testified in opposition to staff recommendation
- (Cottages at San Saba) Mark Mayfield, Texas Housing Foundation, testified in opposition to staff recommendation
- (Cottages at San Saba) Stan Weik, City of San Saba, testified in opposition to staff recommendation
- (Cottages at San Saba) Tony Guidroz, City of San Saba, testified in opposition to staff recommendation
- (Cottages at San Saba) Kim Jungquist, Hamilton Valley Management, provided additional information on the matter
- (Churchill) Tony Sisk, Churchill Residential, testified in opposition to staff recommendation
- (Churchill) Tamea Dula, Coats Rose, testified in opposition to staff recommendation

7) The following public comment was made on matters other than items for which there were posted agenda items:

- Tim Alcott, San Antonio Housing Authority, provided comments on "at risk" housing tax credit developments as well as possible inclusions to the 2017 Qualified Allocation Plan
- Wayne Gerani, Austin Habitat for Humanity, provided comments about how Texas might consider utilizing future funds from the National Housing Trust Fund
- Jennifer Grillo, Fall Creek Homeowners Association, provided comment in opposition to #16118 The Standard at Fall Creek, a 2016 Competitive Housing Tax Credit application
- Bret Sileo, Fall Creek resident and Board member of Water Control Improvement District 96, provided comment in opposition to #16118 The Standard at Fall Creek, a 2016 Competitive Housing Tax Credit application
- Rita Medrano, Fall Creek resident, provided comment in opposition to #16118 The Standard at Fall Creek, a 2016 Competitive Housing Tax Credit application
- Matthew Carpenter, Fall Creek Homeowners Association, provided comment in opposition to #16118 The Standard at Fall Creek, a 2016 Competitive Housing Tax Credit application
- Franklin Fisher, Lifeworks resident, thanked the Board and staff for TDHCA funding the Emergency Solutions Grant program
- Susan McDowell, Lifeworks staffer, thanked the Board and staff for TDHCA funding the Emergency Solutions Grant program

8) At 11:27 a.m. the Board went into Executive Session and reconvened in open session at 12 noon. No action was taken in or as a result of Executive Session.

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

There being no further business to come before the Board, the meeting adjourned at 1:15 p.m. The next meeting is set for Thursday, June 16, 2016.

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Secretary

Approved:

\_\_\_\_\_

Chair

Texas Department of Housing and Community Affairs Governing Board  
Board Meeting Minutes Summary  
June 16, 2016

On Thursday, the sixteenth day of June 2016, at 9:00 a.m., the regular meeting of the Governing Board ("Board") of the Texas Department of Housing and Community Affairs ("TDHCA" or the "Department") was held in Room JHR 140, John H. Reagan Building, 105 W. 15<sup>th</sup> Street, Austin, Texas.

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

- J. Paul Oxer
- Leslie Bingham Escareño
- Tom H. Gann
- JB Goodwin

J. Paul Oxer served as Chair, and James "Beau" Eccles served as secretary.

1) The Board unanimously approved the Consent Agenda as amended with the following transactions pulled from consideration for Item 1(b): #16411 Charles E. Graham Apartments in El Paso; #16412 Rio Grande Apartments in El Paso; #16413 Judson Williams Apartments in El Paso; and #16414 Father Carlos Pinto Memorial Apartments in El Paso.

2) Action Item 3 – Presentation, Discussion, and Possible Action on the Agency Strategic Plan for Fiscal Years 2017-2021 – was presented by Michael Lyttle, TDHCA Chief of External Affairs. The Board unanimously approved staff recommendation to submit the document to the Governor and Texas Legislature leadership.

3) Action Item 4(a) – Presentation, Discussion and Possible Action on Timely Filed Ownership Transfer Appeal for #98119 Sea Breeze Apartments in Port Lavaca – was presented by Raquel Morales, TDHCA Director of Asset Management, with additional information from Mr. Eccles, TDHCA General Counsel. Following public comment (listed below), the Board unanimously approved staff recommendation as modified to approve the appeal.

- Alvin Johnson, Hope Housing Foundation, testified in opposition to staff recommendation to deny the appeal
- Cynthia Bast, Locke Lord, testified in opposition to staff recommendation to deny the appeal

4) Action Item 4(b) – Presentation, Discussion, and Possible Action regarding forgiveness of the Department's Direct HOME loan to #531102 Country Villa in Freer – was presented by Ms. Morales. The Board unanimously approved staff recommendation to grant forgiveness of the loan.

5) Action Item 4(c) – Presentation, Discussion, and Possible Action regarding waiver of 10 TAC Section 11.5(3)(d) for #15267 Thomas Westfall Memorial in El Paso – was presented by Ms. Morales. The Board unanimously approved staff recommendation to grant the waiver.

6) Action Item 5(a) – Presentation, Discussion, and Possible Action on Timely Filed Scoring Notice Appeals under the Department's Multifamily Program Rules for #16029 Baxter Lofts in Harlingen and #16168 Stonebridge of Whitehouse in Whitehouse – was presented by Marni Holloway, TDHCA Director

of Multifamily Finance with additional information from Tim Irvine, TDHCA Executive Director, and Mr. Eccles. The appeal for #16168 Stonebridge of Whitehouse was removed from consideration by request of the applicant. Following public comment (listed below), the Board unanimously approved staff recommendation to deny the appeal.

- Sallie Burchitt, Structure Development, testified in opposition to staff recommendation
- Chris Boswell, City of Harlingen, testified in opposition to staff recommendation
- Cynthia Bast, Locke Lord, testified in opposition to staff recommendation
- Art Cavazos, Harlingen Consolidated Independent School District, testified in opposition to staff recommendation
- Mark Musemeche, developer, testified in support of staff recommendation
- Tamea Dula, Coats Rose, testified in support of staff recommendation
- Barry Palmer, Coats Rose, testified in support of staff recommendation

7) Action Item 5(b) – Presentation, Discussion, and Possible Action Regarding the Issuance of Multifamily Housing Revenue Bonds (Fifty Oaks Apartments and Edinburg Village) Series 2016 Resolution No. 16-017 and Determination Notices of Housing Tax Credits – was presented by Teresa Morales, TDHCA 4% Tax Credit and Bonds Program Administrator. The Board unanimously approved staff recommendation to issue the bonds and award the tax credits.

8) Action Item 5(c) – Presentation, Discussion, and Possible Action on Determination regarding Eligibility under 10 TAC §10.101(a)(4) related to Undesirable Neighborhood Characteristics on Villa Americana, Houston – was pulled from the agenda.

9) Action Item 5(d) – Presentation, Discussion, and Possible Action regarding approval for publication in the Texas Register of Revisions to the 2016-1 Multifamily Direct Loan Notice of Funding Availability – was presented by Andrew Sinnott, TDHCA Multifamily Loans Program Administrator. The Board unanimously approved staff recommendation to publish the revisions.

10) Action Item 6 – Report and discussion regarding a number of specific policy objectives that will be used for the development of the proposed draft of the 2017 Qualified Allocation Plan (“QAP”) and the proposed draft of the related rules governing the administration of multifamily programs – was presented by Ms. Holloway with additional information from Mr. Irvine. The Board heard the report, listened to public comment (listed below), and took no action.

- Janine Sisak, Texas Affiliation of Affordable Housing Providers, made comment on the 2017 QAP
- Charlie Duncan, Texas Low Income Housing Information Service, made comment on the 2017 QAP
- Lisa Stevens, Texas Coalition of Affordable Developers, made comment on the 2017 QAP
- Tim Alcott, San Antonio Housing Authority, made comment on the 2017 QAP
- Joy Horak-Brown, New Hope Housing, made comment on the 2017 QAP
- Kristi Rangel, City of Houston, made comment on the 2017 QAP
- Dennis Hoover, Hamilton Valley Management, Inc., made comment on the 2017 QAP
- Barry Palmer, Coats Rose, made comment on the 2017 QAP

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

There being no further business to come before the Board, the meeting adjourned at 11:52 a.m. The next meeting is set for Thursday, June 30, 2016.

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Secretary

Approved:

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Chair

Texas Department of Housing and Community Affairs Governing Board  
Board Meeting Minutes Summary  
June 30, 2016

On Thursday, the thirtieth day of June 2016, at 9:00 a.m., the regular meeting of the Governing Board ("Board") of the Texas Department of Housing and Community Affairs ("TDHCA" or the "Department") was held in Room JHR 140, John H. Reagan Building, 105 W. 15<sup>th</sup> Street, Austin, Texas.

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

- J. Paul Oxer
- Dr. Juan Muñoz
- Leslie Bingham Escareño
- Tom H. Gann
- JB Goodwin

J. Paul Oxer served as Chair, and James "Beau" Eccles served as secretary.

- 1) The Board unanimously approved the Consent Agenda as presented.
- 2) Action Item 3(a) – Presentation, Discussion, and Possible Action on the FY 2017 Operating Budget – was presented by Ernie Palacios, TDHCA Director of Financial Administration, with additional information from Tim Irvine, TDHCA Executive Director. The Board unanimously approved staff recommendation to approve the operating budget.
- 3) Action Item 3(b) – Presentation, Discussion, and Possible Action on the FY 2017 Housing Finance Division Budget – was presented by Mr. Palacios. The Board unanimously approved staff recommendation to approve the division budget.
- 4) Action Item 4(a) – Presentation, Discussion, and Possible Action on Inducement Resolution No. 16-018 for Multifamily Housing Revenue Bonds Regarding Authorization for Filing Applications for Private Activity Bond Authority and Determination regarding Eligibility under 10 TAC §10.101(a)(4) related to Undesirable Neighborhood Characteristics for Piney Woods Village (#16608) – was pulled from the agenda and not considered.
- 5) Action Item 4(b) – Presentation, Discussion and Possible Action on a Determination Notice for Housing Tax Credits with another Issuer and an Award of Direct Loan Funds (#16406 New Hope Housing at Reed, Houston) – was presented by Teresa Morales, TDHCA 4% Tax Credit and Bonds Program Administrator. The Board unanimously approved staff recommendation to award the tax credits and loan funds.
- 6) Action Item 4(c) – Presentation, Discussion, and Possible Action on a Determination Notice for Housing Tax Credits with another Issuer and an Award of Direct Loan Funds (#16400 Acme Road Apartments, San Antonio) – was presented by Ms. Morales. The Board unanimously approved staff recommendation to award the tax credits and loan funds.
- 7) Action Item 4(d) – Presentation, Discussion, and Possible Action on a Determination Notice for Housing Tax Credits with another Issuer for #16411 Chas E Graham Apartments, El Paso; #16412 Rio

Grande Apartments, El Paso; #16413 Judson Williams Apartments, El Paso; and, #16414 Father Carlos Pinto Memorial Apartments, El Paso – was pulled from the agenda and not considered.

8) Action Item 4(e) – Presentation, Discussion, and Possible Action on Timely Filed Scoring Notice Appeals under the Department’s Multifamily Program Rules for #16001 Rolling Hills, Fredericksburg – was presented by Sharon Gamble, TDHCA 9% Tax Credit Program Administrator, with additional information from Mr. Irvine and Tom Gouris, TDHCA Deputy Executive Director. Following public comment (listed below), the Board unanimously approved staff recommendation to deny the appeal.

- Cynthia Bast, Locke Lord, testified in opposition to staff recommendation

9) Action Item 4(f) – Presentation, Discussion and Possible Action on Staff Determinations regarding 10 TAC §10.101(a)(3) related to Undesirable Site Features and 10 TAC §10.101(a)(4) related to Applicant Disclosure of Undesirable Neighborhood Characteristics for #16200 Kirby Park Villas, San Angelo; and #16274 Rockview Manor, Fort Hancock – was pulled from the agenda and not considered.

10) Action Item 4(g) – Staff will present a summary of Determinations under 10 TAC §11.10 of the 2016 Qualified Allocation Plan related to #16012 Mariposa at Clear Creek, Webster; #16026 Laguna Hotel Lofts, Cisco; #16029 Baxter Lofts, Harlingen; #16057 Silverleaf at Mason, Mason; #16071 Bluff View Senior Village, Crandall; #16117 Indian Lake Apartment Homes, Indian Lake; #16118 The Standard on the Creek, Houston; #16161 Elysium Park, Austin; #16164 Saralita Senior Village, Kerrville; #16169 Havens of Hutto, Hutto; #16263 Starlight, Murillo; #16292 Avanti Canyon, Schertz; #16373 Avondale Farms Seniors, Fort Worth; #16380 Sierra Vista, Lopezville CDP; and #16387 Cantabria Estates Apartments, Brownsville – was presented by Marni Holloway, TDHCA Director of Multifamily Finance, with additional information from Mr. Irvine; Mr. Eccles, TDHCA General Counsel; and Brent Stewart, TDHCA Director of Real Estate Analysis. Following public comment (listed below), the Board directed staff to place #16118 The Standard on the Creek and #16380 Sierra Vista on the next Board meeting agenda for further consideration.

- Zachary Krochtengel, State Street Housing, made comment on #16057 Silverleaf at Mason
- Mike Sugrue, StoneLeaf Companies, made comment on #16057 Silverleaf at Mason
- Michael Hartman, Roundstone Development, made comment on #16117 Indian Lake Apartment Homes
- Donna Rickenbacker, Marquis Development, made comment on #16118 The Standard on the Creek
- Sarah Andre, Structure Development, made comment on #16118 The Standard on the Creek
- Helen Davis-Williams, staffer for The Honorable Harold V. Dutton, Jr., State Representative, Texas House District 142, read a letter into the record regarding #16118 The Standard on the Creek
- Clayton Likover, Ojala Holdings, made comment on #16118 The Standard on the Creek
- Guy Rankin made comment on #16118 The Standard on the Creek
- Barry Palmer, Coats Rose, made comment on #16380 Sierra Vista
- Donna Rickenbacker, Marquis Development, made comment on #16380 Sierra Vista
- Henry Flores, IV, Madhouse Development, made comment on #16380 Sierra Vista
- Cynthia Bast, Locke Lord, made comment on #16380 Sierra Vista
- Mark Musemeche, MGroup, made comment on #16380 Sierra Vista
- Michael Lyttle, TDHCA Chief of External Affairs, read a letter into the record relating to #16380 Sierra Vista from The Honorable Eddie Lucio, Jr., State Senator, Texas Senate District 27

- Mr. Lyttle read a letter into the record relating to #16380 Sierra Vista from The Honorable Armando "Mando" Martinez, State Representative, Texas House District 39

11) Action Item 4(h) – Presentation, Discussion, and Possible Action to Issue a list of Approved Applications for Housing Tax Credits ("HTC") in accordance with §2306.6724(e) of the Texas Government Code – was presented by Ms. Gamble. Following public comment (listed below), the Board unanimously approved staff recommendation to issue the list of applications.

- Mr. Lyttle read a letter into the record from The Honorable Abel Herrero, State Representative, Texas House District 34, indicating his withdrawal of support for #16343 Calallen Apartments

12) At 10:05 a.m. the Board went into Executive Session and reconvened in open session at 10:38 a.m. No action was taken in or as a result of Executive Session.

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

There being no further business to come before the Board, the meeting adjourned at 12:30 p.m. The next meeting is set for Thursday, July 14, 2016.

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Secretary

Approved:

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Chair

1b

**BOARD ACTION REQUEST**

**ASSET MANAGEMENT**

**AUGUST 25, 2016**

Presentation, Discussion, and Possible Action regarding a material amendment to the Housing Tax Credit (“HTC”) Application for Sunquest Apartments in Primera (#13281)

**RECOMMENDED ACTION**

**WHEREAS**, Sunquest Apartments received an award of 9% Housing Tax Credits in 2013 to construct 128 new units in Primera;

**WHEREAS**, the Development Owner has requested approval for a decrease in the development site acreage from 10 acres to 9.21 acres as a result of a right of way dedication required by the City of Primera, which resulted in an 8.5% modification to the residential density;

**WHEREAS**, the Development Owner has also requested approval for slight changes to the site plan that resulted in a modification of the site plan;

**WHEREAS**, Board approval is required for a modification of the residential density of at least 5% under Tex. Gov’t Code §2306.6712 and 10 TAC §10.405(a)(3)(F), and the Owner has complied with the amendment requirements in 10 TAC §10.405(a); and

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

**NOW, therefore, it is hereby**

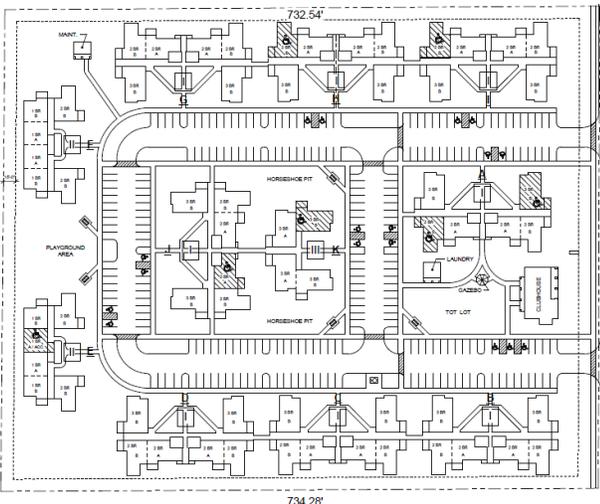
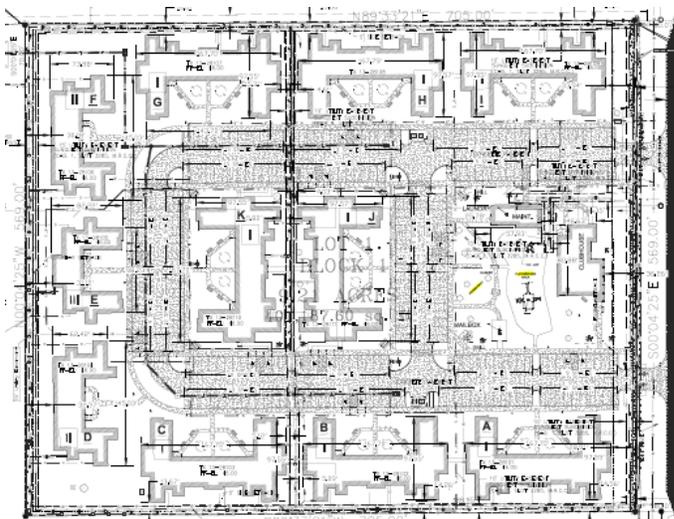
**RESOLVED**, that the requested material amendment of the HTC Application for Sunquest Apartments is approved as presented to this meeting and the Executive Director and his designees are each authorized, directed, and empowered to take all necessary action to effectuate the foregoing.

**BACKGROUND**

Sunquest Apartments was submitted and approved for a 9% HTC allocation during the 2013 cycle to construct 128 new multifamily units in Primera. The owner (Sunny K. Philip) has submitted a request for approval for a decrease in acreage resulting in a change to the residential density and for approval of significant changes to the site plan. At Application the site was identified as 10 acres. During the review of the cost certification, Department staff identified that the as-built survey

provided identified a final site acreage of 9.21 acres. The as-built survey also reflects a 60 foot Right of Way (“ROW”) along the east side of the property. The owner explains that the City of Primera required the ROW as a condition of obtaining approval of the plat. The dedication of the ROW resulted in a 0.79 acre reduction from the original 10 acres and an 8.5% increase in the residential density. A rendering of the final survey below shows the 60’ ROW that was dedicated.

The final as-built survey provided with the cost certification also reveals that there were slight changes to the original site design. The owner’s amendment request indicates that in the original design, the playground was located in the back of the Development while the laundry and clubhouse were located in the front. After meeting with their design team and the manager and residents from an existing property, concerns were expressed regarding the location of the playground because it did not provide visibility of the children from the laundry and clubhouse. Therefore, the owner states that the design was changed to switch the location of one of the residential buildings with the playground. The as-built survey indicates the playground is now located in the front of the property next to the laundry and clubhouse. The as-built survey also reveals that the location of horseshoe pits and the maintenance building were also changed and are now consolidated in the front of the property with the other amenities.

Material Alterations as defined in Texas Government Code §2306.6712(d) and 10 TAC §10.405(a)(3)	
Application	Amendment
<p><b><u>Modification of the residential density of at least 5 percent</u></b></p> <p>Development Site: 10 acres            128 Units  <b>Density: 12.8 units/acre</b>            11 Residential Buildings            127,208 Net Rentable SF</p> 	<p>Development Site: 9.21 acres            128 Units  <b>Density: 13.8 units/acre (+8.5%)</b>            11 Residential Buildings            126,968 Net Rentable SF</p> 

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

Staff recommends approval of the material amendment as presented.



**South Texas Collaborative  
for Housing Development, Inc.**

*A Non-Profit Fostering Safe and Affordable Housing*

July 20, 2016

Ms. Lee Ann Chance  
Asset Manager  
TDHCA  
221 E. 11<sup>th</sup> Street  
Austin, TX 78701

Re: Sunquest Apartments, #13281  
Application Amendment to Reduce Site Area

Dear Ms. Chance,

On behalf of the Applicant, Sunquest Properties, L.P., I request an amendment to the Application to reflect the reduction in site area from that stated in the Application.

The site area shown in the application was 9.99 acres as is shown on the attached subdivision plat named, Plat of Sunquest Subdivision. The plat also depicts an area along the eastern-most portion of the property labelled, "60' ROW DEDICATED BY THIS PLAT", adjacent to the existing public street Stuart Place Road. The City of Primera required dedication of a 60' strip of land as a condition of obtaining subdivision plat approval. By virtue of the plat being approved and recorded, the 60' right of way was conveyed to the City of Primera. This right of way land area is 34,140 SF, or 0.78 acres, a 7.85% site area reduction. The As-Built Survey states the remaining site area after right of way dedication totals 9.21 acres which conforms to the removal of 0.78 acres from the original 9.99 acre parcel shown in the subdivision.

Given that the site area reduction was a requirement of a governmental body, the TDHCA Board is requested to approve the site reduction as the Applicant had no alternative than comply with the City of Primera subdivision regulations and dedicate the stated street right of way.

Sincerely,

Sunny K. Philip  
Executive Director

Attachments



July 5, 2016

Lee Ann Chance  
Asset Manager Regions 1, 2, and 8  
Texas Department of Housing and Community Affairs  
221 East 11th Street  
Austin, Texas 78701-2410

Re: TDHCA #13281 Sunquest Apartments  
Application Amendment Request

Dear Ms. Chance,

This is a formal application amendment request for the abovementioned property. At the time of application, our development team drafted a site plan for Sunquest Apartments that efficiently accommodated the proposed 128 multifamily units and the elected common amenities.

In the early stages of pre-development, however, our team – including the architect, general contractor, and developer – met with the manager and residents of an existing property to discuss any concerns that could be improved through the Sunquest Apartments design. One of most persistent concerns of the proposed site plan was the lack of visibility of the playground from the laundry facilities and the clubhouse; residents were uncomfortable with our original plan to place the playground – and their children – at the back of the property. We reorganized the site plan accordingly.

The required application amendment fee of \$2,500 is included with this letter. I would appreciate a confirmation receipt once you have this letter in hand. If you have any questions or require any additional information, please do not hesitate to call my office at (956) 797-2324.

Sincerely,

Sunny K. Philip  
Manager

Sunquest Properties, L.P.  
P.O. Box 329  
La Feria, Texas 78559-5002  
Phone (956) 797-2324 Fax (956) 797-1898

## Site Information Form Part II

Self Score Total: **116**

### 1. Site Acreage

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

Site Control: 10      Site Plan: 10      Appraisal: N/A      ESA: 10

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

N/A

### 2. Site Control

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

<u>John C. Demoss</u>	<u>Buddy Dosset</u>	<u>7/1/1971</u>
<b>Entity Name</b>	<b>Contact Name</b>	<b>Date of Last Sale</b>
<u>6950 France Ave S.</u>	<u>Edina</u>	<u>MN</u> <u>55435</u>
<b>Address</b>	<b>City</b>	<b>State</b> <b>Zip</b>

Is the seller affiliated with the Applicant, Principal, sponsor, or any Development Team member? No

If "Yes," please explain: N/A

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

**Applicant or Applicant Representative Reminder:**

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

The seller has owned the development site since July 1971.

Site Control is in the form of:

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

Expiration of Contract or Option: ~~9/8/2013~~ 7/7/13      Anticipated Closing Date: 9/1/2013

### 3. Title Commitment/Policy

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

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

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

Development qualifies for the boost for:

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

from application

### REAL ESTATE CONTRACT

THIS REAL ESTATE CONTRACT (the Contract) is made by and between **BILL C. DeMOSS, JOHN C. DeMOSS, CHARLES C. DeMOSS and MICHAEL C. DeMOSS** (collectively Seller) and **SOUTH TEXAS COLLABORATIVE FOR HOUSING DEVELOPMENT, INC.**, a Texas Non-profit Corporation (Buyer) upon the terms and conditions set forth herein.

#### Article I Sale and Purchase of Property

1.1 Property. Seller hereby sells and agrees to convey, and Buyer hereby purchases and agrees to pay for 10.0 acres of land, more or less, out of Block 61, Wilson Tract Subdivision, Survey 25, Cameron County, Texas, as more particularly described on Exhibit "A" attached hereto and made a part hereof, SAVE AND EXCEPT all the oil, gas and other minerals, in, on, under or that may be produced therefrom, provided further, if the mineral estate is subject to existing production or existing leases, this reservation includes the production, the leases and all benefits therefrom, together with all and singular the rights and appurtenances pertaining to the property, including any right, title and interest of Seller in and to adjacent roads or rights-of-way related to the property, (all of such real property, rights and appurtenances being collectively referred to as the "Property"), that is owned by Seller, for the consideration and upon and subject to the terms, provisions and conditions hereinafter set forth. The exact description of the Property shall be determined by the survey as provided below.

1.2 Non-Drilling Agreement. Notwithstanding anything to the contrary herein contained, Seller's reservation of the oil, gas and other minerals and mineral rights in and under or that may be produced from the Property, as set forth in Article 1.1 above, is limited, however, by the agreement of Seller, any other owner of any mineral interest, and any lessee thereof, their successors and assigns, (the Mineral Interest Holder) that no well, equipment, edifice or surface operation of any kind shall ever be placed, drilled, or otherwise installed upon the surface of the Property, without prejudice, however, to Mineral Interest Holder's retained interest in the subsurface of the Property consistent with development of the Property, including (but not limited to) the right to drill wells directionally for oil, gas or other minerals below the surface of such Property regardless of where the directionally drilled wells, if any, shall be bottomed, the right to execute unitization agreements permitting such Property to be unitized with other lands upon which wells have been drilled for salt water or other materials and substances into the subsurface of the Property in such manner as not to harm the surface of such Property. Seller, at Seller's sole cost and expense, shall provide a non-drilling agreement in form satisfactory to Buyer to be executed by all Mineral Interest Holders in the Property and recorded at closing.

#### Article II Purchase Price

2.1 Amount of Purchase Price. Subject to the possible adjustment described in Article 1.1 above, the Purchase Price for the Property to be paid by Buyer shall be the sum of TWO HUNDRED TWENTY THOUSAND DOLLARS (\$220,000.00).

2.2 Payment of Purchase Price. The total Purchase Price shall be payable in cash or other good funds at closing.

*Demoss*  
*of 14*  
*[Signature]* Page 1

Cameron County  
Joe G Rivera  
County Clerk  
Brownsville, TX 78520

from 10% Test



70 2014 00025587

Instrument Number: 2014-00025587

As

Recorded On: July 23, 2014

Real Property

Parties: DeMoss  
To Sunquest

Billable Pages: 9

Number of Pages: 10

Comment: General Warranty Deed (9.99)

( Parties listed above are for Clerks reference only )

**\*\* Examined and Charged as Follows: \*\***

Real Property	58.00
<b>Total Recording:</b>	<b>58.00</b>

\*\*\*\*\* DO NOT REMOVE. THIS PAGE IS PART OF THE INSTRUMENT \*\*\*\*\*

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

**File Information:**

Document Number: 2014-00025587  
Receipt Number: 696235  
Recorded Date/Time: July 23, 2014 01:51:29P  
Book-Vol/Pg: BK-OR VL-20316 PG-20  
User / Station: C Ceballos - Cash Station #11

**Record and Return To:**

RICHARD S TALBERT  
612 S TEXAS  
WESLACO TX 78596

I hereby certify that this instrument was filed on the date and time stamped hereon and was duly recorded in the Official Public Records in Cameron County, Texas



Joe G. Rivera  
Cameron County Clerk

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

## GENERAL WARRANTY DEED

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

THAT JOHN C. DeMOSS, Trustee under the JOHN C. DeMOSS REVOCABLE TRUST, BILL C. DeMOSS, Trustee under the BILL C. DeMOSS REVOCABLE TRUST, CHARLES C. DeMOSS, Trustee under the CHARLES C. DeMOSS REVOCABLE TRUST, and MICHAEL C. DeMOSS, Trustee under the MICHAEL C. DeMOSS REVOCABLE TRUST and MICHAEL C. DeMOSS, individually and joined *pro forma* herein by my spouse MAUREEN J. DeMOSS, hereinafter collectively referred to as "Grantors", for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration to Grantors in hand paid by SUNQUEST PROPERTIES, LP, a Texas limited partnership, hereinafter referred to as "Grantee", the receipt and sufficiency of which are hereby acknowledged and confessed;

And Grantors have GRANTED, SOLD, AND CONVEYED, and by these presents do GRANT, SELL, AND CONVEY, unto said Grantee, the real property more fully described on EXHIBIT "A" and attached hereto and incorporated herein for all purposes (the "Land"), *together with*:

(a) any and all improvements, buildings, structures, fixtures, and open parking areas located on the Land (the "Improvements");

(b) any and all privileges and appurtenances pertaining thereto (the "Appurtenances");

(c) all of Grantors' right, title, and interest in and to:

(i) any roadways and rights-of-way, streets, alleys and ways (open or proposed) affecting, crossing, fronting or bounding the Land, including any awards made by reason of damages thereto or by reason of a widening of or changing of the grade with respect to the same (the "Roads");

(ii) all strips, gores or pieces of property abutting, bounding or which are adjacent or contiguous to the east or north boundaries of the Land (whether owned or claimed by deed, limitations, or otherwise); but specifically excluding and reserving any property owned by Grantors lying west or south of the Land;

(iii) any and all appurtenant easements or rights of way affecting the Land and any of Grantors' rights to use the same;

(iv) any and all rights of ingress and egress to and from the Land and any of Grantors' rights to use the same;

(v) any and all reversionary interests in and to said Land;

(vi) all right, title and interest of Grantors, if any, in and to oil, gas, hydrocarbons, and other minerals in, on, under, or that may be produced from the Land (the "Minerals");

(vii) any and all licenses and permits related to the Land; and

(viii) all water, waste-water and other utility capacities, if any, pertaining to the Land (the "Utility Rights").

The Land, Improvements, Appurtenances, and all of Grantors' right, title, and interest in and to the rights of ingress and egress to and from the Land, licenses and permits, Roads, reversionary interests, Minerals, and Utility Rights are collectively referred to as the "Property".

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereunto in anyway belonging unto Grantee and Grantee's successors and assigns forever; and Grantors do hereby bind themselves, their successors, heirs, and assigns to warrant and forever defend, all and singular the Land unto Grantee and Grantee's successors and assigns, against every person whomsoever lawfully claiming, or to claim the same, or any part thereof.

Ad valorem taxes and assessments for the current calendar year have been prorated as of the date hereof, and Grantee assumes and agrees to pay the same prior to delinquency.

*Remainder of page intentionally blank with individual signature pages to follow.*

DATED the 15 day of July, 2014.

JOHN C. DeMOSS REVOCABLE TRUST

*John C. DeMoss, Trustee under the John C. DeMoss Revocable Trust*

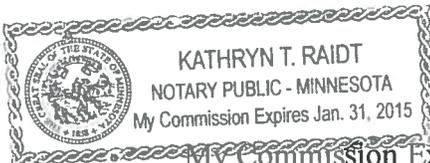
JOHN C. DeMOSS, Trustee under the JOHN C. DeMOSS REVOCABLE TRUST

STATE OF MINNESOTA |

SS:

COUNTY OF HENNEPIN |

This instrument was acknowledged before me on the 15<sup>th</sup> day of July, 2014, by JOHN C. DeMOSS, Trustee under the JOHN C. DeMOSS REVOCABLE TRUST, on behalf of said revocable trust.



*Kathryn T. Raidt*  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:  
Print Name of Notary:

DATED the 15<sup>th</sup> day of July, 2014.

BILL C. DeMOSS REVOCABLE TRUST

*Bill C. DeMoss, Trustee, under the  
Bill C. DeMoss Revocable Trust*

BILL C. DeMOSS, Trustee under the BILL C.  
DeMOSS REVOCABLE TRUST

STATE OF MINNESOTA

ss:

COUNTY OF HENNEPIN

This instrument was acknowledged before me on the 15<sup>th</sup> day of July, 2014,  
by BILL C. DeMOSS, Trustee under the BILL C. DeMOSS REVOCABLE TRUST, on behalf of  
said revocable trust.



*[Handwritten Signature]*  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: 1-31-2015  
Print Name of Notary: KATHRYN T. RAIDT

DATED the 15 day of July, 2014.

CHARLES C. DeMOSS REVOCABLE TRUST

*Charles C. DeMoss*  
CHARLES C. DeMOSS Trustee under the  
CHARLES C. DeMOSS REVOCABLE TRUST

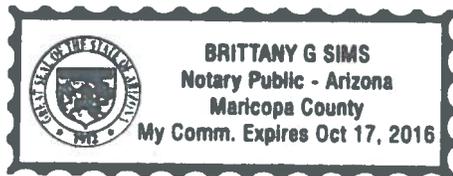
STATE OF Arizona  
COUNTY OF Maricopa

SS:

This instrument was acknowledged before me on the 15<sup>th</sup> day of July, 2014, by CHARLES C. DeMOSS, trustee under the CHARLES C. DeMOSS REVOCABLE TRUST, on behalf of said revocable trust.

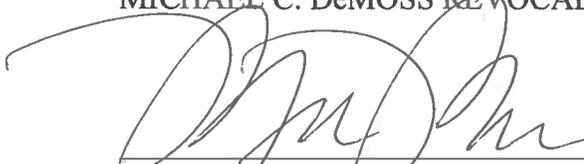
*Brittany G. Sims*  
NOTARY PUBLIC

My Commission Expires: 10/17/2016  
Print Name of Notary: Brittany G. Sims

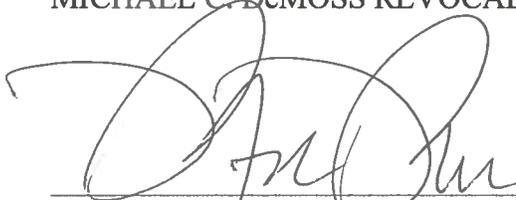


DATED the 15<sup>th</sup> day of July, 2014.

MICHAEL C. DeMOSS REVOCABLE TRUST



MICHAEL C. DeMOSS, Trustee under the  
MICHAEL C. DeMOSS REVOCABLE TRUST



MICHAEL C. DeMOSS, Individually

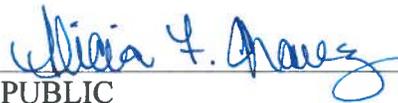


MAUREEN J. DeMOSS

STATE OF California  
COUNTY OF San Mateo

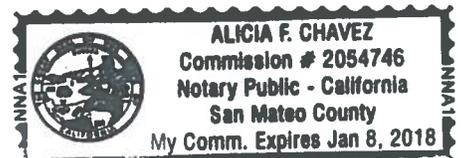
ss:

This instrument was acknowledged before me on the 15 day of July, 2014, by MICHAEL C. DeMOSS, Trustee under the MICHAEL C. DeMOSS REVOCABLE TRUST, on behalf of said revocable trust.



NOTARY PUBLIC

My Commission Expires: Jan. 8, 2018  
Print Name of Notary: Alicia F. Chavez



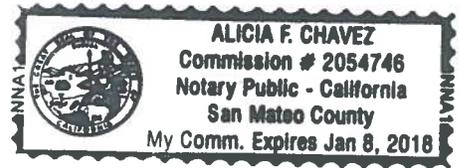
STATE OF California  
COUNTY OF San Mateo

SS:

This instrument was acknowledged before me on the 15<sup>th</sup> day of July, 2014, by MICHAEL C. DEEMOSS, individually, and wife, MAUREEN J. DeMOSS.

Alicia F. Chavez  
NOTARY PUBLIC

My Commission Expires: Jan. 8, 2014  
Print name of Notary: Alicia F. Chavez



Grantee's Mailing Address:

Sunquest Properties, LP  
P.O. Box 329  
La Feria, TX 78559-0329

RETURN ORIGINAL TO:

Sierra Title Company of Cameron & Willacy Counties  
1902 E. Harrison  
Harlingen, Texas 78550  
ATTN: Tamra K. Webb

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF REAL PROPERTY**

BEING a 9.99 acre tract of land situated in Cameron County, Texas and being out of Block 61, Wilson Tract Subdivision, as recorded in Volume 9, Page 28, Map Records Cameron County, Texas. And being out of the called south 7 acres (6.52 acres calc.) of the north 10 acres of said Block 61, as described in the Instrument to John C. DeMoss Revocable Trust, Bill C. DeMoss Revocable Trust, Charles C. DeMoss Revocable Trust, and Michael C. DeMoss Revocable Trust, as recorded in Volume 5314, Page 267, Official Records Cameron County, Texas, said 9.99 acre tract also being out of the south 30 acres of said Block 61, as described in the Instrument to John C. DeMoss Revocable Trust, Bill C. DeMoss Revocable Trust, Charles C. DeMoss Revocable Trust and Michael C. DeMoss Revocable Trust, as recorded in Volume 5314, Page 261, Official Records Cameron County, Texas, and being more particularly described by metes and bounds as follows: (Basis of bearing: Texas State Plane Coordinate System of 1983, South Zone 4205.)

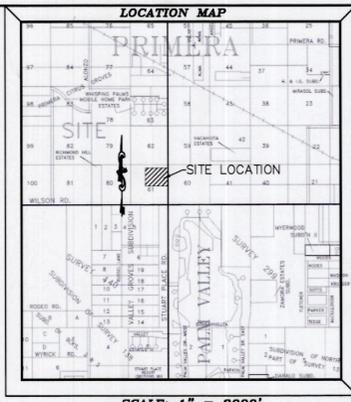
COMMENCING, at a "PK" nail set on the northeast corner of said Block 61, said point being located in the centerline of Stuart Place Road (60 foot right-of-way); THENCE, South 00 degrees 04 minutes 25 seconds East, along the east line of said Block 61 and along the centerline of said Stuart Place Road, a distance of 115.00 feet to a "PK" nail set for the northeast corner of said called south 7 acres, and for the northeast corner and the POINT OF BEGINNING of the tract herein described;

THENCE, South 00 degrees 04 minutes 25 seconds East, along the east line of said Block 61 and along the centerline of said Stuart Place Road, passing at a distance of 215.26 feet the southeast corner of said called south 7 acres and the northeast corner of said 30 acre tract, a total distance of 569.00 feet to a "PK" nail set for the southeast corner of the tract herein described;

THENCE, South 89 degrees 33 minutes 21 seconds West, leaving the centerline of said Stuart Place Road and parallel with the north line of said Block 61, passing at a distance of 30.0 feet a 1/2-inch iron rebar set on the apparent west right-of-way line of said Stuart Place Road, a total distance of 765.00 feet to a 1/2-inch iron rebar set for the southwest corner of the tract herein described;

THENCE, North 00 degrees 04 minutes 25 seconds West, parallel with the east line of said Block 61, passing at a distance of 353.74 feet the north line of said 30 acre tract and the south line of said called south 7 acres, a total distance of 569.00 feet to a 1/2-inch iron rebar set on the north line of said called south 7 acres for the northwest corner of the tract herein described;

THENCE, North 89 degrees 33 minutes 21 seconds East, parallel with the north line of said Block 61 and along the north line of said called south 7 acres, passing at a distance of 735.00 feet the apparent west right-of-way line of said Stuart Place Road, a total distance of 765.00 feet to the POINT OF BEGINNING containing 9.99 acres of land, more or less.



from 10% Test

POINT OF COMMENCEMENT  
N.E. CORNER  
BLOCK 61

POINT OF BEGINNING  
9.21 ACRE TRACT

SCHEDULE B ITEMS AS PER PRO FORMA OWNER POLICY (TO BE DATED THE DATE OF CLOSING), OF NO. 2130082 AS PREPARED BY SIERRA TITLE COMPANY OF CAMERON AND WILLACY COUNTIES ON BEHALF OF CHICAGO TITLE INSURANCE COMPANY.

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) that arise by reason of the terms and conditions of the leases and easements, if any, shown in Schedule A, and the following matters:

1. The following restrictive covenants of record itemized below (the Company must either insert specific recording data or delete this exception):  
Those as set out in that certain U.S. Department of Housing and Urban Development Regulatory Agreement for Multi-Housing Projects, recorded on July 30, 2014 under County Clerk's File No. 2014-26532, Official Records, Cameron County, Texas.

2. Any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments or protrusions, or any overlapping of improvements.  
 Item 2 of Schedule B is hereby amended to read: "shortages in area".

3. Homestead or community property or survivorship rights, if any, of any spouse of any insured.

4. Any titles or rights asserted by anyone, including but not limited to, persons, the public, corporations, governments or other entities, (a) to tidelands, or lands comprising the shores or beds of navigable or perennial rivers and streams, lakes, bays, gulfs or oceans, or (b) to lands beyond the line of the harbor or bulkhead lines as established or changed by any government, or (c) to filled-in lands, or artificial islands, or (d) to statutory water rights, including riparian rights, or (e) to the area extending from the line of mean low tide to the line of vegetation, or the right of access to that area or easement along and across that area.

5. Standby fees, taxes and assessments by any taxing authority for the year 2014, and subsequent years; and subsequent taxes and assessments by any taxing authority for prior years due to changes in land usage or ownership, but not those taxes or assessments for prior years because of an exemption granted to a previous owner of the property under Section 11.13, Texas Tax Code, or because of improvements not assessed for a previous tax year.

6. The following matters and all terms of the documents creating or offering evidence of the matters (The Company must insert matters or delete this exception):

a. Easements, rights, rules and regulations in favor of La Feria Water Control and Improvement District [Cameron County] No. 3 pursuant to the applicable Texas Statutes. (as to PARCEL TWO)

b. Easements, rights, rules and regulations in favor of Cameron County Drainage District No. 5 pursuant to the applicable Texas Statutes.

c. The following building set back lines as shown on plot of Sunquest Subdivision filed for record in the Office of the County Clerk of Cameron County, Texas in Cabinet 1, Page 3285:  
1. Twenty five foot [25.0'] building setback line along the east side of said tract;  
2. Five foot [5.0'] building set back line along the north and south sides of said tract;  
3. Ten foot [10.0'] building setback line along the west side of said tract;

The locations of which are shown on survey prepared by Jimmy Closer & Sons Construction Co., Inc., Robert L. Closer, Jr., Registered Professional Land Surveyor No. 5983, dated July 10, 2014, last revised July 28, 2014. (as to PARCEL ONE)

d. The following utility easements as shown on plot of Sunquest Subdivision filed for record in the Office of the County Clerk of Cameron County, Texas in Cabinet 1, Page 3285:  
1. Ten foot [10.0'] utility easement along the east line of said tract;  
2. Ten foot [10.0'] utility easement(s) along the north and south line of said tract;  
3. Ten foot [10.0'] utility easement bisecting from north to south the said tract;  
4. Ten foot [10.0'] utility easement extending westerly from the east line of the said tract;  
5. Fifteen foot [15.0'] utility easement along the west line of said tract;

The locations of which are shown on survey prepared by Jimmy Closer & Sons Construction Co., Inc., Robert L. Closer, Jr., Registered Professional Land Surveyor No. 5983, dated July 10, 2014, last revised July 28, 2014. (as to PARCEL ONE)

e. Encroachment of neighbor's fence on the north side of the tract, together with any claim or assertion of ownership in and to the land lying between said fence and the established property line, as shown on survey prepared by Jimmy Closer & Sons Construction Co., Inc., Robert L. Closer, Jr., Registered Professional Land Surveyor No. 5983, dated July 10, 2014, last revised July 28, 2014. (as to PARCEL ONE)

f. Ordinance No. 2013-06 amending a portion of above mentioned property executed by the City of Primera, recorded in Volume 1990S, Page 26, Official Records, Cameron County, Texas. (as to PARCEL ONE)

g. Any and all liens arising by reason of unpaid bills or claims for work performed or material furnished in connection with improvements placed to be placed upon the subject land. However, the Company does insure the insured against loss, if any, sustained by insured under this policy if such liens have been filed with the County Clerk of Cameron County, Texas, prior to the date hereof.

Liability hereunder at the date hereof is limited to \$220,000.00. Liability shall increase as contemplated improvements are made so that any loss payable hereunder shall be limited to said sum plus the amount actually expended by the insured in improvements at the time the loss occurs. Any expenditure made for improvements, subsequent to the date of this policy, will be deemed made as of the date of this policy, in no event shall the liability of the Company hereunder exceed the face amount of this policy. Nothing contained in this paragraph shall be construed as limiting any exception or any printed provision of this policy.

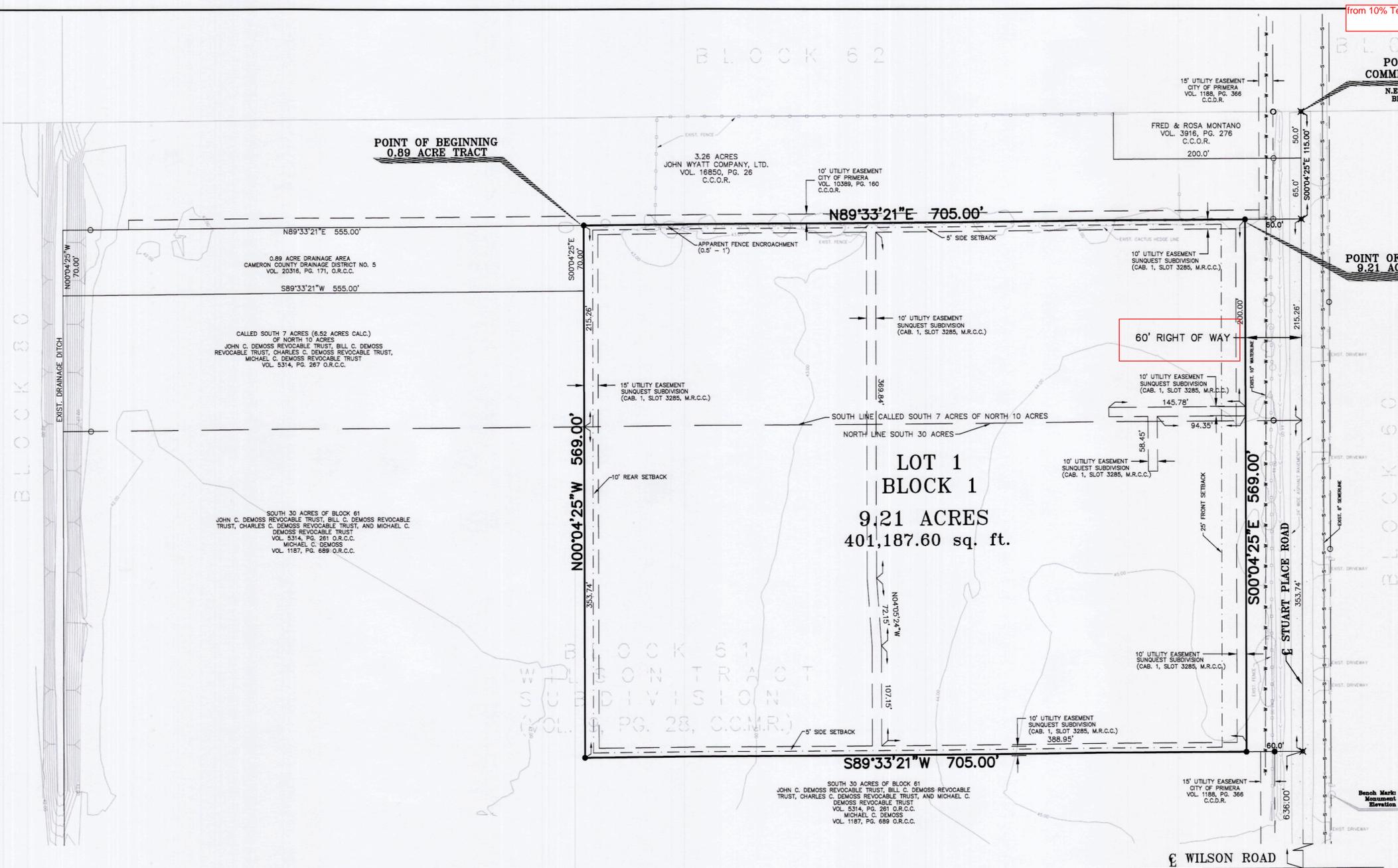
h. Multifamily Deed of Trust, Assignment of Leases and Rents, and Security Agreement, dated July 1, 2014, filed on July 30, 2014, and recorded under County Clerk's File No. 2014-26531, in the Official Records of Cameron County, Texas, as shown on Sunquest Properties, LP, a Texas limited partnership, to Harrison C. Smith, Esq., Trustee, securing the payment of one certain promissory note of even date therewith in the principal sum of \$4,025,000.00, payable as therein provided to PNC Bank, N.A. and the Secretary of Housing and Urban Development of Washington, D.C.

i. Terms, covenants and conditions as set out in that certain U.S. Department of Housing and Urban Development Regulatory Agreement for Multifamily Housing Projects, executed by Sunquest Properties, LP, a Texas limited partnership and the Secretary of Housing and Urban Development, dated July 1, 2014, filed on July 30, 2014, and recorded under County Clerk File No. 2014-26532, in the Official Records of Cameron County, Texas.

j. UCC-1 Financing Statement from Sunquest Properties, LP, a Texas limited partnership, as debtor, to PNC Bank, N.A., and the Secretary of Housing and Urban Development of Washington, D.C., as their interest may appear, as secured party, filed for record on July 30, 2014, and recorded under County Clerk's File No. 2014-26533, in the Official Records of Cameron County, Texas.

k. Terms, covenants, conditions, stipulations and easements as created in that certain Drainage Detention Easement Agreement, dated July 16, 2014, executed by and between Cameron County Drainage District No. 5, a political subdivision of the State of Texas, and Sunquest Properties, LP, a Texas limited partnership, filed for record on July 23, 2014 in the Office of the County Clerk of Cameron County, Texas under Clerk's File No. 00025626.

l. Section 14 of the Conditions and Stipulations of this Policy is hereby deleted.



**ZONING NOTES**  
Re: "Zoning Notes confirming the zoning district in which the subject property is located and all required uses, height, density, setback and parking requirements of such zoning district."  
The Plot of Sunquest Subdivision is zoned M-F (Multi-Family Residential). The zoning regulations in this district are as follows:  
Permitted Uses: Residential uses including single-family detached, townhouse, duplex, tri-plex, quadplex, apartment, condominium, accessory buildings, child day care home, community center, guest house, swimming pool, tennis court, church or rectory, community recreation center, library, park or playground, elementary, middle or high school.  
Minimum lot dimensions:  
Lot area - 6,000 square feet minimum  
Lot depth - 100 feet minimum  
Lot width - 50 feet minimum  
Minimum building set-backs:  
Front - 25 feet  
Rear - 10 feet  
Side - 5 feet  
Maximum height: 2-1/2 stories or 40 feet.  
Parking: 2 off street parking spaces for each residential unit within a multi-family building  
The proper citation to the Zoning Ordinance is, City of Primera Code of Ordinances, No. 2001-001  
FLOOD ZONE DATA:  
This tract lies in Zone 'B' as delineated on the Cameron County Texas Flood Insurance Rate Map, Community Panel Number 480101 0125B, Map Revised: September 15, 1983.

**LEGEND**  
PROPERTY LINE .....  
SET 1/2" REBAR.....  
FOUND 1/2" REBAR.....  
ELECTRICAL BOX.....  
POWER POLE.....  
MAIL BOX.....  
SET "PK" NAIL.....  
SETBACK LINE.....  
RIGHT-OF-WAY LINE.....  
EASEMENT LINE.....  
OVERHEAD POWERLINE.....

**LEGAL DESCRIPTION - LOT 1, BLOCK 1, SUNQUEST SUBDIVISION:**  
BEING Lot 1, in Block 1, of Sunquest Subdivision, a Subdivision to the City of Primera, Cameron County, Texas, according to the Plat thereof filed for record in the Office of the County Clerk of Cameron County, Texas in Cabinet 1, Slot 3285, and being more particularly described by metes and bounds as follows: (Basis of bearing: Texas State Plane Coordinate System of 1983, South Zone 4205.)  
COMMENCING, at a "PK" nail found on the northeast corner of Block 61, Wilson Tract Subdivision, as recorded in Volume 9, Page 28, Map Records of Cameron County, Texas. Said point located in the centerline of Stuart Place Road; THENCE, South 00 degrees 04 minutes 25 seconds East, along the east line of said Block 61 and along the centerline of said Stuart Place Road, a distance of 115.00 feet to a "PK" nail found on the northeast corner of said Sunquest Subdivision. THENCE, South 89 degrees 33 minutes 21 seconds West, parallel with the north line of said Block 61 and along the north line of said Sunquest Subdivision, a distance of 60.00 feet to a 1/2-inch iron rebar found for the northeast corner and the POINT OF BEGINNING of the tract herein described;  
THENCE, South 00 degrees 04 minutes 25 seconds East, along the east line of said Lot 1, Block 1, Sunquest Subdivision, a distance of 569.00 feet to a 1/2-inch rebar found for the southeast corner of the tract herein described;  
THENCE, South 89 degrees 33 minutes 21 seconds West, along the south line of said Lot 1, Block 1, Sunquest Subdivision, a distance of 705.00 feet to a 1/2-inch iron rebar found for the southwest corner of the tract herein described;  
THENCE, North 00 degrees 04 minutes 25 seconds West, along the west line of said Lot 1, Block 1, Sunquest Subdivision, a total distance of 569.00 feet to a 1/2-inch iron rebar found for the northwest corner of the tract herein described;  
THENCE, North 89 degrees 33 minutes 21 seconds East, along the north line of said Sunquest Subdivision, a distance of 705.00 feet to the POINT OF BEGINNING containing 9.21 acres of land, more or less.  
THENCE, North 89 degrees 33 minutes 21 seconds East, parallel with the north line of said Block 61 and along the north line of said Block 61, a distance of 555.00 feet to a point in the west line of said Block 61 and in the west line of said called south 7 acres for the southwest corner of the tract herein described;  
THENCE, North 00 degrees 04 minutes 25 seconds West, along the west line of said Block 61 and along the west line of said called south 7 acres, a distance of 70.00 feet to a point for the northwest corner of said called south 7 acres and the northwest corner of the tract herein described;  
THENCE, North 89 degrees 33 minutes 21 seconds East, parallel with the north line of said Block 61 and along the north line of said called south 7 acres, a distance of 555.00 feet to the POINT OF BEGINNING containing 0.89 acres of land, more or less.

**LEGAL DESCRIPTION - 0.89 ACRE DRAINAGE AREA:**  
BEING a 0.89 acre tract of land situated in Cameron County, Texas and being out of Block 61, Wilson Tract Subdivision, as recorded in Volume 9, Page 28, Map Records Cameron County, Texas; Said 0.89 acre tract being out of the called south 7 acres (6.52 acres calc.) of the north 10 acres of said Block 61, as described in the instrument to John C. DeMoss Revocable Trust, Bill C. DeMoss Revocable Trust, Charles C. DeMoss Revocable Trust, and Michael C. DeMoss Revocable Trust, as recorded in Volume 5314, Page 267, Official Records Cameron County, Texas, and being more particularly described by metes and bounds as follows: (Basis of bearing: Texas State Plane Coordinate System of 1983, South Zone 4205.)  
COMMENCING, at a "PK" nail set on the northeast corner of said Block 61, said point being located in the centerline of Stuart Place Road (60 foot right-of-way); THENCE, South 00 degrees 04 minutes 25 seconds East, along the east line of said Block 61 and along the centerline of said Stuart Place Road, a distance of 115.00 feet to a "PK" nail set for the northeast corner of said called south 7 acres. THENCE, South 89 degrees 33 minutes 21 seconds West, leaving the centerline of said Stuart Place Road and along the north line of said called south 7 acres, posing at a distance of 30.0 feet to a 1/2-inch iron rebar set on the apparent west-right-of-way line of said Stuart Place Road, a total distance of 785.00 feet to a point for the northeast corner and POINT OF BEGINNING of the tract herein described;  
THENCE, South 00 degrees 04 minutes 25 seconds East, parallel with the east line of said Block 61, a distance of 70.00 feet to a point for the southeast corner of the tract herein described;  
THENCE, South 89 degrees 33 minutes 21 seconds West, parallel with the north line of said Block 61, a distance of 555.00 feet to a point in the west line of said Block 61 and in the west line of said called south 7 acres for the southwest corner of the tract herein described;  
THENCE, North 00 degrees 04 minutes 25 seconds West, along the west line of said Block 61 and along the west line of said called south 7 acres, a distance of 70.00 feet to a point for the northwest corner of said called south 7 acres and the northwest corner of the tract herein described;  
THENCE, North 89 degrees 33 minutes 21 seconds East, parallel with the north line of said Block 61 and along the north line of said called south 7 acres, a distance of 555.00 feet to the POINT OF BEGINNING containing 0.89 acres of land, more or less.

**SURVEYOR'S CERTIFICATE:**  
I HEREBY CERTIFY TO US DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND ITS SUCCESSORS AND/OR ASSIGNS, SUNQUEST PROPERTIES, LP, A TEXAS LIMITED PARTNERSHIP, PNC REAL ESTATE TAX CREDIT CAPITAL INSTITUTIONAL FUND 47 LIMITED PARTNERSHIP, COLUMBIA HOUSING SLP CORPORATION, CHICAGO TITLE INSURANCE COMPANY, PNC BANK NATIONAL ASSOCIATION AND TO THEIR SUCCESSORS AND ASSIGNS, THAT, I MADE AN ON THE GROUND SURVEY PER RECORD DESCRIPTION OF THE LAND SHOWN HEREON LOCATED IN PRIMERA, CAMERON COUNTY, TEXAS ON THE DATE OF JULY 9, 2014 AND THAT IT AND THIS MAP WAS MADE IN ACCORDANCE WITH THE HUD SURVEY INSTRUCTIONS AND REPORT, FORM HUD-92457M, AND THE REQUIREMENTS FOR ALTA/ASCM LAND TITLE SURVEY AS DEFINED IN THE 2011 MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/ASCM LAND TITLE SURVEYS. TO THE BEST OF MY KNOWLEDGE, BELIEF AND INFORMATION, EXCEPT AS SHOWN HEREON: POSSIBLE FENCE ENCROACHMENT ALONG NORTH BOUNDARY OF PROPERTY; TITLE LINES AND LINES OF ACTUAL POSSESSION ARE THE SAME; AND THE PREMISES ARE SUBJECT TO ZONE 'B' AS DELINEATED ON THE CAMERON COUNTY TEXAS FLOOD INSURANCE RATE MAP, COMMUNITY PANEL NUMBER 480101 0125B, MAP REVISED: SEPTEMBER 15, 1983.  
Robert L. Closer, Jr.  
Robert L. Closer, Jr., R.P.L.S. 5983

**PNC FORM SURVEYOR'S CERTIFICATE:**  
I HEREBY CERTIFY TO Sunquest Properties, LP; LFSG-SP, LLC; DELPHI AFFORDABLE HOUSING GROUP, INC.; DELPHI COMMUNITY HOUSING 2006, L.P.; SOUTH TEXAS COLLABORATIVE FOR HOUSING DEVELOPMENT, INC; PNC BANK, NATIONAL ASSOCIATION, its successors and assigns; PNC REAL ESTATE TAX CREDIT CAPITAL INSTITUTIONAL FUND 47 LIMITED PARTNERSHIP, its successors and assigns; COLUMBIA HOUSING SLP CORPORATION, its successors and assigns; FIDELITY NATIONAL TITLE INSURANCE COMPANY; and SIERRA TITLE COMPANY OF CAMERON AND WILLACY COUNTIES AND CHICAGO TITLE INSURANCE COMPANY; THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE 2011 MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/ASCM LAND TITLE SURVEYS, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS, AND INCLUDES ITEMS 1,2,3,4,6(8),7(A),8,9,10,11(8),12,13,14,16,17,18,19,20 AND 21 OF TABLE A THEREOF. THE FIELD WORK WAS COMPLETED ON JULY 9, 2014.  
REGISTRATION/LICENSE No. 5983  
SURVEYORS SIGNATURE: Robert L. Closer, Jr.  
PRINTED NAME: Robert L. Closer, Jr.  
DATE SIGNED: 7/20/14  
DATE OF PLAT OR MAP: JULY 10, 2014  
REVISION DATE: JULY 28, 2014

**FHA PROJECT NUMBER 115-35707**  
**ALTA SURVEY OF**  
**Being Lot 1, in Block 1 of Sunquest**  
**Subdivision, a Subdivision to the City of**  
**Primera, Cameron County, Texas, according to**  
**the Plat thereof filed for record in the Office**  
**of the County Clerk of Cameron County, Texas**  
**in Cabinet 1, Slot 3285.**  
**REGISTERED NAME: Sunquest Apartments**  
**PROPERTY ADDRESS: 23850 Stuart Place Road, Primera, TX**  
**JCS JIMMY CLOSER & SONS CONSTRUCTION CO., INC.**  
PO BOX 170 PHONE (956) 565-2688  
MERCEDDES, TEXAS 78570 FAX (956) 565-0347  
TEXAS ENGINEERING FIRM REGISTRATION NO. F-9911



BLOCK 62

BLOCK 59

POINT OF COMMENCEMENT  
N.E. CORNER  
BLOCK 61

FRED & ROSA MONTANO  
VOL. 3916, PG. 276  
C.C.O.R.  
200.0'

3.26 ACRES  
JOHN WYATT COMPANY, LTD.  
VOL. 16850, PG. 26  
C.C.O.R.

10' UTILITY EASEMENT  
CITY OF PRIMERA  
VOL. 10389, PG. 160  
C.C.O.R.

N89°33'21"E 765.00'

5' SIDE SETBACK

50.0'

65.0'

500°04'25"E 115.00'

POINT OF BEGINNING

60' R.O.W.  
DEDICATED BY THIS PLAT

SOUTH LINE CALLED SOUTH 7 ACRES  
NORTH LINE SOUTH 30 ACRES

LOT 1  
BLOCK 1  
9.99 AC. GROSS  
435,164.40 sq. ft.

25' FRONT SETBACK

60' R.O.W.

STUART PLACE ROAD

60' R.O.W.

500°04'25"E 569.00'

BLOCK 60

APPARENT 60' R.O.W.

APPARENT 30' R.O.W.

S89°33'21"W 765.00'

SOUTH 30 ACRES OF BLOCK 61  
BILL C. DEMOSS, JOHN C. DEMOSS,  
CHARLES C. DEMOSS, AND LAWRENCE A. VECCHI  
(VOL. 913, PG. 748, C.C.D.R.)

15' UTILITY EASEMENT  
CITY OF PRIMERA  
VOL. 1168, PG. 366  
C.C.D.R.

Bench Mark: Concrete  
Monument Found:  
Elevation 43.93

CALLED SOUTH 7 ACRES (6.52 ACRES CALC.)  
OF NORTH 10 ACRES  
MICHAEL C. DEMOSS, JOHN C. DEMOSS,  
BILL C. DEMOSS, CHARLES C. DEMOSS  
VOL. 1379, PG. 301  
O.R.C.C.

SOUTH 30 ACRES OF BLOCK 61  
BILL C. DEMOSS, JOHN C. DEMOSS,  
CHARLES C. DEMOSS, AND LAWRENCE A. VECCHI  
VOL. 913, PG. 748  
C.C.D.R.

BLOCK 61  
WILSON TRACT  
SUBDIVISION  
(VOL. 9, PG. 28, C.C.M.R.)

N00°04'25"W 569.00'

10' REAR SETBACK

353.74'

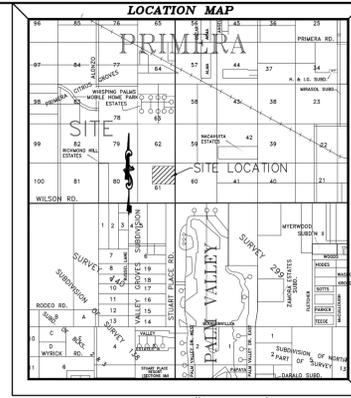
215.26'



Scale 1" = 60'  
BASIS OF BEARING:  
TEXAS STATE PLANE COORDINATE SYSTEM  
OF 1983, SOUTH ZONE 4205.

LEGEND

- PROPERTY LINE .....
- SET 1/2" REBAR.....●
- FOUND 1/2" REBAR.....○
- ELECTRICAL BOX.....E.B.
- POWER POLE.....P.P.
- MAIL BOX.....M.B.
- SET "PK" NAIL.....⊗
- SETBACK LINE .....
- RIGHT-OF-WAY LINE .....
- EASEMENT LINE .....



SCALE: 1" = 3000'

PLAT NOTES AND RESTRICTIONS:

1. MINIMUM BUILDING SET-BACKS (PER CITY OF PRIMERA ZONING ORDINANCE):  
FRONT - 25 FEET  
REAR - 10 FEET  
SIDE - 5 FEET
2. MINIMUM FINISHED FLOOR ELEVATION SHALL BE 45.50 FEET.
3. T.B.M.: CONCRETE MONUMENT FOUND ALONG EAST RIGHT-OF-WAY LINE OF STUART PLACE ROAD APPROXIMATELY 527 FEET NORTH OF WILSON ROAD.  
EL= 43.93 (TEXAS STATE PLANE COORDINATE SYSTEM, NAD 1983)
4. NO BUILDINGS SHALL BE BUILT OVER ANY EASEMENTS.
5. ALL LOT CORNERS SHALL BE SET WITH 1/2" REBARS.

FLOOD ZONE:

THIS TRACT LIES IN ZONE 'B' AS DELINEATED ON THE CAMERON COUNTY TEXAS FLOOD INSURANCE RATE MAP, COMMUNITY PANEL NUMBER 490101 - 0125B, MAP REVISED: SEPTEMBER 15, 1983. REMAINDER OF TRACT LIES WITHIN AN UNMAPPED AREA.

LEGAL DESCRIPTION:

BEING a 9.99 acre tract of land situated in Cameron County, Texas and being out of Block 61, Wilson Tract Subdivision, as recorded in Volume 9, Page 28, Map Records Cameron County, Texas, and being out of the called south 7 acres (6.52 acres calc.) of the north 10 acres of said Block 61, as described in the instrument to Michael C. Demoss, John C. Demoss, Bill C. Demoss, and Charles C. Demoss, as recorded in Volume 1379, Page 301, Official Records Cameron County, Texas, said 9.99 acre tract also being out of the south 30 acres of said Block 61, as described in the instrument to Bill C. Demoss, John C. Demoss, Charles C. Demoss and Lawrence A. Vecchi, as recorded in Volume 913, Page 748, Official Records Cameron County, Texas, and being more particularly described by metes and bounds as follows: (Basis of bearing: Texas State Plane Coordinate System of 1983, South Zone 4205.)

COMMENCING, at a "PK" nail set on the northeast corner of said Block 61, said point being located in the centerline of Stuart Place Road (60 foot right-of-way); THENCE, South 00 degrees 04 minutes 25 seconds East, along the east line of said Block 61 and along the centerline of said Stuart Place Road, a distance of 115.00 feet to a "PK" nail set for the northeast corner of said called south 7 acres, and for the northeast corner and the POINT OF BEGINNING of the tract herein described;

THENCE, South 00 degrees 04 minutes 25 seconds East, along the east line of said Block 61 and along the centerline of said Stuart Place Road, passing at a distance of 215.26 feet the southeast corner of said called south 7 acres and the northeast corner of said 30 acre tract, a total distance of 569.00 feet to a "PK" nail set for the southeast corner of the tract herein described;

THENCE, South 89 degrees 33 minutes 21 seconds West, leaving the centerline of said Stuart Place Road and parallel with the north line of said Block 61, passing at a distance of 30.0 feet a 1/2-inch iron rebar set on the apparent west right-of-way line of said Stuart Place Road, a total distance of 765.00 feet to a 1/2-inch iron rebar set for the southwest corner of the tract herein described;

THENCE, North 00 degrees 04 minutes 25 seconds West, parallel with the east line of said Block 61, passing at a distance of 353.74 feet the north line of said 30 acre tract and the south line of said called south 7 acres, a total distance of 569.00 feet to a 1/2-inch iron rebar set on the north line of said called south 7 acres for the northwest corner of the tract herein described;

THENCE, North 89 degrees 33 minutes 21 seconds East, parallel with the north line of said Block 61 and along the south line of said called south 7 acres, passing at a distance of 735.00 feet the apparent west right-of-way line of said Stuart Place Road, a total distance of 765.00 feet to the POINT OF BEGINNING containing 9.99 acres of land, more or less.

OWNER'S ACKNOWLEDGMENT

STATE OF TEXAS  
COUNTY OF CAMERON

WE, THE UNDERSIGNED, OWNERS OF THE LAND SHOWN ON THIS PLAT AND DESIGNATED HEREIN AS SUNQUEST SUBDIVISION TO THE CITY OF PRIMERA, TEXAS AND WHOSE NAMES ARE SUBSCRIBED HERETO, HEREBY DEDICATE TO THE USE OF THE PUBLIC ALL STREETS, ALLEYS, PARKS, WATERCOURSES, DRAINS, EASEMENTS, WATER LINES, WASTEWATER LINES, STORM SEWER, FIRE HYDRANTS AND PUBLIC PLACES WHICH ARE INSTALLED OR WHICH WE WILL CAUSE TO BE INSTALLED THEREON, SHOWN OR NOT SHOWN, IF REQUIRED OTHERWISE TO BE INSTALLED OR DEDICATED UNDER THE SUBDIVISION APPROVAL PROCESS OF THE CITY OF LA FERIA, ALL THE SAME FOR THE PURPOSES THEREIN EXPRESSED, EITHER ON THE PLAT HEREOF OR ON THE OFFICIAL MINUTES OF THE APPLICABLE AUTHORITIES OF THE CITY OF LA FERIA.

SUNQUEST PROPERTIES, LP  
MR. SUNNY K. PHILIP, EXECUTIVE DIRECTOR

STATE OF TEXAS  
COUNTY OF CAMERON

BEFORE ME, THE UNDERSIGNED AUTHORITY, PERSONALLY APPEARED SUNNY K. PHILIP, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED IN THE ABOVE AND FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATIONS THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_

NOTARY PUBLIC, CAMERON COUNTY, TEXAS

CITY OF PRIMERA

STATE OF TEXAS  
COUNTY OF CAMERON

I, THE UNDERSIGNED, CHAIRMAN OF THE PLANNING COMMISSION OF THE CITY OF PRIMERA, HEREBY CERTIFY THAT THIS SUBDIVISION PLAT CONFORMS TO ALL REQUIREMENTS OF THE SUBDIVISION REGULATIONS OF THIS CITY WHEREIN MY APPROVAL IS REQUIRED.

CHAIRMAN, PLANNING COMMISSION

DATE

STATE OF TEXAS  
COUNTY OF CAMERON

THIS PLAT OF SUNQUEST SUBDIVISION HAS BEEN SUBMITTED TO AND CONSIDERED BY THE CITY OF PRIMERA AND IS HEREBY APPROVED.

APPROVED BY: \_\_\_\_\_ MAYOR, CITY OF PRIMERA

ATTEST BY: \_\_\_\_\_ CITY SECRETARY

SURVEYOR'S CERTIFICATE:

I, THE UNDERSIGNED, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF TEXAS, DO HEREBY CERTIFY THAT THIS SURVEY PLAT WAS PREPARED FROM RESEARCH INFORMATION, AND FROM AN ACTUAL SURVEY OF THE PROPERTY MADE ON THE GROUND, UNDER MY SUPERVISION, AND THAT PROPER SURVEYING CONSIDERATION HAS BEEN GIVEN THIS PLAT TO THE BEST OF MY KNOWLEDGE. ALL DISTANCES ARE IN FEET.

ROBERT L. CLOSNER, JR., R.P.L.S.  
REG. NO. 5983

DATE

CAMERON COUNTY DRAINAGE DISTRICT NO. 5

STATE OF TEXAS  
COUNTY OF CAMERON

I (WE), THE UNDERSIGNED OWNER(S) FOR THE LAND SHOWN ON THIS PLAT FOR THE CONSIDERATION OF CAMERON COUNTY DRAINAGE DISTRICT NO.5 APPROVING THIS PLAT, ASSUME ALL RESPONSIBILITY FOR THE DRAINAGE OF THE LAND COVERED HEREBY AND I (WE) OUR HEIRS AND ASSIGNEES ASSUME ANY COSTS IN CONNECTIONS WITH ANY DRAINAGE NEEDED NOW OR AT ANY TIME IN THE FUTURE.

SUNNY K. PHILIP, EXECUTIVE DIRECTOR

CAMERON COUNTY DRAINAGE DISTRICT NO.5 APPROVE THIS SUBDIVISION ON THE CONDITION THAT THE DISTRICT DOES NOT WARRANT THE ADEQUACY OF ITS DRAINAGE SYSTEM IN CASE OF HEAVY RAINFALL, AND THAT IT WILL NOT BE CALLED UPON, BY PRESENT AND FUTURE OWNERS OF ANY LOT OR LOTS IN THIS SUBDIVISION. APPROVAL IS GIVEN ONLY AS IT RELATES TO AND MAY AFFECT THE FACILITIES OF THE DISTRICT. NO CONSIDERATION IS GIVEN TO ANY OTHER MATTERS. ANY FAILURES TO RECORD THIS PLAT IN THE OFFICE OF THE COUNTY CLERK OF CAMERON COUNTY, TEXAS, WITHIN ONE YEAR AFTER THIS DATE, SHALL CAUSE THIS APPROVAL TO BE VOID.

DATED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_

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

LA FERIA IRRIGATION DISTRICT NO. 3

STATE OF TEXAS  
COUNTY OF CAMERON

THIS PLAT HAS BEEN SUBMITTED TO AND CONSIDERED BY THE LA FERIA IRRIGATION DISTRICT NO. 3 OF CAMERON COUNTY, TEXAS, AND IS HEREBY APPROVED BY SUCH DISTRICT, SUBJECT TO NOTICE THAT IRRIGATION WATER IS AVAILABLE ONLY AT EXISTING IRRIGATION OUTLETS. ANY MODIFICATION, CHANGE OR ADDITIONAL OUTLETS MUST BE APPROVED BY THE DISTRICT AND BE AT THE EXPENSE OF OWNER.

GIVEN UNDER MY HAND AND SEAL THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_

APPROVED BY:

EARL ADAMS, PRESIDENT

ATTEST:

SAMUAL RUIZ, SECRETARY

CAMERON COUNTY TAX ASSESSOR/COLLECTOR

STATE OF TEXAS  
COUNTY OF CAMERON

THE UNDERSIGNED HEREBY CERTIFIED THAT ALL AD VALOREM TAXES OWED TO ALL OF THE TAXING UNITS REPRESENTED BY THE UNDERSIGNED ARE CURRENTLY PAID IN FULL FOR THE YEAR 20\_\_ FOR THE AREA INSIDE THE BOUNDARIES OF VALLEY VILLAS SUBDIVISION.

DATED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_

TONY YZAGUIRRE JR.,  
TAX ASSESSOR DEPUTY CAMERON COUNTY, TEXAS

COUNTY CLERK

STATE OF TEXAS  
COUNTY OF CAMERON

I, JOE G. RIVERA, CLERK OF THE COURT IN AND FOR SAID COUNTY, DO HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT DATED THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_ WITH THE CERTIFICATE OF AUTHENTICATION WAS FILED FOR RECORD IN MY OFFICE THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_ AT \_\_\_\_ O'CLOCK \_\_\_\_ AND DULY RECORDED THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_ AT \_\_\_\_ O'CLOCK \_\_\_\_ PLAT RECORDED IN CABINET \_\_\_\_ SLOT \_\_\_\_ OF THE MAP RECORDS OF CAMERON COUNTY, TEXAS.

WITNESS MY HAND AND SEAL OF THE COUNTY COURT IN AND FOR SAID COUNTY, AT OFFICE IN BROWNSVILLE, TEXAS, THE DAY AND YEAR LAST ABOVE WRITTEN.

JOE G. RIVERA, COUNTY CLERK  
CAMERON COUNTY, TEXAS

DEPUTY

PLAT OF SUNQUEST SUBDIVISION

A 9.99 acre tract of land out of Block 61, Wilson Tract Subdivision, as recorded in Volume 9, Page 28, Cameron County Map Records

PRINCIPAL CONTACTS:

NAME	ADDRESS	PHONE	FAX
OWNER/DEVELOPER: SUNQUEST PROPERTIES, LP	P.O. BOX 329		
ENGINEER: JUAN M. GAMEZ, P.E.	7840 N. F.M. 88		
SURVEYOR: ROBERT L. CLOSNER, JR.	P.O. BOX 170		

LA FERIA, TEXAS 78550			
WESLACO, TEXAS 78596	(956) 363-0768 (888) 747-3965		
MERCEDES, TEXAS 78570	(956) 565-2688 (956) 565-0347		

**JCS** JIMMY CLOSNER & SONS CONSTRUCTION CO., INC.  
 PO BOX 170  
 MERCEDES, TEXAS 78570  
 PHONE (956) 565-2688  
 FAX (956) 565-0347  
 TEXAS ENGINEERING FIRM REGISTRATION NO. F-9911

BLOCK 62

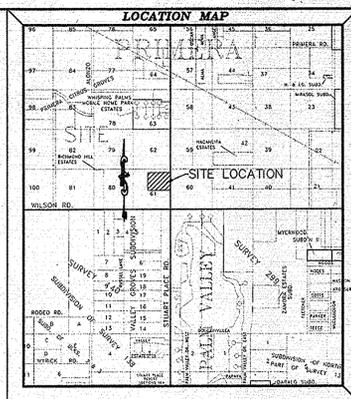
BLOCK 61

POINT OF COMMENCEMENT  
N.E. CORNER  
BLOCK 61

Scale 1" = 60'  
BASIS OF BEARING:  
TEXAS STATE PLANE COORDINATE SYSTEM  
OF 1983, SOUTH ZONE 4205.

LEGEND

- PROPERTY LINE .....
- SET 1/2" REBAR.....●
- FOUND 1/2" REBAR.....○
- ELECTRICAL BOX.....E.B.
- POWER POLE.....P.P.
- MAIL BOX.....M.B.
- SET "PK" NAIL.....X
- SETBACK LINE .....
- RIGHT-OF-WAY LINE .....
- EASEMENT LINE .....



3.26 ACRES  
JOHN WYATT COMPANY, LTD.  
VOL. 16850, PG. 26  
C.C.O.R.

10' UTILITY EASEMENT  
CITY OF PRIMERA  
VOL. 10389, PG. 160  
C.C.O.R.

FRED & ROSA MONTANO  
VOL. 3916, PG. 276  
C.C.O.R.  
200.0'

N89°33'21"E 765.00'

POINT OF BEGINNING  
9.99 ACRE TRACT

PLAT NOTES AND RESTRICTIONS:

- MINIMUM BUILDING SET-BACKS (PER CITY OF PRIMERA ZONING ORDINANCE):  
FRONT - 25 FEET  
REAR - 10 FEET  
SIDE - 5 FEET
- MINIMUM FINISHED FLOOR ELEVATION SHALL BE 45.50 FEET.
- T.B.M.: CONCRETE MONUMENT FOUND ALONG EAST RIGHT-OF-WAY LINE OF STUART PLACE ROAD APPROXIMATELY 527 FEET NORTH OF WILSON ROAD. EL= 43.93 (TEXAS STATE PLANE COORDINATE SYSTEM, NAD 1983)
- NO BUILDINGS SHALL BE BUILT OVER ANY EASEMENTS.
- ALL LOT CORNERS SHALL BE SET WITH 1/2" REBARS.

FLOOD ZONE:

THIS TRACT LIES IN ZONE 'B' AS DELINEATED ON THE CAMERON COUNTY TEXAS FLOOD INSURANCE RATE MAP, COMMUNITY PANEL NUMBER 480101 - 0125B, MAP REVISED: SEPTEMBER 15, 1983. REMAINDER OF TRACT LIES WITHIN AN UNMAPPED AREA.

OWNER'S ACKNOWLEDGMENT

STATE OF TEXAS  
COUNTY OF CAMERON

WE, THE UNDERSIGNED, OWNERS OF THE LAND SHOWN ON THIS PLAT AND DESIGNATED HEREIN AS SUNQUEST SUBDIVISION TO THE CITY OF PRIMERA, TEXAS AND WHOSE NAMES ARE SUBSCRIBED HERETO, HEREBY DEDICATE TO THE USE OF THE PUBLIC ALL STREETS, ALLEYS, PARKS, WATERCOURSES, DRAINS, EASEMENTS, WATER LINES, WASTEWATER LINES, STORM SEWER, FIRE HYDRANTS AND PUBLIC PLACES WHICH ARE INSTALLED OR WHICH WE WILL CAUSE TO BE INSTALLED THEREON, SHOWN OR NOT SHOWN, IF REQUIRED OTHERWISE TO BE INSTALLED OR DEDICATED UNDER THE SUBDIVISION APPROVAL PROCESS OF THE CITY OF PRIMERA, ALL THE SAME FOR THE PURPOSES THEREIN EXPRESSED, EITHER ON THE PLAT HEREOF OR ON THE OFFICIAL MINUTES OF THE APPLICABLE AUTHORITIES OF THE CITY OF PRIMERA.

SUNQUEST PROPERTIES, LP  
BY: FSO-GP, LLC, ITS GENERAL MANAGER

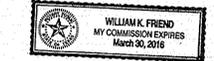
*Sunny K Philip*  
MR. SUNNY K. PHILIP, MANAGER

STATE OF TEXAS  
COUNTY OF CAMERON

BEFORE ME, THE UNDERSIGNED AUTHORITY, PERSONALLY APPEARED SUNNY K. PHILIP, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED IN THE ABOVE AND FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATIONS THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 15 DAY OF July 2014

*William K Friend*  
NOTARY PUBLIC, CAMERON COUNTY, TEXAS



CITY OF PRIMERA

STATE OF TEXAS  
COUNTY OF CAMERON

I, THE UNDERSIGNED, CHAIRMAN OF THE PLANNING COMMISSION OF THE CITY OF PRIMERA, HEREBY CERTIFY THAT THIS SUBDIVISION PLAT CONFORMS TO ALL REQUIREMENTS OF THE SUBDIVISION REGULATIONS OF THIS CITY WHEREIN MY APPROVAL IS REQUIRED.

*Robert L. Clossner, Jr.*  
CHAIRMAN, PLANNING COMMISSION  
DATE: 15 JUL 2014

STATE OF TEXAS  
COUNTY OF CAMERON

THIS PLAT OF SUNQUEST SUBDIVISION HAS BEEN SUBMITTED TO AND CONSIDERED BY THE CITY OF PRIMERA, INCLUDING, BUT NOT LIMITED TO THE DEDICATIONS OF PUBLIC USE AS SET FORTH HEREIN, AND THE PLAT AND ALL RELATED DEDICATIONS OF PUBLIC USE ARE HEREBY ACCEPTED AND APPROVED BY THE CITY OF PRIMERA.

APPROVED BY: *John M. Gamm*  
MAYOR, CITY OF PRIMERA

ATTEST BY: *David M...*  
CITY SECRETARY

CITY SECRETARY

SURVEYOR'S CERTIFICATE:

I, THE UNDERSIGNED, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF TEXAS, DO HEREBY CERTIFY THAT THIS SURVEY PLAT WAS PREPARED FROM RESEARCH INFORMATION, AND AN ACTUAL SURVEY OF THE PROPERTY MADE ON THE GROUND, UNDER MY SUPERVISION, AND THAT PROPER SURVEYING CONSIDERATION HAS BEEN GIVEN THIS PLAT TO THE BEST OF MY KNOWLEDGE. ALL DISTANCES ARE IN FEET.

*Robert L. Clossner, Jr.*  
ROBERT L. CLOSSNER, JR., R.P.L.S.  
REG. NO. 5983

7/15/14  
DATE



PLAT OF SUNQUEST SUBDIVISION

A 9.99 acre tract of land out of Block 61, Wilson Tract Subdivision, as recorded in Volume 9, Page 28, Cameron County Map Records

ALPHA  
INFRASTRUCTURE  
Engineering PLLC  
130 V MAGNOLIA  
LA FERIA, TX  
Phone: (956) 363-0768  
Fax: 1-888-747-3965  
Email: info@alpha-eng.us  
TXBE# 15540

JCS JIMMY CLOSSNER & SONS CONSTRUCTION CO., INC.  
PO BOX 170  
MERCEDDES, TEXAS 78570  
PHONE (956) 565-2688  
FAX (956) 565-0347  
TEXAS ENGINEERING FIRM REGISTRATION NO. F-9911

JOHN C. DEMOSS REVOCABLE TRUST, CHARLES C. DEMOSS REVOCABLE TRUST, AND MICHAEL C. DEMOSS REVOCABLE TRUST, VOL. 5314, PG. 267 O.R.C.C.

N00°04'25"W 569.00'

215.26'

388.95'

765.00'

765.00'

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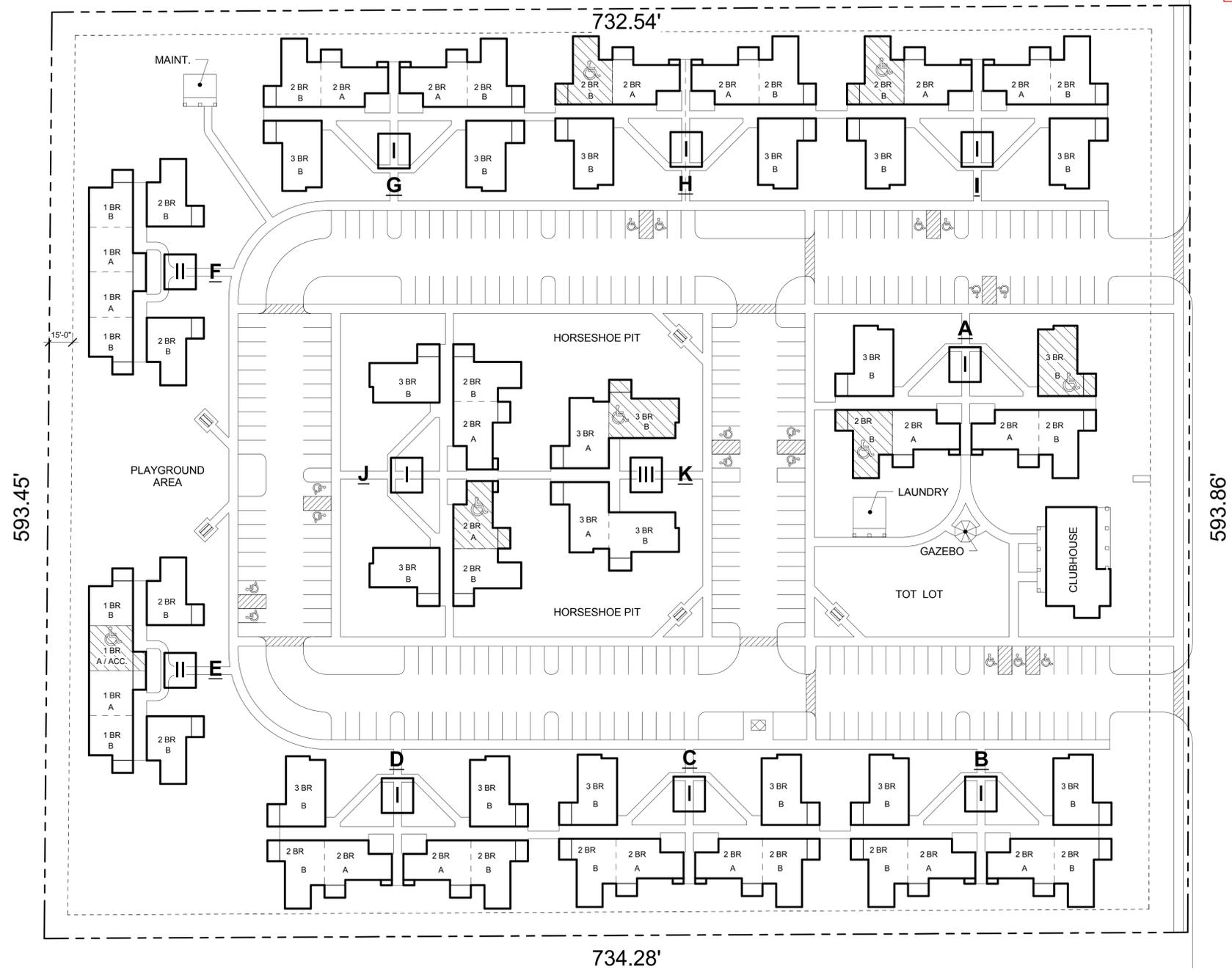
765.00'

765.00'

10' UTILITY EASEMENT

10' UTILITY

from application



1 SITE PLAN - PRIMERA, TX  
1" = 40'-0"

DWELLING UNITS						
UNIT TYPE	DESCRIPTION	NET S.F.	GROSS S.F.	NO. OF UNITS	TOTAL NET AREA	TOTAL GROSS AREA
1 BEDROOM TYPE - 1A	1-BR/1-BATH	728	762	7	5,096	5,334
1 BEDROOM TYPE - 1B	1-BR/1-BATH	779	812	8	6,232	6,496
1 BEDROOM ACCESS.	1-BR/1-BATH	728	762	1	728	762
2 BEDROOM TYPE - 2A	2-BR/2-BATH	971	1,012	31	30,101	31,372
2 BEDROOM TYPE - 2B	2-BR/2-BATH	971	1,012	37	35,927	37,444
2 BEDROOM ACCESS.	2-BR/2-BATH	971	1,012	4	3,884	4,048
3 BEDROOM TYPE - 3A	3-BR/2-BATH	1,131	1,174	4	4,524	4,696
3 BEDROOM TYPE - 3B	3-BR/2-BATH	1,131	1,174	34	38,454	39,916
3 BEDROOM ACCESS.	3-BR/2-BATH	1,131	1,174	2	2,262	2,348
<b>TOTAL DWELLING UNITS</b>				<b>128</b>	<b>127,208</b>	<b>132,416</b>
ANCILLARY STRUCTURES - GROSS AREA						
LAUNDRY		386	417			
MAINTENANCE		260	280			
OFFICE/COMM. BUILDING		2,345	2,430			135,543
PARKING						
ACCESSIBLE		17				
TYPICAL		224				
<b>TOTAL</b>		<b>241</b>				
<b>SITE ACREAGE</b>		<b>10 ACRES</b>				

REVISIONS

**Sunquest Apartments**  
Primera, Texas

**THE HILL FIRM**  
Architect

6609 RODGERS AVE.  
OFFICE SUITE A  
FORT SMITH, AR 72903  
479 494 1808  
FAX 479 494 1843

DATE: 02/26/13  
JOB NO: 2013-07

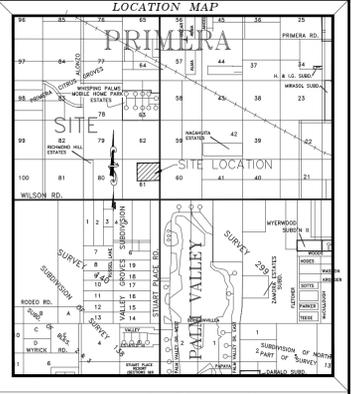
SHEET: **A-SITE**



NOTE: ORIGINAL DOCUMENT SIZE 36" x 24"

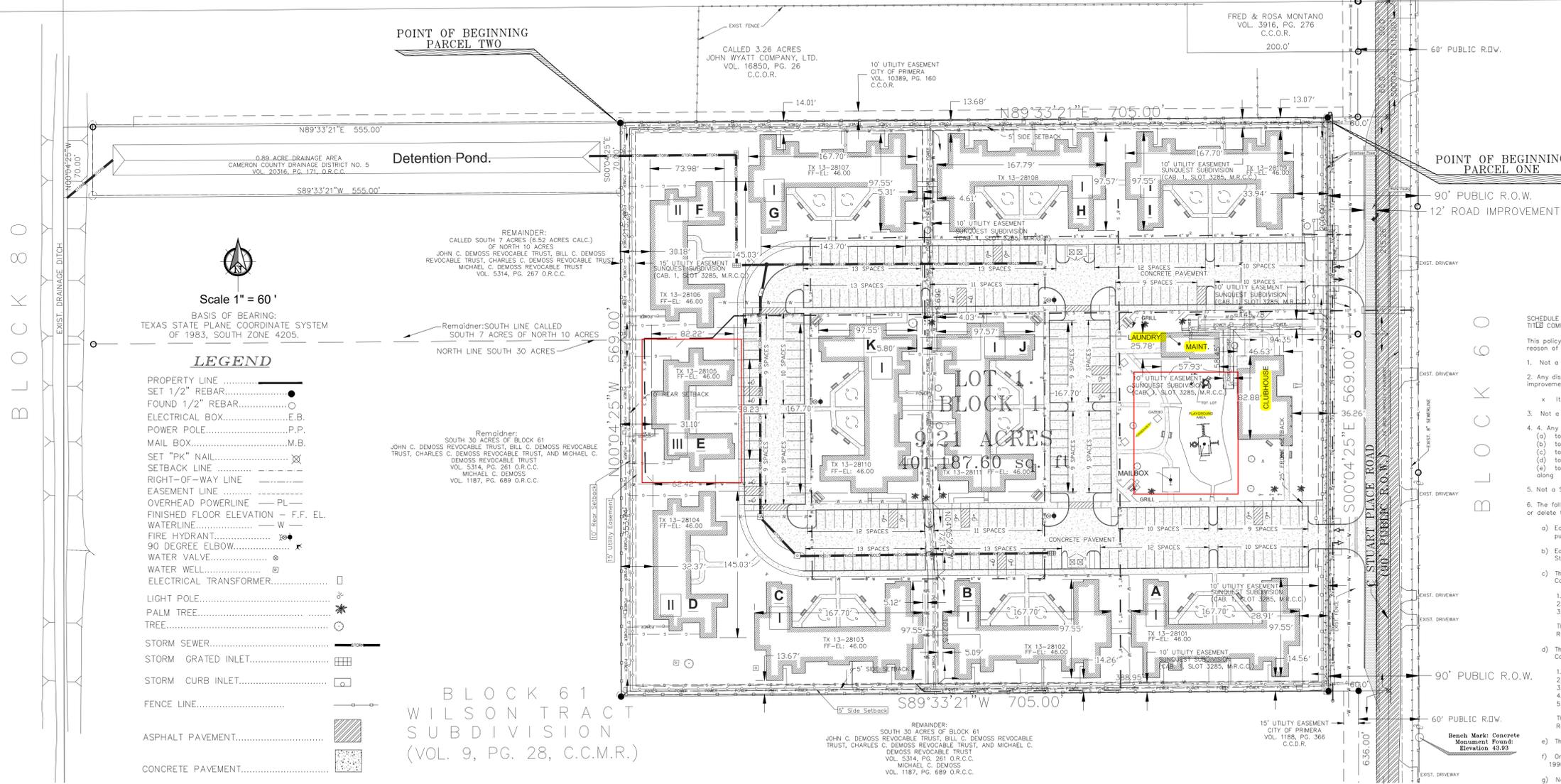
BLOCK 62

BLOCK 59



**BIN # Table**

Building A	TX 13-28101
Building B	TX 13-28102
Building C	TX 13-28103
Building D	TX 13-28104
Building E	TX 13-28105
Building F	TX 13-28106
Building G	TX 13-28107
Building H	TX 13-28108
Building I	TX 13-28109
Building J	TX 13-28110
Building K	TX 13-28111



Scale 1" = 60'

BASIS OF BEARING: TEXAS STATE PLANE COORDINATE SYSTEM OF 1983, SOUTH ZONE 4205.

**LEGEND**

- PROPERTY LINE
- SET 1/2" REBAR
- FOUND 1/2" REBAR
- ELECTRICAL BOX
- POWER POLE
- MAIL BOX
- SET "PK" NAIL
- SETBACK LINE
- RIGHT-OF-WAY LINE
- EASEMENT LINE
- OVERHEAD POWERLINE
- FINISHED FLOOR ELEVATION - F.F. EL.
- WATERLINE
- FIRE HYDRANT
- 90 DEGREE ELBOW
- WATER VALVE
- WATER WELL
- ELECTRICAL TRANSFORMER
- LIGHT POLE
- PALM TREE
- TREE
- STORM SEWER
- STORM GRATED INLET
- STORM CURB INLET
- FENCE LINE
- ASPHALT PAVEMENT
- CONCRETE PAVEMENT

BLOCK 61 WILSON TRACT SUBDIVISION (VOL. 9, PG. 28, C.C.M.R.)

**GENERAL NOTES:**

- Parking: Total = 253, Accessible = 16
- Total Acreage = 9.21 Acres (401,187.60 sq. ft.)
- There are no encroachments.
- Earth moving and new building construction completed on July 31, 2015. No evidence of earth moving work or building construction/additions on date of survey.
- All right-of-way lines shown are current. Surveyor is not aware of any proposed changes to right-of-way lines.
- No evidence of site being used as a solid waste dump, sump or sanitary landfill on date of survey.
- No evidence of any wetland areas on site on date of survey.

**ZONING NOTES**

Re: "Zoning Notes confirming the zoning district in which the subject property is located and all required use, height, density, setback and parking requirements of such zoning district."

The Plot of Sunquest Subdivision is zoned M-F (Multi-Family Residential). The zoning regulations in this district are as follows:

Permitted Uses: Residential uses including single-family detached, townhouse, duplex, tri-plex, quadplex, apartment, condominium, accessory buildings, child day care home, community center, guest house, swimming pool, tennis court, church or rectory, community recreation center, library, park or playground, elementary, middle or high school.

Minimum lot dimensions:  
 Lot area - 6,000 square feet minimum  
 Lot depth - 100 feet minimum  
 Lot width - 50 feet minimum

Minimum building set-backs:  
 Front - 25 feet  
 Rear - 10 feet  
 Side - 5 feet

Maximum height: 2-1/2 stories or 40 feet.

Parking: 2 off street parking spaces for each residential unit within a multi-family building

The proper citation to the Zoning Ordinance is, City of Primera Code of Ordinances, No. 2001-001

FLOOD ZONE DATA:  
 This tract lies in Zone "B" as delineated on the Cameron County Texas Flood Insurance Rate Map, Community Panel Number 480101 0125B, Map Revised: September 15, 1983.

**PARCEL ONE:**

LEGAL DESCRIPTION - LOT 1, BLOCK 1, SUNQUEST SUBDIVISION:  
 BEING Lot 1, in Block 1, of Sunquest Subdivision, a Subdivision to the City of Primera, Cameron County, Texas, according to the Plat thereof filed for record in the Office of the County Clerk of Cameron County, Texas in Cabinet 1, Slot 3285, and being more particularly described by metes and bounds as follows: (Basis of bearing: Texas State Plane Coordinate System of 1983, South Zone 4205.)

COMMENCING, at a "PK" nail found on the northeast corner of Block 61, Wilson Tract Subdivision, as recorded in Volume 9, Page 28, Map Records of Cameron County, Texas. Said point located in the centerline of Stuart Place Road; THENCE, South 00 degrees 04 minutes 25 seconds East, along the east line of said Block 61 and along the centerline of said Stuart Place Road, a distance of 115.00 feet to a "PK" nail found for the northeast corner of said Sunquest Subdivision; THENCE, South 89 degrees 33 minutes 21 seconds West, parallel with the north line of said Block 61 and along the north line of said Sunquest Subdivision, a distance of 60.00 feet to a 1/2-inch iron rebar found for the northeast corner and the POINT OF BEGINNING of the tract herein described;

THENCE, South 00 degrees 04 minutes 25 seconds East, along the east line of said Lot 1, Block 1, Sunquest Subdivision, a distance of 569.00 feet to a 1/2-inch rebar found for the southeast corner of the tract herein described;

THENCE, South 89 degrees 33 minutes 21 seconds West, along the south line of said Lot 1, Block 1, Sunquest Subdivision, a distance of 705.00 feet to a 1/2-inch iron rebar found for the southwest corner of the tract herein described;

THENCE, North 00 degrees 04 minutes 25 seconds West, along the west line of said Lot 1, Block 1, Sunquest Subdivision, a total distance of 569.00 feet to a 1/2-inch iron rebar found for the northwest corner of the tract herein described;

THENCE, North 89 degrees 33 minutes 21 seconds East, along the north line of said Sunquest Subdivision, a distance of 705.00 feet to the POINT OF BEGINNING containing 9.21 acres of land, more or less.

**PARCEL TWO:**

LEGAL DESCRIPTION - 0.89 ACRE DRAINAGE AREA:  
 BEING a 0.89 acre tract of land situated in Cameron County, Texas and being out of Block 61, Wilson Tract Subdivision, as recorded in Volume 9, Page 28, Map Records Cameron County, Texas; Said 0.89 acre tract being out of the colled south 7 acres (6.52 acres calc.) of the north 10 acres of said Block 61, as described in the Instrument to John C. DeMoss Revocable Trust, Bill C. DeMoss Revocable Trust, Charles C. DeMoss Revocable Trust, and Michael C. DeMoss Revocable Trust, as recorded in Volume 5314, Page 267, Official Records Cameron County, Texas, and being more particularly described by metes and bounds as follows: (Basis of bearing: Texas State Plane Coordinate System of 1983, South Zone 4205.)

COMMENCING, at a "PK" nail set on the northeast corner of said Block 61, said point being located in the centerline of Stuart Place Road (60 feet right-of-way); THENCE, South 00 degrees 04 minutes 25 seconds East, along the east line of said Block 61 and along the centerline of said Stuart Place Road, a distance of 115.00 feet to a "PK" nail set for the northeast corner of said called south 7 acres; THENCE, South 89 degrees 33 minutes 21 seconds West, leaving the centerline of said Stuart Place Road and along the north line of said called south 7 acres, passing at a distance of 30.0 feet a 1/2-inch iron rebar set on the apparent west right-of-way line of said Stuart Place Road, a total distance of 765.00 feet to a point for the northeast corner and POINT OF BEGINNING of the tract herein described;

THENCE, South 00 degrees 04 minutes 25 seconds East, parallel with the east line of said Block 61, a distance of 70.00 feet to a point for the southeast corner of the tract herein described;

THENCE, South 89 degrees 33 minutes 21 seconds West, parallel with the north line of said Block 61, a distance of 555.00 feet to a point in the west line of said Block 61 and in the west line of said called south 7 acres for the southwest corner of the tract herein described;

THENCE, North 00 degrees 04 minutes 25 seconds West, along the west line of said Block 61 and along the west line of said called south 7 acres, a distance of 70.00 feet to a point for the northwest corner of said called south 7 acres and the northwest corner of the tract herein described;

THENCE, North 89 degrees 33 minutes 21 seconds East, parallel with the north line of said Block 61 and along the north line of said called south 7 acres, a distance of 555.00 feet to the POINT OF BEGINNING containing 0.89 acres of land, more or less.

**WILSON ROAD (PUBLIC)**

**SURVEYOR'S CERTIFICATE:**

I HEREBY CERTIFY TO US DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND ITS SUCCESSORS AND/OR ASSIGNS, SUNQUEST PROPERTIES, LP, A TEXAS LIMITED PARTNERSHIP, PNC REAL ESTATE TAX CREDIT CAPITAL INSTITUTIONAL FUND 47 LIMITED PARTNERSHIP, COLUMBIA HOUSING SLP CORPORATION, CHICAGO TITLE INSURANCE COMPANY, PNC BANK NATIONAL ASSOCIATION AND TO THEIR SUCCESSORS AND ASSIGNS, THAT: I MADE AN ON THE GROUND SURVEY PER RECORD DESCRIPTION OF THE LAND SHOWN HEREON LOCATED IN PRIMERA, CAMERON COUNTY, TEXAS ON THE DATE OF SEPTEMBER 10, 2015 AND THAT IT AND THIS MAP WAS MADE IN ACCORDANCE WITH THE HUD SURVEY INSTRUCTIONS AND REPORT, FORM HUD-92457M, AND THE REQUIREMENTS FOR ALTA/ASCM LAND TITLE SURVEY AS DEFINED IN THE 2011 MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/ASCM LAND TITLE SURVEYS. TO THE BEST OF MY KNOWLEDGE, BELIEF AND INFORMATION, EXCEPT AS SHOWN HEREON TITLE LINES AND LINES OF ACTUAL POSSESSION ARE THE SAME, AND THE PREMISES ARE SUBJECT TO ZONE "B" AS DELINEATED ON THE CAMERON COUNTY TEXAS FLOOD INSURANCE RATE MAP, COMMUNITY PANEL NUMBER 480101 0125B, MAP REVISED: SEPTEMBER 15, 1983.

Robert L. Clossner, Jr., R.P.L.S. 5983

**PNC FORM SURVEYOR'S CERTIFICATE:**

I HEREBY CERTIFY TO Sunquest Properties, LP; LFSQ-GP, LLC; DELPHI AFFORDABLE HOUSING GROUP, INC.; DELPHI COMMUNITY HOUSING 2006, L.P.; SOUTH TEXAS COLLABORATIVE FOR HOUSING DEVELOPMENT, INC; PNC BANK, NATIONAL ASSOCIATION, its successors and assigns; PNC REAL ESTATE TAX CREDIT CAPITAL INSTITUTIONAL FUND 47 LIMITED PARTNERSHIP, its successors and assigns; COLUMBIA HOUSING SLP CORPORATION, its successors and assigns; FIDELITY NATIONAL TITLE INSURANCE COMPANY, and SIERRA TITLE COMPANY OF CAMERON AND WILCOY COUNTIES AND CHICAGO TITLE INSURANCE COMPANY; THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WAS MADE IN ACCORDANCE WITH THE 2011 MINIMUM STANDARDS DETAIL REQUIREMENTS FOR ALTA/ASCM LAND TITLE SURVEYS, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS, AND INCLUDES ITEMS 1,2,3,4,6(B),7(A),8,9,10,11(B),12,13,14,16,17,18,19,20 AND 21 OF TABLE THEREOF. THE FIELD WORK WAS COMPLETED ON JULY 9, 2014.

REGISTRATION/LICENSE No. 5983  
 SURVEYORS SIGNATURE:  
 PRINTED NAME: Robert L. Clossner, Jr.  
 DATE SIGNED:  
 DATE OF PLAT DR MAP: October 19, 2015  
 REVISION DATE: November 3, 2015

- SCHEDULE B ITEMS AS PER PRO FORMA OWNER POLICY (TO BE DATED THE DATE OF CLOSING), OF NO. 2130082 AS PREPARED BY SIERRA TITLE COMPANY OF CAMERON AND WILCOY COUNTIES ON BEHALF OF CHICAGO TITLE INSURANCE COMPANY.
- This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) that arise from reason of the terms and conditions of the leases and easements, if any, shown in Schedule A, and the following matters:
- Not a Survey Related Item.
  - Any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments or protrusions, or any overlapping of improvements.
    - Item 2 of Schedule B is hereby amended to read: "shortages in area".
  - Not a Survey Related Item.
  - Any titles or rights asserted by anyone, including but not limited to, persons, the public, corporations, governments or other entities,
    - (a) to tide lands, or lands comprising the shores or beds of navigable or potential rivers and streams, lakes, bays, gulfs or oceans, or
    - (b) to lands beyond the line of the harbor or bulkhead lines as established or changed by any government, or
    - (c) to filled-in lands, or artificial islands, or
    - (d) to statutory water rights, including riparian rights, or
    - (e) to the area extending from the line of mean low tide to the line of vegetation, or the right of access to that area or easement along and across that area.
  - Not a Survey Related Item.
  - The following matters and all terms of the documents creating or offering evidence of the matters (The Company must insert matters or delete this exception):
    - a) Easements, rights, rules and regulations in favor of La Feria Water Control and Improvement District [Cameron County] No. 5 pursuant to the applicable Texas Statutes. (as to PARCEL TWO)
    - b) Easements, rights, rules and regulations in favor of Cameron County Drainage District No. 5 pursuant to the applicable Texas Statutes.
    - c) The following building set back lines as shown on plat of Sunquest Subdivision filed for record in the Office of the County Clerk of Cameron County, Texas in Cabinet 1, Page 3285:
      - Twenty five foot [25.0'] building setback line along the east side of said tract;
      - Five foot [5.0'] building set back line along the north and south sides of said tract;
      - Ten foot [10.0'] building setback line along the west side of said tract;
 The locations of which are shown on survey prepared by Jimmy Clossner & Sons Construction Co., Inc., Robert L. Clossner, Jr., Registered Professional Land Surveyor No. 5983, dated July 10, 2014, last revised July 28, 2014. (as to PARCEL ONE)
    - d) The following utility easements as shown on plat of Sunquest Subdivision filed for record in the Office of the County Clerk of Cameron County, Texas in Cabinet 1, Page 3285:
      - Ten foot [10.0'] utility easement along the east line of said tract;
      - Ten foot [10.0'] utility easements along the north and south line of said tract;
      - Ten foot [10.0'] utility easement bisecting from north to south the said tract;
      - Ten foot [10.0'] utility easement extending westerly from the east line of the said tract;
      - Fifteen foot [15.0'] utility easement along the west line of said tract;
 The locations of which are shown on survey prepared by Jimmy Clossner & Sons Construction Co., Inc., Robert L. Clossner, Jr., Registered Professional Land Surveyor No. 5983, dated July 10, 2014, last revised July 28, 2014. (as to PARCEL ONE)
    - e) This item intentionally removed
    - f) Ordinance No. 2013-06 annexing a portion of above mentioned property executed by the City of Primera, recorded in Volume 19905, Page 26, Official Records, Cameron County, Texas. (as to PARCEL ONE)
    - g) Not a Survey Related Item.
    - h) Not a Survey Related Item.
    - i) Not a Survey Related Item.
    - k) Section 14 of the Conditions and Stipulations of this Policy is hereby deleted.

**ALTA LAND TITLE SURVEY**  
**FHA Project Number: 115-35707**  
**FHA Project Name: Sunquest Apartments**  
**23850 Stuart Place Rd., Primera, TX**  
*Being Lot 1, in Block 1 of Sunquest Subdivision, a Subdivision to the City of Primera, Cameron County, Texas, according to the Plat thereof filed for record in the Office of the County Clerk of Cameron County, Texas in Cabinet 1, Slot 3285.*

**JCS** JIMMY CLOSSNER & SONS CONSTRUCTION CO., INC.  
 PO BOX 170 MERCEDES, TEXAS 78570 PHONE (956) 565-2688 FAX (956) 565-0347  
 TEXAS ENGINEERING FIRM REGISTRATION NO. F-9911

**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**AUGUST 25, 2016**

Presentation, Discussion, and Possible Action regarding a material amendment to the Housing Tax Credit (“HTC”) Application for Villas at Colt Run (#13400)

**RECOMMENDED ACTION**

**WHEREAS**, Villas at Colt Run received an award of 4% Housing Tax Credits in 2013 to construct 138 new units in Houston;

**WHEREAS**, the Development Owner has requested approval to amend the HTC application for a decrease in the common area square footage from 5,916 square feet to 2,144 square feet (a 63% reduction);

**WHEREAS**, the reduction in square footage results in the loss of several amenities in the community building and the Development Owner acknowledges that the Development will still meet the minimum threshold of 14 points for common amenities;

**WHEREAS**, Board approval is required for a reduction of three percent or more in the square footage of the units or common area under Tex. Gov’t Code §2306.6712 and 10 TAC §10.405(a)(3)(D), and the Owner has complied with the amendment requirements in 10 TAC §10.405(a); and

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

**NOW, therefore, it is hereby**

**RESOLVED**, that the requested material amendment of the HTC Application for Villas at Colt Run is approved as presented to this meeting and the Executive Director and his designees are each authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

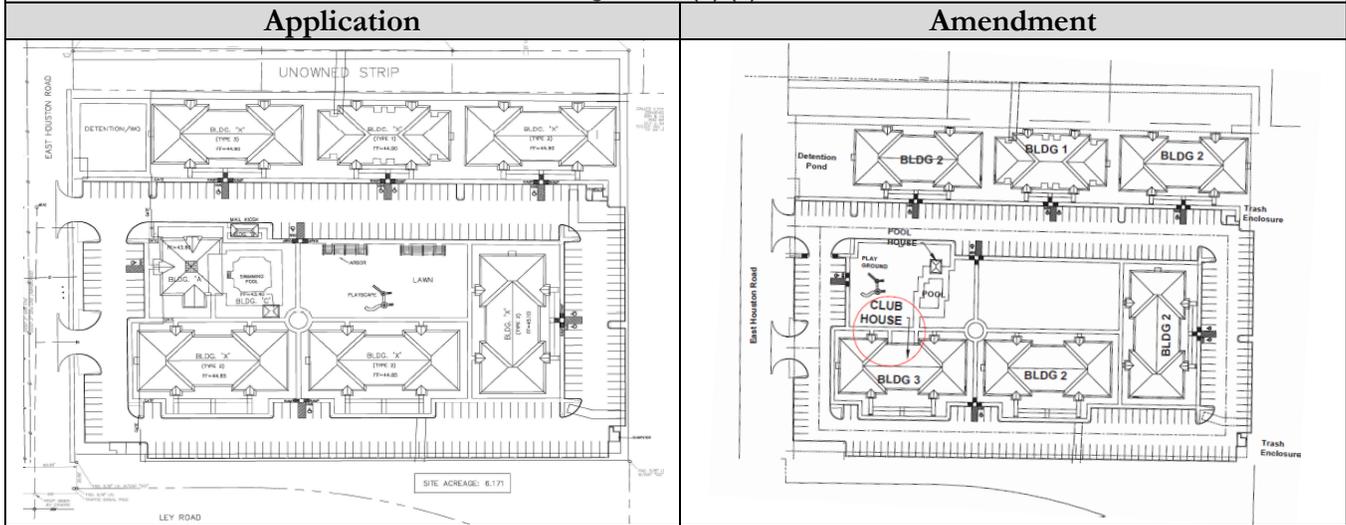
**BACKGROUND**

Villas at Colt Run was approved for 4% HTCs in 2013 for the construction of 138 new multifamily units in Houston. On August 3, 2016, a request dated July 6, 2016 was received from the Development Owner, Villas at Colt Run, LP, through their owner Representative William J. Hartz. The request is for approval of a material amendment for the reduction in the square footage of the Common Area. Specifically, the square footage and location of the community building changed. The reduction was identified during the Asset Manager’s review of the final cost certification submitted for this Development.

At the time of Application, the Development Owner designed and planned to build a 3,772 square foot free standing community building separate from the residential buildings. Additionally, 2,144 square feet was to be used as storage space by the property management company. The design plan was changed to eliminate the storage space and relocate the community space within residential Building 3. The Development Owner states that by relocating the community space within a residential building, it allowed more green space for the tenants, which in turn reduced the amount of impervious cover allowing more water runoff to be absorbed. This part of the City of Houston from time to time experiences flooding, and the redesign of the development allowed for a best management practice to prevent on-site flooding. Finally, the Development Owner establishes that although the community area was not built as initially planned, its size is appropriate for a 138-unit development and the redesign benefitted the project by reducing the costly bids received to construct the complex given that a competitive construction labor force has caused substantially higher costs. Rather than reduce the number or size of the residential units, the Development Owner was able to reduce costs by incorporating a smaller community space into the lower level of residential Building 3. The square footage of the community area within the building is now 2,144 square feet.

<b>Material Alterations as defined in Texas Government Code §2306.6712(d) and 10 TAC §10.405(a)(3)</b>			
<b>Application</b>		<b>Amendment</b>	
<b><u>A reduction of 3 percent or more in the square footage of the common area</u></b>			
<b>Common Area</b>		<b>Common Area</b>	
Community building	3,772 sf	Community building	2,144 sf
Storage space	2,144 sf	Storage space	0 sf
<b>Total Common Area</b>	<b>5,916 sf</b>	<b>Total Common Area</b>	<b>2,144 sf</b>

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



Staff has reviewed the original application, the underwriting report, and the cost certification and has concluded that the reduced square footage of the community building does not significantly affect the total development costs or affect the tax credit allocation awarded.

Staff recommends approval of the material amendment request as presented.

# LDG Multifamily, LLC

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July 6, 2016

Ms. Lucy Trevino  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, TX 78701-2410

RE: Material Amendment for Villas at Colt Run #13400

Ms. Trevino,

Villas at Colt Run, LP is making a formal, written request for an amendment to the Housing Tax Credit Application due to a reduction of 3 percent or more in the square footage of the units or common areas. More specifically, the square footage and location of the community building changed.

At the time of application, the Applicant designed and planned to build a 3,772 square foot free standing community building separate from the residential buildings, which is typical for family properties developed by LDG Multifamily, LLC. Additionally, two 2-bedroom units (2,144 square feet) located on the first floor of residential building #3 were to be used by the property management company as storage.

Prior to construction commencement the development team refined the site plan to address costly bids, and allow more common area greenspace within the site. Rather than reduce the number or size of the residential units, the Applicant removed the free standing building from the development, and incorporated the community building amenities and features within the 2,144 square feet of space initially designed for storage on the first floor of building #3. By relocating the clubhouse within a residential building, it allowed more greenspace for the tenants to utilize and is an added benefit for a development within the City of Houston's urban core. The greenspace reduced the amount of impervious cover allowing more water runoff to be absorbed. The City of Houston has routine flooding and the redesign of the development allowed for a best management practice to prevent on-site flooding.

Lastly, the competitive construction labor force and the required City of Houston Section 3 approved contractors caused substantially higher bids. The redesign benefited the project by reducing the construction costs, which would have made it infeasible to construct the project.

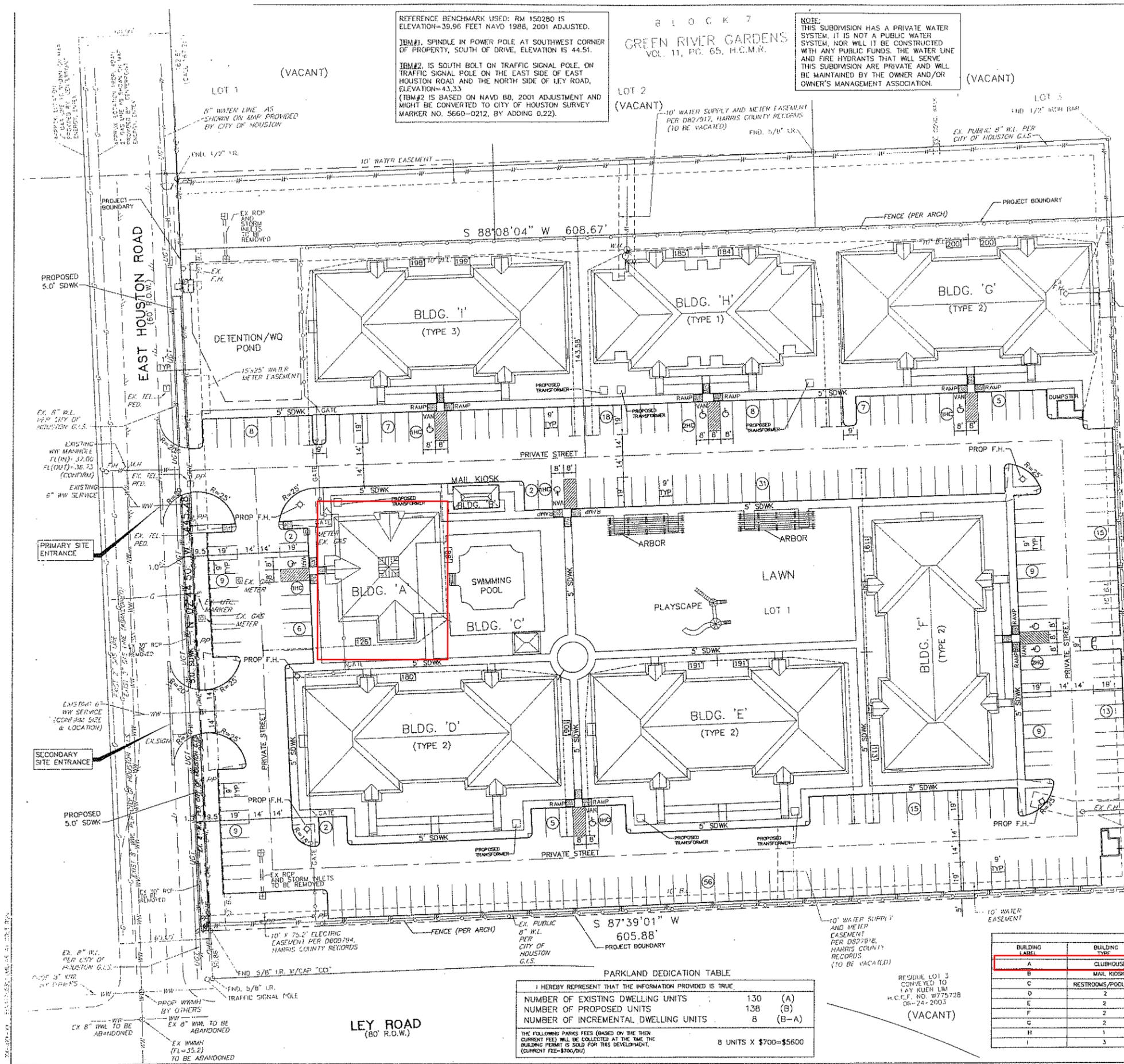
Although the community area was not built as initially planned, its size is appropriate for a 138 unit Development. The Development still meets the minimum threshold of 14 points for amenities as certified to in the HTC Application.

The necessity for the amendment was not reasonably foreseeable at the time of application. We respectfully request for approval of this amendment.

Regards,



William Hartz  
Owner Representative  
Villas at Colt Run LDG GP, LLC

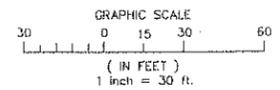


REFERENCE BENCHMARK USED: RM 150280 IS ELEVATION=39.96 FEET NAVD 1988, 2001 ADJUSTED.  
 TBM#1. SPINDLE IN POWER POLE AT SOUTHWEST CORNER OF PROPERTY, SOUTH OF DRIVE, ELEVATION IS 44.51.  
 TBM#2 IS SOUTH BOLT ON TRAFFIC SIGNAL POLE, ON TRAFFIC SIGNAL POLE ON THE EAST SIDE OF EAST HOUSTON ROAD AND THE NORTH SIDE OF LEY ROAD, ELEVATION=43.33  
 (TBM#2 IS BASED ON NAVD 88, 2001 ADJUSTMENT AND MIGHT BE CONVERTED TO CITY OF HOUSTON SURVEY MARKER NO. 5660-0212, BY ADDING 0.22).

GREEN RIVER GARDENS  
 VOL. 11, PG. 65, H.C.M.R.

NOTE: THIS SUBDIVISION HAS A PRIVATE WATER SYSTEM. IT IS NOT A PUBLIC WATER SYSTEM, NOR WILL IT BE CONSTRUCTED WITH ANY PUBLIC FUNDS. THE WATER LINE AND FIRE HYDRANTS THAT WILL SERVE THIS SUBDIVISION ARE PRIVATE AND WILL BE MAINTAINED BY THE OWNER AND/OR OWNER'S MANAGEMENT ASSOCIATION.

original site plan



CHAPTER 42, SECTION 253 PARKS FEES

1) NO LAND IS BEING ESTABLISHED AS PRIVATE PARK OR DEDICATED TO THE PUBLIC FOR PARK PURPOSES; 2) NO BUILDING PERMIT OR OTHER PERMIT, EXCEPT PERMITS FOR CONSTRUCTION OF PUBLIC IMPROVEMENTS WILL BE ISSUED BY THE CITY OF HOUSTON, TEXAS, FOR CONSTRUCTION WITHIN THE SUBDIVISION UNTIL SUCH TIME AS THE FUNDS REQUIRED UNDER PROVISIONS OF SECTION 42-253 OF THE CODE OF ORDINANCES OF THE CITY OF HOUSTON, TEXAS, HAS BEEN SUBMITTED AND ACCEPTED BY THE CITY; 3) THIS PROPERTY IS LOCATED IN THE PARK SECTOR 4; 4) THIS PERCENTAGE IS 100% SHALL BE APPLIED TO THE THEN CURRENT FEE IN LIEU OF DEDICATION; 5) THE THEN CURRENT FEE IN LIEU OF DEDICATION SHALL BE APPLIED TO THIS NUMBER 8 OF DWELLING UNITS.

I HEREBY CERTIFY THAT THE INFORMATION PROVIDED HEREIN IS TRUE	
A	NUMBER OF EXISTING DWELLING UNITS 130 DU
B	NUMBER OF PROPOSED DWELLING UNITS 138 DU
C	NUMBER OF INCREMENTAL DWELLING UNITS (B-A) 8 DU
THE FOLLOWING PARKS FEES (BASED ON THE CURRENT FEE) WILL BE COLLECTED AT THE TIME THE BUILDING PERMIT IS SOLD FOR THIS DEVELOPMENT (CURRENT FEE=\$700/DU)	
TOTAL PARKS FEES TO BE APPLIED TO THIS DEVELOPMENT:	\$5600

CHAPTER 42, SECTION 230 PROJECT INFORMATION

NUMBER OF SEPARATE BUILDINGS: 2 NUMBER OF STORES: 3 HEIGHT OF BUILDING: 30  
 TOTAL NUMBER OF DWELLING UNITS: 138/TOTAL ACREAGE OF DEVELOPMENT: 6.171 = DENSITY: 22.36 DU/AC

DWELLING UNITS & PARKING INFORMATION	TOTAL EACH USE	REQUIRED EACH USE	PROVIDED EACH USE
EFFICIENCY	0	0	0
ONE BEDROOM	12	1,333	15
TWO BEDROOMS	70	1,666	117
THREE OR MORE BEDROOMS	56	2	112
SPECIAL RESIDENTIAL USE	0	0	0
RETIREMENT COMMUNITY WITH KITCHENS	0	0	0
RETIREMENT COMMUNITY W/OUT KITCHENS	0	0	0
TOTAL PARKING	245	245	245
TOTAL ADA	7	7	30
NUMBER OF LOADING BERTHS:	0	0	0

PARKLAND DEDICATION TABLE

I HEREBY REPRESENT THAT THE INFORMATION PROVIDED IS TRUE.

NUMBER OF EXISTING DWELLING UNITS	130 (A)
NUMBER OF PROPOSED UNITS	138 (B)
NUMBER OF INCREMENTAL DWELLING UNITS	8 (B-A)
THE FOLLOWING PARKS FEES (BASED ON THE THEN CURRENT FEE) WILL BE COLLECTED AT THE TIME THE BUILDING PERMIT IS SOLD FOR THIS DEVELOPMENT. (CURRENT FEE=\$700/DU)	
8 UNITS X \$700=\$5600	

BUILDING SUMMARY

BUILDING LABEL	BUILDING TYPE	BUILDING FOOTPRINT	TOTAL FLOOR AREA	No. OF STORES	No. OF 1BR UNITS	No. OF 2BR UNITS	No. OF 3BR UNITS	TOTAL No. UNITS
A	CLUBHOUSE	3772 SF	3772 SF	1	-	-	-	-
B	MAIL KIOSK	90 SF	90 SF	1	-	-	-	-
C	RESTROOMS/POOL, MECH.	187 SF	187 SF	1	-	-	-	-
D	2	10,746 SF	27,084 SF	3	-	12	12	24
E	2	10,746 SF	27,084 SF	3	-	12	12	24
F	2	10,746 SF	27,084 SF	3	-	12	12	24
G	2	10,746 SF	27,084 SF	3	-	12	12	24
H	1	9,020 SF	23,054 SF	3	12	12	-	24
I	3	10,746 SF	20,286 SF	3/2	-	10	6	16
TOTAL								138

CONLEY ENGINEERING INC.  
 Civil Engineers Land Planners Development Consultants  
 7800 EAST HOUSTON ROAD  
 CITY OF HOUSTON, HARRIS COUNTY, TEXAS  
 P.O. Box 162713 Austin, Texas 78716-2713. (512)328-3508  
 FBPT: # F-277

SHEET OF 17  
 CEI 464-03-02

VILLAS AT COLT RUN  
 7800 EAST HOUSTON ROAD  
 CITY OF HOUSTON, HARRIS COUNTY, TEXAS

SITE PLAN

REVISION BLOCK

DATE

original  
community room  
design

**KEY NOTES:**

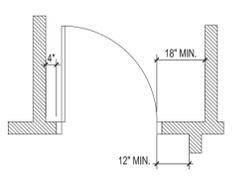
- GENERAL REQUIREMENTS: NOT USED
- SITE WORK: NOT USED
- CONCRETE:
  - 4" REINFORCED CONCRETE SLAB OVER WATER PROOF MEMBRANE OVER 4" DRAINAGE FILL OVER COMPACTED FILL - REFER TO STRUCTURAL DWGS. FOR ADDITIONAL INFORMATION
  - CONCRETE PORCH SLAB, SLOPE AWAY FROM BUILDING AT 1/4" PER FOOT, REFER TO CIVIL DRAWINGS FOR ADDITIONAL INFORMATION.
  - CONCRETE FOOTING, REFER TO STRUCTURAL DRAWING FOR ADDITIONAL INFORMATION.
  - 3/4" GYPSUM FILL
  - CONTINUOUS 1/2" COMPRESSIBLE EXPANSION JOINT WITH SEALANT
  - CONCRETE SIDEWALK, REFER TO CIVIL DRAWINGS FOR ADDITIONAL INFORMATION.
  - REINFORCED CONCRETE SLAB OVER 6 MIL POLY VAPOR BARRIER OVER 4" DRAINAGE FILL OVER COMPACTED FILL - REFER TO STRUCTURAL DWGS. FOR THICKNESS
  - 2-1/2" LIGHTWEIGHT CONCRETE TOPPING SLOPED TO MIN. 1/2" AT ALUMINUM T-BAR OVER 60 MIL MEMBRANE OVER SUBSTRATE.
- MASONRY:
  - TEXAS STONE (RUBBLE PATTERN) WITH ADJUSTABLE MASONRY ANCHORS AT 16" O.C. VERTICALLY AND HORIZONTALLY.
  - PRE-CAST ARCHITECTURAL STONE HEADER, INSTALL PER MFR. RECOMMENDATIONS.
  - PRE-CAST ARCHITECTURAL STONE SILL, INSTALL PER MFR. RECOMMENDATIONS.
  - CONT. THRU WALL MEMBRANE FLASHING WITH WEEP HOLES @ 24" O.C.
  - MASONRY GROUT
  - PRE-CAST ARCHITECTURAL STONE CAP
- METALS:
  - ANCHOR BOLTS, REFER TO STRUCTURAL DRAWINGS FOR ADDITIONAL INFORMATION.
  - CONTINUOUS STEEL SHELF ANGLE, EXTEND MIN. 6" ON EACH SIDE OF MASONRY OPENING, REFER TO STRUCTURAL DRAWINGS FOR ADDITIONAL INFORMATION.
  - STAIR ASSEMBLY, REFER TO STAIR DETAILS FOR ADDITIONAL INFORMATION
  - METAL PICKET GUARD RAILING, REFER TO DETAIL FOR ADDITIONAL INFORMATION
  - 3/8" THK. STEEL PLATE (PAINTED), EXTEND MIN. 8" BEYOND MASONRY OPENING.
- WOOD, PLASTICS AND COMPOSITES:
  - 2X4 WOOD STUD FRAMING @ 16" O.C.
  - 2X4 WOOD SILL PLATE.
  - 2X4 WOOD STUD HEADER, REFER TO STRUCTURAL
  - DOUBLE 2X4 WOOD STUD TOP PLATE.
  - OPEN WEB WOOD FLOOR JOISTS, REFER TO STRUCTURAL DRAWINGS FOR ADDITIONAL INFORMATION.
  - OPEN WEB WOOD ROOF TRUSSES, REFER TO STRUCTURAL DRAWINGS FOR ADDITIONAL INFORMATION.
  - 12" EXTERIOR GRADE PLYWOOD SHEATHING.
  - 3/4" TONGUE AND GROOVE PLYWOOD OR OSB SUBSTRATE.
  - DECORATIVE WOOD BASE, REFER TO FINISH SCHEDULE FOR ADDITIONAL INFORMATION.
  - DECORATIVE WOOD WINDOW SILL, REFER TO FINISH SCHEDULE FOR ADDITIONAL INFORMATION.
  - 1X4 WOOD WINDOW CASEMENT, REFER TO FINISH SCHEDULE FOR ADDITIONAL INFORMATION.
  - CONT. 2X4 EXTERIOR GRADE WOOD BLOCKING.
  - ALUMINUM WRAPPED 2X4 FASCIA BOARD.
  - 2 X 8 PRESSURE TREATED DECK FRAMING @ 16" O.C., REFER TO STRUCTURAL FOR ADDITIONAL INFORMATION.
  - WOOD BEAM, REFER TO STRUCTURAL DRAWINGS FOR ADDITIONAL INFORMATION.
  - (2) 2 X 8 PRESSURE TREATED HEADERS, REFER TO STRUCTURAL FOR ADDITIONAL INFORMATION.
  - 2X4 WOOD STUD FRAMING @ 16" O.C.
  - LINE OF STUD FRAMING.
  - 2X6 WOOD ROOF RAFTER, REFER TO STRUCTURAL FOR ADDITIONAL INFORMATION.
  - CONT. 2X16 TOP PLATE, CUT TO SIZE.
  - 6/17" EXTERIOR GRADE OSB SHEATHING
  - 2X4 WOOD SILL PLATE
  - 6 X 6 ROUGH CUT CEDAR POSTS, ANCHOR POSTS WITH STEEL ANGLES, REFER TO STRUCTURAL FOR ADDITIONAL INFORMATION.
  - CONT. 2 X 12 ROUGH CUT CEDAR JOISTS ON EACH SIDE OF POSTS, PROVIDE WOOD BLOCKING AS REQUIRED. BOLT TO POST PER STRUCTURAL DRAWINGS.
  - 2 X 6 WOOD STUD FRAMING @ 16" O.C.
  - LVL BEAMS, REFER TO STRUCTURAL DRAWINGS FOR SIZE AND ADDITIONAL INFORMATION.
- THERMAL AND MOISTURE PROTECTION:
  - 4" x 4" PRE-FINISHED METAL DOWNSPOUT.
  - 6" WIDE PRE-FINISHED RECTANGULAR METAL GUTTER WITH PERFORATED LEAF GUARD, COLOR TO BE SELECTED BY ARCHITECT.
  - WATERPROOF MEMBRANE (SHOWN DASHED)
  - DECORATIVE 32" W X 16" H NON-VENTED LOUVER BY FYPON, LOUVER MODEL # LV32X16
  - 3" R-15 BATT INSULATION
  - VAPOR BARRIER (SHOWN DASHED)
  - CONTINUOUS SEALANT AND BACKER ROD
  - 4" NOMINAL CEDAR FINISHED FIBER-CEMENT LAP SIDING BOARDS - COLOR TO BE SELECTED BY ARCHITECT.
  - 8" NOMINAL CEDAR FINISHED FIBER-CEMENT LAP SIDING BOARDS - COLOR TO BE SELECTED BY ARCHITECT.
  - 4" NOMINAL CEDAR FINISHED FIBER-CEMENT BOARD AND BATTEN SIDING - COLOR TO BE SELECTED BY ARCHITECT.
  - 4" NOMINAL CEDAR FINISHED FIBER-CEMENT TRIM BOARDS - COLOR TO BE SELECTED BY ARCHITECT.
  - 8" NOMINAL CEDAR FINISHED FIBER-CEMENT TRIM BOARDS - COLOR TO BE SELECTED BY ARCHITECT.
  - VENTED VINYL SOFFIT PANELS.
  - CONT. ALUMINUM DRIP EDGE.
  - CONT. INSULATION Baffle.
  - DECORATIVE 16" W X 24" H LOUVER BY FYPON, LOUVER MODEL # LV16X24
  - PASSIVE ALUMINUM ROOF VENT BOX, COLOR TO BE SELECTED BY ARCHITECT PER MFR. RECOMMENDATIONS
  - ASPHALT COMPOSITE SHINGLES OVER 30LB ROOF FELT (SHOWN DASHED) OVER 3/4" EXTERIOR GRADE PLYWOOD SHEATHING WITH CLIPS.
  - DECORATIVE 18" W X 30" H CATHEDRAL LOUVER AND TRIM BY FYPON, LOUVER MODEL # CLV22X31, TRIM MODEL # CLV22X31L4F
  - 12" NOMINAL CEDAR FINISHED FIBER-CEMENT TRIM BOARDS - COLOR TO BE SELECTED BY ARCHITECT.
  - LINE OF HIDDEN ROOF
  - CONT. PRE-FINISHED ALUMINUM FLASHING, EXTEND OVER ROWLOCK AND EXTEND UP AND SIDING MIN 6".
  - PERIMETER DRAINAGE MEMBRANE
  - R-38 BLOWN IN INSULATION
  - METAL ROOF FLASHING, EXTEND UNDER SHINGLES AND UP WALL MIN. 6"
  - RIDGE VENT
  - 8" NOMINAL CEDAR FINISHED FIBER-CEMENT TRIM BOARDS - COLOR TO BE SELECTED BY ARCHITECT.
  - STANDING SEAM METAL ROOF OVER 30LB ROOF FELT (SHOWN DASHED) OVER 3/4" EXTERIOR GRADE PLYWOOD SHEATHING WITH CLIPS, PROVIDE VENTED RIGID CAP.
  - FULLY ADHERED MEMBRANE ROOFING OVER 1" RIGID INSULATION OVER 3/4" EXTERIOR GRADE PLYWOOD SHEATHING WITH CLIPS, INSTALL MEMBRANE ROOFING MFR'S RECOMMENDATIONS.
  - FULLY ADHERED MEMBRANE FLASHING OVER 3/4" EXTERIOR GRADE PLYWOOD SHEATHING, EXTEND MEMBRANE UP AND OVER ROOFING FRAMING.
  - CONTINUOUS PRE-FINISHED METAL DRIP EDGE FLASHING, EXTEND OVER MEMBRANE FLASHING MIN. 4", PENDING ON THE LOCATION, INSTALL THE DRIP EDGE EITHER OVER OR UNDERNEATH THE ASPHALT SHINGLES.
- OPENINGS:
  - SINGLE-HUNG VINYL WINDOW UNIT WITH INSULATED GLAZING AND INTERGRAL CHANNEL FLANGE - REFER TO WINDOW SCHEDULE FOR ADDITIONAL INFORMATION.
  - EXTERIOR INSULATED METAL DOOR AND FRAME ASSEMBLY, REFER TO SHEET DOOR SCHEDULE FOR ADDITIONAL INFORMATION.
  - ALUMINUM CLAD WOOD DOOR AND FRAME ASSEMBLY, REFER TO SHEET DOOR SCHEDULE FOR ADDITIONAL INFORMATION.
  - ALUMINUM THRESHOLD.
  - OVERHEAD SECTIONAL GARAGE DOOR ASSEMBLY.
  - EXTERIOR INSULATED DECORATIVE DOOR AND FRAME ASSEMBLY WITH INSULATED TRANSLITE.
  - INSULATED VINYL PICTURE WINDOW WINDOW UNIT.
- FINISHES:
  - FINISH FLOOR, REFER TO ROOF FINISH SCHEDULE FOR ADDITIONAL INFORMATION
  - 5/8" TYPE "X" GYPSUM WALL BOARD
  - 5/8" TYPE "C" GYPSUM BOARD OVER 1/2" RESILIENT CHANNELS @ 12" O.C. (PER UL # L521 FOR CEILING AND UL # P533 FOR ROOF)
  - 5/8" FIRE RATED EXTERIOR GYPSUM SOFFIT BOARD OVER 1/2" RESILIENT CHANNELS @ 24" O.C. OVER 5/8" TYPE "C" GYPSUM BOARD (3HR RATED CEILING SIMILAR TO UL # P533 FOR ROOF)
  - 5/8" GYPSUM WALL BOARD
  - TWO LAYERS OF 5/8" TYPE "C" GYPSUM BOARD OVER 1/2" RESILIENT CHANNELS @ 12" O.C. OVER 5/8" TYPE "C" GYPSUM BOARD (PER UL # L577 FOR CEILING) - 2HR ASSEMBLY
- SPECIALTIES: NOT USED
- EQUIPMENT:
  - METAL MAILBOX UNIT, REFER TO SPECIFICATIONS FOR ADDITIONAL INFORMATION. INSTALL PER MFR. RECOMMENDATIONS.

**EXTERIOR MATERIALS %**

BUILDING TYPE #1	CLUBHOUSE	TEXAS STONE	FIBER-CEMENT SIDING
TEXAS STONE	25%	FIBER-CEMENT SIDING	75%
BUILDING TYPE #2	MAILBOX KIOSK	TEXAS STONE	FIBER-CEMENT SIDING
TEXAS STONE	25%	FIBER-CEMENT SIDING	70%
FIBER-CEMENT SIDING	75%		
POOLHOUSE	FIBER-CEMENT SIDING	100%	

**NOTE:**

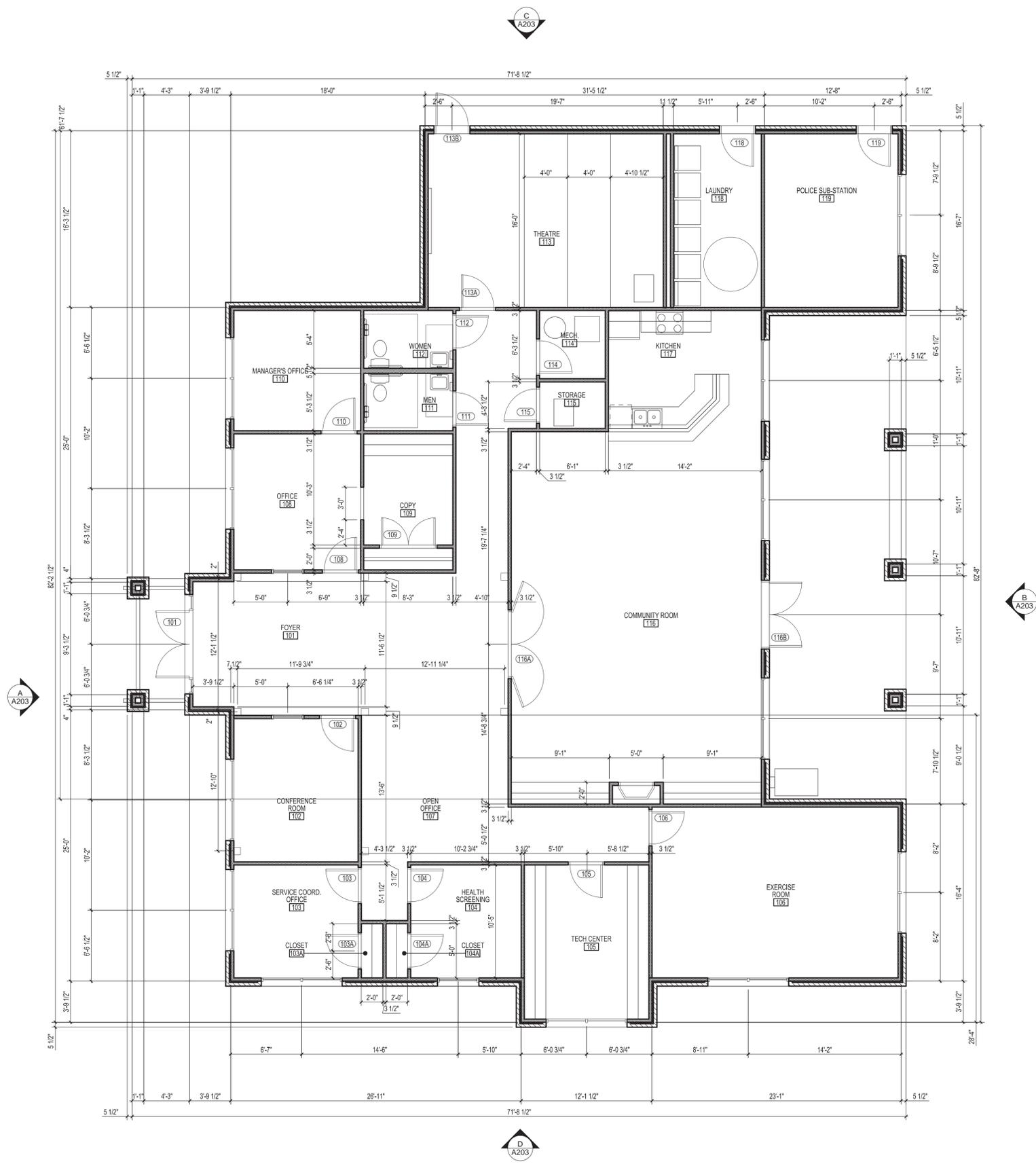
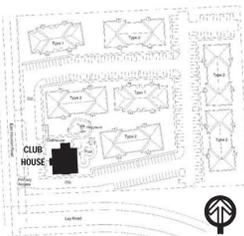
DOOR PLACEMENT, UNLESS OTHERWISE DIMENSIONED ON PLANS, INSTALL DOORS PER THE FOLLOWING FINISH DIMENSIONS LISTED BELOW (FACE OF GWB TO FACE OF GWB):



**NOTE:**

- DIMENSIONS ON PLANS ARE FROM FACE OF STUD FRAMING TO FACE OF STUD TO FACE OF STUD.
- FRAMING WINDOW & EXTERIOR DOOR LOCATIONS ARE SHOWN FOR REFERENCE ONLY. FOR EXACT WINDOW & DOOR LOCATIONS PLEASE REFER TO FLOOR DIMENSION PLANS.
- ALL INTERIOR UNIT WALLS TO BE TYPE P5 UNLESS OTHERWISE NOTED ON PLANS

**KEY PLAN**



**CLUBHOUSE FLOOR PLAN**  
SCALE: 3/16" = 1' - 0"




**ARCHITECT**

WEBER & ROUSSELLE ARCHITECTURE STUDIO LLC  
DESIGN CONSTRUCTION SPECIALTY FABRICATIONS  
1571 Burdick Road  
Louisville, Kentucky  
Tel: 502-599-8007 Fax: 502-599-8004

**ARCHITECT OF RECORD**

Kentucky Architecture Studio LLC  
1571 Burdick Road  
Louisville, Kentucky  
Tel: 502-599-8007 Fax: 502-599-8004

**CONSULTANT**


**PROJECT TITLE**

Villas at Colt's Run  
Apartments  
Houston, TX

**NOT FOR CONSTRUCTION**

DESIGNED BY	CHECKED BY
DRAWN BY	DATE
SHEET TITLE	CLUBHOUSE PLAN
PROJECT NO.	SHEET NO.

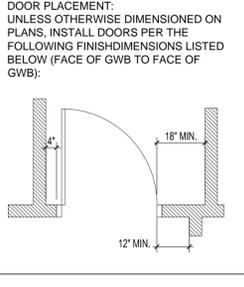
STA-12WB-00-8 **A1.09**

original plan-  
storage space

**KEY NOTES:**

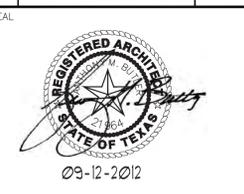
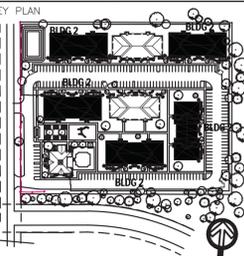
- GENERAL REQUIREMENTS:
  - NOT USED
  - SITE WORK: NOT USED
- CONCRETE:
  - 4" REINFORCED CONCRETE SLAB OVER WATER PROOF MEMBRANE OVER 4" DRAINAGE FILL OVER COMPACTED FILL - REFER TO STRUCTURAL DWGS. FOR ADDITIONAL INFORMATION
  - CONCRETE PORCH SLAB, SLOPE AWAY FROM BUILDING AT 1/4" PER FOOT. REFER TO CIVIL DRAWINGS FOR ADDITIONAL INFORMATION.
  - CONCRETE FOOTING. REFER TO STRUCTURAL DRAWING FOR ADDITIONAL INFORMATION.
  - 3/4" GYPCRETE.
  - CONTINUOUS 1/2" COMPRESSIBLE EXPANSION JOINT WITH SEALANT
  - CONCRETE SCHEDULE. REFER TO CIVIL DRAWINGS FOR ADDITIONAL INFORMATION.
  - 3/4" GYPCRETE OVER 60 MIL MEMBRANE OVER SUBSTATE
  - LIGHTWEIGHT CONCRETE TOPPING SLOPED TO MIN. 2" AT ALUMINUM T-BAR OVER 60 MIL MEMBRANE OVER SUBSTATE.
- MASONRY:
  - TEXAS STONE (RUBBLE PATTERN) WITH ADJUSTABLE MASONRY ANCHORS AT 16" O.C. VERTICALLY AND HORIZONTALLY.
  - STONE WINDOW HEADER, INSTALL PER MFR. RECOMMENDATIONS.
  - STONE WINDOW SILL, INSTALL PER MFR. RECOMMENDATIONS.
  - CONT. THUR WALL MEMBRANE FLASHING WITH WEEP HOLES @ 24" O.C.
  - MASONRY GROUT
  - PRE-CAST ARCHITECTURAL STONE CAP
- METALS:
  - ANCHOR BOLTS, REFER TO STRUCTURAL DRAWINGS FOR ADDITIONAL INFORMATION.
  - CONTINUOUS STEEL SHELF ANGLE, EXTEND MIN. 8" ON EACH SIDE OF MASONRY OPENING. REFER TO STRUCTURAL DRAWINGS FOR ADDITIONAL INFORMATION.
  - STAIR ASSEMBLY, REFER TO STAIR DETAILS FOR ADDITIONAL INFORMATION
  - METAL PICKET GUARD RAILING, REFER TO DETAIL FOR ADDITIONAL INFORMATION
  - 3/8" THK. STEEL PLATE (PAINTED), EXTEND MIN. 8" BEYOND MASONRY OPENING.
- WOOD, PLASTICS AND COMPOSITES:
  - 2X4 WOOD STUD FRAMING @ 16" O.C.
  - 2X4 WOOD SILL PLATE.
  - 2XW WOOD STUD HEADER. REFER TO STRUCTURAL
  - DOUBLE 2X4 WOOD STUD TOP PLATE.
  - OPEN WEB WOOD FLOOR JOISTS, REFER TO STRUCTURAL DRAWINGS FOR ADDITIONAL INFORMATION.
  - OPEN WEB WOOD ROOF TRUSSES, REFER TO STRUCTURAL DRAWINGS FOR ADDITIONAL INFORMATION.
  - 1/2" EXTERIOR GRADE PLYWOOD SHEATHING.
  - 3/4" TONGUE AND GROOVE PLYWOOD OR OSB SUBSTRATE.
  - DECORATIVE WOOD BASE, REFER TO FINISH SCHEDULE FOR ADDITIONAL INFORMATION.
  - DECORATIVE WOOD WINDOW SILL, REFER TO FINISH SCHEDULE FOR ADDITIONAL INFORMATION.
  - 1XW WOOD WINDOW CASEMENT, REFER TO FINISH SCHEDULE FOR ADDITIONAL INFORMATION.
  - CONT. 2XW EXTERIOR GRADE WOOD BLOCKING.
  - FIBER-CEMENT FASIO BOARD OVER 2" X WOOD BLOCKING.
  - 2 X 8 PRESSURE TREATED DECK FRAMING @ 16" O.C. REFER TO STRUCTURAL FOR ADDITIONAL INFORMATION.
  - WOOD BEAM, REFER TO STRUCTURAL DRAWINGS FOR ADDITIONAL INFORMATION.
  - (02) 2 X 8 PRESSURE TREATED HEADERS, REFER TO STRUCTURAL FOR ADDITIONAL INFORMATION.
  - 2X4 WOOD STUD FRAMING @ 16" O.C.
  - LINE OF STUD FRAMING.
  - 2X6 WOOD ROOF RAFTER, REFER TO STRUCTURAL FOR ADDITIONAL INFORMATION.
  - CONT. 2X10 TOP PLATE, CUT TO SIZE.
  - 6/11" EXTERIOR GRADE OSB SHEATHING
  - 2X4 WOOD SILL PLATE
  - 6X6 X 8 ROUGH CUT CEDAR POSTS, ANCHOR POSTS WITH STEEL ANGLES. REFER TO STRUCTURAL FOR ADDITIONAL INFORMATION.
  - CONT. 2 X 1/2" ROUGH CUT CEDAR JOISTS ON EACH SIDE OF POSTS, PROVIDE WOOD BLOCKING AS REQUIRED. BOLT TO POST PER STRUCTURAL DRAWINGS.
  - 2X4 WOOD STUD FRAMING @ 16" O.C.
  - 2 X 6 WOOD STUD FRAMING @ 16" O.C.
  - LVL BEAMS, REFER TO STRUCTURAL DRAWINGS FOR SIZE AND ADDITIONAL INFORMATION.
  - PROVIDE 3/4" EXTERIOR GRADE PLYWOOD SHEATHING AS CATWALK PATH TO ROOFTOP ACCESS PANELS.
- THERMAL AND MOISTURE PROTECTION:
  - 4" X 4" PRE-FINISHED METAL DOWNSPOUT.
  - 6" WIDE PRE-FINISHED RECTANGULAR METAL GUTTER WITH PERFORATED LEAF GUARD, COLOR TO BE SELECTED BY ARCHITECT.
  - WEATHER BARRIER (SHOWN DASHED)
  - DECORATIVE 32" W X 16" H NON-VENTED LOUVER BY FYPON, LOUVER MODEL # LV2316
  - 3" R-15 BATT INSULATION
  - 5/8" THK. CEDAR FINISHED FIBER-CEMENT PANEL BOARDS - COLOR TO BE SELECTED BY ARCHITECT.
  - CONTINUOUS SEALANT AND BACKER ROD
  - 4" NOMINAL CEDAR FINISHED FIBER-CEMENT LAP SIDING BOARDS - COLOR TO BE SELECTED BY ARCHITECT.
  - 8" NOMINAL CEDAR FINISHED FIBER-CEMENT LAP SIDING BOARDS - COLOR TO BE SELECTED BY ARCHITECT.
  - CEDAR FINISHED FIBER-CEMENT BOARD AND BATTEN SIDING @ 16" O.C. - COLOR TO BE SELECTED BY ARCHITECT.
  - 4" NOMINAL CEDAR FINISHED FIBER-CEMENT TRIM BOARDS - COLOR TO BE SELECTED BY ARCHITECT.
  - 8" NOMINAL CEDAR FINISHED FIBER-CEMENT TRIM BOARDS - COLOR TO BE SELECTED BY ARCHITECT.
  - VENTED VINYL SOFFIT PANELS.
  - CONT. ALUMINUM DRIP EDGE.
  - CONT. INSULATION BAFFLE.
  - DECORATIVE 16" W X 24" H LOUVER BY FYPON, LOUVER MODEL # LV16X24
  - PASSIVE ALUMINUM ROOF VENT BOX, NUMBER OF VENT PER MFR. RECOMMENDATIONS. COLOR TO BE SELECTED BY ARCHITECT PER MFR. RECOMMENDATIONS.
  - ASPHALT COMPOSITE SHINGLES OVER 3/8" ROOF FELT (SHOWN DASHED) OVER 3/4" EXTERIOR GRADE PLYWOOD SHEATHING WITH CLIPS.
  - DECORATIVE 18" W X 30" H CATHEDRAL LOUVER AND TRIM BY FYPON, LOUVER MODEL # CLV23X14F
  - 12" NOMINAL CEDAR FINISHED FIBER-CEMENT TRIM BOARDS - COLOR TO BE SELECTED BY ARCHITECT.
  - LINE OF HIDDEN ROOF.
  - CONT. PRE-FINISHED ALUMINUM FLASHING, EXTEND OVER ROWLOCK AND EXTEND UP AND SIDING MIN 6".
  - PERIMETER DRAINAGE MEMBRANE
  - R-38 BLOWN-IN INSULATION
  - METAL ROOF FLASHING, EXTEND UNDER SHINGLES AND UP WALL MIN. 6"
  - RIDGE VENT
  - 8" NOMINAL CEDAR FINISHED FIBER-CEMENT TRIM BOARDS - COLOR TO BE SELECTED BY ARCHITECT.
  - STANDING SEAM METAL ROOF OVER 3/8" ROOF FELT (SHOWN DASHED) OVER 3/4" EXTERIOR GRADE PLYWOOD SHEATHING WITH CLIPS. PROVIDE VENTED RIGID CAP.
  - FULLY ADHERED MEMBRANE ROOFING OVER 1" RIGID INSULATION OVER 3/4" EXTERIOR GRADE PLYWOOD SHEATHING WITH CLIPS, INSTALL MEMBRANE ROOFING MFR'S RECOMMENDATIONS.
  - FULLY ADHERED MEMBRANE FLASHING OVER 3/4" EXTERIOR GRADE PLYWOOD SHEATHING, EXTEND MEMBRANE UP AND OVER ROOFING FRAMING.
  - CONTINUOUS PRE-FINISHED METAL DRIP EDGE FLASHING, EXTEND OVER MEMBRANE FLASHING MIN. 4". PENDING ON THE LOCATION, INSTALL THE DRIP EDGE EITHER OVER OR UNDERNEATH THE ASPHALT SHINGLES.
- OPENINGS:
  - SINGLE-HUNG VINYL WINDOW UNIT WITH INSULATED GLAZING AND INTERGRAL CHANNEL FLANGE, REFER TO WINDOW SCHEDULE FOR ADDITIONAL INFORMATION.
  - EXTERIOR INSULATED METAL DOOR AND FRAME ASSEMBLY, REFER TO DOOR SCHEDULE FOR ADDITIONAL INFORMATION.
  - INSULATED FIBERGLASS DOOR AND BORROWED LITE ASSEMBLY, REFER TO DOOR SCHEDULE FOR ADDITIONAL INFORMATION.
  - ALUMINUM THRESHOLD.
  - OVERHEAD SECTIONAL GARAGE DOOR ASSEMBLY.
  - EXTERIOR INSULATED DECORATIVE DOOR AND FRAME ASSEMBLY WITH INSULATED TRANSLUM LITE.
  - INSULATED VINYL PICTURE WINDOW WINDOW UNIT.
  - 24" X 24" RATED EXTERIOR ACCESS PANEL, PAINT TO MATCH ADJACENT WALL COLOR.
  - ALUMINUM STOREFRONT DOOR AND FRAME ASSEMBLY, REFER TO DOOR SCHEDULE FOR ADDITIONAL INFORMATION.
- FINISHES:
  - FINISH FLOOR, REFER TO ROOF FINISH SCHEDULE FOR ADDITIONAL INFORMATION
  - 5/8" TYPE "C" GYPSUM WALL BOARD
  - 5/8" TYPE "C" GYPSUM BOARD OVER 1/2" RESILIENT CHANNELS @ 12" O.C. (PER UL # L521 FOR CEILING AND UL # P533 FOR ROOF)
  - 5/8" FIRE RATED EXTERIOR GYPSUM SOFFIT BOARD OVER 1/2" RESILIENT CHANNELS @ 24" O.C. OVER 5/8" TYPE "C" GYPSUM BOARD (2HR RATED CEILING SIMILAR TO UL # P533 FOR ROOF)
  - NOT USED
  - 5/8" GYPSUM WALL BOARD
  - TWO LAYERS OF 5/8" TYPE "C" GYPSUM BOARD OVER 1/2" RESILIENT CHANNELS @ 12" O.C. OVER 5/8" TYPE "C" GYPSUM BOARD (PER UL # L577 FOR CEILING) - 2HR ASSEMBLY
- SPECIALTIES: NOT USED
- EQUIPMENT:
  - METAL MAILBOX UNIT, REFER TO SPECIFICATIONS FOR ADDITIONAL INFORMATION. INSTALL PER MFR. RECOMMENDATIONS.

**NOTE:**



**NOTE:**

- DIMENSIONS ON PLANS ARE FROM FACE OF STUD FRAMING TO FACE OF STUD TO FACE OF STUD.
- FRAMING WINDOW & EXTERIOR DOOR LOCATIONS ARE SHOWN FOR REFERENCE ONLY. FOR EXACT WINDOW & DOOR LOCATIONS PLEASE REFER TO FLOOR DIMENSION PLANS.
- ALL INTERIOR UNIT WALLS TO BE TYPE P5 UNLESS OTHERWISE NOTED ON PLANS

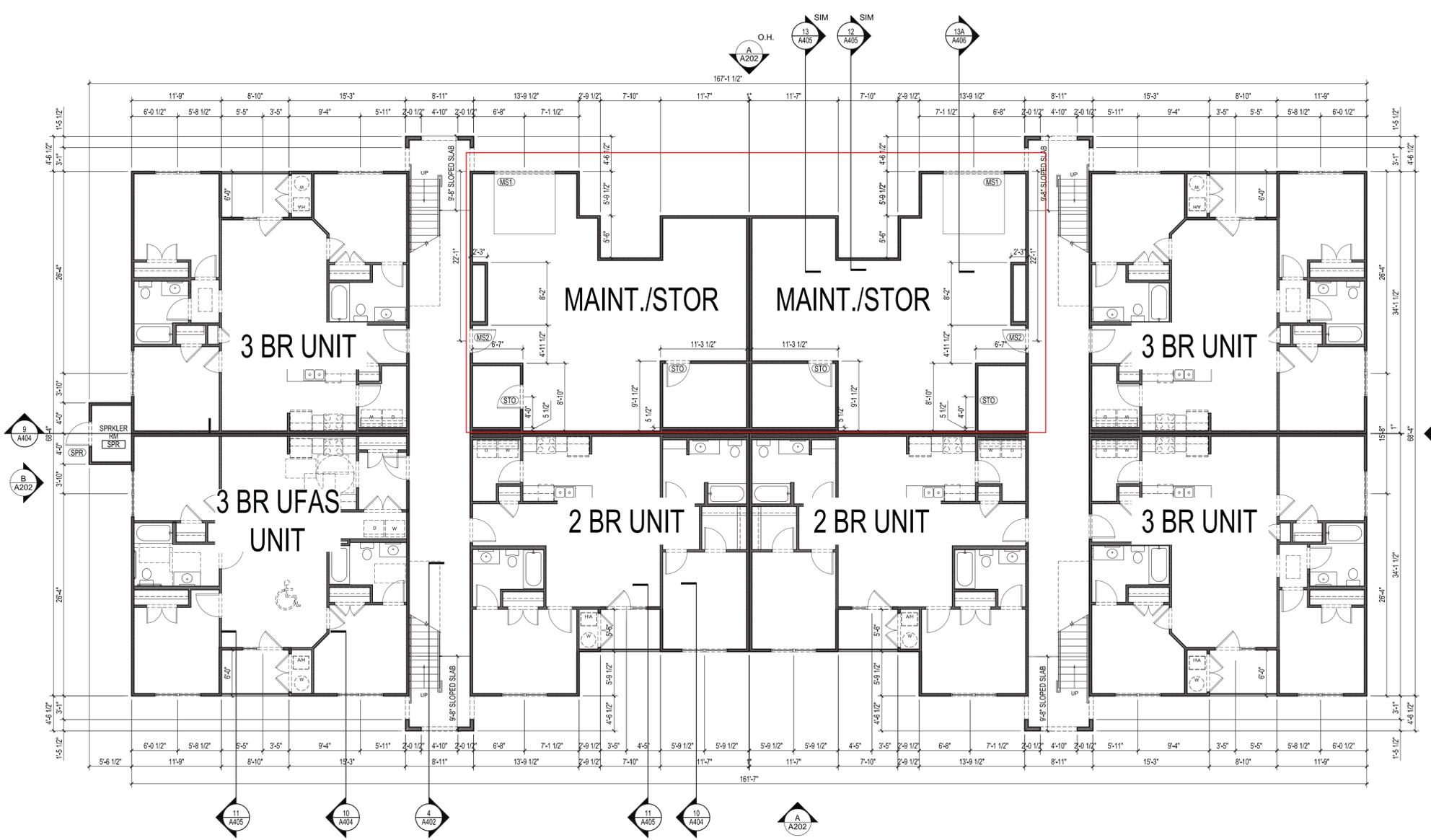


ARCHITECT  
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**Kentucky Architecture Studio LLC**  
 1571 Bardonia Road  
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CONSULTANT  
 PROJECT TITLE  
**Villas at Colt's Run Apartments**  
 Houston, TX

PERMIT SET  
 DESIGNED BY  
 DRAWN BY  
 SHEET TITLE  
**BLDG #3 1ST FLOOR PLAN**  
 PROJECT NO.  
**STA-12WB-00-8**  
 CHECKED BY  
 DATE  
**09-12-2012**  
 SHEET NO.  
**A1.09**



**BLDG TYPE #23**  
**FIRST FLOOR PLAN**  
 SCALE: 1/8" = 1' - 0"

VILLAS AT COLT'S RUN- UNIT TYPE SUMMARY													
Note: All first floor units to be adaptable per ANSI A117.1 unless otherwise noted													
Bldg 1				Bldg 2				Bldg 3					
Unit Type	# of Units	1st Floor	2nd Floor	3rd Floor	SF per Unit	Unit Description	Unit Type	# of Units	1st Floor	2nd Floor	3rd Floor	SF per Unit	Unit Description
1 BR	11	3	4	4	850 SF	1 Bdr; 1 Bath	1 BR	0	0	0	0	850 SF	1 Bdr; 1 Bath
1 BR UFAS	1	1	0	0	850 SF	1 Bdr; 1 Bath; ADA	1 BR UFAS	0	0	0	0	850 SF	1 Bdr; 1 Bath; ADA
2 BR	12	4	4	4	1,072 SF	2 Bdr; 2 Bath	2 BR	11	3	4	4	1,072 SF	2 Bdr; 2 Bath
2 BR UFAS	0	0	0	0	1,072 SF	2 Bdr; 2 Bath; ADA	2 BR UFAS	1	1	0	0	1,072 SF	2 Bdr; 2 Bath; ADA
3 BR	0	0	0	0	1,185 SF	3 Bdr; 2 Bath	3 BR	11	3	4	4	1,185 SF	3 Bdr; 2 Bath
3 BR UFAS	0	0	0	0	1,185 SF	3 Bdr; 2 Bath; ADA	3 BR UFAS	1	1	0	0	1,185 SF	3 Bdr; 2 Bath; ADA
<b>Total</b>	<b>24</b>	<b>8</b>	<b>8</b>	<b>8</b>			<b>Total</b>	<b>24</b>	<b>8</b>	<b>8</b>	<b>8</b>		

**EXTERIOR MATERIALS %**

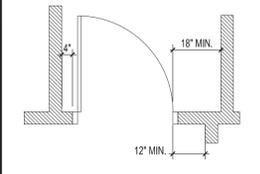
BUILDING TYPE #1	CLUBHOUSE	BUILDING TYPE #3	
TEXAS STONE	25%	TEXAS STONE	25%
FIBER-CEMENT SIDING	75%	FIBER-CEMENT SIDING	75%
		FIBER-CEMENT SIDING	50%
		FIBER-CEMENT SIDING	50%
		MAILBOX KIOSK	
		TEXAS STONE	30%
		FIBER-CEMENT SIDING	70%
		POOLHOUSE	
		FIBER-CEMENT SIDING	100%

**KEY NOTES:**

- GENERAL REQUIREMENTS:
  - NOT USED
- SITE WORK:
  - 2A. SLOPE GRADE AWAY FROM BUILDING AT A MINIMUM SLOPE OF 5% FOR A MINIMUM OF 10'-0" FEET.
- CONCRETE:
  - 3A. 4" REINFORCED CONCRETE SLAB - REFER TO STRUCTURAL DWGS. FOR ADDITIONAL INFORMATION
  - 3B. CONCRETE PORCH SLAB, SLOPE AWAY FROM BUILDING AT 1/4" PER FOOT. REFER TO CIVIL DRAWINGS FOR ADDITIONAL INFORMATION.
  - 3C. CONCRETE FOOTING, REFER TO STRUCTURAL DRAWING FOR ADDITIONAL INFORMATION.
  - 3D. 3/4" GYPCRETE
  - 3E. CONTINUOUS 1/2" COMPRESSIBLE EXPANSION JOINT WITH SEALANT
  - 3F. CONCRETE SIDEWALK, REFER TO CIVIL DRAWINGS FOR ADDITIONAL INFORMATION.
  - 3G. 3/4" GYPCRETE OVER 60 MIL MEMBRANE OVER SUBSTATE
  - 3H. LIGHTWEIGHT CONCRETE TOPPING SLOPED TO MIN. 2" AT ALUMINUM T-BAR OVER 60 MIL MEMBRANE OVER SUBSTRATE.
- MASONRY:
  - 4A. TEXAS STONE (RUBBLE PATTERN) WITH BRICK TIES AT 16" O.C. VERTICALLY AND HORIZONTALLY.
  - 4B. STONE WINDOW HEADER, INSTALL PER MFR. RECOMMENDATIONS.
  - 4C. STONE WINDOW SILL, INSTALL PER MFR. RECOMMENDATIONS.
  - 4D. CONT. THUR WALL MEMBRANE FLASHING WITH WEEP HOLES @ 24" O.C.
  - 4E. MASONRY GROUT
  - 4F. PRE-CAST ARCHITECTURAL STONE CAP
  - 4G. MASONRY JOINT
- METALS:
  - 5A. ANCHOR BOLTS, REFER TO STRUCTURAL DRAWINGS FOR ADDITIONAL INFORMATION.
  - 5B. CONTINUOUS STEEL SHELF ANGLE, EXTEND MIN. 8" ON EACH SIDE OF MASONRY OPENING, REFER TO STRUCTURAL DRAWINGS FOR ADDITIONAL INFORMATION.
  - 5C. STAIR ASSEMBLY, REFER TO STAIR DETAILS FOR ADDITIONAL INFORMATION
  - 5D. METAL PICKET GUARD RAILING, REFER TO DETAIL FOR ADDITIONAL INFORMATION
  - 5E. 3/8" THK. STEEL PLATE (PAINTED), EXTEND MIN. 8" BEYOND MASONRY OPENING.
- WOOD, PLASTICS AND COMPOSITES:
  - 6A. 2X4 WOOD STUD FRAMING @ 16" O.C.
  - 6B. 2X4 WOOD SILL PLATE.
  - 6C. 2X4 WOOD STUD HEADER, REFER TO STRUCTURAL
  - 6D. DOUBLE 2X4 WOOD STUD TOP PLATE.
  - 6E. OPEN WEB WOOD FLOOR JOISTS, REFER TO STRUCTURAL DRAWINGS FOR ADDITIONAL INFORMATION.
  - 6F. OPEN WEB WOOD ROOF TRUSSES, REFER TO STRUCTURAL DRAWINGS FOR ADDITIONAL INFORMATION.
  - 6G. OSB SHEATHING, REFER TO STRUCTURAL DWGS FOR ADDITIONAL INFORMATION
  - 6H. 3/4" TONGUE AND GROOVE OSB SUBSTRATE.
  - 6I. DECORATIVE WOOD SILL, REFER TO FINISH SCHEDULE FOR ADDITIONAL INFORMATION.
  - 6J. 1X4 WOOD WINDOW CASSEMENT, REFER TO FINISH SCHEDULE FOR ADDITIONAL INFORMATION.
  - 6K. CONT. 2X4 EXTERIOR GRADE WOOD BLOCKING.
  - 6L. FIBER-CEMENT FASCIA BOARD OVER 2 X W WOOD BLOCKING.
  - 6M. NOT USED
  - 6N. WOOD BEAM, REFER TO STRUCTURAL DRAWINGS FOR ADDITIONAL INFORMATION.
  - 6O. (3) 2 X 12 WOOD STUD FRAMING, REFER TO STRUCTURAL FOR ADDITIONAL INFORMATION.
  - 6P. 2X4 WOOD STUD FRAMING @ 16" O.C.
  - 6Q. LINE OF STUD FRAMING.
  - 6R. 2X6 WOOD ROOF RAFTERS AT 16" O.C., REFER TO STRUCTURAL FOR ADDITIONAL INFORMATION.
  - 6S. CONT. 2X10 TOP PLATE, CUT TO SIZE.
  - 6T. 7/16" EXTERIOR GRADE OSB SHEATHING
  - 6U. 2X4 WOOD SILL PLATE
  - 6V. 3 X 6 ROUGH CUT CEDAR POSTS, REFER TO STRUCTURAL FOR ADDITIONAL INFORMATION.
  - 6W. CONT. 2 X 12 ROUGH CUT CEDAR JOISTS ON EACH SIDE OF POSTS, BOLT TO POST PER STRUCTURAL DRAWINGS.
  - 6X. 2 X 6 WOOD STUD FRAMING @ 16" O.C.
  - 6Y. LVL BEAMS, REFER TO STRUCTURAL DRAWINGS FOR SIZE AND ADDITIONAL INFORMATION.
  - 6Z. PROVIDE 3/4" EXTERIOR GRADE PLYWOOD SHEATHING AS CATWALK PATH TO ROOFTOP ACCESS PANELS.
  - 6AA. CONT. 2 X 8 ROUGH CUT CEDAR TRELLIS JOISTS (SPACED EQUALLY) NOTCH JOISTS AS REQUIRED, OVERLAP, STAGGER JOISTS, TO SCREW ASSEMBLY TO CROSS JOISTS.
- THERMAL AND MOISTURE PROTECTION:
  - 7A. 4" X 3" PRE-FINISHED METAL DOWNSPOUT.
  - 7B. 6" WIDE PRE-FINISHED RECTANGULAR METAL GUTTER WITH PERFORATED LEAF GUARD, COLOR TO BE SELECTED BY ARCHITECT.
  - 7C. 1/2" RIGID FOAM INSULATION (MIN R-2)
  - 7D. DECORATIVE 3/8" W X 1/8" NON-VENTILATED LOUVER BY FYPON, LOUVER MODEL # LV32X16
  - 7E. 3/8" BATT INSULATION
  - 7F. 5/16" THK. CEDAR FINISHED FIBER-CEMENT PANEL BOARDS - COLOR TO BE SELECTED BY ARCHITECT.
  - 7G. CONTINUOUS SEALANT AND BACKER ROD
  - 7H. 4" NOMINAL CEDAR FINISHED FIBER-CEMENT LAP SIDING BOARDS - COLOR TO BE SELECTED BY ARCHITECT.
  - 7I. 8" NOMINAL CEDAR FINISHED FIBER-CEMENT LAP SIDING BOARDS - COLOR TO BE SELECTED BY ARCHITECT.
  - 7J. CEDAR FINISHED FIBER-CEMENT BOARD AND BATTEN SIDING @ 16" O.C. - COLOR TO BE SELECTED BY ARCHITECT.
  - 7K. 4" NOMINAL CEDAR FINISHED FIBER-CEMENT TRIM BOARDS - COLOR TO BE SELECTED BY ARCHITECT.
  - 7L. 8" NOMINAL CEDAR FINISHED FIBER-CEMENT TRIM BOARDS - COLOR TO BE SELECTED BY ARCHITECT.
  - 7M. VENTED VINYL SOFFIT PANELS.
  - 7N. CONT. ALUMINUM DRIP EDGE.
  - 7O. CONT. INSULATION BATTLE
  - 7P. FUNCTIONAL 16 W X 24 H LOUVER BY FYPON, LOUVER MODEL # FLV16X24
  - 7Q. PASSIVE METAL ROOF VENT BOX (MINIMUM OF 50 SQ. IN. OF FREE VENTILATION AREA PER UNIT) - COLOR TO BE SELECTED BY ARCHITECT. PROVIDE ONE (1) SQ. FT. OF FREE VENTILATION PER EVERY 150 SQ. FT. OF ATTIC SPACE. G.C TO INSTALL VENT BOX PER MFRS RECOMMENDATIONS.
  - 7R. ASPHALT COMPOSITE SHINGLES OVER 1/8" ROOF FELT (SHOWN DASHED) OVER 7/16" RADIANT BARRIER SHEATHING WITH CLIPS, REFER TO SPECIFICATIONS FOR INFORMATION ON THE RADIANT BARRIER SHEATHING.
  - 7S. DECORATIVE 18" W X 30" H CATHEDRAL LOUVER AND TRIM BY FYPON, LOUVER MODEL # CLV23X31, TRIM MODEL # CLV23X31L4F
  - 7T. 12" NOMINAL CEDAR FINISHED FIBER-CEMENT TRIM BOARDS - COLOR TO BE SELECTED BY ARCHITECT.
  - 7U. LINE OF HIDDEN ROOF
  - 7V. CONT. PRE-FINISHED ALUMINUM FLASHING, EXTEND OVER ROWLOCK AND EXTEND UP AND SIDING MIN 8".
  - 7W. PERIMETER DRAINAGE MEMBRANE
  - 7X. R-38 BLOW-IN INSULATION
  - 7Y. METAL ROOF FLASHING, EXTEND UNDER SHINGLES AND UP WALL MIN. 6"
  - 7Z. RIDGE VENT
  - 7AA. 8" NOMINAL CEDAR FINISHED FIBER-CEMENT TRIM BOARDS - COLOR TO BE SELECTED BY ARCHITECT.
  - 7AB. METAL ROOF OVER 1/8" ROOF FELT (SHOWN DASHED) OVER 7/16" RADIANT BARRIER SHEATHING WITH CLIPS, PROVIDE VENTED RIGID CAP, REFER TO SPECIFICATIONS FOR INFORMATION ON THE RADIANT BARRIER SHEATHING.
  - 7AC. FULLY ADHERED MEMBRANE ROOFING OVER 1" RIGID INSULATION OVER 3/4" EXTERIOR GRADE PLYWOOD SHEATHING WITH CLIPS, INSTALL MEMBRANE ROOFING MFR'S RECOMMENDATIONS.
  - 7AD. FULLY ADHERED MEMBRANE FLASHING OVER 3/4" EXTERIOR GRADE PLYWOOD SHEATHING, EXTEND MEMBRANE UP AND OVER ROOFING FRAMING.
  - 7AE. CONTINUOUS PRE-FINISHED ALUMINUM DRIP EDGE, INSTALL UNDER ASPHALT SHINGLES AND EXTEND DOWN OVER MEMBRANE FLASHING MIN. OF 4".
- OPENINGS:
  - 8A. SINGLE-HUNG VINYL WINDOW UNIT WITH INSULATED GLAZING AND INTERGLAZING CHANNEL FLANGE, REFER TO WINDOW SCHEDULE FOR ADDITIONAL INFORMATION.
  - 8B. EXTERIOR INSULATED METAL DOOR AND FRAME ASSEMBLY, REFER TO DOOR SCHEDULE FOR ADDITIONAL INFORMATION.
  - 8C. INSULATED FIBERGLASS DOOR AND BOROURED LITE ASSEMBLY, REFER TO DOOR SCHEDULE FOR ADDITIONAL INFORMATION.
  - 8D. ALUMINUM THRESHOLD.
  - 8E. OVERHEAD SECTIONAL GARAGE DOOR ASSEMBLY.
  - 8F. EXTERIOR INSULATED DECORATIVE DOOR AND FRAME ASSEMBLY WITH INSULATED TRANSOM LITE.
  - 8G. INSULATED VINYL PICTURE WINDOW WINDOW UNIT.
  - 8H. 24" X 24" RATED EXTERIOR ACCESS PANEL, PAINT TO MATCH ADJACENT CEILING COLOR.
  - 8I. ALUMINUM STOREFRONT DOOR AND FRAME ASSEMBLY, REFER TO DOOR SCHEDULE FOR ADDITIONAL INFORMATION.
- FINISHES:
  - 9A. FINISH FLOOR, REFER TO ROOF FINISH SCHEDULE FOR ADDITIONAL INFORMATION
  - 9B. 5/8" TYPE "X" GYPSUM WALL BOARD
  - 9C. 5/8" TYPE "C" GYPSUM BOARD OVER 1/2" RESILIENT CHANNELS @ 12" O.C. (PER UL # L586 FOR CEILING AND UL # P548 FOR ROOF)
  - 9D. 5/8" FIRE RATED EXTERIOR GYPSUM SOFFIT BOARD OVER 1/2" RESILIENT CHANNELS @ 24" O.C. OVER 5/8" TYPE "C" GYPSUM BOARD (1 HR RATED CEILING SIMILAR TO UL # P548 FOR ROOF)
  - 9E. NOT USED
  - 9F. 5/8" GYPSUM WALL BOARD
  - 9G. TWO LAYERS OF 5/8" TYPE "C" GYPSUM BOARD OVER 1/2" RESILIENT CHANNELS @ 12" O.C. OVER 5/8" TYPE "C" GYPSUM BOARD (PER UL # L577 FOR CEILING) - 2HR ASSEMBLY
- SPECIALTIES:
  - NOT USED
- EQUIPMENT:
  - 11A. METAL MAILBOX UNIT, REFER TO SPECIFICATIONS FOR ADDITIONAL INFORMATION. INSTALL PER MFR. RECOMMENDATIONS.
- PLUMBING:
  - 15A. DRINKING FOUNTAIN, REFER TO PLUMBING DRAWINGS FOR ADDITIONAL INFORMATION.

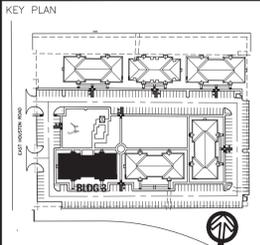
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**NOTE:**  
DOOR PLACEMENT, UNLESS OTHERWISE DIMENSIONED ON PLANS, INSTALL DOORS PER THE FOLLOWING FINISH DIMENSIONS LISTED BELOW (FACE OF GWB TO FACE OF GWB):



**NOTE:**

- DIMENSIONS ON PLANS ARE FROM FACE OF STUD FRAMING TO FACE OF STUD TO FACE OF STUD.
- FRAMING WINDOW & EXTERIOR DOOR LOCATIONS ARE SHOWN FOR REFERENCE ONLY. FOR EXACT WINDOW & DOOR LOCATIONS PLEASE REFER TO LOCATION DIMENSION PLANS.
- ALL INTERIOR UNIT WALLS TO BE TYPE P5 UNLESS OTHERWISE NOTED ON PLANS.
- ON ROOF PLANS, ALL DOWNSPOUT SIZES ARE TO BE 3" X 4"



No.	Description	Date
1	PERMIT SET	12-20-2012
2	COH PREMIT REVIEW	11-28-2012
3	COH PREMIT REVIEW	01-24-2013
3	VE REVISIONS	08-15-2013



ARCHITECT  
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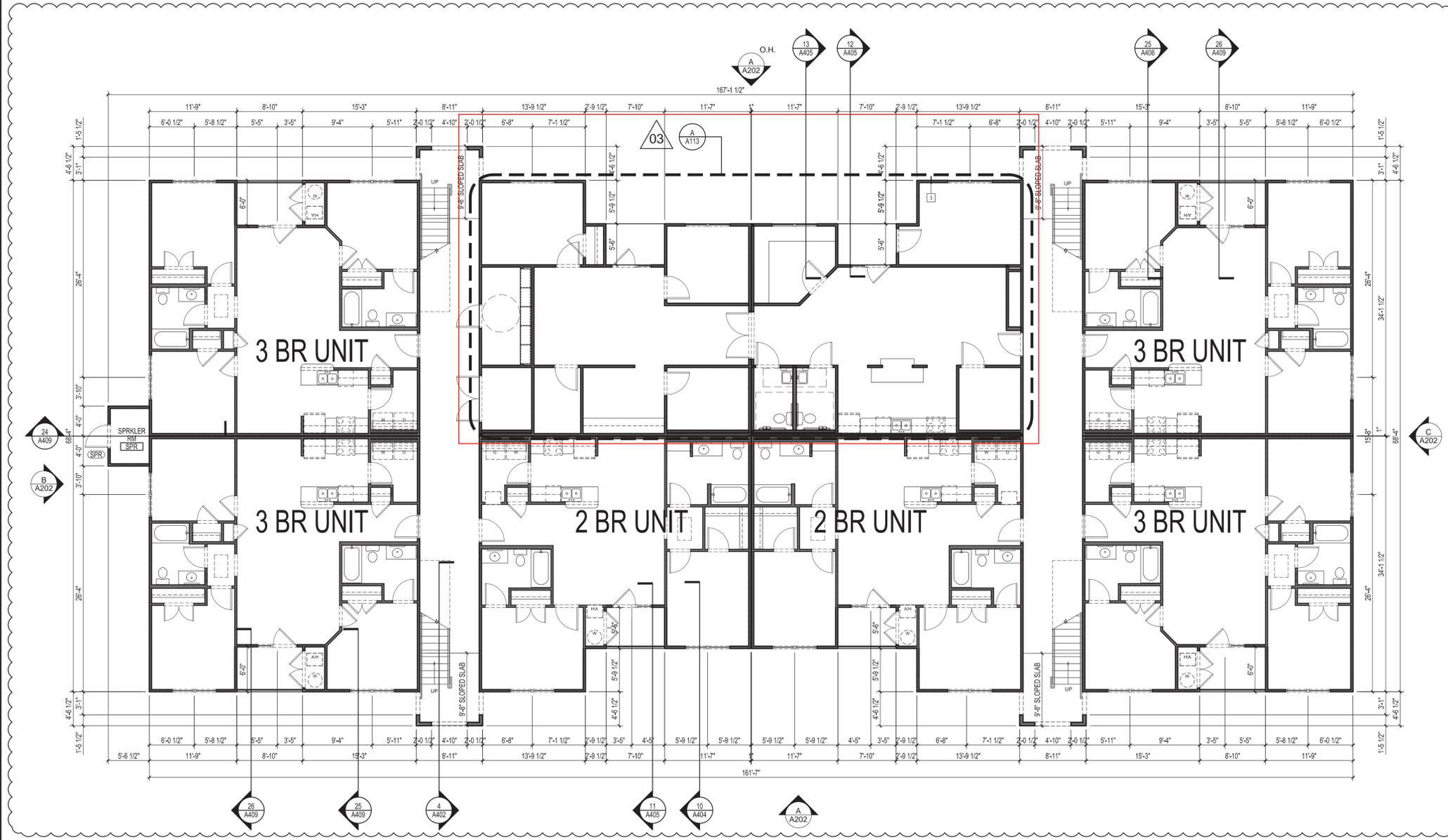
ARCHITECT OF RECORD  
**Kentucky Architecture Studio LLC**  
1571 Barstow Road Louisville, Kentucky Tel: 502-586-8007 Fax: 502-586-8004

CONSULTANT

PROJECT TITLE  
**Villas at Colt's Run Apartments**  
Houston, TX

CONSTRUCTION SET  
DESIGNED BY \_\_\_\_\_ CHECKED BY \_\_\_\_\_  
DRAWN BY \_\_\_\_\_ DATE 8-21-2013

SHEET TITLE  
**BLDG #3 1ST FLOOR PLAN**  
PROJECT NO. STA-12WB-00-8 SHEET NO. **A1.09**



**BLDG TYPE #3 FIRST FLOOR PLAN**  
SCALE: 1/8" = 1' - 0"

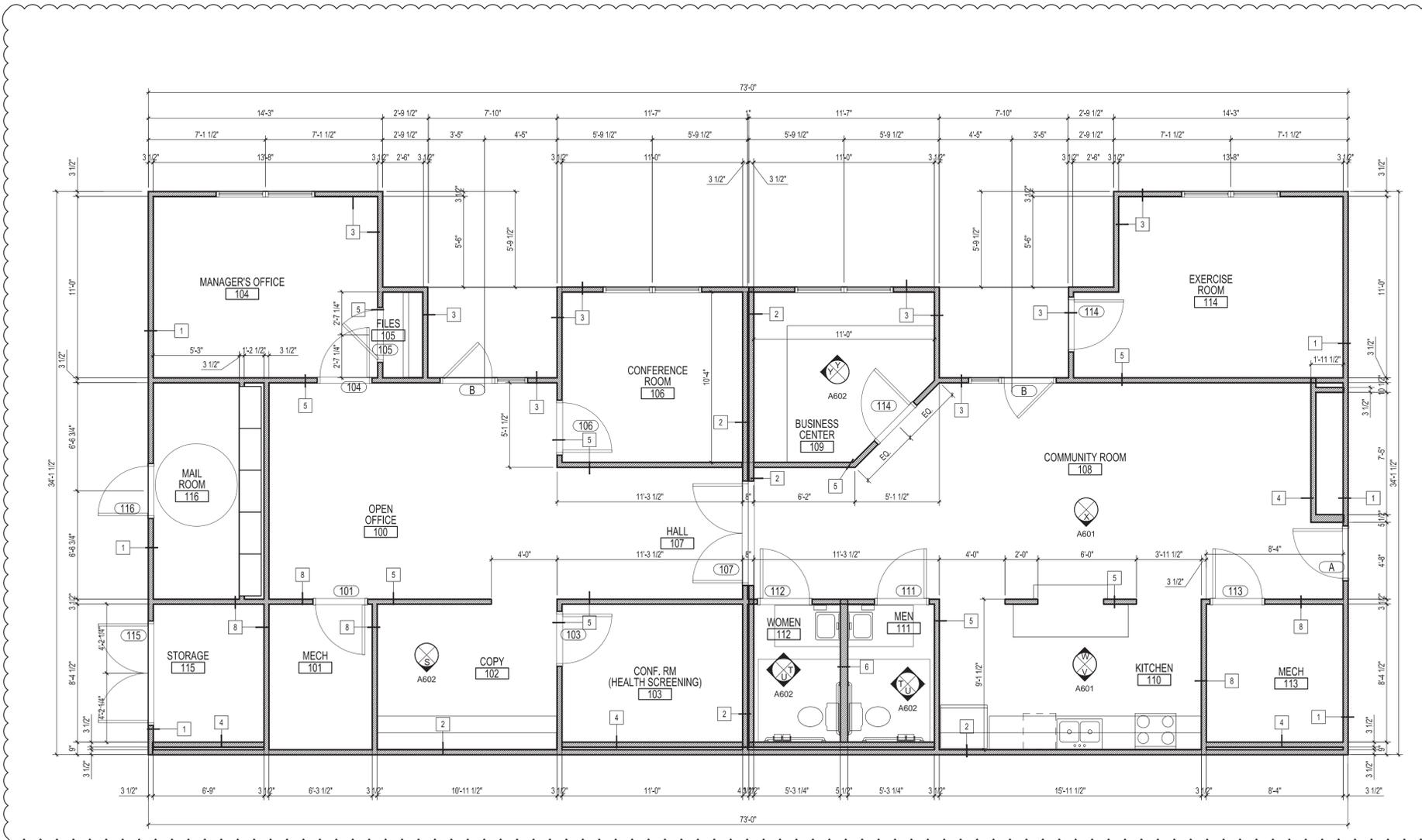
VILLAS AT COLT'S RUN- UNIT TYPE SUMMARY													
Note: All first floor units to be adaptable per ANSI A117.1 unless otherwise noted													
Bldg 1					Bldg 2					Bldg 3			
Unit Type	# of Units	1st Floor	2nd Floor	3rd Floor	SF per Unit	Unit Description	Unit Type	# of Units	1st Floor	2nd Floor	3rd Floor	SF per Unit	Unit Description
1 BR	11	3	4	4	850 SF	1 Bdr; 1 Bath	1 BR	0	0	0	0	850 SF	1 Bdr; 1 Bath
1 BR UFAS	1	1	0	0	850 SF	1 Bdr; 1 Bath; ADA	1 BR UFAS	0	0	0	0	850 SF	1 Bdr; 1 Bath; ADA
2 BR	12	4	4	4	1,072 SF	2 Bdr; 2 Bath	2 BR	11	3	4	4	1,072 SF	2 Bdr; 2 Bath
2 BR UFAS	0	0	0	0	1,072 SF	2 Bdr; 2 Bath; ADA	2 BR UFAS	1	1	0	0	1,072 SF	2 Bdr; 2 Bath; ADA
3 BR	0	0	0	0	1,185 SF	3 Bdr; 2 Bath	3 BR	11	3	4	4	1,185 SF	3 Bdr; 2 Bath
3 BR UFAS	0	0	0	0	1,185 SF	3 Bdr; 2 Bath; ADA	3 BR UFAS	1	1	0	0	1,185 SF	3 Bdr; 2 Bath; ADA
<b>Total</b>	<b>24</b>	<b>8</b>	<b>8</b>	<b>8</b>			<b>Total</b>	<b>24</b>	<b>8</b>	<b>8</b>	<b>8</b>		

EXTERIOR MATERIALS %			
BUILDING TYPE #1	BUILDING TYPE #2	BUILDING TYPE #3	
TEXAS STONE	TEXAS STONE	TEXAS STONE	
FIBER-CEMENT SIDING	FIBER-CEMENT SIDING	FIBER-CEMENT SIDING	
10%	90%	90%	90%

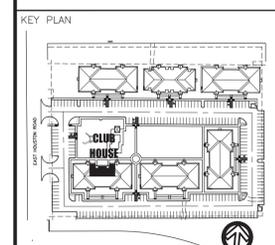
as-built community space located in the area originally designated as storage/maintenance.

**KEY NOTES:**

- GENERAL REQUIREMENTS:
  - NOT USED
- SITE WORK:
  - SLOPE GRADE AWAY FROM BUILDING AT A MINIMUM SLOPE OF 5% FOR A MINIMUM OF 10'-0" FEET.
- CONCRETE:
  - 4" REINFORCED CONCRETE SLAB - REFER TO STRUCTURAL DWGS. FOR ADDITIONAL INFORMATION
  - CONCRETE PORCH SLAB, SLOPE AWAY FROM BUILDING AT 1/4" PER FOOT. REFER TO CIVIL DRAWINGS FOR ADDITIONAL INFORMATION.
  - CONCRETE FOOTING, REFER TO STRUCTURAL DRAWING FOR ADDITIONAL INFORMATION.
  - 3/4" GYPCRETE
  - CONTINUOUS 1/2" COMPRESSIBLE EXPANSION JOINT WITH SEALANT
  - CONCRETE SIDEWALK, REFER TO CIVIL DRAWINGS FOR ADDITIONAL INFORMATION.
  - 3/4" GYPCRETE OVER 60 MIL MEMBRANE OVER SUBSTATE
  - LIGHTWEIGHT CONCRETE TOPPING SLOPED TO MIN. 2" AT ALUMINUM T-BAR OVER 60 MIL MEMBRANE OVER SUBSTRATE.
- MASONRY:
  - TEXAS STONE (RUBBLE PATTERN) WITH BRICK TIES AT 16" O.C. VERTICALLY AND HORIZONTALLY.
  - STONE WINDOW HEADER, INSTALL PER MFR. RECOMMENDATIONS.
  - STONE WINDOW SILL, INSTALL PER MFR. RECOMMENDATIONS.
  - CONT. THUR WALL MEMBRANE FLASHING WITH WEEP HOLES @ 24" O.C.
  - MASONRY GROUT
  - PRE-CAST ARCHITECTURAL STONE CAP
  - MASONRY JOINT
- METALS:
  - ANCHOR BOLTS, REFER TO STRUCTURAL DRAWINGS FOR ADDITIONAL INFORMATION.
  - CONTINUOUS STEEL SHELF ANGLE, EXTEND MIN. 8" ON EACH SIDE OF MASONRY OPENING, REFER TO STRUCTURAL DRAWINGS FOR ADDITIONAL INFORMATION.
  - STAIR ASSEMBLY, REFER TO STAIR DETAILS FOR ADDITIONAL INFORMATION
  - METAL PICKET GUARD RAILING, REFER TO DETAIL FOR ADDITIONAL INFORMATION
  - 3/8" THK. STEEL PLATE (PAINTED), EXTEND MIN. 8" BEYOND MASONRY OPENING.
- WOOD, PLASTICS AND COMPOSITES:
  - 2X4 WOOD STUD FRAMING @ 16" O.C.
  - 2X4 WOOD SILL PLATE.
  - 2XW WOOD STUD HEADER, REFER TO STRUCTURAL
  - DOUBLE 2X4 WOOD STUD TOP PLATE.
  - OPEN WEB WOOD FLOOR JOISTS, REFER TO STRUCTURAL DRAWINGS FOR ADDITIONAL INFORMATION.
  - OPEN WEB WOOD ROOF TRUSSES, REFER TO STRUCTURAL DRAWINGS FOR ADDITIONAL INFORMATION.
  - OSB SHEATHING, REFER TO STRUCTURAL DWGS FOR ADDITIONAL INFORMATION
  - 3/4" TONGUE AND GROOVE OSB SUBSTRATE.
  - DECORATIVE WOOD BASE, REFER TO FINISH SCHEDULE FOR ADDITIONAL INFORMATION.
  - DECORATIVE WOOD WINDOW SILL, REFER TO FINISH SCHEDULE FOR ADDITIONAL INFORMATION.
  - 1XW WOOD WINDOW CASEMENT, REFER TO FINISH SCHEDULE FOR ADDITIONAL INFORMATION.
  - CONT. 2XW EXTERIOR GRADE WOOD BLOCKING.
  - FIBER-CEMENT FASCIA BOARD OVER 2 X W WOOD BLOCKING.
  - NOT USED
  - WOOD BEAM, REFER TO STRUCTURAL DRAWINGS FOR ADDITIONAL INFORMATION.
  - (3) 2 X 12 WOOD STUD FRAMING, REFER TO STRUCTURAL FOR ADDITIONAL INFORMATION.
  - 2X4 WOOD STUD FRAMING @ 16" O.C.
  - LINE OF STUD FRAMING.
  - 2X6 WOOD ROOF RAFTERS AT 16" O.C., REFER TO STRUCTURAL FOR ADDITIONAL INFORMATION.
  - CONT. 2X10 TOP PLATE, CUT TO SIZE.
  - 7/16" EXTERIOR GRADE OSB SHEATHING
  - 2X4 WOOD SILL PLATE
  - 3 X 6 ROUGH CUT CEDAR POSTS, REFER TO STRUCTURAL FOR ADDITIONAL INFORMATION.
  - CONT. 2 X 12 ROUGH CUT CEDAR JOISTS ON EACH SIDE OF POSTS, BOLT TO POST PER STRUCTURAL DRAWINGS.
  - 2 X 6 WOOD STUD FRAMING @ 16" O.C.
  - LVL BEAMS, REFER TO STRUCTURAL DRAWINGS FOR SIZE AND ADDITIONAL INFORMATION.
  - PROVIDE 3/4" EXTERIOR GRADE PLYWOOD SHEATHING AS CATWALK PATH TO ROOFTOP ACCESS PANELS.
  - CONT. 2 X 8 ROUGH CUT CEDAR TRELLIS JOISTS (SPACED EQUALLY) NOTCH JOISTS AS REQUIRED, OVERLAP, STAGGER JOISTS, TO SCREW ASSEMBLY TO CROSS JOISTS.
- THERMAL AND MOISTURE PROTECTION:
  - 4" X 3" PRE-FINISHED METAL DOWNSPOUT.
  - 6" WIDE PRE-FINISHED RECTANGULAR METAL GUTTER WITH PERFORATED LEAF GUARD, COLOR TO BE SELECTED BY ARCHITECT.
  - 1/2" RIGID FOAM INSULATION (MIN R-2)
  - DECORATIVE 32" W X 16" H NON-VENTED LOUVER BY FYPON, LOUVER MODEL # LV32X16
  - 5/8" R-15 BATT INSULATION
  - 5/16" THK. CEDAR FINISHED FIBER-CEMENT PANEL BOARDS - COLOR TO BE SELECTED BY ARCHITECT.
  - CONTINUOUS SEALANT AND BACKER ROD
  - 4" NOMINAL CEDAR FINISHED FIBER-CEMENT LAP SIDING BOARDS - COLOR TO BE SELECTED BY ARCHITECT.
  - 8" NOMINAL CEDAR FINISHED FIBER-CEMENT LAP SIDING BOARDS - COLOR TO BE SELECTED BY ARCHITECT.
  - CEMENT FINISHED FIBER-CEMENT BOARD AND BATTEN SIDING @ 16" O.C. - COLOR TO BE SELECTED BY ARCHITECT.
  - 4" NOMINAL CEDAR FINISHED FIBER-CEMENT TRIM BOARDS - COLOR TO BE SELECTED BY ARCHITECT.
  - 8" NOMINAL CEDAR FINISHED FIBER-CEMENT TRIM BOARDS - COLOR TO BE SELECTED BY ARCHITECT.
  - VENTED VINYL SOFFIT PANELS.
  - CONT. ALUMINUM DRIP EDGE.
  - CONT. INSULATION Baffle.
  - FUNCTIONAL 16 W X 24 H LOUVER BY FYPON, LOUVER MODEL # FLV16X24
  - PASSIVE METAL ROOF VENT BOX (MINIMUM OF 50 SQ. IN. OF FREE VENTILATION AREA PER UNIT) - COLOR TO BE SELECTED BY ARCHITECT. PROVIDE ONE (1) SQ. FT. OF FREE VENTILATION PER EVERY 150 SQ. FT. OF ATTIC FLOOR SPACE. G.C TO INSTALL VENT BOX PER MFRS RECOMMENDATIONS.
  - ASPHALT COMPOSITE SHINGLES OVER 1/8" B ROOF FELT (SHOWN DASHED) OVER 7/16" RADIAN BARRIER SHEATHING WITH CLIPS, REFER TO SPECIFICATIONS FOR INFORMATION ON THE RADIAN BARRIER SHEATHING.
  - DECORATIVE 18" W X 30" H CATHEDRAL LOUVER AND TRIM BY FYPON, LOUVER MODEL # CLV23X31, TRIM MODEL # CLV23X31(LF)
  - NOMINAL CEDAR FINISHED FIBER-CEMENT TRIM BOARDS - COLOR TO BE SELECTED BY ARCHITECT.
  - LINE OF HIDDEN ROOF
  - CONT. PRE-FINISHED ALUMINUM FLASHING, EXTEND OVER ROWLOCK AND EXTEND UP AND SIDING MIN 8"
  - PERIMETER DRAINAGE MEMBRANE
  - R-38 BLOW-IN INSULATION
  - METAL ROOF FLASHING, EXTEND UNDER SHINGLES AND UP WALL MIN. 6"
  - RIDGE VENT
  - NOMINAL CEDAR FINISHED FIBER-CEMENT TRIM BOARDS - COLOR TO BE SELECTED BY ARCHITECT.
  - METAL ROOF OVER 1/8" B ROOF FELT (SHOWN DASHED) OVER 7/16" RADIAN BARRIER SHEATHING WITH CLIPS, PROVIDE VENTED RIGID CAP, REFER TO SPECIFICATIONS FOR INFORMATION ON THE METAL ROOFING.
  - FULLY ADHERED MEMBRANE ROOFING OVER 1" RIGID INSULATION OVER 3/4" EXTERIOR GRADE PLYWOOD SHEATHING WITH CLIPS, INSTALL MEMBRANE ROOFING MFR'S RECOMMENDATIONS.
  - FULLY ADHERED MEMBRANE FLASHING OVER 3/4" EXTERIOR GRADE PLYWOOD SHEATHING, EXTEND MEMBRANE UP AND OVER ROOFING FRAMING.
  - CONTINUOUS PRE-FINISHED ALUMINUM DRIP EDGE, INSTALL UNDER ASPHALT SHINGLES AND EXTEND DOWN OVER MEMBRANE FLASHING MIN. OF 4"
- OPENINGS:
  - SINGLE-HUNG VINYL WINDOW UNIT WITH INSULATED GLAZING AND INTERGRAL CHANNEL FLANGE, REFER TO WINDOW SCHEDULE FOR ADDITIONAL INFORMATION.
  - EXTERIOR INSULATED METAL DOOR AND FRAME ASSEMBLY, REFER TO DOOR SCHEDULE FOR ADDITIONAL INFORMATION.
  - INSULATED FIBERGLASS DOOR AND BORROWED LITE ASSEMBLY, REFER TO DOOR SCHEDULE FOR ADDITIONAL INFORMATION.
  - ALUMINUM THRESHOLD.
  - OVERHEAD SECTIONAL GARAGE DOOR ASSEMBLY.
  - EXTERIOR INSULATED DECORATIVE DOOR AND FRAME ASSEMBLY WITH INSULATED TRANSOM LITE.
  - INSULATED VINYL PIGEON WINDOW WINDOW UNIT.
  - 24" X 24" RATED EXTERIOR ACCESS PANEL, PAINT TO MATCH ADJACENT CEILING COLOR.
  - ALUMINUM STOREFRONT DOOR AND FRAME ASSEMBLY, REFER TO DOOR SCHEDULE FOR ADDITIONAL INFORMATION.
- FINISHES:
  - FINISH FLOOR, REFER TO ROOF FINISH SCHEDULE FOR ADDITIONAL INFORMATION
  - 5/8" TYPE "C" GYPSUM WALL BOARD
  - 5/8" TYPE "C" GYPSUM BOARD OVER 1/2" RESILIENT CHANNELS @ 12" O.C. (PER UL # L586 FOR CEILING AND UL # P548 FOR ROOF)
  - 5/8" FIRE RATED EXTERIOR GYPSUM SOFFIT BOARD OVER 1/2" RESILIENT CHANNELS @ 24" O.C. OVER 5/8" TYPE "C" GYPSUM BOARD (1 HR RATED CEILING SIMILAR TO UL # P548 FOR ROOF)
  - NOT USED
  - 5/8" GYPSUM WALL BOARD
  - TWO LAYERS OF 5/8" TYPE "C" GYPSUM BOARD OVER 1/2" RESILIENT CHANNELS @ 12" O.C. OVER 5/8" TYPE "C" GYPSUM BOARD (PER UL # L577 FOR CEILING) - 2HR ASSEMBLY
- SPECIALTIES:
  - NOT USED
- EQUIPMENT:
  - METAL MAILBOX UNIT, REFER TO SPECIFICATIONS FOR ADDITIONAL INFORMATION. INSTALL PER MFR. RECOMMENDATIONS.
- PLUMBING:
  - DRINKING FOUNTAIN, REFER TO PLUMBING DRAWINGS FOR ADDITIONAL INFORMATION.



BLDG #3 CLUBHOUSE PLAN  
SCALE: 3/16" = 1' - 0"



No.	Description	Date
1	COH PREMIT REVIEW	12-20-2012
2	COH PREMIT REVIEW	11-28-2012
3	VE REVISIONS	01-24-2013
		08-15-2013



ARCHITECT  
WEISS & ROUSE INC. DESIGN CONSTRUCTION SPECIALTY FABRICATIONS  
6500 Westpark Blvd. Suite 1000 Houston, TX 77057-1200 Tel: 281-462-2400 Fax: 281-462-2404

ARCHITECT OF RECORD  
Kentucky Architecture Studio LLC  
1571 Bardonia Road Louisville, Kentucky Tel: 502-599-8007 Fax: 502-599-8004

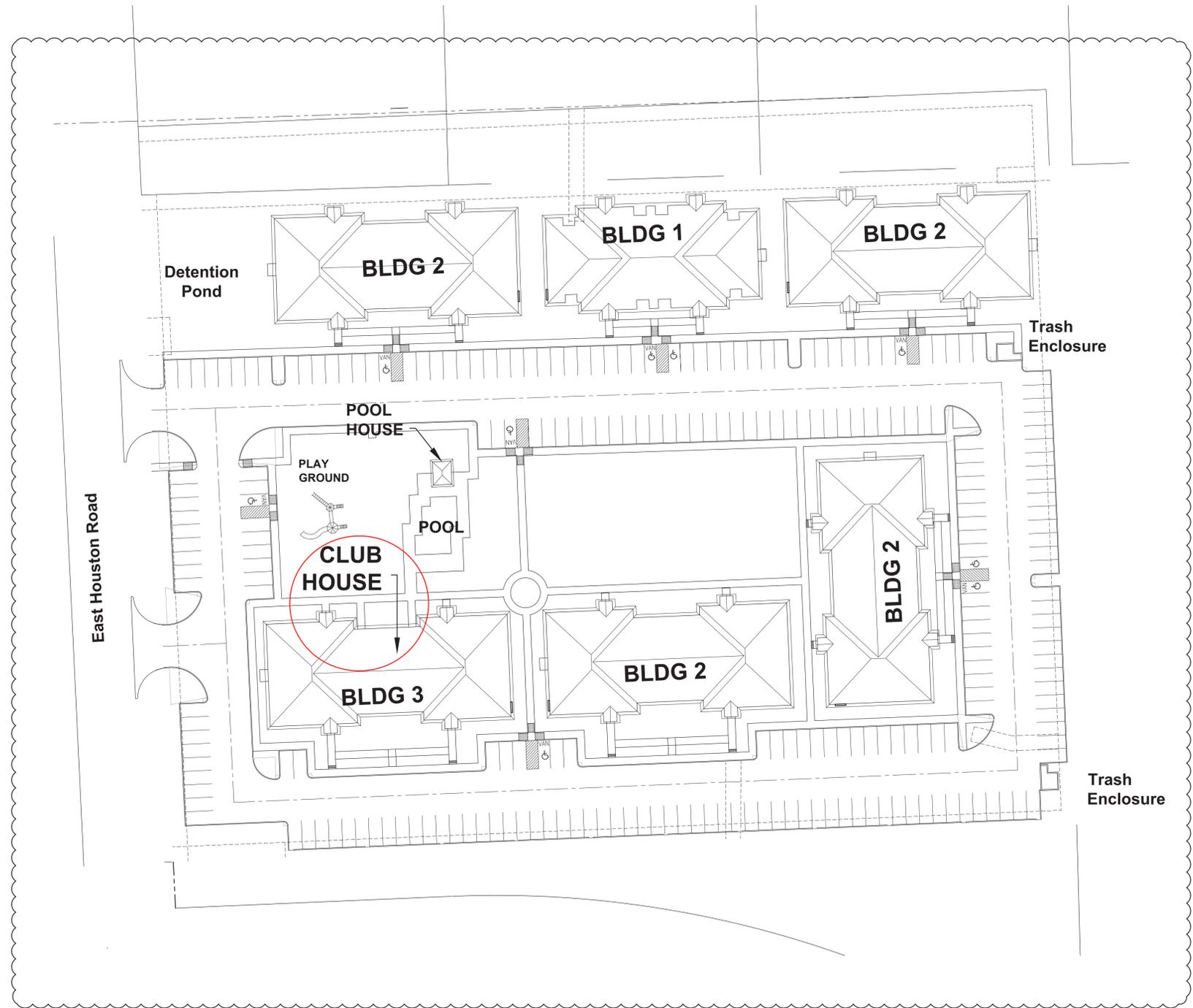
CONSULTANT

PROJECT TITLE  
Villas at Colt's Run Apartments  
Houston, TX

CONSTRUCTION SET

DESIGNED BY	CHECKED BY
DRAWN BY	DATE 8-21-2013
SHEET TITLE CLUBHOUSE PLAN	
PROJECT NO. STA-12WB-00-8	SHEET NO. A1.13

as-built site plan



**Volume 1, Tab 2. ACTIVITY OVERVIEW**

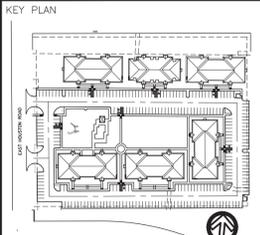
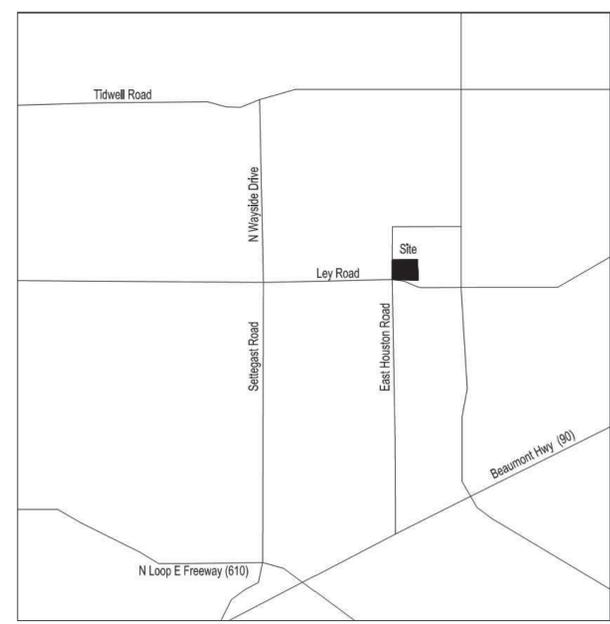
**Part F. Building/Unit Type Configuration (Required for All Rental Developments)**

*Unit types should be entered from smallest to largest based on "# of Bedrooms" and "Sq. Ft. Per Unit." "Unit Label" should correspond to the unit label or name used on the unit floor plan. "Building Label" should conform to the building label or name on the building floor plan. The total number of units per unit type and totals for "Total # of Units" and "Total Sq Ft. for Unit Type" should match the rent schedule and site plan. If additional building types are needed, they are available by unhiding the columns between J and Z in Excel.*

Development Name: **Villas at Colt's Run Apartments** City: **Houston, TX**

Unit Type	# of Bedrooms	# of Baths	Sq. Ft. Per Unit	Building Configuration			Total # of Buildings	Total # of Units	Total Sq Ft for Unit Type
				Type 1	Type 2	Type 3			
1BR	1	1	850				11	9,350	
1BR UFAS	1	1	850				1	850	
2BR	2	2	1,072				12	70,752	
2BR UFAS	2	2	1,072				1	4,288	
3BR	3	2	1,185				11	61,620	
3BR UFAS	3	2	1,185				1	4,740	
<b>Totals</b>				24	96	18	138	151,600	

Net Rentable Square Footage from Rent Schedule: **160,064**



No.	Description	Date
1	PERMIT SET	12-20-2012
2	COH PREMIT REVIEW	11-28-2012
3	VE REVISIONS	08-15-2013



ARCHITECT  
**Kenton G. Rouse, Inc.**  
 DESIGN CONSTRUCTION SPECIALTY FABRICATIONS  
 1571 Berwick Road, Louisville, Kentucky  
 Tel: 502-589-8007 Fax: 502-589-8004

ARCHITECT OF RECORD  
**Kentucky Architecture Studio LLC**  
 1571 Berwick Road, Louisville, Kentucky  
 Tel: 502-589-8007 Fax: 502-589-8004

CONSULTANT

PROJECT TITLE  
**Villas at Colt's Run Apartments**  
 Houston, TX

CONSTRUCTION SET

DESIGNED BY	CHECKED BY
DRAWN BY	DATE
SHEET TITLE	SHEET NO.
PROJECT NO.	SHEET NO.

STA-12WB-00-8 **A100**

AREA: 6.845 ACRES  
**OVERALL SITE PLAN**  
 SCALE: NO SCALE

**VICINITY MAP**  
 SCALE: NO SCALE

03



727.520.8181  
www.aerophoto.com

## Villas at Colt Run

Image # 150811 6026  
Date 08.11.15

1c

**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**AUGUST 25, 2016**

Presentation, Discussion, and Possible Action to approve a material amendment to the Housing Tax Credit Land Use Restriction Agreement (“LURA”) for Delta Estates (# 98180)

**RECOMMENDED ACTION**

**WHEREAS**, Delta Estates received an award of 9% Housing Tax Credits in 1998 to construct 64 multifamily units in Edcouch;

**WHEREAS**, the tax credit application for the Development received points and/or other preferences for agreeing to provide a Right of First Refusal (“ROFR”) to purchase the Development;

**WHEREAS**, in Spring 2015 the Texas Legislature amended Tex. Gov’t Code §2306.6725 and §2306.6726 to allow, among other things, for a 180-day ROFR period and to permit a Qualified Entity to purchase a property under ROFR and defines a Qualified Entity to mean an entity described by, or an entity controlled by an entity described by, §42(i)(7)(A), Internal Revenue Code of 1986;

**WHEREAS**, the Development Owner requests to amend the LURA to incorporate changes made to Tex. Gov’t Code §2306.6725 and §2306.6726; and

**WHEREAS**, 10 TAC §10.405(b)(2) allows for an owner to request a material LURA amendment, and the Owner has complied with the procedural amendment requirements in 10 TAC §10.405(b) to place this request before the Board;

**NOW, therefore, it is hereby**

**RESOLVED**, that the material LURA amendment for Delta Estates is approved, as presented to this meeting and the Executive Director and his designees are hereby, authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

**BACKGROUND**

Delta Estates was approved in 1998 for the new construction of 64 multifamily units in Edcouch. In a letter dated June 22, 2016, the General Partner (South Texas Economic Development Corporation, Inc.- Jose De Jesus Perez) requested approval to amend the LURA related to the ROFR provision. The current LURA for the Development requires the Development Owner to provide a two-year ROFR to sell the Development based on a set order of priority to a community housing development organization (as defined for purposes of the federal HOME Investment Partnership Program at 24 CFR Part 92), to a qualified nonprofit organization (as defined in Internal Revenue Code §42(h)(5)(C)), or to a tenant organization if at any time after the fifteenth year of the Compliance Period the owner decides to sell the property.

In 2015, the Texas Legislature passed HB 3576 which amended Tex. Gov't Code §2306.6725 to allow for a 180-day ROFR period and §2306.6726 to allow for a Qualified Entity to purchase a development under a ROFR provision of the LURA and satisfy the ROFR requirement. Additionally, HB 3576 defines Qualified Entity to mean an entity described by, or an entity controlled by an entity described by, §42(i)(7)(A) of the Internal Revenue Code of 1986. The Department's 2016 Post Award and Asset Management Requirements implemented administrative procedures to allow a Development Owner to conform to the new ROFR provisions described in the amended statute.

The Development Owner must comply with the amendment and notification requirements under the Department's rule at Tex. Gov't Code §2306.6712 and 10 TAC §10.405(b). The Development Owner is scheduled to hold a public hearing on the matter on August 10, 2016, at 2:00 pm at the Development's management office/clubhouse. Should any negative public comment be provided at the public hearing, this board action item will be pulled from the Consent Agenda and results of the public hearing will be presented verbally at the Board meeting.

Staff recommends approval of the amendment, subject to no negative public comment received, to amend the LURA to incorporate changes made to Tex. Gov't Code §2306.6725 and §2306.6726 related to ROFR.

**Green Valley Estates Partners, Ltd**  
330 W. Victoria Street  
Gardena, CA 90248

June 22, 2016

**VIA EMAIL DELIVERY**

Kent Bedell  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street, Austin, Texas 78701-2410

Re: TDHCA File No. 98180 – Delta Estates Apartments (the “**Property**”)

Dear Kent:

The undersigned, Green Valley Estates Partners, Ltd., a Texas limited partnership (the “**Partnership**”), the current owner of the Property, hereby submits this letter as a request for a material LURA amendment in accordance with Section 10.405(b) of the Rules for the reasons set forth below.

**Background Information and Request**

In 2015, Texas Government Code Section 2306.6725 was amended to allow for a 180-day Right of First Refusal (“**ROFR**”) period. Currently, the LURA for this Property requires a two-year ROFR period. Section 10.405(b)(2)(F) of the Rules allows for a LURA amendment in order to conform a ROFR period to the period described in Section 2306.6725. Therefore the Partnership requests a LURA amendment to eliminate the two-year ROFR period and replace it with the 180-day ROFR period.

**LURA Amendment**

In accordance with Section 10.405(b) of the Rules, the Partnership is delivering a fee in the amount of \$2,500. In addition, the Partnership commits to hold a public hearing, as required by the Rules, and to notify all residents, investors, lenders, and appropriate elected officials. Drafts of the public hearing notices are attached for your consideration. Upon approval from TDHCA, the Partnership will proceed to set a date and time for the Public Hearing and will provide TDHCA with evidence that the notice has been delivered and the hearing has been conducted. With that, the Partnership requests staff recommendation, in support of this request, to be considered at the August 25th, 2016 TDHCA Board Meeting.

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

Sincerely,

Green Valley Estates Partners, Ltd,  
a Texas limited partnership

By: South Texas Economic Development Corporation, Inc.,  
a Texas non-profit corporation,  
its General Partner

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

Name: Jose De Jesus Perez

Date: 6/22/2016

**Green Valley Estates Partners, Ltd**  
330 W. Victoria Street  
Gardena, CA 90248

June 22, 2016

Dear Resident:

Delta Estates Apartments (the “**Community**”) is owned by Green Valley Estates Partners, Ltd (the “**Owner**”). In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the “**Department**”) (Phone: 512-475-3800; Website: [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)).

A contractual restriction imposed by the Department mandates that if the Owner decides to sell the Community at a certain time, the Owner will offer the Community for sale to a non-profit organization or a tenant organization for a period of up to two years. To be consistent with a change in Texas law, the Owner is requesting Department approval to change the two-year period to a 180-day period.

In making its decision whether to approve Owner’s request, the Department considers the opinions and views of the members of the Community. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community’s management office/clubhouse on \_\_\_\_\_, 2016 at \_\_\_\_\_ am/pm. The public hearing is your opportunity to discuss the amendment request and voice your concern regarding the LURA amendment to eliminate the two-year ROFR period and replace it with the 180-day ROFR period. Information obtained from this meeting will be submitted for consideration by the TDHCA Board at their August 25<sup>th</sup>, 2016 meeting.

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

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

Thank you for choosing Delta Estates Apartments as your home.

Sincerely,

Green Valley Estates Partners, Ltd,  
a Texas limited partnership

By: South Texas Economic Development Corporation, Inc.,  
a Texas non-profit corporation,  
its General Partner

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

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

Date: \_\_\_\_\_

**Green Valley Estates Partners, Ltd**  
330 W. Victoria Street  
Gardena, CA 90248

June 22, 2016

[Elected Official]

Dear [Addressee]:

Green Valley Estates Partners, Ltd (the “**Owner**”) is the owner of Delta Estates Apartments (the “**Community**”) which is located at 300 S. Mile 2 West, Edcouch, TX 78538. In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the “**Department**”).

A contractual restriction imposed by the Department mandates that if the Owner decides to sell the Community at a certain time, the Owner will offer the Community for sale to a non-profit organization or a tenant organization for a period of up to two years. To be consistent with a change in Texas law, the Owner is requesting Department approval to change the two-year period to a 180-day period.

In making its decision whether to approve Owner’s request, the Department considers the opinions and views of the members of the Community and its elected representatives. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community’s management office/clubhouse on \_\_\_\_\_, 2016 at \_\_\_\_\_ am/pm.

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

Sincerely,

Green Valley Estates Partners, Ltd,  
a Texas limited partnership

By: South Texas Economic Development Corporation, Inc.,  
a Texas non-profit corporation,  
its General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Date: \_\_\_\_\_

**Green Valley Estates Partners, Ltd**  
330 W. Victoria Street  
Gardena, CA 90248

June 22, 2016

[Investor/Lender]

Dear [Addressee]:

Green Valley Estates Partners, Ltd (the “**Owner**”) is the owner of Delta Estates Apartments (the “**Community**”) which is located at 300 S. Mile 2 West, Edcouch, TX 78538. In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the “**Department**”).

A contractual restriction imposed by the Department mandates that if the Owner decides to sell the Community at a certain time, the Owner will offer the Community for sale to a non-profit organization or a tenant organization for a period of up to two years. To be consistent with a change in Texas law, the Owner is requesting Department approval to change the two-year period to a 180-day period.

In making its decision whether to approve Owner’s request, the Department considers the opinions and views of the members of the Community and its elected representatives. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community’s management office/clubhouse on \_\_\_\_\_, 2016 at \_\_\_\_\_ am/pm.

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

Sincerely,

Green Valley Estates Partners, Ltd,  
a Texas limited partnership

By: South Texas Economic Development Corporation, Inc.,  
a Texas non-profit corporation,  
its General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Date: \_\_\_\_\_

1d

**BOARD ACTION REQUEST**  
**COMMUNITY AFFAIRS DIVISION**  
**AUGUST 25, 2016**

Presentation, Discussion, and Possible Action on State Fiscal Year 2017 Homeless Housing and Services Program Awards

**RECOMMENDED ACTION**

**WHEREAS**, the Homeless Housing and Services Program (“HHSP”) was created by the 81<sup>st</sup> Texas Legislature to be administered by the Texas Department of Housing and Community Affairs (the “Department”) to fund homelessness prevention and homeless services in the eight largest Texas cities;

**WHEREAS**, the continued funding of the HHSP has been identified by the Texas Legislature as a high priority;

**WHEREAS**, the Texas Legislature has, through the enactment of House Bill 1 (84<sup>th</sup> Legislature, 1<sup>st</sup> called session), provided General Revenue funds of \$10 million over the biennium; and

**WHEREAS**, the allocation formula for HHSP is set forth in 10 TAC Chapter 5, Subchapter J, §5.1004. Formula;

**NOW, therefore, it is hereby**

**RESOLVED**, that the Executive Director and his designees, be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to take any and all such actions as they or any of them may deem necessary or advisable to effectuate the award of not less than \$5,000,000 in state fiscal year (“SFY”) 2017 HHSP contracts, in the amounts reflected in Attachment A, to the municipalities in Texas (or their designee) with a population of 285,500 or more conditioned upon resolution of noted conditions herein: Arlington, Austin, Corpus Christi, Dallas, El Paso, Fort Worth, Houston, and San Antonio.

**BACKGROUND**

The Department administers the HHSP in accordance with Tex. Gov’t Code §2306.2585 and 10 TAC Chapter 5, Subchapter J. Allowable activities include construction, development, or procurement of housing for homeless persons; rehabilitation of structures targeted to serving homeless persons or persons at-risk of homelessness; provision of direct services and case management to homeless persons or persons at risk of homelessness; or other homelessness-related activity, as approved by the Department.

The Previous Participation Rule (10 TAC, Chapter 1, Subchapter A, §1.303) includes a review of HHSP awards prior to contract execution. The review has been performed and approved with one condition for

Arlington, Austin, Dallas, and Houston. The condition is that each city must disclose to the Department's satisfaction any pending federal or state litigation (including administrative proceedings) against itself along with any final decrees within the last three years that involve federal or state program administration or funds or if the requested judgment against the entity would represent a 20% reduction or more in the municipalities' current year operating budget.

Effective dates for contracts will be September 1, 2016, through August 31, 2017.

**2017 Homeless Housing and Services Program Awards**

	<b>SUBRECIPIENT</b>	<b>AWARD</b>
1	City of Arlington	\$ 220,509
2	City of Austin	\$ 508,795
3	City of Corpus Christi, with Mother Teresa Shelter	\$ 236,310
4	City of Dallas	\$ 811,129
5	City of El Paso	\$ 447,041
6	City of Fort Worth, with United Way of Tarrant County	\$ 474,831
7	City of Houston	\$ 1,272,861
8	City of San Antonio, with Haven for Hope of Bexar County	\$ 1,028,522
	<b>Total</b>	<b>\$5,000,000</b>

1e

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**AUGUST 25, 2016**

Presentation, Discussion, and Possible Action on a Determination Notice for Housing Tax Credits with another Issuer (#16423 Plano Artist's Lofts, Plano)

**RECOMMENDED ACTION**

**WHEREAS**, a 4% Housing Tax Credit application for Plano Artist's Lofts, sponsored by the Plano Housing Corporation and Rise Residential Construction, was submitted to the Department on April 21, 2016;

**WHEREAS**, the Certificate of Reservation from the Texas Bond Review Board ("BRB") was issued on May 3, 2016, and will expire on September 30, 2016; and

**WHEREAS**, the proposed issuer of the bonds is the Plano Public Facilities Corporation;

**NOW, therefore, it is hereby**

**RESOLVED**, that the issuance of a Determination Notice of \$1,050,953 in 4% Housing Tax Credits, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department's website for Plano Artist's Lofts is hereby approved as presented to this meeting.

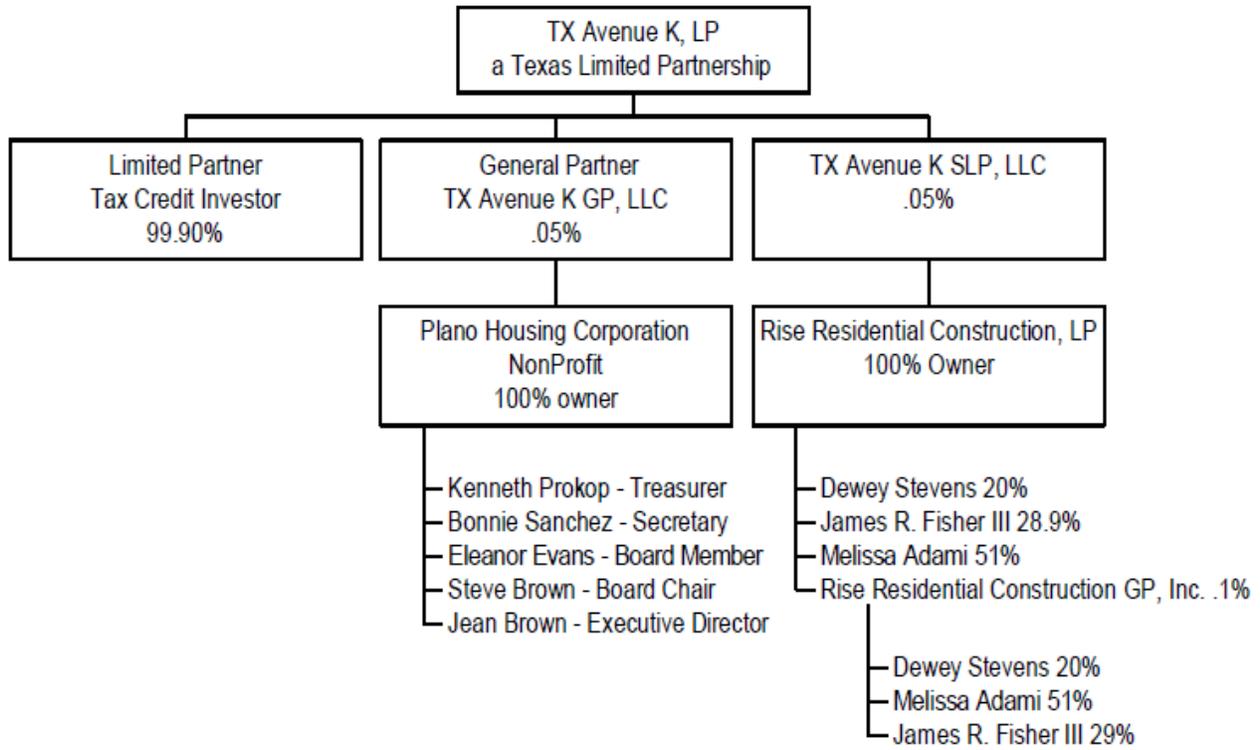
**BACKGROUND**

*General Information:* Plano Artist's Lofts, proposed to be located at Avenue G and 13<sup>th</sup> and 14<sup>th</sup> Street Connector in Plano, Collin County, involves the new construction of 220 units, 176 of which will be rent and income restricted at 60% of Area Median Family Income. The remaining 44 units will be at market rate with no rent and income restrictions. The development will serve the general population and is currently zoned appropriately. Proposed to be located in downtown Plano, the development is proposed to be four-story, urban infill with structured parking. There will be live work spaces designed for use by working artists and the site plan reflects areas for displays of art by local artists, residents and non-residents. The census tract (0319.00) has a median household income of \$40,851, is in the third quartile, and has a poverty rate of 37.10%.

*Organizational Structure and Previous Participation:* The Borrower is TX Avenue K, L.P., and includes the entities and principals as illustrated in Exhibit A. The applicant is considered a Medium Category 1 portfolio and the previous participation was deemed acceptable by EARAC without further review or discussion. EARAC also reviewed the proposed financing and the underwriting report, and recommends issuance of a Determination Notice.

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

EXHIBIT A



# APPLICATION SUMMARY

PROPERTY IDENTIFICATION	
Application #	16423
Development	Plano Artist Lofts
City / County	Plano / Collin
Region/Area	3 / Urban
Population	General
Set-Aside	General
Activity	New Construction

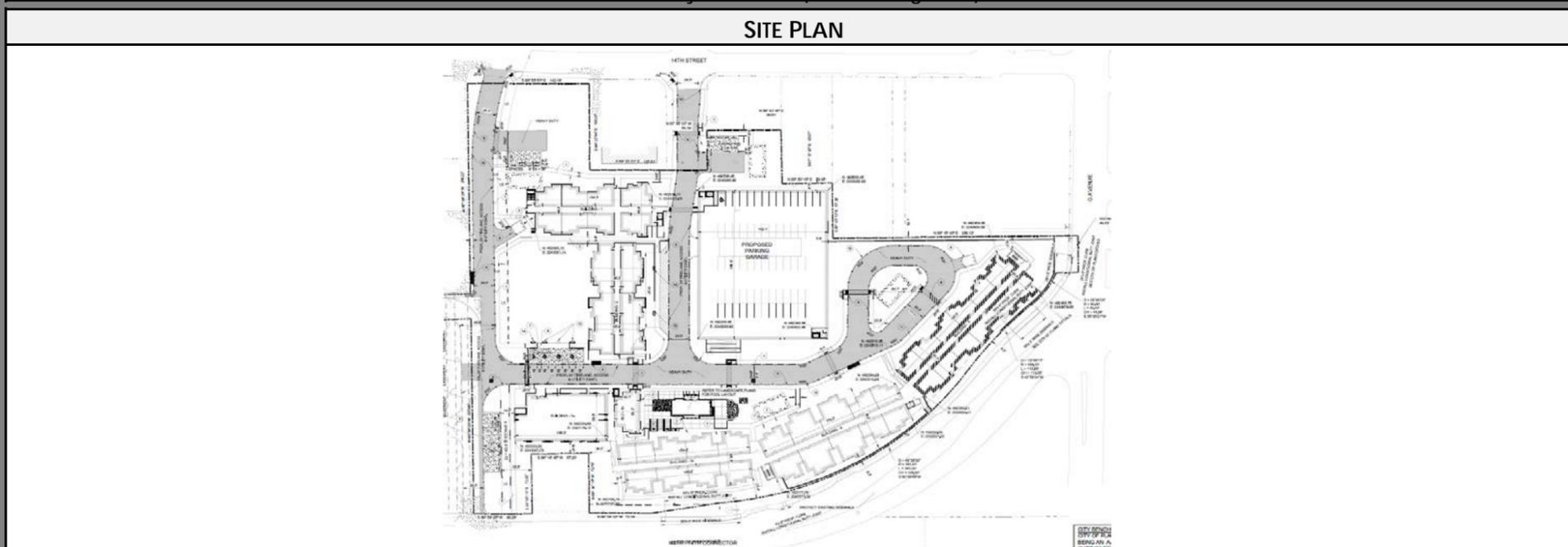
RECOMMENDATION					
TDHCA Program	Request	Approved			
LIHTC (4% Credit)	\$1,078,928	\$1,050,953	\$4,777/Unit	\$1.06	
	Amount	Rate	Amort	Term	Lien
Private Activity Bonds					
MDLP (Repayable)					
MDLP (Non-Repayable)					
CHDO Expenses					

KEY PRINCIPAL / SPONSOR		
General Partner(s)		
Plano Housing Corporation - Jean Brown		
Rise Residential - Melissa Adami		
Developer(s)		
Plano Housing Corporation - Jean Brown		
Rise Residential - Melissa Adami		
Related-Parties	Contractor - Yes	Seller - No



UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	32	15%	30%	-	0%
1	104	47%	40%	-	0%
2	68	31%	50%	-	0%
3	16	7%	60%	176	80%
4	-	0%	MR	44	20%
<b>TOTAL</b>	<b>220</b>	<b>100%</b>	<b>TOTAL</b>	<b>220</b>	<b>100%</b>

PRO FORMA FEASIBILITY INDICATORS			
Pro Forma Underwritten		TDHCA's Pro Forma	
Debt Coverage	1.15	Expense Ratio	44.2%
Breakeven Occ.	85.8%	Breakeven Rent	\$814
Average Rent	\$881	B/E Rent Margin	\$67
Property Taxes	\$574/unit	Exemption/PILOT	50%
Total Expense	\$4,489/unit	Controllable	\$2,972/unit



MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (10% Maximum)			7.2%
Highest Unit Capture Rate	35%	1 BR/60%	84
Dominant Unit Cap. Rate	35%	1 BR/60%	84
Premiums (↑60% Rents)	Yes		\$359/Avg.
Rent Assisted Units	19	9% Total Units	

DEVELOPMENT COST SUMMARY			
Costs Underwritten		Applicant's Costs	
Avg. Unit Size	790 SF	Density	39.4/acre
Acquisition		\$15K/unit	\$3,250K
Building Cost	\$99.29/SF	\$78K/unit	\$17,264K
Hard Cost		\$98K/unit	\$21,580K
Total Cost		\$161K/unit	\$35,501K
Developer Fee	\$4,000K	(96% Deferred)	Paid Year: 15
Contractor Fee	\$3,021K	30% Boost	Yes

DEBT (Must Pay)					CASH FLOW DEBT / GRANT FUNDS					EQUITY / DEFERRED FEES		
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount	
IBC Bank	17/35	4.18%	\$19,900,000	1.15						42 Equity or other investor	\$11,178,051	
City TIF= Infrastructure (PHC Loan)	35/	1.00%	\$600,000	1.15						Deferred Developer Fee	\$3,823,324	
<b>TOTAL DEBT (Must Pay)</b>			#####		<b>CASH FLOW DEBT / GRANTS</b>				\$0		<b>TOTAL EQUITY SOURCES</b>	\$15,001,375
											<b>TOTAL DEBT SOURCES</b>	\$20,500,000
											<b>TOTAL CAPITALIZATION</b>	\$35,501,375

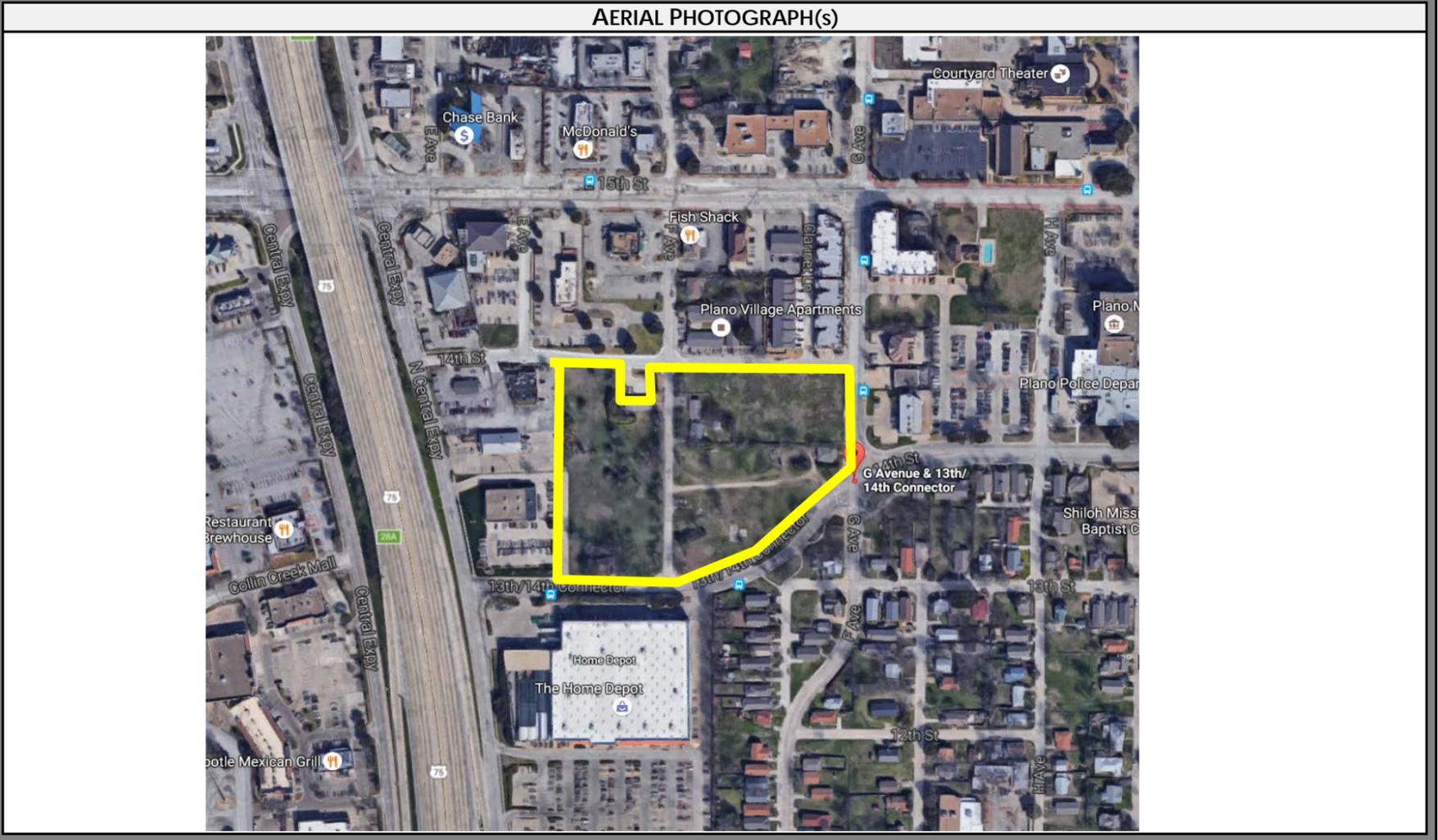
**CONDITIONS**

- 1 Receipt and acceptance before Determination Notice:
  - Documentation of creation of the TIF and commitment of the TIF funds.
- 2 Documentation at Cost Certification clearing environmental issues identified in the ESA report, specifically:
  - Documentation be provided that recommendations of the ESA Provider regarding asbestos, mold, lead based paint and lead in drinking water have been followed and executed before and during construction.
- 3 Receipt and acceptance by Cost Certification:
  - a: Documentation that any management fee in excess of 4% of EGI will be subordinate to debt service.
  - b: Fully executed HAP contract.

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

BOND RESERVATION / ISSUER	
Issuer	Plano Public Facility Corporation
Expiration Date	9/30/2016
Bond Amount	\$20,000,000
BRB Priority	2
Expected Close	TBD
Bond Structure	Freddie Mac TEL

RISK PROFILE	
STRENGTHS/MITIGATING FACTORS	
▫	Experienced Developer/Owner
▫	High area occupancy
WEAKNESSES/RISKS	
▫	Market rent exposure
▫	Understated contingency
▫	Break even rent
▫	1.15 DCR



**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**AUGUST 25, 2016**

Presentation, Discussion, and Possible Action on a Determination Notice for Housing Tax Credits with another Issuer (#16426 87<sup>th</sup>, Odessa)

**RECOMMENDED ACTION**

**WHEREAS**, a 4% Housing Tax Credit application for 87th, sponsored by the Odessa Housing Finance Corporation and Delphi Affordable, was submitted to the Department on May 26, 2016;

**WHEREAS**, the Certificate of Reservation from the Texas Bond Review Board was issued on July 8, 2016, and will expire on December 5, 2016;

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

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

**WHEREAS**, the middle school for the attendance zone of the proposed development did not achieve a Met Standard rating in 2015, 2014 and 2013, based on the Accountability Ratings by the Texas Education Agency (“TEA”) and in 2010 and 2011 an Academically Unacceptable was rating was given;

**WHEREAS**, based on the recently released 2016 Accountability Ratings by TEA the middle school achieved Met Standard and; therefore, staff believes sufficiently addresses the mitigation allowed under the rule and should not render the site ineligible under 10 TAC §10.101(a)(4) of the Uniform Multifamily Rules; and

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

**NOW, therefore, it is hereby**

**RESOLVED**, that the issuance of a Determination Notice of \$1,130,133 in 4% Housing Tax Credits, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department’s website for 87th is hereby approved as presented to this meeting.

## **BACKGROUND**

*General Information:* The 87<sup>th</sup>, proposed to be located at the south side of 87<sup>th</sup> Street between Yale Avenue and Dawn Avenue in Odessa, Ector County, involves the new construction of 181 units that will be rent and income restricted at 60% of Area Median Family Income (“AMFI”) and includes one employee occupied unit. The development will serve the general population and is currently zoned appropriately. The census tract (0025.01) has a median household income of \$80,579, is in the first quartile and has a poverty rate of 4%.

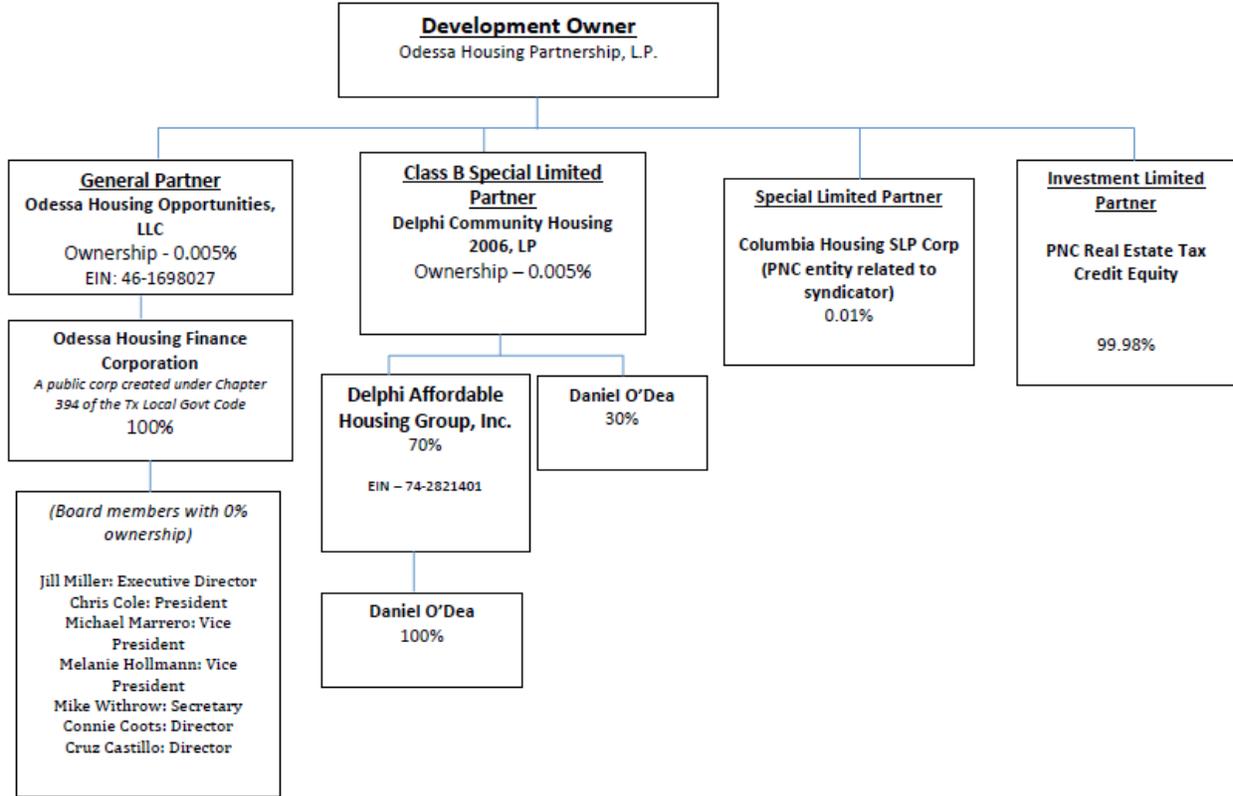
*Site Analysis:* The proposed development is to be located within the Ector County Independent School District (“ISD”) and the Wilson & Young Medal of Honor Middle School (“Wilson”), formerly known as John B Hood Jr. High School, failed to achieve the 2015 Met Standard rating. From a historical perspective, in 2010 and 2011, Wilson was considered Academically Unacceptable and has been deemed Improvement Required for the last 3 years. A letter was submitted by Ector County ISD Chief of Staff Brian Moersch that identified the improvement efforts underway at Wilson and also indicated that their internal analysis of the student data has been effective in raising Wilson to Met Standard. On August 15, 2016, the TEA released the 2016 Accountability Ratings and Wilson did achieve Met Standard.

Under §10.101(a)(4) of the Uniform Multifamily Rules, there is a consideration for acceptable mitigation regarding the undesirable neighborhood characteristics on the basis that there is a factual determination that such characteristic is not of such a nature or severity that it should render the development site ineligible. Staff believes the recently released 2016 Accountability Ratings by TEA reflecting a Met Standard rating, combined with the letter from the Ector County ISD, leads to a supported conclusion that the development site should be considered eligible under §10.101(a)(4) of the Uniform Multifamily Rules.

*Organizational Structure and Previous Participation:* The Borrower is Odessa Housing Partnership, L.P., and includes the entities and principals as illustrated in Exhibit A. The applicant is considered a large Category 2 portfolio and the previous participation was deemed acceptable by EARAC without further review or discussion.

*Public Comment:* The Department received a letter of support from State Representative Brooks Landgraf. No letters of opposition for this Development have been received.

## EXHIBIT A



# APPLICATION SUMMARY

PROPERTY IDENTIFICATION		RECOMMENDATION					KEY PRINCIPAL / SPONSOR		
Application #	16426	TDHCA Program	Request	Approved			General Partner(s)		
Development	87th	LIHTC (4% Credit)	\$1,130,133	\$1,130,133	\$6,244/Unit	\$0.97	Odessa Housing Opportunities, LLC		
City / County	Odessa / Ector		Amount	Rate	Amort	Term	Delphi Affordable Housing Group, Inc		
Region/Area	12 / Urban	Private Activity Bonds					Developer(s)		
Population	General	MDLP (Repayable)					Daniel O'Dea		
Set-Aside	General	MDLP (Non-Repayable)					Craig Alter		
Activity	New Construction	CHDO Expenses					Related-Parties	Contractor - No	Seller - Yes

### TYPICAL BUILDING ELEVATION/PHOTO

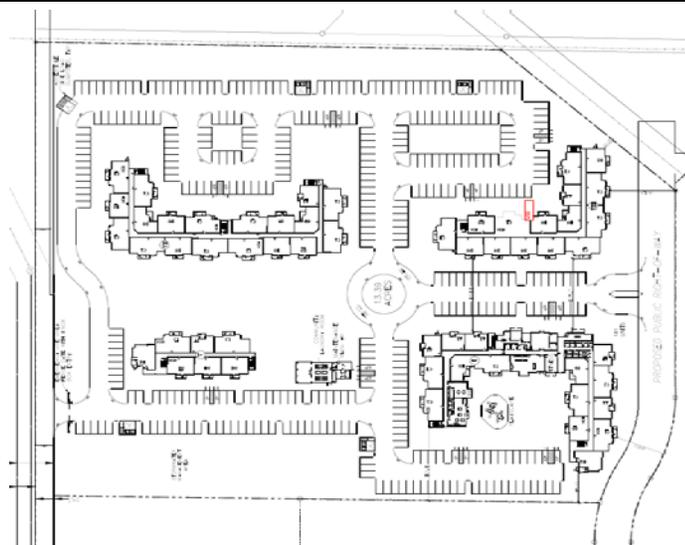


UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	-	0%	30%	-	0%
1	27	15%	40%	-	0%
2	78	43%	50%	-	0%
3	76	42%	60%	180	99%
4	-	0%	EO	1	1%
<b>TOTAL</b>	<b>181</b>	<b>100%</b>	<b>TOTAL</b>	<b>181</b>	<b>100%</b>

### PRO FORMA FEASIBILITY INDICATORS

Pro Forma Underwritten		Applicant's Pro Forma	
Debt Coverage	1.26	Expense Ratio	39.7%
Breakeven Occ.	81.0%	Breakeven Rent	\$809
Average Rent	\$925	B/E Rent Margin	\$116
Property Taxes	Exempt	Exemption/PILOT	0%
Total Expense	\$4,118/unit	Controllable	\$2,818/unit

### SITE PLAN



### MARKET FEASIBILITY INDICATORS

Gross Capture Rate (10% Maximum)	5.3%
Highest Unit Capture Rate	33% 3 BR/60% 32
Dominant Unit Cap. Rate	33% 3 BR/60% 32
Premiums (↑60% Rents)	#DIV/0! #DIV/0!
Rent Assisted Units	114 63% Total Units

### DEVELOPMENT COST SUMMARY

Costs Underwritten		Applicant's Costs	
Avg. Unit Size	1,060 SF	Density	13.5/acre
Acquisition	\$01K/unit		\$109K
Building Cost	\$76.18/SF	\$81K/unit	\$14,619K
Hard Cost	\$98K/unit		\$17,818K
Total Cost	\$159K/unit		\$28,856K
Developer Fee	\$3,424K	(40% Deferred)	Paid Year: 6
Contractor Fee	\$2,494K	30% Boost	Yes

DEBT (Must Pay)					CASH FLOW DEBT / GRANT FUNDS					EQUITY / DEFERRED FEES	
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount
PNC - FHA 221(d)4 Loan	40/40	4.25%	\$16,491,993	1.26						PNC	\$10,989,446
										Odessa Housing Partnership, L.P.	\$1,374,754
<b>TOTAL DEBT (Must Pay)</b>			<b>\$16,491,993</b>		<b>CASH FLOW DEBT / GRANTS</b>			<b>\$0</b>		<b>TOTAL EQUITY SOURCES</b>	<b>\$12,364,200</b>
										<b>TOTAL DEBT SOURCES</b>	<b>\$16,491,993</b>
										<b>TOTAL CAPITALIZATION</b>	<b>\$28,856,193</b>

**CONDITIONS**

1 Receipt and acceptance by Cost Certification:

a: Executed Ground Lease with OHFC clearly specifying all terms and conditions, including who will retain ownership of land and improvements at the end of the lease.

b: Signed HAP contract stating the Section 8 rents.

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

**BOND RESERVATION / ISSUER**

<b>Issuer</b>	Odessa Housing Finance Corporation
<b>Expiration Date</b>	12/5/2016
<b>Bond Amount</b>	\$20,000,000
<b>BRB Priority</b>	Priority 3
<b>Expected Close</b>	10/15/2016
<b>Bond Structure</b>	Private Placement

**RISK PROFILE**

STRENGTHS/MITIGATING FACTORS

- 114 PBV units
- Affordable master planned community
- Low gross capture rate
- High occupancies in PMA
- Partnership with Odessa Housing Authority

WEAKNESSES/RISKS

- Dependent on Property Tax Exemption
- Multiple changes to Project since initial submission

**AREA MAP**



**AERIAL PHOTOGRAPH(S)**



1f

**BOARD ACTION REQUEST**

**FAIR HOUSING, DATA MANAGEMENT, & REPORTING**

**AUGUST 25, 2016**

Presentation, Discussion, and Possible Action on the withdrawal of previously proposed amendments to 10 TAC Chapter 1 Administration, Subchapter B, concerning §1.204 Reasonable Accommodations and directing that it be published in the *Texas Register*.

**RECOMMENDED ACTION**

**WHEREAS**, at the Board meeting of July 28, 2016, the Board directed proposed amendments to §1.204 Reasonable Accommodations be published in the *Texas Register* for public comment; and

**WHEREAS**, the Department of Justice published a final rule on August 11, 2016 that has the potential to impact the Department's reasonable accommodation rule;

**NOW, therefore, it is hereby**

**RESOLVED**, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the withdrawal of the previously published proposed amendments of 10 TAC Chapter 1 Administration, Subchapter B, concerning §1.204 Reasonable Accommodations as presented at the Board meeting of July 28, 2016.

**BACKGROUND**

As a result of the Department of Justice issuing a final rule on August 11, 2016, Amendment of Americans With Disabilities Act Title II and Title III Regulations To Implement ADA Amendments Act of 2008, the Department is withdrawing the proposed amendments §1.204 Reasonable Accommodations that was presented at the Board meeting of July 28, 2016.

Staff intends to take proposed amendments to §1.204 Reasonable Accommodations to a future board meeting along with other amendments to Chapter 1, Subchapter B.

**Attachment 1: Preamble and proposed withdrawal of the proposed amendments of 10 TAC Chapter 1 Administration, Subchapter B, concerning §1.204 Reasonable Accommodations.**

At the Board meeting of July 28, 2016, staff proposed amendments to 10 TAC Chapter 1 Administration, Subchapter B, concerning §1.204 Reasonable Accommodations, and directing that they be published in the *Texas Register*. The intent was to clarify by rule the acceptable response times for a recipient of Department funds/awards to respond to reasonable accommodation requests to ensure persons with disabilities have full and equal access to programs.

Proposed amendments were published in the August 12, 2016, issue of the *Texas Register* (41 Tex.Reg. 5860). A public comment period was opened August 12, 2016 to close on September 12, 2016. After the board directed the proposed amendments be published for public comment the Department of Justice issued a final rule that impacts the Department's reasonable accommodation rule.

2a

## TDHCA Outreach Activities, July 2016

*A compilation of activities designed to increase the awareness of TDHCA programs and services or increase the visibility of the Department among key stakeholder groups and the general public*

Event	Location	Date	Division	Purpose
TDHCA Overview/Texas Impact Network Webinar	Austin	July 1	Policy & Public Affairs	Presentation
Section 811/Referral Agent & Service Coordinator training	Brownsville	July 8	Fair Housing, Data Mgt, & Reporting	Training
Section 811/Property Management Training	Brownsville	July 8	Fair Housing, Data Mgt, & Reporting	Training
Quarterly Meeting/Texas Interagency Council for the Homeless	Austin	July 12	Housing Resource Center	Participant
Roundtable/2017 Qualified Allocation Plan	Austin	July 15	Multifamily Finance	Roundtable
Housing and Health Services Coordination Council Meeting	Austin	July 20	Housing Resource Center	Presentation, Participant
Rural Rental Housing Annual Convention	Fort Worth	July 21	Compliance	Panelist
Promoting Independence Advisory Committee Meeting	Austin	July 21	Housing Resource Center	Participant
Meeting/Dallas City Council Members	Dallas	July 22	Executive, Multifamily	Participant
Texas Affiliation of Affordable Housing Providers/2016 Conference	Austin	July 26	Executive, Fair Housing, Data Mgt, & Reporting	Remarks, Panelist
Housing Subcommittee/Intellectual & Developmental Disabilities System Redesign Advisory Council Meeting	Austin	July 27	Housing Resource Center	Participant
Tenant Based Rental Assistance Program/ MHMR Tarrant County	Fort Worth	July 28-29	HOME	Training

## Internet Postings of Note, July 2016

*A list of new or noteworthy documents posted to the Department's website*

**HOME: Single Family Program Competitive Cycle Application Documents** — *including application for funding, Application Submission Procedures Manual, and other supporting documents:*  
[www.tdhca.state.tx.us/home-division/applications.htm](http://www.tdhca.state.tx.us/home-division/applications.htm)

**2016 Emergency Solutions Grants Program Application Scoring Log: July 5** — *detailing updated scores for entities seeking to administer ESG Program funds, subject to organizations appeals, previous participation reviews and recommendations to the Department's Governing Board:*  
[www.tdhca.state.tx.us/community-affairs/nofas.htm](http://www.tdhca.state.tx.us/community-affairs/nofas.htm)

**LIHEAP Priority List: July 2016** — *updating list establishing a priority for the implementation of conservation measures for single-family, manufactured homes, and small multifamily buildings through the Department's Comprehensive Energy Assistance Program:*  
[www.tdhca.state.tx.us/community-affairs/ceap/guidance.htm](http://www.tdhca.state.tx.us/community-affairs/ceap/guidance.htm)

**CEAP Frequently Asked Questions: July 2016** — *updating answers to the most frequently asked questions of the Department from subrecipients administering its Comprehensive Energy Assistance Program:*

[www.tdhca.state.tx.us/community-affairs/ceap/guidance.htm](http://www.tdhca.state.tx.us/community-affairs/ceap/guidance.htm)

**Strategic Plan for Fiscal Years 2017-2021** — *defining the Department's mission, operational goals, and action plan. It covers the four-year fiscal period of 2017-2021:*

[www.tdhca.state.tx.us/housing-center/pubs-plans.htm](http://www.tdhca.state.tx.us/housing-center/pubs-plans.htm); [www.tdhca.state.tx.us/](http://www.tdhca.state.tx.us/)

**Texas Interagency Council for the Homeless: TICH Agencies** — *updating council member agencies, advisory members, and staff support for this advisory committee to the Department:*

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

**Emergency Solutions Grant Program: Client and Unit Eligibility** — *regarding Fair Market Rents relative to the Housing Choice Voucher Program for subrecipients of the Department's Emergency Solutions Grants Program:*

[www.tdhca.state.tx.us/community-affairs/esgp/guidance-solutions.htm](http://www.tdhca.state.tx.us/community-affairs/esgp/guidance-solutions.htm)

**Multifamily Direct Loan Program: Loan Closing Due Diligence Checklist** — *for use by and for the benefit of entities accessing loan funds from either the Department's HOME Multifamily and TCAP Multifamily Loan programs:*

[www.tdhca.state.tx.us/multifamily/home/index.htm](http://www.tdhca.state.tx.us/multifamily/home/index.htm)

**Request for Proposals: Underwriting Services** — *seeking a qualified entity to provide underwriting services for Single Family Mortgage Revenue Bond issuances (links to the Comptroller's Office webpage):*

[http://esbd.cpa.state.tx.us/bid\\_show.cfm?bidid=125860](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=125860)

**Office of Colonia Initiatives: Census Tracts Eligible under the 2016 Texas Bootstrap Loan Program Two-Thirds Set-Aside** — *detailing counties containing census tracts with a median household income no greater than 75% of the median state household income:*

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

**Multifamily Direct Loan 2016-1 NOFA Application Log: July 18** — *announcing the availability of funding for the development of affordable rental housing for income-eligible households:*

[www.tdhca.state.tx.us/multifamily/home/index.htm](http://www.tdhca.state.tx.us/multifamily/home/index.htm)

**HOME Program Intake Application: Spanish Language Forms** — *supporting documents, such as Loan Addendum, Construction Inspection Authorization and Certification of Principal Residence, in Spanish:*

[www.tdhca.state.tx.us/home-division/forms/home\\_forms\\_hra.htm](http://www.tdhca.state.tx.us/home-division/forms/home_forms_hra.htm); [www.tdhca.state.tx.us/home-division/forms/home\\_forms\\_hba.htm](http://www.tdhca.state.tx.us/home-division/forms/home_forms_hba.htm); [www.tdhca.state.tx.us/home-division/forms/home\\_forms\\_sfd.htm](http://www.tdhca.state.tx.us/home-division/forms/home_forms_sfd.htm); [www.tdhca.state.tx.us/home-division/forms/home\\_forms\\_tbra.htm](http://www.tdhca.state.tx.us/home-division/forms/home_forms_tbra.htm)

**Draft National Housing Trust Fund Allocation Plan, Draft Amended 2015-2019 State of Texas Consolidated Plan, and Draft Amended 2016 One-Year Action Plan**

— *reflecting the intended uses of funds received through the National Housing Trust Fund, as well as updated required planning documents that now include details regarding the Department's administration of the NHTF Program:*

[www.tdhca.state.tx.us/public-comment.htm](http://www.tdhca.state.tx.us/public-comment.htm)

**Request for Proposal: Emergency Temporary Housing** — *seeking qualified vendors to provide emergency temporary housing to persons impacted by disasters on contingency contract as needed (links to the Comptroller's Office webpage):*

[http://esbd.cpa.state.tx.us/bid\\_show.cfm?bidid=126043](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=126043)

**Weatherization Assistance Program: QCI Supplemental Multifamily Training** — *relating to required training for certified Quality Control Inspectors participating in the Department's WAP Program:*

[www.tdhca.state.tx.us/community-affairs/wap/quality-work-plan.htm](http://www.tdhca.state.tx.us/community-affairs/wap/quality-work-plan.htm)

**2017 Regional Allocation Formula Methodology** — *explaining the method by which the Department will regionally allocate HOME, Housing Trust Fund, and Housing Tax Credit program funding:*  
[www.tdhca.state.tx.us/housing-center/pubs-plans.htm](http://www.tdhca.state.tx.us/housing-center/pubs-plans.htm)

**Community Affairs: Staff Drafts of Proposed Rule Changes** — *series of four proposed rule changes included as part of the Community Affairs Rules Project for which comment is being sought prior to staff presenting the Board with initial drafts:*  
[www.tdhca.state.tx.us/public-comment.htm](http://www.tdhca.state.tx.us/public-comment.htm)

**2016 Competitive Housing Tax Credits Award and Waiting List: July 28** — *detailing final and/or conditional awards in the 2016 9% HTC cycle and applications placed on the waiting list:*  
[www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/index.htm](http://www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/index.htm)

2b

**BOARD REPORT ITEM**  
**HOME PROGRAM DIVISION**  
**AUGUST 25, 2016**

Final Report On Activities Assisted under HOME Investment Partnerships Program (“HOME”) Reservation System Participant (“RSP”) Agreement No. 2011-0062 with EBENZ Inc. (“EBENZ”) for four single family homes located in Texas City and League City, Galveston County.

**BACKGROUND**

EBENZ received RSP Agreement 2011-0062 in October 2012 for the provision of three contract activities: 1) Homeowner Rehabilitation Assistance (“HRA”) under the Department’s General set-aside contract number 1001695, 2) Persons with Disabilities (“PWD”) set-aside contract number 1001696, and 3) Disaster Relief (“DR”) set-aside contract number 1001697. EBENZ identified two households to assist under contract 1001695 and two households to assist under 1001696. TDHCA’s contract monitoring team and physical inspection monitoring team conducted reviews that each resulted in multiple findings of non-compliance, including construction deficiencies on all four homes approved under RSP Agreement 2011-0062, as well as disallowed costs totaling \$73,720.78 that was due to the Department on February 26, 2016, but has not been received to date.

In accordance with Board authorization provided January 28, 2016, and March 31, 2016, the Department executed an RSP Agreement with Institute for Building and Technology Services (“IBTS”) to correct construction deficiencies on all four houses, including one home that was under construction when the initial findings were issued to EBENZ that was never completed. As of this Board book posting, IBTS has completed construction on the unfinished home and the family has returned to their home, corrected deficiencies on one home that had major construction issues, completed work on a home with minor deficiencies, and is in the process of completing a ramp on the remaining home that will be finished by the end of August. The Department originally anticipated that the amount of HOME funds invested under the IBTS RSP Agreement per house for the completed homes with deficiencies would be limited to \$40,000 for hard costs and \$5,000 for soft costs including inspection fees. The final budget for these homes was below these limits. Staff originally estimated that the budget for the unfinished home would not exceed \$80,000 for hard costs and \$13,250 for soft costs, but received Board authorization to exceed this amount if necessary, provided federal subsidy limits were not exceeded. The first bid received for this home came in well above IBTS’ estimate. The project was therefore re-evaluated and rebid, and IBTS ultimately awarded a construction contract totaling \$102,697, which was \$13,855 less than the first bid and well below the federal subsidy limits. The project budget totals \$118,831 including \$5,134 for contingency costs and \$11,000 for soft costs.

Staff is pleased with the progress and construction work overseen by IBTS to correct all deficiencies noted by TDHCA’s physical inspection monitoring team. Given that the remaining home will be completed by the end of August, staff anticipates this will be the last report to the Board on the matter of resolving the construction deficiencies caused by EBENZ under RSP Agreement 2011-0062.

2c

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

# **ACTION ITEMS**

3a

BOARD ACTION REQUEST  
COMMUNITY AFFAIRS DIVISION  
AUGUST 25, 2016

Presentation, Discussion, and Possible Action on an order proposing new 10 TAC Chapter 7, Homelessness Programs: Subchapter A, General Provisions; Subchapter B, Homeless Housing and Services Program (“HHSP”); and Subchapter C, Emergency Solutions Grant (“ESG”), and directing that they be published for public comment in the Texas Register

RECOMMENDED ACTION

WHEREAS, pursuant to Tex. Gov’t Code §2306.053, the Department is authorized to adopt rules governing the administration of the Department and its programs;

WHEREAS, the Department is undertaking a broad reorganization of, and revision to, the rules that govern the programs administered by the Community Affairs Division of the Department, and this action item is one of several that jointly encompasses those broad changes;

WHEREAS, the rules governing the Department’s two homelessness programs – the ESG Program and HHSP - are currently included within 10 TAC Chapter 5, Community Affairs Programs;

WHEREAS, as part of the plan in reorganizing the rules, Chapter 5 is remaining in effect, and is not being proposed for repeal, so that it will continue to govern any and all contracts that reference said Chapter;

WHEREAS, as part of the reorganization of the rules, staff believes that the homelessness programs, and their applicable state and federal oversight regulations, are sufficiently distinct to warrant their separation from the other Community Affairs Programs and are being proposed to exist in a new Chapter in TAC, Chapter 7, to specifically cover the Department’s homelessness programs;

WHEREAS, the rule changes being proposed include some language currently in Chapter 5 that still remains relevant to homelessness activities into Chapter 7, and incorporate other programmatic and policy changes;

WHEREAS, on June 27, 2016, a roundtable was held to discuss the proposed changes to these sections, and on July 29, 2016, a staff draft of the rules was released for public input, and input received from the roundtable and staff draft were considered in the drafting of the attached proposed rules; and

WHEREAS, upon authorization of this item, these proposed actions will be published in the Texas Register for public comment from September 9, 2016, through October 10, 2016, including a public hearing on the proposed rules to occur on September 29, 2016;

NOW, therefore, it is hereby

RESOLVED, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the proposed adoption of 10 TAC Chapter 7, Homelessness Programs, Subchapter A, General Provisions; Subchapter B, Homeless Housing and Services Program ("HHSP"); and Subchapter C, Emergency Solutions Grant ("ESG"), in the form presented to this meeting, to be published in the Texas Register for review and public comment, and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

## BACKGROUND

### Community Affairs Rules Project ("CA Rules Project") and Public Input

Within Title 10 of Texas Administrative Code ("TAC") a series of different Department rules govern the programs administered by the Community Affairs Division. Those programs include the Community Services Block Grant Program ("CSBG"), the Comprehensive Energy Assistance Program ("CEAP"), the Weatherization Assistance Program ("WAP"), the Emergency Solutions Grant Program ("ESG"), and the Homeless Housing and Services Program ("HHSP"). Over time, varying components of those rules have been amended, as needed, to address specific changes, but a wholesale review and revisit of the rules has not taken place in several years and is needed. Therefore, the Department is undertaking a broad reorganization of, and revision to, the rules that govern the Community Affairs programs.

The programmatic rules that currently govern the Community Affairs Programs are located in Chapter 5, Community Affairs Programs. However, to remove ambiguity about what program contracts are subject to which set of rules, the Department is proposing to leave Chapter 5 unchanged as it continues to apply to many existing contracts, and alternatively proposes two new chapters that will govern Community Affairs Program contracts in the future - a new Chapter 6 to govern Community Affairs Programs, and a new Chapter 7 to govern Homelessness Programs.

Other rules being proposed for change as part of the CA Rules Project, because they affect the Community Affairs Programs, include Chapter 1, Administration, and Chapter 2, Enforcement, which both relate more broadly to all Department activities. A full listing of all of the rule changes being included in the CA Rules Project is provided in Attachment A. As part of this CA Rules Project, staff is proposing a set of rule actions that jointly capture the reorganization and revisions. While proposed separately to facilitate discussion and organization, the actions are inter-related.

Staff has made sure that the organizations who administer these programs were made aware of the proposed changes and already has sought out initial public input. On June 27, 2016, a roundtable was held to discuss the proposed changes to these sections and input received from those roundtables was considered, and a staff draft of the rules was released on July 29, 2016, for early initial input. That input has been considered in the preparation of these proposed rules. The proposed rules will, upon action by the Board, be published in the Texas Register for public comment from September 9, 2016, through October 10, 2016, including a webinar on September 19, 2016, during which the Department will answer questions about the proposed rules. A public hearing on the proposed rules is scheduled for September 29, 2016.

### Homelessness Programs Rules

Chapter 7 is being newly created and proposes new Subchapters to address the Department's Homelessness Programs, which have previously been addressed in Chapter 5: Subchapter A, General Provisions; Subchapter B, HHSP; and Subchapter C, ESG. The rule changes being made include, incorporating into Chapter 7 language currently in Chapter 5 that still remains relevant to homelessness activities, removing unnecessary requirements, streamlining uniform requirements, organizationally placing sections in more logical order or within more appropriate chapters/subchapters, incorporating new or more fully addressing existing federal program requirements, renumbering non-sequential sections, and making policy updates and process changes. The full set of proposed rules being submitted to the Texas Register, including the preamble, is provided in Attachment B.

While not comprehensive of all changes proposed, below is a list of some of the more significant changes reflected in the proposed rules affecting the Homelessness Programs:

- ❖ Definitions: The proposed rule only includes those definitions from Chapter 5 that were germane to the homelessness programs and still in use within the rule. Additionally, definitions have been added for the following terms: At-Risk of Homelessness, Break in Service, CoC, Concern, Finding, Homeless Management and Information System (HMIS), HMIS Comparable Database, LURA, Observation, Occupancy Limits, Program Year and Veterans Affairs.
- ❖ Within the Definitions section, the rule removes the requirement that the Declaration of Income Statement requires notarization to be complete.
- ❖ The definition for Affiliate is revised.
- ❖ Within the Definitions section, the rule revises the definition of Homeless Individual to clarify that "for HHSP, a homeless individual may have right of occupancy because of a signed lease, but still qualify as homeless if his or her primary nighttime residence is an emergency shelter or place not meant for human habitation."
- ❖ Several sections that were previously in Chapter 5, General Provisions, are not moved to Chapter 7, but were moved to new Chapter 1, Subchapter D, which applies to all Department programs that have Subrecipients that receive federal or state funds (those sections include Cost Principles, Fidelity Bond Requirements, Purchase and Procurement Standards, Procurement/Cooperative Purchasing Program, Bonding Requirement, Inventory, Record Retention, and Travel).
- ❖ Several other sections that were previously in Chapter 5, General Provisions, are also not being moved to Chapter 7 because they are being removed from the rules completely, as they only restated other state or federal law, and are also required within the contract between the Department and the Subrecipients (those sections include Prohibitions, Lobbying Activities, Texas Public Information Act, and Federal Funding Accountability and Transparency Act (FFATA)), or in the case of the section called Information Technology Security Practices, the section is removed because it had only encouragement language but provided no requirement.
- ❖ The rule clarifies that a Land Use Restriction Agreement is a requirement.
- ❖ The rule clarifies that the Department may do biennial Subrecipient awards.
- ❖ Some sections from the ESG or HHSP Subchapters are being moved into the Homeless General Provisions section as they are applicable to both programs (those sections include Subrecipient Contracts, Performance and Expenditure Benchmarks, Subrecipient Reporting, and Subrecipient Data Collection).
- ❖ The 45-day close out period for reporting that had been in use for HHSP has now been applied to ESG, which had previously had only 30 days.

- ❖ The rule adds a new section for Client Eligibility that covers a client's eligibility under each program, including addressing a break in service, and specifying that those being assisted with rental assistance must also apply for their local Section 8 wait list.
- ❖ The Income Eligibility section is now renamed "Income Determination" and removes the extensive list of "excluded incomes" - now merely referencing the determination method to be used.
- ❖ A new section called Inclusive Marketing has been added to the rule that addresses affirmative fair marketing plans, language access plans, affirmative outreach, protections under the Violence Against Women Reauthorization Act, and other issues relating to participant selection.
- ❖ The Compliance Monitoring section has been incorporated into the General Provisions section. Changes add the term "Subgrantee" throughout to clarify that the partner entities who work with our direct ESG subrecipients also are subject to monitoring requirements, take out the requirement that the Department provide an exit interview briefing, amend the requirement that the Department approve corrective action extension requests to five days, and take out the requirement that the Department must wait six months prior to referring a Subrecipient to the Enforcement Committee.
- ❖ Within the HHSP Subchapter:
  - A section on Eligible Activities was added to the rule, which was previously covered within contracts.
  - The rule removes the language that said the Point in Time count for formula purposes had to be on the HUD website.
  - The rule adds new language specifying that HHSP awards will be made biennially in keeping with the biennial nature of the state general revenue that funds the program.
  - The rule adds language specifying that "the Department may redistribute formula funded allocation among the eligible municipalities if a Subrecipient is unable to expend the funds within 120 days of the close of the biennium." The Department has no desire to deobligate funds from any HHSP subrecipients, but it has occurred that an HHSP subrecipient has not expended funds by the end of the biennium and therefore funds were not able to be redistributed and were lost to the program.
  - The Formula section was moved but the formula methodology remained unchanged other than specifying that the formula will be calculated each appropriation period/biennium.
  - The rule adds a section on Eligible Costs, but the costs noted are consistent with what is currently allowed by the program (but had not been specified in rule).
  - The rule reflects that the Habitability Standards for HHSP will mirror those of ESG.
- ❖ Within the ESG Subchapter:
  - Several sections are moved elsewhere as noted above or consolidated.
  - The rule adds language that reflects that Subrecipients that subcontract any portion of their award to another entity must, consistent with 2 CFR Part 200, monitor those subcontracts based on a risk assessment and be prepared to provide documentation of the risk assessment performed and the policies and procedures used in monitoring those subcontracts.

Attachment A  
CA Rules Project – Rules List and Actions  
(in TAC order)

Chapter 1, Agency Administration

- Subchapter A, General Policies and Procedures
  - §1.3. Delinquent Audits and Related Issues – Repeal (Now Addressed in Ch 1, Subchapter D)
  - §1.21, Action by Dept. if Outstanding Balance - Repeal/New
- Subchapter C, Previous Participation
  - §1.302, PPR for CSBG, LIHEAP and WAP – Repeal/New (Now Covering All Non-MF from Previous §1.302 and §1.303)
  - §1.303, PPR for Homeless Programs (and Other non-CA, non-MF) - Repeal
- Subchapter D, Federal Uniform Guidance – All Proposed New
  - §1.401. Definitions
  - §1.402. Cost Principles and Administrative Requirements
  - §1.403. Single Audit Requirements
  - §1.404. Purchase and Procurement Standards
  - §1.405. Bonding Requirements
  - §1.406. Fidelity Bond Requirements
  - §1.407. Inventory Report
  - §1.408. Travel
  - §1.409. Records Retention

Chapter 2, Enforcement

- Subchapter A, Enforcement General
  - §2.102, Definitions - Amend
- Subchapter B, Enforcement Regarding Community Affairs Contract Subrecipients
  - §2.201, Modified Cost Reimbursement - Repeal/New
  - §2.202, Sanctions and Contract Closeout - Repeal/New
  - §2.203, Termination and Reduction of Funding for CSBG Eligible Entities - New
  - §2.204, Contents of a Quality Improvement Plan

Chapter 6, CA Programs – All Proposed New

- Subchapter A, General Provisions, including Compliance Monitoring
- Subchapter B, Community Services Block Grant (CSBG)
- Subchapter C, Comprehensive Energy Assistance Program
- Subchapter D, Weatherization Assistance Program

Chapter 7, Homelessness Programs – All Proposed New

- Subchapter A, General Provisions, including Compliance Monitoring
- Subchapter B, Homeless Housing and Services Program (HHSP)
- Subchapter C, Emergency Solutions Grant (ESG)

### Attachment B – Proposed New Chapter 7

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 7, Homelessness Programs. The purpose of the proposed new Chapter 7 is to effectuate a reorganization of the rules that govern the homelessness programs so that the rules addressing homelessness that currently are provided for in Chapter 5 relating to the Community Affairs Programs will now be addressed in a new and separately proposed chapter.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the proposed new Chapter will be in effect, enforcing or administering the proposed new Chapter does not have any foreseeable additional costs or revenues for the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new Chapter is in effect, the public benefit anticipated as a result of the new Chapter will be to provide clearer guidance to Subrecipients through more organized and direct rules. There are no anticipate additional new economic costs to individuals required to comply with the new Chapter as a result of this action.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 9, 2016, to October 10, 2016, to receive input on the proposed Chapter. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attention: Brooke Boston, CA Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by email to the following address: [brooke.boston@tdhca.state.tx.us](mailto:brooke.boston@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin Local Time on OCTOBER 10, 2016. A copy of the proposed new chapter will be available on the Department's website at <http://www.tdhca.state.tx.us/public-comment.htm> under Items Open for Public Comment during the public comment period.

STATUTORY AUTHORITY. The new Chapter is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed new Chapter affects no other code, article, or statute.

<rule>

#### SUBCHAPTER A. GENERAL PROVISIONS.

§7.1. Purpose and Goals.

§7.2. Definitions.

§7.3. Land Use Restriction Requirement.

§7.4. Subrecipient Contract.

§7.5. Performance and Expenditure Benchmarks.

§7.6. Subrecipient Reporting.

§7.7. Subrecipient Data Collection.

§7.8. Client Eligibility.

§7.9. Income Determination.

§7.10. Subrecipient Contact Information.

§7.11. Records Retention.

§7.12. Contract Closeout.

§7.13. Inclusive Marketing.

§7.14. Compliance Monitoring.

### §7.1. Purpose and Goals.

(a) The rules established herein for Chapter 7 "Homelessness Programs" Subchapter A "General Provisions" applies to all homelessness programs, unless otherwise noted. Additional program specific requirements are contained within each program subchapter.

(b) The homelessness programs administered by the Texas Department of Housing and Community Affairs ("the Department") support the Department's statutorily assigned mission to address the problem of homelessness among Texans.

(c) The Department accomplishes this mission by acting as a conduit for state and federal grant funds for homelessness programs. Ensuring program compliance with the state and federal laws that govern these programs is another important part of the Department's mission. Oversight and program mandates ensure state and federal resources are expended in an efficient and effective manner.

### §7.2. Definitions.

(a) To ensure a clear understanding of the terminology used in the context of the Department's Homelessness programs, a list of terms and definitions has been compiled as a reference.

(b) The words and terms in this Chapter shall have the meanings described in this subsection unless the context clearly indicates otherwise.

(1) Affiliate--An entity related to an Applicant that controls by contract or by operation of law the Applicant or has the power to control the Applicant or a third entity that controls, or has the power to control both the Applicant and the entity. Examples include but are not limited to entities submitting under a common application, or instrumentalities of a unit of government. This term also includes any entity that is required to be reported as a component entity under Generally Accepted Accounting Standards, is required to be part of the same Single Audit as the Applicant, is reported on the same IRS Form 990, or is using the same federally approved indirect cost rate.

(2) At-risk of homelessness--As defined by 24 CFR §576.2.

(3) Break in Service--Situation in which a program participant had received homeless services or housing assistance, currently receives no homelessness services or housing assistance, and is in need of homelessness services or housing assistance.

(4) Child--Household member not exceeding eighteen (18) years of age.

(5) Code of Federal Regulations ("CFR")--The codification of the general and permanent rules and regulations of the federal government as adopted and published in the Federal Register.

(6) Concern--A policy, practice or procedure that has not yet resulted in a Finding but if not changed will or may result in Findings, Deficiencies, and/or disallowed costs.

(7) Continuum of Care ("CoC")--The Continuum of Care Program is a HUD funded program designed to assist sheltered and unsheltered homeless people by providing the housing and/or services needed to help individuals move into transitional and permanent housing, with the goal of long-term stability. HUD requires representatives of relevant organizations to form a CoC to serve a specific geographic area; the Department and the CoCs are required by HUD to coordinate relating to the ESG Program as set forth in 24 CFR §576.400. This does not include any funds given from the State to a specific CoC.

(8) Contract--The executed written agreement between the Department and a Subrecipient performing a program activity that describes performance requirements and responsibilities assigned by the document; for which the first day of the Contract term is the point at which programs funds may be considered by a Subrecipient for Expenditure, unless otherwise directed in writing by the Department.

(9) Contracted Funds--The gross amount of funds obligated by the Department to a Subrecipient as reflected in a Contract.

(10) Cost Reimbursement--A Contract sanction whereby reimbursement of costs incurred by the Subrecipient is made only after the Department has reviewed and approved backup documentation provided by the Subrecipient to support such costs.

(11) Declaration of Income Statement ("DIS")--A Department-approved form used only when it is not possible for an applicant to obtain third party or firsthand verification of income.

(12) Department of Housing and Urban Development ("HUD")--Federal department that provides funding for ESG.

(13) Elderly Person--

(A) For HHSP, a person who is 60 years of age or older; and

(B) For ESG, a person who is 62 years of age or older.

(14) Emergency Solutions Grants ("ESG")--A HUD-funded program which provides funds for services necessary to help persons that are at risk of homelessness or homeless quickly regain stability in permanent housing.

(15) Expenditure--An amount of money spent.

(16) Finding--A Subrecipient's material failure to comply with rules, regulations, the terms of the Contract or to provide services under each program to meet appropriate standards, goals, and other requirements established by the Department or funding source (including performance objectives). A Finding impacts the organization's ability to achieve the goals of the program and jeopardizes continued operations of the Subrecipient. Findings include the identification of an action or failure to act that results in disallowed costs.

(17) Homeless or Homeless Individual--An individual as defined by 42 U.S.C. §§11371 - 11378 and 24 CFR §576.2. For HHSP, a homeless individual may have right of occupancy because of a signed lease, but still qualify as homeless if his or her primary nighttime residence is an emergency shelter or place not meant for human habitation.

(18) Homeless Housing and Services Program ("HHSP")--The state-funded program established under §2306.2585 Tex. Gov't Code.

(19) Homeless Management Information System ("HMIS")-- Information system designated by the CoC to comply with the HUD's data collection, management, and reporting standards and used to collect client-level data and data on the provision of housing and services to homeless individuals and families and persons at-risk of homelessness.

(20) HMIS-Comparable Database--Database established and operated by a victim service provider or legal service provider that is comparable to HMIS and collects client-level data over time (i.e., longitudinal data) and generates unduplicated aggregate reports based on the data.

(21) Household--Any individual or group of individuals who are living together.

(22) Low Income--Income in relation to Household size and that governs income eligibility for a program:

(A) For ESG, below 30% of the Median Family Income ("MFI") as defined by HUD's 30% Income Limits for All Areas for persons receiving prevention assistance or as amended by HUD; and

(B) For all other homelessness programs, below 30% of the MFI as defined by HUD for the ESG Program, although persons may be up to, but not exceed, 50% of ESG income limits, at recertification for rapid re-housing or homelessness prevention. Households in which any member is a recipient of SSI or a Means Tested Veterans Program are categorically income eligible.

(23) Land Use Restriction Agreement ("LURA")--An agreement, regardless of its title, between the Department and the shelter property owner which is a binding covenant upon the shelter property owner and successors in interest, that, when recorded, encumbers the property with respect to the requirements of the programs for which it receives funds.

(24) Means-Tested Veterans Program--A program whereby applicants receive payments under Sections 415, 521, 541, or 542 of title 38, United States, or under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978.

(25) Observation--A notable policy, practice or procedure observed through the course of monitoring

(26) Occupancy limits--three adults per bedroom, as defined by Tex. Prop Code §92.010. Exceptions to the occupancy limits are requirements by a state or federal fair housing law to allow a higher occupancy rate; or if an adult is seeking temporary sanctuary from family violence, as defined by Section 71.004, Family Code, for a period that does not exceed one month.

(27) Office of Management and Budget ("OMB")--Office within the Executive Office of the President of the United States that oversees the performance of federal agencies and administers the federal budget.

(28) OMB Circulars--Instructions and information issued by OMB to Federal agencies that set forth principles and standards for determining costs for federal awards and establish consistency in the management of grants for federal funds. Uniform cost principles and administrative requirements for local governments and for nonprofit organizations, as well as audit standards for governmental organizations and other organizations expending federal funds are set forth in 2 CFR Part 200, unless different provisions are required by statute or approved by OMB.

(29) Outreach--The method that attempts to identify clients who are in need of services, alerts these clients to service provisions and benefits, and helps them use the services that are available. Outreach is utilized to locate, contact and engage potential clients.

(30) Persons with Disabilities--Any individual who is:

(A) a handicapped individual as defined in 29 U.S.C. §701 or has a disability under 42 U.S.C. §12131-12134;

(B) disabled as defined in 42 U.S.C. 1382(a)(3)(A), 42 U.S.C. §423, or in 42 U.S.C. 15001; or

(C) receiving benefits under 38 U.S.C. Chapter 11 or 15.

(31) Private Nonprofit Organization--An organization described in §501(c) of the Internal Revenue Code (the "Code") of 1986 and which is exempt from taxation under subtitle A of the Code, has an accounting system and a voluntary board, and practices nondiscrimination in the provision of assistance. This does not include a governmental organization such as a public housing authority or a housing finance agency.

(32) Program Year--Contracts with funds from a specific federal allocation (ESG) or state biennium (HHSP).

(33) Public Organization--A unit of government, as established by the Legislature of the State of Texas. Includes, but may not be limited to, cities, counties, and councils of governments. For ESG, this does not include a governmental organization such as a public housing authority or a housing finance agency.

(34) Single Audit--The audit required by OMB, 2 CFR Part 200, Subpart F, or Tex. Gov't Code, Chapter 738, Uniform Grant and Contract Management, as reflected in an audit report.

(35) State--The State of Texas or the Department, as indicated by context.

(36) Subcontractor--A person or an organization with whom the Subrecipient contracts with to provide services.

(37) Subgrant--An award of financial assistance in the form of money made under a grant by a Subrecipient to an eligible Subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases.

(38) Subgrantee--The legal entity to which a Subgrant is awarded and which is accountable to the Subrecipient for the use of the funds provided.

(39) Subrecipient--An organization that receives federal or states funds passed through the Department to operate the ESG and/or HHSP programs.

(40) Supplemental Security Income ("SSI")--A means tested program run by the Social Security Administration.

(41) Texas Administrative Code ("TAC")--A compilation of all state agency rules in Texas.

(42) Uniform Grant Management Standards ("UGMS")--The standardized set of financial management procedures and definitions established by Tex. Gov't Code Chapter 783 to promote the efficient use of public funds, by requiring consistency among grantor agencies in their dealings with grantees, and by ensuring accountability for the expenditure of public funds. State agencies are required to adhere to these standards when administering grants and other financial assistance agreements with cities, counties and other political subdivisions of the state. This includes all Public Organizations, Housing Authorities, and Housing Finance Agencies. In addition, Tex. Gov't Code Chapter 2105, subjects subrecipients of federal block grants (as defined therein) to the Uniform Grant and Contract Management Standards.

(43) Unit of General Local Government--A unit of government which has, among other responsibilities, the authority to assess and collect local taxes and to provide general governmental services.

(44) United States Code ("U.S.C.")--A consolidation and codification by subject matter of the general and permanent laws of the United States.

(45) United States Department of Veteran Affairs ("VA")--Federal department that serves America's Veterans and their families with medical care, benefits, social support, and lasting memorials promoting the health, welfare, and dignity of all Veterans in recognition of their service.

### §7.3. Land Use Restriction Requirement.

(a) A Subrecipient that rehabilitates or convert a building(s) for use as a shelter will be required to enter into a land use restriction agreement from three to ten years depending on the type of renovation or conversion and value of the building. The minimum use periods established in 24 CFR §576.102(c) are applicable to both the ESG emergency shelter component and to HHSP.

(b) For HHSP only, §2306.185 Tex. Gov't Code requires certain multifamily developments to have a thirty-year land use restriction agreement. A Subrecipient that intends to expend funds that require the use of a LURA, must let the Department know at least 60 days prior to the end of the Contract.

### §7.4. Subrecipient Contract.

(a) Subject to prior Board approval, the Department and a Subrecipient shall enter into and execute a Contract for the disbursement of program funds. The Department, acting by and through its Executive Director or his/her designee, may authorize, execute, and deliver authorized modifications and/or amendments to the Contract, as allowed by state and federal laws and rules.

(b) The governing body of the Subrecipient must pass a resolution authorizing its Executive Director or his/her designee to have signature authority to enter into Contracts, sign amendments, and review and approve reports. All Contract actions including extensions, amendments or revisions must be ratified by the governing body at the next regularly scheduled meeting. Minutes relating to this resolution must be on file at the Subrecipient level.

(c) Within 45 days following the conclusion of a Contract issued by the Department, the Subrecipient shall provide a final expenditure and final performance report regarding funds expended under the terms of the Contract.

(d) A performance statement and budget are attachments to the Contract between the Subrecipient and the Department. Execution of the Contract enables the Subrecipient to access funds through the Department's Community Affairs contract system.

(e) Amendments and Extensions to Contracts.

(1) Amendments and extension requests must be submitted in writing by the Subrecipient and except for amendments that only move funds within budget categories, amendments will not be granted if any of the following circumstances exist:

(A) if the award for the Contract was competitively awarded and the amendment would materially change the scope of the Contract performance;

(B) if the funds associated with the Contract will reach their federal expiration date within 45 days of the request;

(C) if the Subrecipient is delinquent in the submission of their Single Audit or their Single Audit Certification form required by §1.403 in Chapter 1 of this Part;

(D) if the Subrecipient owes the Department disallowed amounts in excess of \$1,000 and a Department-approved repayment plan is not in place or has been violated;

(E) for amendments adding funds (not applicable to amendments for extending time), if the Department has cited the Subrecipient for violations within §7.14 of this Subchapter (related to Compliance Monitoring) and the corrective action period has expired without correction of the issue or a satisfactory plan for correction of the issue;

(F) the Contract has expired; or

(G) a member of the Subrecipient's board has been debarred and has not been removed.

(2) Within 30 calendar days of a Subrecipient's request for a Contract amendment or extension request the request will be processed or denied in writing. If denied, the applicable reason from this subsection (e) will be cited. The Subrecipient may appeal the decision to the Executive Director consistent with Chapter 1, §1.7, of this Title.

(f) For ESG:

(1) The Department reserves the right to deobligate funds and redistribute funds for failure to abide by terms of the Contract.

(2) The Department reserves the right to negotiate the final grant amounts and local match with Subrecipients.

#### §7.5. Performance and Expenditure Benchmarks.

(a) The Department may incorporate performance and expenditure benchmarks into each Contract.

(b) Performance and expenditure benchmarks will be based on budgets, timelines, and performance measures approved by the Department in writing before the start of the Contract period.

(c) Benchmarks may be adjusted for good cause by the Department. If Subrecipient does not concur with adjustments to benchmarks, they may Appeal this decision consistent with §1.7 of this Title, relating to Staff Appeals.

(d) Department staff will periodically review Subrecipients' progress in meeting benchmarks. If a Subrecipient is out of compliance with performance or expenditure benchmarks, the Department may deobligate all or a portion of any remaining funds under the Contract, in accordance with the notice provisions in the Contract.

#### §7.6. Subrecipient Reporting.

(a) Subrecipients must submit a monthly performance and expenditure report through the Community Affairs Contract System not later than the fifteenth (15th) day of each month following the reported month of the contract period. Reports are required even if a fund reimbursement or advance is not being requested.

(b) For monthly performance reports, the data to be reported will be indicated in the Contract. Clients that are assisted continuously as one Contract ends and a new Contract begins in the same program will count as new clients for the new Contract. However, the start of a new Contract does not require new eligibility determination or documentation for clients, except as required by federal rule for ESG.

(c) Subrecipient shall reconcile their Expenditures with their performance at least monthly before seeking a request for funds for the following month. If the Subrecipient is unable to reconcile on a month-to-month basis, the Subrecipient must provide at the request of the Department, a written explanation for the variance and take appropriate measures to reconcile the subsequent month. It is the responsibility of a Subrecipient to ensure that it has documented the compliant use of all funds provided prior to receipt of additional funds, or if this cannot be done to address the repayment of such funds.

(d) Within 45 days from the end of the Contract, the Subrecipient must provide a final expenditure and final performance report regarding all funds expended under the terms of the contract.

(e) Failure of a Subrecipient to provide a final expenditure and final performance report of funds expended under the terms of the contract may be sufficient reason for the Department to deny any future Contract to the Subrecipient until resolved to the satisfaction of the Department.

#### §7.7. Subrecipient Data Collection.

Subrecipients must ensure that data on all persons served and all activities assisted under ESG or HHSP is entered into the applicable HMIS or HMIS comparable database for domestic violence or legal service providers in order to integrate data from all homeless assistance and homelessness prevention projects in a COC. The data to be collected will be indicated in the Contract.

#### §7.8. Client Eligibility.

(a) For ESG, clients must satisfy the eligibility requirements as defined in 24 CFR Parts 91 and 576, by meeting the appropriate definition of homelessness, at-risk of homelessness in 24 CFR 576.2, including applicable income requirements. Subrecipients must document eligibility of the clients.

(b) For HHSP, clients must satisfy the eligibility requirements by meeting the appropriate definition of homelessness or at-risk of homelessness in this chapter including applicable income requirements. Subrecipients must document eligibility of the clients; however, in accordance with subsection (a) of §7.9 of this Subchapter, documentation of income for certain individuals is not required to be collected.

(c) If a client has a break in service, the Subrecipient must document eligibility before providing services. For HHSP, if the client is currently receiving homeless services or housing assistance through ESG, the Subrecipient would not need to document further their eligibility for HHSP.

(d) If Subrecipients provide medium-term rental assistance for a period greater than six months, prior to clients being assisted with the seventh month of rental assistance, the client must have applied for rental assistance benefits, such as Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program and been placed on one or more waiting lists, if waiting lists are open. If waiting lists are closed, the Subrecipient will check every six (6) months for opening of the lists for programs in the city ( HHSP)or county (ESG).

#### §7.9. Income Determination.

(a) For ESG and HHSP, Subrecipients must use the income determination method outlined in 24 CFR §5.609, must use the list of income included in HUD Handbook 4350, and must exclude from income those items listed in HUD's Updated List of Federally Mandated Exclusions from Income, as may be amended from time to time. For HHSP, Households who were income eligible under a prior definition, retain that eligibility until recertification. For HHSP, there is no procedural requirement to verify income for persons living on the street (or other places not fit for human habitation), living in emergency shelter, entering transitional housing (housing that is limited to 24 months or less of occupancy), or starting rapid re-housing.

(b) If a federal or state requirement provides an updated definition of income or method for calculating income, the Department will provide written notice to Subrecipients about the implementation date for the new requirements.

(c) If proof of income is unobtainable, the applicant must complete and sign a DIS.

(d) For ESG recertification must be done in accordance with 24 CFR §576.401. For HHSP, recertification must be done for rapid re-housing and homelessness prevention the lesser of every twelve months or in accordance with the entity's written policies.

#### §7.10. Subrecipient Contact Information.

(a) In accordance with §1.22 of this Title (relating to Providing Contact Information to the Department), Subrecipients will notify the Department and provide contact information for key management staff (Executive Director, Chief Financial Officer, Program Director/Manager/Coordinator or any other person, regardless of title, generally performing such duties) new hires within 30 days of such occurrence.

(b) Subrecipients will notify the Department and provide contact information for subgrants or subcontracts, where clients must apply for services or for HMIS/HMIS-comparable databases, within 30 days of, subgrants or Subcontracts. Contact information for the organizations with which the Subrecipients partner, subgrant or subcontract must be provided to the Department, including: organization name, phone number, e-mail address, and service area for any program services provided.

(c) The Department will rely solely on the contact information supplied by the Subrecipient in the Department's web-based Community Affairs System. It is the Subrecipient's sole responsibility to ensure such information is current, accurate, and complete. Correspondence sent to the email or physical address shown in CA Contract System will be deemed delivered to the Subrecipient. Correspondence from the Department may be directly uploaded to the Subrecipient's CA contract account using a secure electronic document attachment system. Once uploaded, notification of the attachment will be sent electronically to the email address listed in the CA contract system. The Department is not required to send a paper copy and if it does so it does as a voluntary and non-precedential courtesy only.

#### §7.11. Records Retention.

Record retention for rehabilitation/conversion/construction of emergency shelters or multifamily housing developments must be retained until the greater of ten (10) years after the date that the funds are first obligated for rehabilitation/conversion/construction, or the expiration of the LURA.

#### §7.12. Contract Closeout.

(a) When a Contract is terminated, or voluntarily relinquished, the procedures described in this subsection will be implemented. The terminology of a "terminated" Subrecipient below is intended to include the Subrecipient that is voluntarily terminating their Contract, but does not include Contracts naturally reaching the end of their Contract Term.

(1) the Department will issue a termination letter to the Subrecipient no less than 30 calendar days prior to terminating the Contract. The Department may determine to take one of the following actions: suspend funds immediately or allow a temporary transfer to another Subrecipient; or provide instructions to the Subrecipient to prepare a proposed budget and written plan of action that supports the closeout of the Contract. The plan must identify the name and current job titles of staff that will perform the closeout and an estimated dollar amount to be incurred. The plan must identify the CPA or firm which will perform the Single Audit. The Department will issue an official termination date to allow all parties to calculate deadlines which are based on such date.

(2) No later than 30 calendar days after the Contract is terminated, the Subrecipient will take a physical inventory of client files, including case management files.

(3) The terminated Subrecipient will have 30 calendar days from the date of the physical inventory to make available to the Department all current client files. Current and active case management files also must be inventoried.

(4) Within 60 calendar days following the Subrecipient due date for preparing and boxing client files, Department staff will retrieve the client files.

(5) The terminated Subrecipient will prepare and submit no later than 30 calendar days from the date the Department retrieves the client files, a final report containing a full accounting of all funds expended under the Contract.

(7) A final monthly expenditure report and a final monthly performance report for all remaining expenditures incurred during the closeout period must be received by the Department no later than 45 calendar days from the date the Department determines that the closeout of the program and the period of transition are complete.

(8) The Subrecipient will submit to the Department no later than 45 calendar days after the termination of the Contract, an inventory of the non-expendable personal property acquired in whole or in part with funds received under the Contract.

(9) The Department may require transfer of Equipment title to the Department or to any other entity receiving funds under the program in question. The Department will make arrangements to remove Equipment covered by this paragraph within 90 calendar days following termination of the Contract.

(10) A current year Single Audit must be performed for all entities that have exceeded the federal expenditure threshold under 2 CFR Part 200, Subpart F or the State expenditure threshold under UGMS, as applicable. The Department will allow a proportionate share of program funds to pay for accrued audit costs, when an audit is required, for a Single Audit that covers the date up to the closeout of the contract. To be reimbursed for a Single Audit, the terminated Subrecipient must have a binding contract with a CPA firm on or before the termination date of the Contract. The actual costs of the Single Audit and accrued audit costs including support documentation must be submitted to the Department no later than 45 calendar days from the date the Department determines the closeout is complete.

(11) Subrecipients shall submit within 45 calendar days after the date of the closeout process all financial, performance, and other applicable reports to the Department. The Department may approve extensions when requested by the Subrecipient. However, unless the Department authorizes an extension, the Subrecipient must abide by the 45 day requirement of submitting all referenced reports and documentation to the Department.

#### §7.13. Inclusive Marketing.

(a) The purpose of this section is to highlight certain policies and/or procedures that are required to have written documentation. Other items that are required for written standards are included in the federal or state rules.

(b) Participant selection criteria:

(1) Selection criteria will be applied in a manner consistent with all applicable laws, including the Texas and Federal Fair Housing Acts, program guidelines, and the Department's rules.

(2) If the local COC has adopted priority for certain Homeless subpopulations or a specific funding source has a statutory or regulatory preference, then those subpopulations may be given priority by the Subrecipient. Such priority must be listed in the participant selection criteria.

(3) Notifications on denial, non-renewal, or termination of Assistance must:

(i) State that a Person with a Disability may request a reasonable accommodation in relation to such notice.

(ii) Include any appeal rights the participant may have in regards to such notice.

(iii) Inform program participants in any denial, non-renewal or termination notice, include information on rights they may have under VAWA (for ESG only, in accordance with the Violence Against Women Reauthorization Act of 2013 ("VAWA") protections). Subrecipients may not deny admission on the basis that the applicant has been a victim of domestic violence, dating violence, sexual assault, or stalking.

(c) Other policies and procedures:

(1) Affirmative Fair Housing Marketing Plan. Subrecipients providing project-based rental assistance must have an Affirmative Fair Housing Marketing Plan created in accordance with HUD requirements to direct specific marketing and outreach to potential tenants who are considered "least likely" to know about or apply for housing based on an evaluation of market area data.

Subrecipients must comply with HUD's Affirmative Fair Housing Marketing and the Age Discrimination Act of 1975.

(2) Language Access Plan. Subrecipients that interact with program participants or clients must create a Language Access Plan for Limited English Proficiency ("LEP") Requirements. Consistent with Title VI and Executive Order 13166, Subrecipients are also required to take reasonable steps to ensure meaningful access to programs and activities for LEP persons.

(3) Affirmative Outreach. If it is unlikely that outreach will reach persons of any particular race, color, religion, sex, age, national origin, familial status, or disability who may qualify for those facilities and services, the Subrecipient must establish policies and procedures that target outreach to those persons. The Subrecipients must take appropriate steps to ensure effective communication with persons with disabilities including, but not limited to, adopting procedures that will make available to interested persons information concerning the location of assistance, services, and facilities that are accessible to persons with disabilities. Subrecipients must make known that use of the facilities, assistance, and services are available to all on a nondiscriminatory basis.

(4) Reasonable Accommodation. The Subrecipient must comply with state and federal fair housing and antidiscrimination laws. Subrecipients' policies and procedures must address reasonable accommodation, including, but not limited to, consideration of reasonable accommodations requested to complete the application process. See Chapter 1 Subchapter B for more information.

#### §7.14. Compliance Monitoring.

##### (a) Purpose and Overview

(1) This section provides the procedures that will be followed for monitoring for compliance with the programs in 10 TAC Chapter 7.

(2) Any entity administering any or all of the programs detailed in 10 TAC Chapter 7 is a Subrecipient. A Subrecipient may also administer other programs, including programs administered by other state or federal agencies and privately funded programs. If the Subrecipient has Contracts for other programs through the Department, including but not limited to the HOME Partnerships Program, the Neighborhood Stabilization Program, or the Texas Housing Trust Fund, the Department may, but is not required to and does not commit to, coordinate monitoring of those programs with monitoring of the programs under this Chapter.

(3) Any entity administering any or all of the programs provided for in subsection (a) of this section as part of a Memorandum of Understanding ("MOU"), contract, or other legal agreement with a Subrecipient is a Subgrantee.

##### (b) Frequency of Reviews, Notification and Information Collection.

(1) In general, the Subrecipient or Subgrantee will be scheduled for monitoring based on state or federal monitoring requirements and/or a risk assessment. Factors to be included in the risk assessment include but are not limited to: the number of Contracts administered by the Subrecipient or Subgrantee, the amount of funds awarded and expended, the length of time since the last monitoring, findings identified during previous monitoring, issues identified through the submission or lack of submission of a Single Audit, complaints received by the Department, and reports of fraud, waste and/or abuse. The risk assessment will also be used to determine which Subrecipients or Subgrantees will have an onsite review and which may have a desk review.

(2) The Department will provide the Subrecipient or Subgrantee with written notice of any upcoming onsite or desk monitoring review, and such notice will be given to the Subrecipient and Subgrantee by email to the Subrecipient's and Subgrantee's chief executive officer at the email address most recently provided to the Department by the Subrecipient or Subgrantee. In general, a 30 day notice will be provided. However, if a credible complaint of fraud or other egregious noncompliance is received the Department reserves the right to conduct unannounced monitoring visits. It is the responsibility of the Subrecipients to provide to the Department the current contact information for the organization and the Board in accordance with §7.10 of this chapter (relating to

Subrecipient Contact Information) and §1.22 of this title (relating to Providing Contact Information to the Department).

(3) Upon request, Subrecipients or Subgrantees must make available to the Department all books and records that the Department determines are reasonably relevant to the scope of the Department's review. Typically, these records may include (but are not limited to):

(A) Minutes of the governing board and any committees thereof, together with all supporting materials;

(B) Copies of all internal operating procedures or other documents governing the Subrecipient's operations;

(C) The Subrecipient's Board approved operating budget and reports on execution of that budget;

(D) The Subrecipient's strategic plan or comparable document if applicable and any reports on the achievement of that plan;

(E) Correspondence to or from any independent auditor;

(F) Contracts with any third parties for goods or services and files documenting compliance with any applicable procurement and property disposition requirements;

(G) All general ledgers and other records of financial operations (including copies of checks and other supporting documents);

(H) Applicable client files with all required documentation;

(I) Applicable human resources records;

(J) Monitoring reports from other funding entities;

(K) Client files regarding complaints, appeals and termination of services; and

(L) Documentation to substantiate compliance with any other applicable state or federal requirements including, but not limited to, the Davis-Bacon Act, HUD requirements for environmental clearance, Lead Based Paint, the Personal Responsibility and Work Opportunity Act, HUD LEP requirements, and requirements imposed by Section 3 of the Housing and Urban Development Act of 1968.

(c) Post Monitoring Procedures.

(1) In general, within 30 calendar days of the last day of the monitoring visit, a written monitoring report will be prepared for the Subrecipient describing the monitoring assessment and any corrective actions, if applicable. The monitoring report will be emailed and sent through the U.S. Postal Service to the Board Chair and the Subrecipient's and Subgrantee Executive Director. Issues of concern over which there is uncertainty or ambiguity may be discussed by the Department with the staff of cognizant agencies overseeing federal funding. Certain types of suspected or observed improper conduct may trigger requirements to make reports to other oversight authorities, state and federal, including but not limited to the State Auditor's Office and applicable Inspectors General.

(2) Subrecipient Response. If there are any findings of noncompliance requiring corrective action, the Subrecipient will be provided 30 calendar days, from the date of the email, to respond which may be extended for good cause. In order to receive an extension, the Subrecipient must submit a written request to the Chief of Compliance within the corrective action period, stating the basis for good cause that justifies the extension. The Department will approve or deny the extension request within five calendar days.

(3) Monitoring Close Out. Within 45 calendar days after the end of the corrective action period, a close out letter will be issued to the Subrecipient with notice to Subgrantees (if applicable). If the Subrecipient supplies evidence establishing continual compliance that negates the finding of noncompliance, the issue of noncompliance will be rescinded. If the Subrecipient's response satisfies all findings and concerns noted in the monitoring letter, the issue of noncompliance will be noted as corrected. In some circumstances, the Subrecipient may be unable to secure documentation to correct a finding. In those instances, if there are mitigating circumstances, the Department may note the finding is not corrected but close the issue with no further action required. If the Subrecipient's response does not correct all findings noted, the close out letter will identify the documentation that must be submitted to correct the issue.

(4) Options for Review. If, following the submission of corrective action documentation, Compliance staff continues to find the Subrecipient or Subgrantee in noncompliance, and the Subrecipient disagrees, the Subrecipient may request or initiate review of the matter using the following options, where applicable:

(A) If the issue is related to a program requirement or prohibition of a federal program, the Subrecipient may contact the applicable federal program officer for guidance or request that the Department contact applicable federal program officer for guidance without identifying the Subrecipient.

(B) If the issue is related to application of a provision of the Contract or a requirement of the Texas Administrative Code, the Subrecipient may request to submit an appeal to the Executive Director consistent with §1.7, Staff Appeals Process, in Chapter 1 of this Title.

(C) The Subrecipient may request Alternative Dispute Resolution (“ADR”). The Subrecipient may send a proposal to the Department’s Dispute Resolution Coordinator to initiate ADR pursuant to §1.17 of this title.

(5) If the Subrecipients does not respond to a monitoring letter or fail to provide acceptable evidence of compliance, the matter will be handled through the procedures described in Chapter 2 of this Title, relating to Enforcement.

## SUBCHAPTER B HOMELESS HOUSING AND SERVICES PROGRAM (HHSP)

§7.1001. Purpose and Use of Funds.

§7.1002. Distribution of Funds and Formula.

§7.1003. General Homeless Housing and Services Program (“HHSP”) Requirements.

§7.1004. Eligible Costs.

§7.1005. Shelter and Housing Standards.

§7.1001. Purpose and Use of Funds.

(a) In accordance with Tex. Gov’t Code §2306.2585, HHSP provides funding to cities with populations in excess of 285,500 to develop programs to prevent and eliminate Homelessness.

(b) HHSP eligible activities are:

(1) Administrative costs associated with HHSP, including client tracking using HMIS or a HMIS-comparable database;

(2) Case management for households experiencing or at-risk of Homelessness to assess, arrange, coordinate and monitor the delivery of services;

(3) Construction/Conversion/Rehabilitation of buildings (including administrative facilities) to serve persons experiencing Homelessness or at-risk of Homelessness, or house persons experiencing homelessness;

(4) Essential services for Households experiencing or at-risk of Homelessness to find or maintain housing stability;

(5) Homelessness Prevention to provide financial assistance to individuals or families at risk of Homelessness;

(6) Homelessness Assistance to provide financial assistance provided to individuals or families experiencing Homelessness;

(7) Operation of emergency shelters or administrative facilities to serve persons experiencing or at-risk of Homelessness; and

(8) Other local programs to assists individuals or families experiencing Homelessness or at-risk of Homelessness if approved by the Department in writing in advance of the Expenditure.

§7.1002. Distribution of Funds and Formula.

(a) Pursuant to the authority of Tex. Gov’t Code §2306.2585, HHSP is available to any municipality in Texas with a population of 285,500 or more. HHSP funds will be biennially awarded upon

appropriation from the legislature and will be made available to any of those municipalities subject to the requirements of this rule and be distributed in accordance with the formula set forth in subsection (b) of this section (relating to Formula). The Department may redistribute formula-funded allocations among the eligible municipalities if a Subrecipient is unable to expend the funds within 120 days of the close of the biennium.

(b) Formula. Any funds made available for HHSP shall be distributed in accordance with a formula that is calculated each biennium that takes into account:

(1) population of the municipality, as determined by the most recent available 1 Year American Community Survey ("ACS") data;

(2) poverty, defined as the number of persons in the municipality's population with incomes at or below the poverty threshold, as determined by the most recent available 1 Year ACS data;

(3) veteran populations, defined as that percentage of the municipality's population composed of veterans, as determined by the most recent available 1 Year ACS data;

(4) population of Persons with Disabilities, defined as that percentage of the municipality's population composed of Persons with Disabilities, as determined by the most recent available 1 Year ACS data; and

(5) population of Homeless persons, defined as that percentage of the municipality's population comprised of Homeless persons, as determined by the most recent publically available Point-In-Time Counts submitted to HUD by the CoCs in Texas.

(c) The factors enumerated shall be used to calculate distribution percentages for each municipal area based on the following formula:

(1) 20 percent weight for population;

(2) 25 percent weight for poverty populations;

(3) 25 percent weight for veteran populations;

(4) 5 percent weight for population of Persons with Disabilities; and

(5) 25 percent weight for the Homeless population.

#### §7.1003. General Homeless Housing and Services Program ("HHSP") Requirements.

(a) Each municipality or entity that had in effect as of January 1, 2012, a Contract with the Department to administer HHSP funds will remain a designated entity to receive HHSP funds in its municipality, whether that entity is the municipality itself or another entity. The Department may add to or change those entities at its discretion based on consideration of the factors enumerated in paragraphs (1) - (4) of this subsection. If the Department proposes to add or change any such entity(ies) it will publish notice thereof on its website at least twenty (20) days prior to such addition or change. If the proposal is to add an entity, the notice will include any proposed sharing of funding with other HHSP providers in the affected municipality:

(1) whether an entity to be removed and replaced was compliantly and efficiently administering its contract;

(2) the specific plans of any new entity to build facilities to provide shelter or services to homeless populations, and/or to provide any specific programs to serve the homeless;

(3) the capacity of any new entity to deliver its planned activities; and

(4) any public comment and comment by state or local elected officials.

(b) The final decision to add or change entities will be approved by the Department's Governing Board (the "Board").

(c) A municipality or entity receiving HHSP funds is subject to the Department's Previous Participation Rule, found in §1.302 of this title. In addition to the considerations of the Previous Participation Rule, a municipality or entity receiving HHSP funds may not:

(1) have failed to fully expend funds with respect to any previous HHSP award(s) except as approved by the Executive Director of the Department after review of unique circumstances and reported to the Board; or

(2) be in breach, after notice and a reasonable opportunity to cure, of any contract with the Department.

(d) A municipality or entity receiving HHSP funds (Subrecipient) must enter into a Contract with the Department governing the use of such funds. If the source of funds for HHSP is funding under another specific Department program, such as the Housing Trust Fund, as authorized by Tex. Gov't Code, §2306.2585(c), the Contract will incorporate any requirements applicable to such funding source.

#### 7.1004. Eligible Costs.

(a) Administrative costs includes staff costs related to staff performing management, reporting and accounting of HHSP activities, including costs associated with HMIS or an HMIS-comparable databases.

(b) Case management costs include staff salaries related to assessing, arranging, coordinating and monitoring the delivery of services related to obtaining or retaining housing, including, but not limited to, determining client eligibility, counseling, coordinating services and obtaining mainstream benefits, monitoring clients' progress, providing safety planning for persons under VAWA, developing a housing and service plan, and entry into HMIS or an HMIS-comparable database.

(c) Construction/Conversion and Rehabilitation costs include:

(1) Pre-Development such as: environmental review, site-control, survey, appraisal, architectural fees, and legal fees

(2) Development such as: land acquisition costs, site work including infrastructure for service utilities, walkways, curbs, gutters, construction to meet uniform building codes, construction to meet international energy conservation code, accessibility features to site and building, local rehabilitation standards, essential improvements, energy-related improvements, abatement of lead-based paint hazards, barrier removal/construction costs for accessibility features for persons with disabilities, non-luxury general property improvements, site improvements and utility connections, lot clearing and site preparations.

(3) Essential services costs are associated with finding maintaining stable housing, and include, but are not be limited to, out-patient medical services, child care, education services, legal services, mental health services, local transportation assistance, drug and alcohol rehabilitation, and job training.

(4) Homelessness Prevention costs include rental and utility assistance (including reasonable deposits), motel stay costs, and local transportation assistance. An individual or family at-risk of homelessness may receive Homelessness Prevention, Case Management, and Essential Services. Staff time entering information into HMIS or HMIS-comparable database is also an eligible Homelessness Prevention cost.

(5) Homelessness Assistance costs include costs associated with rapidly re-housing the individual or family with rental and utility assistance (including reasonable deposits) or motel stay costs, and local transportation assistance. An individual or family experiencing homelessness may receive Homelessness Assistance, Case Management, and Essential Services. Staff time entering information into HMIS or HMIS-comparable database is also an eligible Homelessness Assistance cost.

(6) Operation costs include rent, utilities, supplies and equipment purchases, food pantry supplies, and other related costs necessary to operate an emergency shelter or administrative offices serving individuals experiencing or at-risk of homelessness.

#### §7.1005. Shelter and Housing Standards.

(a) Minimum standards for emergency shelters. Any building for which HHSP funds are used for conversion, major rehabilitation, or other renovation, must meet state or local government safety and sanitation standards, as applicable, and the following minimum safety and sanitation standards.

Any emergency shelter that receives assistance for shelter operations must also meet the following minimum safety and sanitation standards.

(1) Structure and materials. The shelter building must be structurally sound to protect residents from the elements and not pose any threat to health and safety of the residents. Any renovation (including major rehabilitation and conversion) carried out with HHSP assistance must use Energy Star and WaterSense products and appliances.

(2) Access. The shelter must be accessible in accordance with Section 504 of the Rehabilitation Act (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8; the Fair Housing Act (42 U.S.C. 3601 et seq.) as outlined in 10 TAC Chapter 1, Subchapter B, and implementing regulations at 24 CFR Part 100; and Title II of the Americans with Disabilities Act (42 U.S.C. 12131 et seq.) and 28 CFR Part 35; where applicable.

(3) Space and security. Except where the shelter is intended for day use only, the shelter must provide each program participant in the shelter with an acceptable place to sleep and adequate space and security for themselves and their belongings.

(4) Interior air quality. Each room or space within the shelter must have a natural or mechanical means of ventilation. The interior air must be free of pollutants at a level that might threaten or harm the health of residents.

(5) Water supply. The shelter's water supply must be free of contamination.

(6) Sanitary facilities. Each program participant in the shelter must have access to sanitary facilities that are in proper operating condition and are adequate for personal cleanliness and the disposal of human waste.

(7) Thermal environment. The shelter must have any necessary heating/cooling facilities in proper operating condition.

(8) Illumination and electricity. The shelter must have adequate natural or artificial illumination to permit normal indoor activities and support health and safety. There must be sufficient electrical sources to permit the safe use of electrical appliances in the shelter.

(9) Food preparation. Food preparation areas, if any, must contain suitable space and equipment to store, prepare, and serve food in a safe and sanitary manner.

(10) Sanitary conditions. The shelter must be maintained in a sanitary condition.

(11) Fire safety. There must be at least one working smoke detector in each occupied unit of the shelter. Where possible, smoke detectors must be located near sleeping areas. The fire alarm system must be designed for hearing-impaired residents. All public areas of the shelter must have at least one working smoke detector. There must also be a second means of exiting the building in the event of fire or other emergency.

(b) Minimum standards for housing for occupancy. HHSP funds cannot help a program participant remain in or move into housing that does not meet the minimum habitability standards below. HHSP funds may assist a program participant in returning the home to the minimum habitability standard in cases where the program participant is the responsible party for ensuring such conditions. In order to ensure continuity of housing, the Subrecipient may provide assistance to a program participant pending a completed housing inspection within 30 days of the assistance being provided. This allowance applies whether the program participant is the responsible party for ensuring such standards or another party is the responsible party. Should the housing not meet the minimum habitability standards 30 days after the initial assistance, no further assistance may be provided to maintain the program participant in that housing.

(1) Structure and materials. The structures must be structurally sound to protect residents from the elements and not pose any threat to the health and safety of the residents.

(2) Space and security. Each resident must be provided adequate space and security for themselves and their belongings. Each resident must be provided an acceptable place to sleep.

(3) Interior air quality. Each room or space must have a natural or mechanical means of ventilation. The interior air must be free of pollutants at a level that might threaten or harm the health of residents.

(4) Water supply. The water supply must be free from contamination.

(5) Sanitary facilities. Residents must have access to sufficient sanitary facilities that are in proper operating condition, are private, and are adequate for personal cleanliness and the disposal of human waste.

(6) Thermal environment. The housing must have any necessary heating/cooling facilities in proper operating condition.

(7) Illumination and electricity. The structure must have adequate natural or artificial illumination to permit normal indoor activities and support health and safety. There must be sufficient electrical sources to permit the safe use of electrical appliances in the structure.

(8) Food preparation. All food preparation areas must contain suitable space and equipment to store, prepare, and serve food in a safe and sanitary manner.

(9) Sanitary conditions. The housing must be maintained in a sanitary condition.

(10) Fire safety.

(A) There must be a second means of exiting the building in the event of fire or other emergency.

(B) Each unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each occupied level of the unit. Smoke detectors must be located, to the extent practicable, in a hallway adjacent to a bedroom. If the unit is occupied by hearing impaired persons, smoke detectors must have an alarm system designed for hearing-impaired persons in each bedroom occupied by a hearing-impaired person.

(C) The public areas of all housing must be equipped with a sufficient number, but not less than one for each area, of battery-operated or hard-wired smoke detectors. Public areas include, but are not limited to, laundry rooms, community rooms, day care centers, hallways, stairwells, and other common areas.

(c) Shelters and housing for occupancy. Lead-based paint remediation and disclosure. The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations in 24 CFR Part 35, subparts A, B, H, J, K, M, and R apply to all shelters and all housing units occupied by program participants.

(d) Lead-based paint remediation and disclosure. The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations in 24 CFR Part 35, subparts A, B, H, J, K, M, and R apply to all shelters and all housing units occupied by program participants.

## SUBCHAPTER C EMERGENCY SOLUTIONS GRANT (ESG)

§7.2001. Background.

§7.2002. Purpose and Use of Funds.

§7.2003. Availability, Distribution, and Redistribution of ESG Funds.

§7.2004. Eligible Applicants.

§7.2005. Program Income.

§7.2006. Environmental Clearance.

§7.2001. Background.

(a) ESG funds are federal funds awarded to the State of Texas by HUD and administered by the Department.

(b) The regulations in this subchapter govern the administration of ESG funds and establish policies and procedures for use of ESG funds to meet the purposes contained in Title IV of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. §§11371 - 11378) (the "Act"), as amended by the Homeless Emergency Assistance and Rapid Transition to Housing Act ("HEARTH Act").

(c) ESG Subrecipients shall comply with the regulations applicable to the ESG Program as set forth in this subchapter and as set forth in 24 CFR Part 91 and 24 CFR Part 576 (the "Federal Regulations"). ESG Subrecipients must also follow all other applicable federal and state statutes and the regulations established in this chapter, as amended or supplemented.

(d) In the event that Congress, the Texas Legislature, or HUD add or change any statutory or regulatory requirements concerning the use or administration of these funds, ESG Subrecipients shall comply with such requirements at the time they become effective.

#### §7.2002. Purpose and Use of Funds.

(a) The purpose of ESG is to assist people in regaining stability in permanent housing quickly after experiencing a housing crisis and/or Homelessness.

(b) ESG eligible activities are:

(1) the rehabilitation or conversion of buildings for use as emergency shelter for the Homeless;

(2) the payment of certain expenses related to operating emergency shelters;

(3) essential services related to emergency shelters and street outreach for the Homeless;

(4) homelessness prevention and rapid re-housing assistance;

(5) HMIS activities, including HMIS-comparable database activities; and

(6) administrative costs.

(c) Subrecipients are prohibited from charging occupancy fees for emergency shelter supported by funds covered by this subchapter.

(d) The Department's Governing Board, Executive Director, or his/her designee may limit activities in a given funding cycle or by contract.

#### §7.2003. Availability, Distribution, and Redistribution of ESG Funds.

(a) The Department will post on its website the distribution plan for ESG funds.

(b) Redistribution/Reallocation of Additional Grant Funds and Unexpended Funds. The Department, as determined by the Board, will determine the most equitable and beneficial use of any additional grant year appropriation, unexpended or deobligated program funds. In determining the distribution of funds, the Department may consider program performance, expenditure rates of eligible applicants or Subrecipients, or other factors deemed appropriate by the Department.

#### §7.2004. Eligible Applicants.

(a) Eligible Subrecipients are Units of General Local Government; those Private Nonprofit Organization(s) that are secular or religious organizations as described in §501(c) of the Internal Revenue Code of 1986, are exempt from taxation under Subtitle A of the Code, have an accounting system and a voluntary board, and practice non-discrimination in the provision of assistance; and organizations as described in a Notice of Funding Availability or other Board-approved funding mechanism.

(b) The Department reserves the option to limit eligible Subrecipient entities in a given funding cycle.

(c) Subrecipients that subcontract or subgrant any portion of their award to another entity must, consistent with 2 CFR Part 200, monitor those subcontracts based on a risk assessment. Subrecipients must be prepared to provide documentation of the risk assessment performed and the policies and procedures used in monitoring those subcontracts.

#### §7.2005. Program Income.

(a) Program income is gross income received by the Subrecipient, its Affiliates, or Subgrantees directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. Program income received and expended during the contract

period will count toward meeting the Subrecipients' matching requirements, provided the costs are eligible ESG costs that supplement the ESG program.

(b) Utility and security deposit refunds from vendors should be treated as program income.

(c) In accounting for program income, the Subrecipient must accurately reflect the receipt of such funds separate from the receipt of federal funds and Subrecipient funds.

(d) Program income received by the Subrecipient, its Affiliates, or its Subgrantees during the two (2) years following the end of the contract period must be returned to the Department. Program income must be returned to the Department within ten (10) working days of receipt.

(e) Program income received after the two (2) year period described in subsection (d) of this section has expired, can be retained.

#### §7.2006. Environmental Clearance

All ESG activities require some level of environmental clearance. Subrecipients must obtain the correct level of environmental clearance prior to commencing associated choice-limiting activities. Activities for which the Subrecipient did not properly complete the Department's environmental review process before commencing a choice-limiting activity are ineligible and funds will not be reimbursed or will be required to be repaid.

3b

BOARD ACTION REQUEST  
COMMUNITY AFFAIRS DIVISION  
AUGUST 25, 2016

Presentation, Discussion, and Possible Action on an order proposing new 10 TAC Chapter 6, Community Affairs Programs: Subchapter A, General Provisions; Subchapter B, Community Services Block Grant ("CSBG"); Subchapter C, Comprehensive Energy Assistance Program ("CEAP"); Subchapter D, Weatherization Assistance Program ("WAP"), and directing that they be published for public comment in the Texas Register

RECOMMENDED ACTION

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

WHEREAS, the Department is undertaking a broad reorganization of, and revision to, the rules that govern the programs administered by the Community Affairs Division of the Department, and this action item is one of several that jointly encompasses those broad changes;

WHEREAS, the rules governing the CSBG, CEAP and WAP programs are currently included within 10 TAC Chapter 5, Community Affairs Programs;

WHEREAS, as part of the plan in reorganizing the rules, Chapter 5 is remaining in effect, and is not being proposed for repeal, so that it will continue to govern any and all contracts that reference said Chapter;

WHEREAS, as part of the reorganization of the rules, staff believes that the CSBG, CEAP and WAP programs, and their applicable state and federal oversight regulations, are sufficiently distinct to warrant their separation from the homelessness programs also covered in Chapter 5 and are being proposed to exist in a new Chapter in TAC, Chapter 6, to specifically cover the Department's CSBG, CEAP and WAP programs;

WHEREAS, the rule changes being proposed include some language currently in Chapter 5 that still remains relevant to these programs, and incorporate other programmatic and policy changes;

WHEREAS, on June 27, 2016, a roundtable was held to discuss the proposed changes to these sections, and on July 29, 2016, a staff draft of the rules was released for public input, and input received from the roundtable and staff draft were considered in the drafting of the attached proposed rules; and

WHEREAS, upon authorization of this item, these proposed actions will be published in the Texas Register for public comment from September 9, 2016, through

October 10, 2016, including a public hearing on the proposed rules to occur on September 29, 2016;

NOW, therefore, it is hereby

RESOLVED, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the proposed new 10 TAC Chapter 6, Community Affairs Programs: Subchapter A, General Provisions; Subchapter B, Community Services Block Grant; Subchapter C, Comprehensive Energy Assistance Program; Subchapter D, Weatherization Assistance Program, in the form presented to this meeting, to be published in the Texas Register for review and public comment, and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

### BACKGROUND

#### Community Affairs Rules Project ("CA Rules Project") and Public Input

Within Title 10 of Texas Administrative Code ("TAC") a series of different Department rules govern the programs administered by the Community Affairs Division. Those programs include CSBG, CEAP, WAP, Emergency Solutions Grant Program ("ESG"), and Homeless Housing and Services Program ("HHSP"). Over time, varying components of those rules have been amended, as needed, to address specific changes, but a wholesale review and revisit of the rules has not taken place in several years and is needed. Therefore, the Department is undertaking a broad reorganization of, and revision to, the rules that govern the Community Affairs programs.

The programmatic rules that currently govern the Community Affairs Programs are located in Chapter 5, Community Affairs Programs. However, to remove ambiguity about what program contracts are subject to which set of rules, the Department is proposing to leave Chapter 5 unchanged as it continues to apply to many existing contracts, and alternatively proposes two new chapters that will govern Community Affairs Program contracts in the future - a new Chapter 6 to govern Community Affairs Programs, and a new Chapter 7 to govern Homelessness Programs.

Other rules being proposed for change as part of the CA Rules Project, because they affect the Community Affairs Programs, include Chapter 1, Administration, and Chapter 2, Enforcement, which both relate more broadly to all Department activities. A full listing of all of the rule changes being included in the CA Rules Project is provided in Attachment A. As part of this CA Rules Project, staff is proposing a set of rule actions that jointly capture the reorganization and revisions. While proposed separately to facilitate discussion and organization, the actions are inter-related.

Staff has made sure that the organizations who administer these programs were made aware of the proposed changes and already has sought out initial public input. On June 27, 2016, a roundtable was held to discuss the proposed changes to these sections and input received from those roundtables was considered, and a staff draft of the rules was released on July 29, 2016, for early initial input. That input has been considered in the preparation of these proposed rules. The proposed rules will, upon action by the Board, be published in the Texas Register for public comment from September 9, 2016, through October 10, 2016, including a webinar on September 19, 2016, during which the Department will answer questions about the proposed rules. A public hearing on the proposed rules is scheduled for September 29, 2016.

## Community Affairs Program Rules Governing CSBG, CEAP and WAP

Chapter 6 is being newly created and proposes new Subchapters to address the Department's Community Affairs Programs, which have previously been addressed in Chapter 5: Subchapter A, General Provisions; Subchapter B, Community Services Block Grant; Subchapter C, Comprehensive Energy Assistance Program; Subchapter D, Weatherization Assistance Program. The rule changes being made include incorporating into Chapter 6 language currently in Chapter 5 that still remains relevant to program activities, removing unnecessary requirements, streamlining uniform requirements, organizationally placing sections in more logical order or within more appropriate chapters/subchapters, incorporating new or more fully addressing existing federal program requirements, renumbering non-sequential sections, and making policy updates and process changes. The full set of proposed rules being submitted to the Texas Register, including the preamble, is provided in Attachment B.

While not comprehensive of all changes proposed, below is a list of some of the more significant changes reflected in the proposed rules affecting the Community Affairs programs:

### Subchapter A, General Provisions

- ❖ Removes provisions that were only germane to the homelessness programs.
- ❖ Several sections that were previously in Chapter 5, General Provisions, are not moved to Chapter 6, but were moved to new Chapter 1, Subchapter D, which applies to all Department programs that have Subrecipients that receive federal or state funds (those sections include Cost Principles, Fidelity Bond Requirements, Purchase and Procurement Standards, Procurement/Cooperative Purchasing Program, Bonding Requirement, Inventory, Record Retention, and Travel).
- ❖ Several other sections that were previously in Chapter 5, General Provisions, are also not being moved to Chapter 6 because they are being removed from the rules completely, as they only restated other state or federal law, and are also required within the contract between the Department and the Subrecipients (those sections include Prohibitions, Lobbying Activities, Texas Public Information Act, and Federal Funding Accountability and Transparency Act (FFATA)), or in the case of the section called Information Technology Security Practices, the section is removed because it had only encouragement language but provided no requirement.
- ❖ The rule identifies under the section for Subrecipient Contracts the instances in which contract amendments should not be requested.
- ❖ New definitions are added for: Categorical Eligibility, Community Action Plan ("CAP"), Vulnerable Populations, Concern, Finding, Deficiency, Observation, and Emergency.
- ❖ Definitions are revised for: Affiliate, Cost Reimbursement, Expenditure, Families with Young Children, High Energy Burden, High Energy Consumption, Household, Private Nonprofit, Production Schedule, and Program Year.
- ❖ Definitions are being deleted that are not used in rule, or have been moved to other sections.
- ❖ References to the Community Affairs Division have been removed from the rules, referring now in most cases to the Department in general.
- ❖ Clarifies that categorical eligibility for DOE activities will follow LIHEAP requirements.
- ❖ Within the Definitions section, the rule removes the requirement that the Declaration of Income Statement requires notarization to be complete.
- ❖ Revisions to the Income Eligibility section include: revising the title to Income Determination, clarifying how to annualize income, providing for how a live-in aid should be considered for WAP in determining eligibility, clarifying methodology for calculating income for persons who are not employed year round or those who are self-employed, clarifying that excluded income must be documented, addressing WPN 16-03, and revising federal act references.
- ❖ Adds a new section on Documentation and Frequency of Determining Client Eligibility that provides for when and how often determinations must occur: for LIHEAP and CSBG it is

required annually each program year, and for DOE WAP it is required at initial application and updated within 12 months of initial inspection.

- ❖ Within the section for Contact Information, the rule adds clarity on providing Board information to the Department, keeping it updated in the Community Affairs contract system, and being required to maintain two contacts for disaster responsiveness.
- ❖ The rule moves Subrecipient Reporting into Subchapter A, as it was previously included repeatedly in each program's subchapter.
- ❖ The Compliance Monitoring section has been incorporated into the General Provisions section. Changes take out the requirement that the Department provide an exit interview briefing, amend the requirement that the Department approve corrective action extension requests to five days, take out the requirement that the Department must wait six months prior to referring a Subrecipient to the Enforcement Committee, and allow for the possibility of longer corrective action periods for CSBG Subrecipients depending on the nature of the finding.
- ❖ The rule clarifies that if cash on hand is in excess of a draw request the Department will not release funds.
- ❖ The section addressing Denials and Appeals for Clients is now in the General Provisions and clarifications on the process are made.
- ❖ Throughout the rule the terms for Contract Term vs. Program Year were carefully adjusted.

#### Subchapter B, CSBG

- ❖ Added definitions for Transitioning Out of Poverty ("TOPS") and Quality Improvement Plan ("QIP").
- ❖ Wording throughout the section was revised to more clearly correlate the TAC with CSBG Act terminology and processes relating in particular to monitoring, deficiencies, etc.
- ❖ The rule adds that if a Subrecipient does not obligate more than 20% of their base annual allocation (excluding any additional funds that may be distributed by the Department) by the end of the first quarter of the year following the allocation year for two consecutive years, they will have funding recaptured consistent with 42 U.S.C. 9907(a)(3). This recapture of funds does not trigger the procedures or protections of Information Memorandum 116.
- ❖ As it relates to the CSBG formula, the formula is now reflected in rule (as opposed to only in the CSBG Plan) and the rule clarifies that the formula may be considered on a biennial basis and would utilize the most recent published decennial census figures and that the formula is subject to adjustment from time to time when amended as part of the CSBG State Plan.
- ❖ Language affirming the applicability of the Open Meetings Act is being added.
- ❖ The rule adds new stipulations relating to the Use of Funds, requiring that a minimum 20% of funds be used for Direct Client Assistance and an additional 10% of funds be used for TOPs clients. These requirements do not apply to Subrecipients with awards of \$250,000 or less.
- ❖ The rule provides that any funds not expended and carried forward into the following year may only be used for Direct benefits (excludes salary and fringe).
- ❖ The rule indicates that if a Subrecipient does not spend at least 80% of their funds, or if federal funds are returned several years in a row, it will trigger the proceedings covered under IM 116.
- ❖ Provides clarity on the Community Action Plan and the required Needs Assessment, providing that they must be approved by the Department, and how the plan must address when benchmarks not achieved.
- ❖ The rule provides that failure to meet required HHS Organizational Standards may trigger IM 116 proceedings.
- ❖ The rule provides clarifications regarding CSBG Board issues including edits to terminology for Articles/Certificates of Formation/bylaws, clarification on allowing a Board member to serve as the executive director, issues relating to debarred board members, clarity on the requirement that the democratic selection process must be a written policy approved by board, revises the

advisory board language, specifies that the number of board members must be divisible by 3, and adds conflict of interest language.

- ❖ The process for termination and reduction of funding is moved from this subchapter to Chapter 2, Enforcement.

#### Subchapter C, CEAP

- ❖ Sections are moved and reorganized.
- ❖ Relating to the distribution of CEAP funds, new provisions are added that address when funds are not sufficiently expended, deobligation/reobligation, and how Subrecipients that have had funds deobligated can access their full formula share in subsequent years.
- ❖ The rule streamlines and simplifies sections addressing benefits and components, and allows for repairs.
- ❖ Greater specificity is provided on establishing client priorities and on the minimum content of the Service Delivery Plan (“SDP”). The SDP must establish the priority rating sheet and priority households, the alternate billing method, how client education is being addressed, and how the Subrecipient is determining the number of payments to be made and which types of Households are qualified for a given number of payments.
- ❖ The rule adds Assurance 16 provisions, a federal provision that allows for client education.
- ❖ The rule specifies that aggregate benefits are aggregated by program year, not contract term.
- ❖ Adds language that the Department may repro cure the provider network if needed and appropriate state and federal regulations are adhered to.
- ❖ Removes the restriction on arrears not being able to be paid for in crisis assistance.

#### Subchapters D, Weatherization

- ❖ Consolidates what had previously been three distinct subchapters addressing weatherization into one subchapter.
- ❖ Several sections that were previously covered for only LIHEAP or DOE WAP are being centralized and made applicable to both types of weatherization assistance, including Whole House Assessment and Blower Door Standards.
- ❖ In the Health and Safety section, the rule provides for an increase to the Health and Safety limits for LIHEAP WAP up to 30%, fixes technical language relating to Carbon Monoxide levels, and specifies when the Subrecipient must request that the household to leave the unit.
- ❖ Provides more specificity on deobligation/Reobligation; provides that if a Subrecipient does not spend funds for more than two years running, the program may be considered for removal; and specifies how Subrecipients that have had funds deobligated can access their full formula share in subsequent years.
- ❖ Adds a definition for Reweatherization.
- ❖ Fixes an inconsistency between the Board-approved LIHEAP Plan and the rule relating to categorical eligibility.
- ❖ Adds a requirement that weatherization contractors must provide a one-year warranty on their work.
- ❖ Provides that if poor weatherization construction work occurs consistently, the Subrecipient may be considered for removal from the program, and clarifies that Subrecipients can pursue debarment of weatherization contractors.
- ❖ Specifies that a Subrecipient must operate both DOE and LIHEAP WAP programs, and that if they want to keep one program, they must keep them both, and that if they have one program removed, they will have both removed.
- ❖ Several sections relating to Mold-Like Substances were merged and revised.
- ❖ The rule deletes a section that required adherence to one of the Department of Energy’s Notices relating to space heaters; that requirement still exists, but as Subrecipients must adhere to all DOE notices, the rule is no longer going to single out one notice in particular.

- ❖ Adds language that the Department may reprocore the provider network if needed and appropriate state and federal regulations are adhered to.

Attachment A  
CA Rules Project – Rules List and Actions  
(in TAC order)

Chapter 1, Agency Administration

- Subchapter A, General Policies and Procedures
  - §1.3. Delinquent Audits and Related Issues – Repeal (Now Addressed in Ch 1, Subchapter D)
  - §1.21, Action by Dept. if Outstanding Balance - Repeal/New
- Subchapter C, Previous Participation
  - §1.302, PPR for CSBG, LIHEAP and WAP – Repeal/New (Now Covering All Non-MF from Previous §1.302 and §1.303)
  - §1.303, PPR for Homeless Programs (and Other non-CA, non-MF) - Repeal
- Subchapter D, Federal Uniform Guidance – All Proposed New
  - §1.401. Definitions
  - §1.402. Cost Principles and Administrative Requirements
  - §1.403. Single Audit Requirements
  - §1.404. Purchase and Procurement Standards
  - §1.405. Bonding Requirements
  - §1.406. Fidelity Bond Requirements
  - §1.407. Inventory Report
  - §1.408. Travel
  - §1.409. Records Retention

Chapter 2, Enforcement

- Subchapter A, Enforcement General
  - §2.102, Definitions - Amend
- Subchapter B, Enforcement Regarding Community Affairs Contract Subrecipients
  - §2.201, Modified Cost Reimbursement - Repeal/New
  - §2.202, Sanctions and Contract Closeout - Repeal/New
  - §2.203, Termination and Reduction of Funding for CSBG Eligible Entities - New
  - §2.204, Contents of a Quality Improvement Plan

Chapter 6, CA Programs – All Proposed New

- Subchapter A, General Provisions, including Compliance Monitoring
- Subchapter B, Community Services Block Grant (CSBG)
- Subchapter C, Comprehensive Energy Assistance Program
- Subchapter D, Weatherization Assistance Program

Chapter 7, Homelessness Programs – All Proposed New

- Subchapter A, General Provisions, including Compliance Monitoring
- Subchapter B, Homeless Housing and Services Program (HHSP)
- Subchapter C, Emergency Solutions Grant (ESG)

## Attachment B – Proposed New Chapter 6

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 6, Community Affairs Programs. The purpose of the proposed new Chapter 6 is to effectuate a reorganization of the rules that govern the Community Affairs programs including Community Services Block Grant, Comprehensive Energy Assistance Program, and Weatherization Assistance Program so that the rules addressing those programs that currently are provided for in Chapter 5 relating to the Community Affairs Programs will now be addressed in a new and separately proposed chapter.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the proposed new Chapter will be in effect, enforcing or administering the proposed new Chapter does not have any foreseeable additional costs or revenues for the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new Chapter is in effect, the public benefit anticipated as a result of the new Chapter will be to provide clearer guidance to Subrecipients through more organized and direct rules. There are no anticipate additional new economic costs to individuals required to comply with the new Chapter as a result of this action.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 9, 2016, to October 10, 2016, to receive input on the proposed Chapter. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attention: Brooke Boston, CA Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by email to the following address: [brooke.boston@tdhca.state.tx.us](mailto:brooke.boston@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin Local Time on OCTOBER 10, 2016. A copy of the proposed new chapter will be available on the Department's website at <http://www.tdhca.state.tx.us/public-comment.htm> under Items Open for Public Comment during the public comment period.

STATUTORY AUTHORITY. The new Chapter is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed new Chapter affects no other code, article, or statute.

<rule>

### SUBCHAPTER A. GENERAL PROVISIONS.

§6.1. Purpose and Goals.

§6.2. Definitions.

§6.3. Subrecipient Contract.

§6.4. Income Determination.

§6.5. Documentation and Frequency of Determining Customer Eligibility.

§6.6. Subrecipient Contact Information and Required Notifications.

§6.7. Subrecipient Reporting Requirements.

§6.8. Applicant/Customer Denials and Appeal Rights.

§6.9. Training Funds for Conferences.

§6.10. Compliance Monitoring.

### §6.1. Purpose and Goals.

(a) The rules established herein are for CSBG, LIHEAP, and DOE-WAP. Additional program specific requirements are contained within each program subchapter and Chapters 1 and 2 of this Title.

(b) Programs administered by the Community Affairs ("CA") Division of the Texas Department of Housing and Community Affairs (the "Department") support the Department's statutorily assigned mission.

(c) The Department accomplishes its mission chiefly by acting as a conduit for federal grant funds and other assistance for housing and community affairs programs. Ensuring program compliance with the state and federal laws that govern the CA programs is another important part of the Department's mission. Oversight and program mandates ensure state and federal resources are expended in an efficient and effective manner.

### §6.2. Definitions.

(a) To ensure a clear understanding of the terminology used in the context of the CSBG, LIHEAP, and DOE-WAP programs of the Community Affairs Division, a list of terms and definitions has been compiled as a reference.

(b) The words and terms in this chapter shall have the meanings described in this subsection unless the context clearly indicates otherwise. Refer to Subchapters B, C, and D of this chapter for program specific definitions.

(1) Affiliate--An entity related to an Applicant that controls by contract or by operation of law the Applicant or has the power to control the Applicant or a third entity that controls, or has the power to control both the Applicant and the entity. Examples include but are not limited to entities submitting under a common application, or instrumentalities of a unit of government. This term also includes any entity that is required to be reported as a component entity under Generally Accepted Accounting Standards, is required to be part of the same Single Audit as the Applicant, is reported on the same IRS Form 990, or is using the same federally approved indirect cost rate.

(2) Awarded Funds--The amount of funds or proportional share of funds committed by the Department's Board to a Subrecipient or service area.

(3) Categorical Eligible/Eligibility: Households determined to be income eligible because at least one member receives:

(A) SSI payments from the Social Security Administration; or

(B) Means Tested Veterans Program payments.

(4) Child--Household member not exceeding eighteen (18) years of age.

(5) Code of Federal Regulations ("CFR")--The codification of the general and permanent rules and regulations of the federal government as adopted and published in the Federal Register.

(6) Community Action Agencies ("CAAs")--Private Nonprofit Organizations and Public Organizations that carry out the Community Action Program, which was established by the 1964 Economic Opportunity Act to fight poverty by empowering the poor in the United States.

(7) Community Services Block Grant ("CSBG")--An HHS-funded program which provides funding for CAAs and other Eligible Entities that seek to address poverty at the community level.

(8) Comprehensive Energy Assistance Program ("CEAP")--A LIHEAP-funded program to assist low-income Households, in meeting their immediate home energy needs.

(9) Concern--A policy, practice or procedure that has not yet resulted in a Finding or Deficiency but if not changed will or may result in Findings, Deficiencies and/or disallowed costs.

(10) Contract--The executed written Agreement between the Department and a Subrecipient performing an Activity related to a program that describes performance requirements and responsibilities assigned by the document; for which the first day of the contract period is the point at which programs funds may be considered by a Subrecipient for expenditure unless otherwise directed in writing by the Department.

(11) Contracted Funds--The gross amount of funds obligated by the Department to a Subrecipient as reflected in a Contract.

(12) Cost Reimbursement--A Contract sanction whereby reimbursement of costs incurred by the Subrecipient is made only after the Department has conducted such review as it deems appropriate, which may be complete or limited, such as on a sampling basis, and approved backup documentation provided by the Subrecipient to support such costs. Such a review and approval does not serve as a final approval and all uses of advanced funds remain subject to review in connection with future or pending reviews, monitoring, or audits.

(13) Declaration of Income Statement ("DIS")--A Department-approved form used only when it is not possible for an applicant to obtain third party or firsthand verification of income.

(14) Deficiency--Consistent with the CSBG Act, a Deficiency exists when an Eligible Entity has failed to comply with the terms of an agreement or a State plan, or to meet a State requirement. The Department's determination of a Deficiency may be based on the Eligible Entity's failure to provide CSBG services, or to meet appropriate standards, goals, and other requirements established by the State, including performance objectives. A Finding, Observation, or Concern that is not corrected, or is repeated, may become a Deficiency.

(15) Deobligation--The partial or full removal of Contracted Funds from a Subrecipient. Partial Deobligation is the removal of some portion of the full Contracted Funds from a Subrecipient, leaving some remaining balance of Contracted Funds to be administered by the Subrecipient. Full Deobligation is the removal of the full amount of Contracted Funds from a Subrecipient. This definition does not apply to CSBG non-discretionary funds.

(16) Department of Energy ("DOE")--Federal department that provides funding for a weatherization assistance program.

(17) Department of Health and Human Services ("HHS")--Federal department that provides funding for CSBG and LIHEAP energy assistance and weatherization.

(18) Dwelling Unit--A house, including a stationary mobile home, an apartment, a group of rooms, or a single room occupied as separate living quarters.

(19) Elderly Person--

(A) for CSBG, a person who is fifty-five (55) years of age or older; and

(B) for CEAP and WAP, a person who is 60 years of age or older.

(20) Emergency--defined as:

(A) a natural disaster;

(B) a significant home energy supply shortage or disruption;

(C) significant increase in the cost of home energy, as determined by the Secretary of HHS;

(D) a significant increase in home energy disconnections reported by a utility, a state regulatory agency, or another agency with necessary data;

(E) a significant increase in participation in a public benefit program such as the food stamp program carried out under the Food Stamp Act of 1977 (7 U.S.C. §§2011, et seq.), the national program to provide supplemental security income carried out under Title XVI of the Social Security Act (42 U.S.C. §§1381, et seq.) or the state temporary assistance for needy families program carried out under Part A of Title IV of the Social Security Act (42 U.S.C. §§601, et seq.), as determined by the head of the appropriate federal agency;

(F) a significant increase in unemployment, layoffs, or the number of Households with an individual applying for unemployment benefits, as determined by the Secretary of Labor; or

(G) an event meeting such criteria as the Secretary of HHS, at the discretion of the Secretary of HHS, may determine to be appropriate.

(21) Expenditure--An amount of money spent.

(22) Families with Young Children--A Household that includes a Child age five (5) or younger including a Household that has a pregnant woman.

(23) Finding--A Subrecipient's material failure to comply with rules, regulations, the terms of the Contract or to provide services under each program to meet appropriate standards, goals, and other

requirements established by the Department or funding source (including performance objectives). A Finding impacts the organization's ability to achieve the goals of the program and jeopardizes continued operations of the Subrecipient. Findings include the identification of an action or failure to act that results in disallowed costs.

(24) High Energy Burden--Households with energy burden which exceeds 11% of annual gross income (as defined by the applicable program), determined by dividing a Household's annual home energy costs by the Household's annual gross income.

(25) High Energy Consumption --A Household that is billed more for the use of gas and electricity in their Dwelling Unit than the median of Low Income home energy expenditures. The amount is identified in the Contract.

(26) Household--Any individual or group of individuals who are living together as one economic unit. For DOE WAP this includes all persons living in the Dwelling Unit. For LIHEAP these persons customarily purchase residential energy in common or make undesignated payments for energy.

(27) Inverse Ratio of Population Density Factor--The number of square miles of a county divided by the number of poverty Households of that county.

(28) Low Income Household--defined as:

(A) For DOE WAP, a Household whose total combined annual income is at or below 200% of the HHS Poverty Income guidelines;

(B) For CEAP and LIHEAP WAP, a Household whose total combined annual income is at or below 150% of the HHS Poverty Income guidelines or a Household who is Categorically Eligible; and

(C) For CSBG, a Household whose total combined annual income is at or below 125% of the HHS Poverty Income guidelines.

(29) Low Income Home Energy Assistance Program ("LIHEAP")--An HHS-funded program which serves low income Households who seek assistance for their home energy bills and/or weatherization services.

(30) Means Tested Veterans Program--A program whereby applicants receive payments under Sections 415, 521, 541, or 542 of title 38, United States Code, or under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978.

(31) Observation--A notable policy, practice or procedure observed though the course of monitoring.

(32) Office of Management and Budget ("OMB")--Office within the Executive Office of the President of the United States that oversees the performance of federal agencies and administers the federal budget.

(33) OMB Circulars--Instructions and information issued by OMB to Federal agencies that set forth principles and standards for determining costs for federal awards and establish consistency in the management of grants for federal funds. Uniform cost principles and administrative requirements for local governments and for nonprofit organizations, as well as audit standards for governmental organizations and other organizations expending federal funds are set forth in 2 CFR Part 200, unless different provisions are required by statute or approved by OMB.

(34) Outreach--The method that attempts to identify customers who are in need of services, alerts these customers to service provisions and benefits, and helps them use the services that are available. Outreach is utilized to locate, contact and engage potential customers.

(35) Performance Statement--A document which identifies the services to be provided by a Subrecipient.

(36) Persons with Disabilities--Any individual who is:

(A) a handicapped individual as defined in 29 U.S.C. §701 or has a disability under 42 U.S.C. §12131-12134;

(B) disabled as defined in 42 U.S.C. 1382(a)(3)(A), 42 U.S.C. §423, or in 42 U.S.C. 15001; or

(C) receiving benefits under 38 U.S.C. Chapter 11 or 15.

- (37) Population Density--The number of persons residing within a given geographic area of the state.
- (38) Poverty Income Guidelines--The official poverty income guidelines as issued by HHS annually.
- (39) Private Nonprofit Organization--An organization described in §501(c) of the Internal Revenue Code (the "Code") of 1986 and which is exempt from taxation under subtitle A of the Code and that is not a Public Organization.
- (40) Production Schedule--The estimated monthly and quarterly performance targets and expenditures for a Contract period. The Production schedule must be signed by the applicable approved signatory and approved by the Department.
- (41) Program Year--January 1 through December 31 of each calendar year for CSBG and LIHEAP and July 1 through June 30 of each calendar year for DOE WAP.
- (42) Public Organization--A unit of government, as established by the Legislature of the State of Texas. Includes, but may not be limited to, cities, counties, and councils of governments.
- (43) Referral--The documented process of providing information to a customer Household about an agency, program, or professional person that can provide the service(s) needed by the customer.
- (44) Reobligation--The reallocation of deobligated funds to other Subrecipients.
- (45) Single Audit-- Single Audit--The audit required by Office of Management and Budget (OMB), 2 CFR Part 200, Subpart F, or Tex. Gov't Code, Chapter 738, Uniform Grant and Contract Management, as reflected in an audit report.
- (46) State--The State of Texas or the Department, as indicated by context.
- (47) Subcontractor--A person or an organization with whom the Subrecipient contracts with to provide services.
- (48) Subgrant--An award of financial assistance in the form of money, made under a grant by a Subrecipient to an eligible Subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases.
- (49) Subgrantee--The legal entity to which a Subgrant is awarded and which is accountable to the Subrecipient for the use of the funds provided.
- (50) Subrecipient--An organization that receives federal funds passed through the Department to operate the CSBG, CEAP, DOE WAP and/or LIHEAP program(s).
- (51) Supplemental Security Income (SSI)--A means tested program run by the Social Security Administration.
- (52) System for Award Management ("SAM")--Combined federal database that includes the Excluded Parties List System ("EPLS").
- (53) Systematic Alien Verification for Entitlements ("SAVE")--Automated intergovernmental database that allows authorized users to verify the immigration status of applicants.
- (54) Texas Administrative Code ("TAC")--A compilation of all state agency rules in Texas.
- (55) Uniform Grant Management Standards ("UGMS")--The standardized set of financial management procedures and definitions established by Tex. Gov't Code Chapter 783 to promote the efficient use of public funds by requiring consistency among grantor agencies in their dealings with grantees, and by ensuring accountability for the expenditure of public funds. State agencies are required to adhere to these standards when administering grants and other financial assistance agreements with cities, counties and other political subdivisions of the state. This includes all Public Organizations. In addition, Tex. Gov't Code Chapter 2105, subjects subrecipients of federal block grants (as defined therein) to the Uniform Grant and Contract Management Standards.
- (56) United States Code ("U.S.C.")--A consolidation and codification by subject matter of the general and permanent laws of the United States.
- (57) Vendor Agreement--An agreement between the Subrecipient and energy vendors that contains assurances regarding fair billing practices, delivery procedures, and pricing for business transactions involving LIHEAP beneficiaries.

(58) Vulnerable Populations – Elderly persons, Persons with a Disability, and Households with a Child at or below the age of five.

(59) Weatherization Assistance Program (“WAP”)--DOE and LIHEAP funded program designed to reduce the energy cost burden of Low Income Households through the installation of energy efficient weatherization materials and education in energy use.

### §6.3. Subrecipient Contract.

(a) Subject to prior Board approval, the Department and a Subrecipient shall enter into and execute a Contract for the disbursement of program funds. The Department, acting by and through its Executive Director or his/her designee, may authorize, execute, and deliver authorized modifications and/or amendments to the contract, as allowed by state and federal laws and rules.

(b) The governing body of the Subrecipient must pass a resolution authorizing its Executive Director or his/her designee to have signature authority to enter into contracts, sign amendments, and review and approve reports. All Contract actions including extensions, amendments or revisions must be ratified by the governing body at the next regularly scheduled meeting. Minutes relating to this resolution must be on file at the Subrecipient level.

(c) Within 45 calendar days following the conclusion of a Contract issued by the Department, the Subrecipient shall provide a final expenditure and final performance report regarding funds expended under the terms of the Contract.

(d) A performance statement and budget are attachments to the Contract between the Subrecipient and the Department. Execution of the Contract enables the Subrecipient to access funds through the Department’s Community Affairs contract system.

(e) Amendments and Extensions to Contracts.

(1) Except for quarterly amendments to non-discretionary CSBG Contracts to add funds as they are received from HHS, and excluding amendments that move funds within budget categories but do not extend time or add funds, amendments and extension requests must be submitted in writing by the Subrecipient and will not be granted if any of the following circumstances exist:

(A) if the award for the Contract was competitively awarded and the amendment would materially change the scope of Contract performance;

(B) if the funds associated with the Contract will reach their federal expiration date within 45 calendar days of the request;

(C) if the Subrecipient is delinquent in the submission of their Single Audit or the Single Audit Certification form required by §1.403 in Chapter 1 of this Title;

(D) if the Subrecipient owes the Department disallowed amounts in excess of \$1,000 and a Department-approved repayment plan is not in place or has been violated;

(E) for amendments adding funds (not applicable to amendments for extending time) if the Department has cited the Subrecipient for violations within §6.10 of this Subchapter (related to Compliance Monitoring) and the corrective action period has expired without correction of the issue or a satisfactory plan for correction of the issue;

(F) the Contract has expired; or

(G) a member of the Subrecipient’s board has been debarred and has not been removed.

(2) Within 30 calendar days of a Subrecipient’s request for a Contract amendment or extension request the request will be processed or denied in writing. If denied, the applicable reason from this subsection (e) will be cited. The Subrecipient may appeal the decision to the Executive Director consistent with Chapter 1, §1.7, of this Title.

### §6.4. Income Determination.

(a) Eligibility for program assistance is determined under the Poverty Income Guidelines and calculated as described herein. Income means cash receipts earned and/or received by the applicant before taxes during applicable tax year(s), but not the excluded income listed in paragraph (2) of this subsection. Gross income is to be used, not net income, except that from non-farm or farm self-

employment net receipts must be used (i.e., receipts from a person's own business or from an owned or rented farm after deductions for business or farm expenses), and net income from gambling or lottery winnings.

(1) If an income source is not excluded below, it must be included when determining income eligibility.

(2) Excluded Income:

- (A) Capital gains;
- (B) Any assets drawn down as withdrawals from a bank;
- (C) Balance of funds in a checking or savings account;
- (D) Any amounts in an "individual development account" as provided by the Assets for Independence Act, as amended in 2002 (Pub. L. 107-110, 42 U.S.C. 604(h)(4));
- (E) Proceeds from the sale of property, a house, or a car;
- (F) One-time payments from a welfare agency to a family or person who is in temporary financial difficulty;
- (G) Tax refunds, Earned Income Tax Credit refunds;
- (H) Jury duty compensation;
- (I) Gifts, loans, and lump-sum inheritances;
- (J) One-time insurance payments, or compensation for injury;
- (K) Non-cash benefits, such as the employer-paid or union-paid portion of health insurance or other employee fringe benefits;
- (L) Reimbursements (for mileage, gas, lodging, meals, etc.);
- (M) Employee fringe benefits such as food or housing received in lieu of wages;
- (N) The value of food and fuel produced and consumed on farms;
- (O) The imputed value of rent from owner-occupied non-farm or farm housing;
- (P) Federal non-cash benefit programs as Medicare, Medicaid, SNAP, WIC, and school lunches, and housing assistance (Medicare deduction from Social Security Administration benefits should not be counted as income);
- (Q) Combat zone pay to the military;
- (R) Veterans (VA) Disability Payments;
- (S) College scholarships, Pell and other grant sources, assistantships, fellowships and work study, VA Education Benefits ("GI Bill"), Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu);
- (T) Child support payments (amount paid by payor may not be deducted from income);
- (U) Income of Household members under eighteen (18) years of age;
- (V) Stipends from senior companion programs, such as Retired Senior Volunteer Program and Foster Grandparents Program;
- (W) AmeriCorps Program payments, allowances, earnings, and in-kind aid;
- (X) Depreciation for farm or business assets;
- (Y) Reverse mortgages;
- (Z) Payments for care of Foster Children;
- (AA) Payments or allowances made under the Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));
- (BB) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602(c));
- (CC) Major disaster and emergency assistance received by individuals and families under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (93, as amended) and comparable disaster assistance provided by States, local governments, and disaster assistance organizations (42 U.S.C. 5155(d));

(DD) Allowances, earnings, and payments to individuals participating in programs under the Workforce Innovation and Opportunity Act(29 U.S.C.3101 );

(EE) Payments received from programs funded under Title V of the Older Americans Act of 1965 (42 U.S.C. 3056(g));

(FF) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858(q));

(GG) Certain payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c));

(HH) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459(e));

(II) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (94, §6);

(JJ) The first \$2,000 of per capita shares received from judgment funds awarded by the National Indian Gaming Commission or the U.S. Claims Court, the interests of individual Indians in trust or restricted lands, and the first \$2000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408). This exclusion does not include proceeds of gaming operations regulated by the Commission;

(KK) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund (101) or any other fund established pursuant to the settlement in In Re Agent Orange Liability Litigation, M.D.L. No. 381 (E.D.N.Y.);

(LL) Payments received under the Maine Indian Claims Settlement Act of 1980 (96, 25 U.S.C. 1728);

(MM) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (95);

(NN) Any allowance paid under the provisions of 38 U.S.C. 1833(c) to children of Vietnam veterans born with spina bifida (38 U.S.C. 1802-05), children of women Vietnam veterans born with certain birth defects (38 U.S.C. 1811-16), and children of certain Korean service veterans born with spina bifida (38 U.S.C. 1821);

(OO) Payments, funds, or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990 (25 U.S.C. 1774f(b));

(PP) Payments from any deferred U.S. Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts (42 U.S.C. §1437a(b)(4));

(QQ) A lump sum or a periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the case entitled Elouise Cobell et al. v. Ken Salazar et al., 816 F.Supp.2d 10 (Oct. 5, 2011 D.D.C.), for a period of one year from the time of receipt of that payment as provided in the Claims Resolution Act of 2010 (Pub. L. 111-291);

(RR) Per capita payments made from the proceeds of Indian Tribal Trust Cases as described in PIH Notice 2013-30 "Exclusion from Income of Payments under Recent Tribal Trust Settlements" (25 U.S.C. 117b(a)); and

(SS) Any other items which are excluded by virtue of federal or state legislation or by properly adopted federal regulations have taken effect. The Department will, from time to time, provide on its website updated links to such federal exceptions. Notwithstanding such information, a Subrecipient may rely on any adopted federal exception on and after the date on which it took effect.

(b) The requirements for determining whether an applicant Household is eligible for assistance require the Subrecipient to annualize the Household income based on verifiable documentation of income, 30 days prior to date of application. Income is based on the Gross Annual Income for all household members 18 years or older. Annual gross income is the total amount of money earned annually before taxes or any deductions.

(c) The Subrecipient must document all sources of income, including excluded income, for 30 days prior to the date of application, for all household members 18 years of age or older.

(d) Identify all income sources, not on the excluded list, for income calculation.

(1) The Subrecipient must calculate projected annual income by annualizing current income. Income that may not last for a full 12 months (e.g., unemployment compensation) should be calculated assuming current circumstances will last a full 12 months, unless it can be documented that employment is less than 12 months/year and pay is not prorated over the entire 12 month period. For incomes not able to be annualized over a twelve month period, the income shall be calculated on the total annual earning period (e.g., for a teacher paid only nine months a year, the annual income should be the income earned during those nine months). In limited cases where income is not paid hourly, weekly, bi-weekly, semi-monthly nor monthly, the Subrecipient may contact the Department to determine an alternate calculation method in unique circumstances on a case-by-case basis.

(2) For all customers including those with categorical eligibility, the Subrecipient must collect verifiable documentation of Household income received in the 30 days prior to the date of application.

(3) Once all sources of income are known, Subrecipient must convert reported income to an annual figure. Convert periodic wages to annual income by multiplying:

(A) Hourly wages by the number of hours worked per year (2,080 hours for full-time employment with a 40-hour week and no overtime);

(B) Weekly wages by 52;

(C) Bi-weekly wages (paid every other week) by 26;

(D) Semi-monthly wages (paid twice each month) by 24; and

(E) Monthly wages by 12.

(4) Except where a more frequent period is required by federal regulation, re-certification of income eligibility must occur at least every twelve months.

(e) If a federal or state requirement provides an updated definition of income or method for calculating income, the Department will provide written notice to Subrecipients about the implementation date for the new requirements.

(f) If proof of income is unobtainable, the applicant must complete and sign a Declaration of Income Statement (DIS).

(g) For CSBG and LIHEAP, a live in aide or attendant is not considered part of the Household for purposes of determining Household income, but is considered for a benefit based on the size of the Household. Example 4(1): A Household applies for assistance. There are four people in the Household. One of the four people is a live-in aide. To determine if the Household is qualified, annualize the income of the other three Household members and compare it to the three person income limit. However, if the amount of benefit is based on Household size (such as benefit level based on the number of people in the Household), then this is a four person Household.

(h) Subrecipients shall not discourage anyone from applying for assistance. Subrecipients shall provide all potential customers with an opportunity to apply for programs.

#### §6.5. Documentation and Frequency of Determining Customer Eligibility

(a) For LIHEAP and CSBG, income must be verified annually, with a new application each Program Year.

(b) For DOE-WAP income must be verified at the initial application. If the customer is on a wait-list for over 12 months since initial application, household income must be updated within at least 12 months of the unit being initially inspected.

#### §6.6. Subrecipient Contact Information and Required Notifications .

(a) In accordance with §1.22 of this title (relating to Providing Contact Information to the Department), Subrecipients will notify the Department through the CA contract system and provide

contact information for key management staff (Executive Director, Chief Financial Officer, Program Director/Manager/Coordinator or any other person, regardless of title, generally performing such duties) vacancies and new hires within 30 days of such occurrence.

(b) As vacancies exceed the 90 day threshold within the organization's advisory board of directors, the Department will be notified of such vacancies and, if applicable, the sector the advisory board member represented.

(c) Contact information for all members of the board of directors or advisory board of directors must be provided to the Department and shall include: each board member's name, the position they hold, their term, their mailing address (which must be different from the organization's mailing address), phone number (different from the organization's phone number), fax number (if applicable), and the direct e-mail address for the chair of the advisory board.

(d) The Department will rely solely on the contact information supplied by the Subrecipient in the Department's web-based Community Affairs System. It is the Subrecipient's sole responsibility to ensure such information is current, accurate, and complete. Correspondence sent to the email or physical address shown in CA Contract System will be deemed delivered to the Subrecipient. Correspondence from the Department may be directly uploaded to the Subrecipient's CA contract account using a secure electronic document attachment system. Once uploaded, notification of the attachment will be sent electronically to the email address listed in the CA contract system. The Department is not required to send a paper copy and if it does so it does as a voluntary and non-precedential courtesy only.

(e) Upon the hiring of a new program Coordinator (e.g., the weatherization program coordinator) the Subrecipient is required to contact the Department with written notification within 30 days of the hiring and request training and technical assistance.

(f) Contact information for a primary and secondary contact are required to be provided to the Department and accurately maintained as it relates to the handling of disaster response and emergency services as provided for in §6.207(d).

#### §6.7. Subrecipient Reporting Requirements.

(a) Subrecipients must submit a monthly performance and expenditure report through the Community Affairs Contract System not later than the fifteenth (15th) day of each month following the reported month of the contract period. Reports are required even if a fund reimbursement or advance is not being requested.

(b) Subrecipient shall reconcile their expenditures with their performance on at least a monthly basis before seeking a request for funds for the following month. If the Subrecipient is unable to reconcile on a month-to-month basis, the Subrecipient must provide at the request of the Department, a written explanation for the variance and take appropriate measures to reconcile the subsequent month. It is the responsibility of a Subrecipient to ensure that it has documented the compliant use of all funds provided prior to receipt of additional funds, or if this cannot be done to address the repayment of such funds.

(c) Subrecipient shall electronically submit to the Department no later than 45 days after the end of the Subrecipient Contract term a final expenditure or reimbursement and programmatic report utilizing the expenditure report and the performance report.

(d) If the Department has provided funds to a Subrecipient in excess of the amount of reported expenditures in the ensuing month's report, no additional funds will be released until those excess funds have been expended. For example, in January a Subrecipient requests and is advanced \$50,000. In February, if the Subrecipient reports \$10,000 in Expenditures and an anticipated need for \$30,000, no funds will be released.

(e) CSBG Annual Report and National Survey. Federal requirements mandate all states to participate in the preparation of an annual performance measurement report. To comply with the requirements of 42 U.S.C. §9917, all CSBG Eligible Entities and other organizations receiving CSBG funds are required to participate.

(f) The Subrecipient shall submit other reports, data, and information on the performance of the DOE and LIHEAP-WAP program activities as required by DOE pursuant to 10 CFR §440.25 or by the Department.

(g) Subrecipient shall submit other reports, data, and information on the performance of the federal program activities as required by the Department.

#### §6.8. Applicant/Customer Denials and Appeal Rights

(a) Subrecipient shall establish a denial of service complaint procedure to address written complaints from program applicants/customers. At a minimum, the procedures described in paragraphs (a)(1) - (8) of this subsection shall be included:

(1) Subrecipients shall provide a written denial of assistance notice to applicant within ten (10) calendar days of the determination. Such a determination is defined as a denial of assistance, but does not include a level of assistance lower than the possible program limits or a reduction in assistance, as long as such process is in accordance with the Subrecipient's written policy. This notification shall include written notice of the right of a hearing and specific reasons for the denial by program. The applicant wishing to appeal a decision must provide written notice to Subrecipient within twenty (20) days of receipt of the denial notice.

(2) A Subrecipient must establish an appeals committee composed of at least three persons. Subrecipient shall maintain documentation of appeals in their customer files.

(3) Subrecipients shall hold a private appeal hearing (unless otherwise required by law) by phone or in person in an accessible location within ten (10) business days after the Subrecipient received the appeal request from the applicant and must provide the applicant notice in writing of the time/location of the hearing at least seven (7) calendar days before the appeal hearing.

(4) Subrecipient shall record the hearing.

(5) The hearing shall allow time for a statement by Subrecipient staff with knowledge of the case.

(6) The hearing shall allow the applicant at least equal time, if requested, to present relevant information contesting the decision.

(7) Subrecipient shall notify applicant of the decision in writing. The Subrecipient shall mail the notification by close of business on the third calendar day following the decision (three day turn-around).

(8) If the denial is solely based on income eligibility, the provisions described in paragraphs (2) - (7) of this subsection do not apply and the applicant may request a recertification of income eligibility based on initial documentation provided at the time of the original application. The recertification will be an analysis of the initial calculation based on the documentation received with the initial application for services and will be performed by an individual other than the person who performed the initial determination. If the recertification upholds the denial based on income eligibility documents provided at the initial application, the applicant is notified in writing.

(b) If the applicant is not satisfied, the applicant may further appeal the decision in writing to the Department within ten (10) days of notification of an adverse decision.

(c) Applicants/customers who allege that the Subrecipient has denied all or part of a service or benefit in a manner that is unjust, violates discrimination laws, or without reasonable basis in law or fact, may request a contested hearing under Tex. Gov't Code, Chapter 2001.

(d) The hearing under subsection (c) shall be conducted by the State Office of Administrative Hearings on behalf of the Department in the locality served by the Subrecipient.

(e) If the applicant/customer appeals to the Department, the funds should remain encumbered until the Department completes its decision.

#### §6.9. Training Funds for Conferences.

The Department may provide financial assistance to Subrecipients for training and technical activities for state sponsored, federally sponsored, and other relevant workshops and conferences. Subrecipients may use program training funds to attend conferences provided the conference

agenda includes topics directly related to administering the program. Costs to attend the conference must be prorated by program for the appropriate portion. Only staff billed to the specific program, directly or indirectly, may charge any training and travel costs to the program.

#### §6.10. Compliance Monitoring.

##### (a) Purpose and Overview

(1) This section provides the procedures that will be followed for monitoring for compliance with the programs in 10 TAC Chapter 6.

(2) Any entity administering any or all of the programs detailed in 10 TAC Chapter 6 is a Subrecipient. A Subrecipient may also administer other programs, including programs administered by other state or federal agencies and privately funded programs. If the Subrecipient has contracts for other programs through the Department, including but not limited to the HOME Partnerships Program, the Neighborhood Stabilization Program, or the Texas Housing Trust Fund, the Department may, but is not required to and does not commit to, coordinate monitoring of those programs with monitoring of community affairs programs under this subchapter.

(3) Any entity administering any or all of the programs provided for in subsection (a) of this section as part of a Memorandum of Understanding ("MOU"), contract, or other legal agreement with a Subrecipient is a Subgrantee.

##### (b) Frequency of Reviews, Notification and Information Collection.

(1) In general, Subrecipients or Subgrantees will be scheduled for monitoring based on state or federal monitoring requirements and/or a risk assessment. Factors to be included in the risk assessment include but are not limited to: the number of Contracts administered by the Subrecipient or Subgrantee, the amount of funds awarded and expended, the length of time since the last monitoring, findings identified during previous monitoring, issues identified through the submission or lack of submission of a single audit, complaints received by the Department, and reports of fraud, waste and/or abuse. The risk assessment will also be used to determine which Subrecipients or Subgrantees will have an onsite review and which may have a desk review.

(2) The Department will provide a Subrecipient or Subgrantee with written notice of any upcoming onsite or desk monitoring review, and such notice will be given to the Subrecipient and Subgrantee by email to the Subrecipient's and Subgrantee's chief executive officer at the email address most recently provided to the Department by the Subrecipient or Subgrantee. In general, a 30 day notice will be provided. However, if a credible complaint of fraud or other egregious noncompliance is received the Department reserves the right to conduct unannounced monitoring visits. It is the responsibility of the Subrecipient to provide to the Department the current contact information for the organization and the Board in accordance with §6.6 of this chapter (relating to Subrecipient Contact Information) and §1.22 of this title (relating to Providing Contact Information to the Department).

(3) Upon request, Subrecipients or Subgrantees must make available to the Department all books and records that the Department determines are reasonably relevant to the scope of the Department's review. Typically, these records may include (but are not limited to):

(A) Minutes of the governing board and any committees thereof, together with all supporting materials;

(B) Copies of all internal operating procedures or other documents governing the Subrecipient's operations;

(C) The Subrecipient's Board approved operating budget and reports on execution of that budget;

(D) The Subrecipient's strategic plan or comparable document if applicable and any reports on the achievement of that plan;

(E) Correspondence to or from any independent auditor;

(F) Contracts with any third parties for goods or services and files documenting compliance with any applicable procurement and property disposition requirements;

(G) All general ledgers and other records of financial operations (including copies of checks and other supporting documents);

(H) Applicable customer files with all required documentation;

(I) Applicable human resources records;

(J) Monitoring reports from other funding entities;

(K) Customer files regarding complaints, appeals and termination of services; and

(L) Documentation to substantiate compliance with any other applicable state or federal requirements including, but not limited to, the Davis-Bacon Act, Lead Based Paint, the Personal Responsibility and Work Opportunity Act, and limited English proficiency requirements,.

(c) Post Monitoring Procedures.

(1) In general, within 30 calendar days of the last day of the monitoring visit, a written monitoring report will be prepared for the Subrecipient describing the monitoring assessment and any corrective actions, if applicable. The monitoring report will be emailed to the Board Chair and the Subrecipient's and Subgrantee Executive Director. Issues of concern over which there is uncertainty or ambiguity may be discussed by the Department with the staff of cognizant agencies overseeing federal funding. Certain types of suspected or observed improper conduct may trigger requirements to make reports to other oversight authorities, state and federal, including but not limited to the State Auditor's Office and applicable Inspectors General.

(2) Subrecipient Response. If there are any findings of noncompliance requiring corrective action, the Subrecipient will be provided 30 calendar days, from the date of the email, to respond which may be extended by the Department for good cause. In order to receive an extension, the Subrecipient must submit a written request to the Chief of Compliance within the corrective action period, stating the basis for good cause that justifies the extension. The Department will approve or deny the extension request within five (5) calendar days.

(3) Monitoring Close Out. Within 45 calendar days after the end of the corrective action period, a close out letter will be issued to the Subrecipient. If the Subrecipient supplies evidence establishing continual compliance that negates the finding of noncompliance, the issue of noncompliance will be rescinded. If the Subrecipient's timely response satisfies all findings and concerns noted in the monitoring letter, the issue of noncompliance will be noted as corrected. In some circumstances, the Subrecipient may be unable to secure documentation to correct a finding. In those instances, if there are mitigating circumstances, the Department may note the finding is not corrected but close the issue with no further action required. If the Subrecipient's response does not correct all findings noted, the close out letter will identify the documentation that must be submitted to correct the issue.

(4) Options for Review. If, following the submission of corrective action documentation, Compliance staff continues to find the Subrecipient or Subgrantee in noncompliance, and the Subrecipient disagrees, the Subrecipient may request or initiate review of the matter using the following options, where applicable:

(A) If the issue is related to a program requirement or prohibition of a federal program, the Subrecipients may contact the applicable federal program officer for guidance or request that the Department contact applicable federal program officer for guidance without identifying the Subrecipient.

(B) If the issue is related to application of a provision of the Contract or a requirement of the Texas Administrative Code, the Subrecipient may request to submit an appeal to the Executive Director consistent with §1.7, Staff Appeals Process, in Chapter 1 of this Title.

(C) Subrecipients may request Alternative Dispute Resolution ("ADR"). A Subrecipient may send a proposal to the Department's Dispute Resolution Coordinator to initiate ADR pursuant to §1.17 of this title.

(5) If Subrecipients do not respond to a monitoring letter or fail to provide acceptable evidence of compliance, the matter be handled through the procedures described in Chapter 2 of this Title, relating to Enforcement.

## SUBCHAPTER B. COMMUNITY SERVICES BLOCK GRANT (CSBG).

§6.201. Background and Definitions.

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§6.201. Background and Definitions.

(a) In addition to this subchapter, except where noted, the rules established in Subchapter A of this chapter (relating to General Provisions) and Chapters 1 and 2 of this Part apply to the CSBG Program. The CSBG Act was amended by the "Community Services Block Grant Amendments of 1994" and the Coats Human Services Reauthorization Act of 1998. The Secretary is authorized to establish a community services block grant program and make grants available through the program to states to ameliorate the causes of poverty in communities within the states. Although Eligible Entities receive an allocation of CSBG funds, the CSBG program is not an entitlement program for eligible customers.

(b) The Texas Legislature designates the Department as the lead agency for the administration of the CSBG program pursuant to Tex. Gov't Code, §2306.092. CSBG funds are made available to Eligible Entities to carry out the purposes of the CSBG program.

(c) Definitions

(1) Community Action Plan ("CAP")--An annual plan required by the CSBG Act which describes the local Eligible Entity service delivery system, how coordination will be developed to fill identified gaps in services, how funds will be coordinated with other public and private resources, and how the local entity will use the funds to support innovative community and neighborhood based initiatives related to the grant. A comprehensive CAP developed with extensive input from the local community and an engaged tripartite board is a fundamental underpinning of an Eligible Entity's role in administering its programs to ameliorate poverty and its causes and to transition eligible Households it serves out of poverty.

(2) CSBG Act--The CSBG Act is a law passed by Congress authorizing the Community Services Block Grant. The CSBG Act was amended by the Community Services Block Grant Amendments of 1994 and the Coats Human Services Reauthorization Act of 1998 under 42 U.S.C. §§9901, et seq. The CSBG Act authorized establishing a community services block grant program to make grants available through the program to states to ameliorate the causes of poverty in communities within the states.

(3) Direct Customer Support--includes salaries and fringe benefits of case management staff as well as direct benefits provided to customers.

(4) Discretionary Funds--CSBG funds, excluding the 90% of the state's annual allocation that is designated for statewide allocation to CSBG Eligible Entities under §6.203 of this Subchapter and state administrative funds, maintained by the Department, at its discretion, for CSBG allowable uses as authorized by the CSBG Act.

(5) Eligible Entity--Those local organizations in existence and designated by the federal and state government to administer programs created under the Federal Economic Opportunity Act of 1964. This includes CAAs, limited-purpose agencies, and units of local government. The CSBG Act defines an eligible entity as an organization that was an eligible entity on the day before the enactment of the Coats Human Services Reauthorization Act of 1998 (October 27, 1998), or is designated by the Governor to serve a given area of the state and that has a tripartite board or other mechanism specified by the state for local governance.

(6) National Performance Indicator ("NPI")--A federally defined measure of performance within the Department's Community Affairs Contract System for measuring performance and results of Subrecipients of funds.

(7) Needs Assessment--An assessment of community needs in the areas to be served with CSBG funds.

(8) Quality Improvement Plan ("QIP")--A plan developed by a CSBG Eligible Entity to correct Deficiencies identified by the Department.

(9) Transitioned Out of Poverty ("TOP")--a Household who was CSBG eligible and as a result of the delivery of case management services attains an annual income in excess of 125% of the poverty guidelines for 90 calendar days.

(d) Use of certain terminology. In these rules and in the Department's administration of its programs, including the CSBG program, certain terminology is used that may not always align completely with the terminology employed in the CSBG Act. The term "monitoring" is used interchangeably with the CSBG Act term "review" as used in 42 USC §9915 of the CSBG Act. Similarly, the terms "findings," "concerns," and "violations" are used interchangeably with the term "deficiencies as used in 42 USC §9915 of the CSBG Act although, in a given context, they may be assigned more specific, different, or more nuanced meanings, as appropriate.

#### §6.202. Purpose and Goals.

The Department passes through CSBG funds to a network of Public Organizations and Private Nonprofits that are to comply with the purposes of the CSBG Act.

#### §6.203. Formula for Distribution of CSBG Funds.

(a) The CSBG Act requires that no less than 90% of the state's annual allocation be allocated to Eligible Entities. The Department currently utilizes a multi-factor fund distribution formula to equitably provide CSBG funds throughout the state to the CSBG Eligible Entities. The formula is subject to adjustment from time to time when amended as part of the CSBG State Plan.

(b) The distribution formula incorporates the most current U.S. Census Bureau Decennial Census and data from the American Community Survey for information on persons at 124% of poverty. The formula is applied as follows:

(1) each Eligible Entity receives a \$50,000 base award;

(2) then, the factors of poverty population, weighted at 98% and inverse population density, weighted at 2%, are applied to the state's allocation required to be distributed among Eligible Entities;

(3) if the base combined with the calculation resulting from the weighted factors in subparagraph (2) do not reach a minimum floor of \$150,000, then a minimum floor of \$150,000 is reserved for each of those CSBG eligible entities, resulting in a proportional reduction in other funds available for formula-based distribution;

(4) then, the formula is re-applied to the balance of the 90% funds for distributing the remaining funds to the remaining CSBG eligible entities.

(c) Following the use of the decennial Census data, then on a biennial basis, the Department will use the most recent American Community Survey five year estimate data that is available. To the extent that there are significant reductions in CSBG funds received by the Department, the Department may revise the CSBG distribution formula through a rulemaking process.

(d) In years where permitted by the federal government, Subrecipients that do not obligate more than 20% of their base allocation in a Program Year (excluding any additional funds that may be distributed by the Department) by the end of the first quarter of the year following the allocation year for two consecutive years will have funding recaptured consistent with 42 U.S.C. §9907(a)(3). This recapture of funds does not trigger the procedures or protections of HHS Information Memorandum 116. The Subrecipient of the funds will be provided a Contract for the average percentage of funds that they expended over the last two years. The Eligible Entity will be provided an opportunity to redistribute the funds through a competitive request for proposals to a Private Nonprofit Organization, located within the community served by the Eligible Entity. If the Eligible Entity selects this option it will be responsible for monitoring the Private Nonprofit Organization selected. If the Subrecipient does not provide them to an eligible Private Nonprofit Organization, located within the community served by the Subrecipient, the Department in accordance with CSBG IM 42 shall redistribute the funds to another Eligible Entity to be used in accordance with the CSBG and Department rules.

(e) Five percent of the Department's annual allocation of CSBG funds may be expended on activities listed in 42 U.S.C. §9907(b)(A) - (H) and further described in the annual plan or by Board approval. The Department may also opt to distribute unexpended funds described in subsection (f) of this section for these activities.

(f) Up to 5% of the State's annual allocation of CSBG funds will be used for the Department's administrative purposes consistent with state and federal law.

#### §6.204. Use of Funds.

(a) CSBG funds are contractually obligated to Eligible Entities, and accessed through the Department's web-based Community Affairs contract system. Prior to executing a Contract for CSBG funds, the Department will verify that neither the entity, nor any member of the Eligible Entity's Board is federally debarred or excluded. Unless modified by Contract, the annual allocation has a beginning date of January 1 and an end date of December 31, regardless of the Eligible Entity's fiscal year. Eligible Entities may use the funds for administrative support and/or for direct services such as: education, employment, housing, health care, nutrition, transportation, linkages with other service providers, youth programs, emergency services, i.e., utilities, rent, food, shelter, clothing etc.

(b) Except in the case of a Subrecipient whose total Contract is \$250,000 or less, at least 20% of a Contract must be used for Direct Customer Support for customers not enrolled in TOP case management.

(c) Except in the case of a Subrecipient whose total Contract is \$250,000 or less, an additional 10% of a Contract year's funds must be expended on direct benefits for customers enrolled in TOP case management. This amount does not include case manager salary or fringe.

(d) In the event that a Subrecipient does not expend the funds allocated through the formula described in subsection 6.203 of this section, the Subrecipient may request an extension no earlier than October 1 and no later than December 1. If granted, the Subrecipient will have two active Contracts, and the funds spent after the original Contract period in the Contract that was extended must only be used for direct services, not including case manager salaries or fringe.

#### §6.205. Limitations on Use of Funds.

(a) Construction of Facilities. CSBG funds may not be used for the purchase, construction or improvement of land, or facilities as described in (42 U.S.C. §9918(a)).

(b) The CSBG Act prohibits the use of program funds for political activity, voter registration activity, or voter registration, (for example, contacting a congressional office to advocate for a change to any law is a prohibited activity).

(c) Utility and rent deposit refunds from Vendors must be reimbursed to the Subrecipient and not the customer. Refunds must be treated as program income, and returned to the Department within ten days of receipt.

§6.206. CSBG Needs Assessment, Community Action Plan, and Strategic Plan.

(a) In accordance with the CSBG Act each Eligible Entity must submit a Community Action Plan on an annual basis. The Community Action Plan is required to be submitted to the Department by a date directed by the Department, for approval prior to execution of a Contract.

(b) Consistent with organizational standards relating to Data Analysis and Performance, the Eligible Entity must present to its governing board for review or action, at least every twelve months, an analysis of the agency's outcomes and any operational or strategic program adjustments and improvements identified as necessary; and the organization must submit its annual CSBG Information Survey data report which reflects customer demographics and organization-wide outcomes.

(c) Every three (3) years each Eligible Entity shall complete a Community Needs Assessment, upon which the annual Community Action Plan will be based. Guidance on the content and requirements of the Community Needs Assessment will be released by the Department. Information related to the Community Needs Assessment shall be submitted to the Department on or before a date specified by the Department in the previous year's Contract. The Needs Assessment will require, among other things, that the top five needs of the service area are identified.

(d) Services to Poverty Population. Eligible Entities administering services to customers in one or more CSBG service area counties shall ensure that such services are rendered reasonably and in an equitable manner to ensure fairness among all potential applicants eligible for services. Services rendered must reflect the poverty population ratios in the service area and services should be distributed based on the proportionate representation of the poverty population within a county. A variance of greater than plus or minus 20% may constitute a Deficiency. Eligible Entities with a service area of a single county shall demonstrate marketing and outreach efforts to make available direct services to a reasonable percentage of the county's eligible population based on the most recent census or American Community Survey data, as directed by the Department. Services should also be distributed based on the proportionate representation of the poverty population within a county. Other CSBG-funded organizations shall ensure that services are rendered in accordance with requirements of the CSBG contract.

(e) The Community Action Plan shall be derived from the Needs Assessment and at a minimum include a budget, a description of the delivery of case management services, in accordance with the National Performance Indicators, and include a performance statement that describes the services, programs, activities, and planned outcomes to be delivered by the organization.

(f) The Community Action Plan must take into consideration the outcomes expected by previous Community Action Plan(s). If past outcomes were not achieved as reported in the CA contract system, or outcomes exceed the targeted goals, the Subrecipient must assess the reasons for the variance in outcomes, determine what will be done differently if continuing to include those outcome goals, and identify how any of issues or obstacles will be mitigated or addressed. An effective CAP should be constantly monitored and adjusted to optimize achievement of results consistent with CSBG Act goals.

(g) The Community Needs Assessment and the CAP both require Department approval; those that do not meet the Department's requirements as articulated in these rules or in Department actions described and contemplated in these rules will be required to be revised until they meet the Department's satisfaction. If circumstances warrant amendments to the Community Needs Assessment or the CAP, the Department must approve amendments.

(h) Hearing. In conjunction with the submission of the CAP, the Eligible Entity must submit to the Department a certification from its board that a public hearing was conducted on the proposed use of funds.

(i) Every five (5) years each Eligible Entity shall complete a strategic plan, with which the annual Community Action Plan should be consistent. Information related to the strategic plan shall be submitted to the Department on or before a date specified by the Department in the previous year's Contract.

(j) Each CSBG Subrecipient must develop a performance statement which identifies the services, programs, and activities to be administered by that organization.

#### §6.207. Subrecipient Requirements.

(a) Eligible Entities shall submit information regarding the planned use of funds as part of the CAP as described in §6.206 of this chapter.

(b) HHS issues terms and conditions for receipt of funds under the CSBG. Subrecipients will comply with the requirements of the terms and conditions of the CSBG award.

(c) CSBG Eligible Entities, and other CSBG organizations where applicable, are required to coordinate CSBG funds and form partnerships and other linkages with other public and private resources and coordinate and establish linkages between governmental and other social service programs to assure the effective delivery of services and avoid duplication of services.

(d) CSBG Eligible Entities are required to provide, on an emergency basis, the provision of supplies and services, nutritious foods, and related services, to counteract the conditions of starvation and malnutrition. The nutritional needs may be met through a referral source that has resources available to meet the immediate needs.

(e) CSBG Eligible Entities and other CSBG organizations are required to coordinate for the provision of employment and training activities through local workforce investment systems under the Workforce Innovation and Opportunity Act, as applicable.

(f) CSBG Eligible Entities are required to inform custodial parents in single-parent families that participate in programs, activities, or services about the resources available through the Texas Attorney General's Office with respect to the collection of child support payments and refer eligible parents to the Texas Attorney General's Office of Child Support Services Division.

(g) Documentation of Services. Subrecipients must maintain a record of referrals and services provided.

(h) Intake Form. To fulfill the requirements of 42 U.S.C. §9917, CSBG Subrecipients must complete and maintain an intake form that screens for income, assesses customer needs, and captures the demographic and household characteristic data required for the monthly performance and expenditure report, referenced in Subchapter A of this chapter (relating to General Provisions), for all Households receiving a community action service. CSBG Subrecipients must complete and maintain a manual or electronic intake form for all customers for each program year.

(i) Case Management.

(1) Subrecipients are required to provide integrated case management services. Subrecipients are required to identify and set goals for households they serve through the case management process. Subrecipients are required to evaluate and assess the effect their case management system has on the short-term (less than three months) and long-term (greater than three months) impact on customers, such as enabling the customer to move from poverty to self-sufficiency, to maintain stability. CSBG funds may be used for short term case management to meet immediate needs. In addition, CSBG funds may be used to provide long-term case management to persons working to transition out of poverty and achieve self-sufficiency.

(2) Subrecipients must have and maintain documentation of case management services provided.

(3) Eligible Entities are each assigned a minimum TOP goal by the Department. Eligible Entities must provide ongoing case management services for these transitioning out of poverty "TOP" households. The case management services must include the components described in subparagraphs (A) - (N) of this paragraph. The forms or systems utilized for each component may be manual or electronic forms provided by the Department or manual or electronic forms created

by the Eligible Entity that at minimum contain the same information as the Department-issued form, including but not limited to:

(A) Self-Sufficiency Customer Questionnaire to assess a customer's status in the areas of employment, job skills, education, income, housing, food, utilities, child care, child and family development, transportation, healthcare, and health insurance;

(B) Self-Sufficiency Outcomes Matrix to assess the customer's status in the self-sufficiency domains noted in subparagraph (A) of this paragraph;

(C) Case Management Screening Questions to assess the customer's willingness to participate in case management services on an ongoing basis;

(D) For customers who are willing to engage in long term case management services, a Case Management Agreement between Subrecipient and customer;

(E) Release of Information Form;

(F) Case Management Service Plan to document planned goals agreed upon by the case manager and customer along with steps and timeline to achieve goals;

(G) Case management follow-up - A system to document customer progress at completing steps and achieving goals. Case management follow-up should occur, at a minimum, every 30 days, either through a meeting, phone call or e-mail. In person meetings should occur, at a minimum, once a quarter;

(H) A record of referral resources and documentation of the results;

(I) A system to document services received and to collect and report NPI data;

(J) A system to document case closure for persons that have exited case management;

(K) A system to document income for persons that have maintained an income level above 125% of the Poverty Income Guidelines for 90 days;

(L) Customer Satisfaction Survey;

(M) A system to document and notify customers of termination of case management services; and

(N) Evaluation System. On an annual basis, Eligible Entities should determine the effectiveness of their case management services and identify strategies for improvement, including identification of reasons for customer terminations and strategies to limit their occurrence.

(j) Effective January 1, 2016, Eligible Entities shall meet the CSBG Organizational Standards as issued by HHS in Information Memorandum #138 (as revised), except that where the word bylaws is used the Department has modified the standards to read Certificate of Formation/Articles of Incorporation and bylaws; also, Eligible Entities must follow the requirements in UGMS including State of Texas Single Audit Circular. Failure to meet the CSBG Organizational Standards may result in HHS Information Memorandum #116 proceedings as described in Chapter 2 of this Title.

#### §6.208. Designation and Re-designation of Eligible Entities in Unserved Areas.

If any geographic area of the state ceases to be served by an Eligible Entity, the requirements of 42 U.S.C. §9909 will be followed.

#### §6.209. CSBG Requirements for Tripartite Board of Directors.

(a) General Board Requirements:

(1) The Coats Human Services Reauthorization Act (Public Law 105-285) addresses the CSBG program and requires that Eligible Entities administer the CSBG program through a tripartite board. The Act requires that governing boards or a governing body be involved in the development, planning, implementation, and evaluation of the programs serving the low-income sector.

(2) Federal requirements for establishing a tripartite board require board oversight responsibilities for public entities, which differ from requirements for private organizations. Where differences occur between private and public organizations, requirements for each entity have been noted in related sections of the rule.

(b) Each CSBG Eligible Entity shall comply with the provisions of this rule and if necessary, the Eligible Entity's by-laws/Certificate of Formation/Articles of Incorporation shall be amended to reflect compliance with these requirements.

#### §6.210. Board Structure.

(a) Eligible Entities that are Private Nonprofit Organizations shall administer the CSBG program through a tripartite board that fully participates in the development, planning, implementation, and evaluation of the program to serve low-income communities. Records must be retained for all seated board members in relation to their elections to the board for the longer of the board member's term on the Board, or the federal record retention period. Some of the members of the board shall be selected by the Private Nonprofit Organization, and others through a democratic process; the board shall be composed so as to assure that the requirements of the CSBG Act are followed and are composed as:

(1) One-third of the members of the board shall be elected public officials, holding office on the date of the selection, or their representatives. In the event that there are not enough elected public officials reasonably available and willing to serve on the board, the entity may select appointive public officials to serve on the board. The public officials selected to serve on the board may each choose one permanent representative or designate an alternate to serve on the board. Appointive public officials or their representatives or alternates may be counted in meeting the 1/3 requirement.

(2) not fewer than 1/3 of the members are persons chosen in accordance with the Eligible Entity's Board-approved written democratic selection procedures adequate to assure that these members are representative of low-income individuals and families in the neighborhood served; and each representative of low-income individuals and families selected to represent a specific neighborhood within a community resides in the neighborhood represented by the member;

(3) the remainder are members of business, industry, labor, religious, law enforcement, education, or other major groups and interests in the community served.

(b) For a Public Organization that is an Eligible Entity, the entity shall administer the CSBG grant through an advisory board that fully participates in the development, planning, implementation and evaluation of programs that serve low-income communities or through another mechanism specified by the state and that satisfies the requirements of a tripartite board in subsection (a) above. The advisory board is the only alternative mechanism for administration the Department has specified.

(c) Eligible Entities administering the Head Start Program must comply with the Head Start Act (42 U.S.C. §9837) that requires the governing body membership to comply with the requirements of §642(c)(1) of the Head Start Act.

(d) Selection.

(1) Public Officials:

(A) Elected public officials or appointed public officials, selected to serve on the board, shall have either general governmental responsibilities or responsibilities which require them to deal with poverty-related issues; and

(B) Permanent Representatives and Alternates. The public officials selected to serve on the board may each choose one permanent representative or designate an alternate to serve on the board.

(i) Permanent Representatives. The representative need not be a public official but shall have full authority to act for the public official at meetings of the board. Permanent representatives may hold an officer position on the board. If a permanent representative is not chosen, then an alternate may be designated by the public official selected to serve on the board. Alternates may not hold an officer position on the board.

(ii) Alternate Representatives. If the Private Nonprofit Entity or Public Organization advisory board chooses to allow alternates, the alternates for low-income representatives shall be elected at the same time and in the same manner as the board representative is elected to serve on the board. Alternates for representatives of private sector organizations may be designated to serve on the

board and should be selected at the same time the board representative is selected. In the event that the board member or alternate ceases to be a member of the organization represented, he/she shall no longer be eligible to serve on the board. Alternates may not hold an officer position on the board.

(2) Low-Income Representatives:

(A) The CSBG Act and its amendments require representation of low-income individuals on boards. The CSBG statute requires that not fewer than one-third of the members shall be representatives of low-income individuals and families and that they shall be chosen in accordance with democratic selection procedures adequate to assure that these members are representative of low-income individuals and families in the neighborhoods served; and that each representative of low-income individuals and families selected to represent a specific neighborhood within a community resides in the neighborhood represented by the member.

(B) Board members representing low-income individuals and families must be selected in accordance with a democratic procedure. This procedure, as detailed in subparagraph (D) of this paragraph, may be either directly through election, public forum, or, if not possible, through a similar democratic process such as election to a position of responsibility in another significant service or community organization such as a school PTA, a faith-based organization leadership group; or an advisory board/governing council to another low-income service provider; For a Private Nonprofit Entity the democratic selection process must be detailed in the agency's Certificate of Formation/Articles of Incorporation; failure to comply could result in a default procedure that does not meet the CSBG requirements and potentially jeopardizes the Eligible Entity status of the organization as detailed in §6.213 of this Subchapter. For Public Organizations the democratic procedure must be written in the advisory board's procedures and approved at a board meeting.

(C) Every effort should be made by the Private Nonprofit Entity or Public Organization to assure that low-income representatives are truly representative of current residents of the geographic area to be served, including racial and ethnic composition, as determined by periodic selection or reselection by the community. "Current" should be defined by the recent or annual demographic changes as documented in the needs/community assessment. This does not preclude extended service of low-income community representatives on boards, but it does suggest that continued board participation of longer term members be revalidated and kept current through some form of democratic process.

(D) The procedure used to select the low-income representative must be documented to demonstrate that a democratic selection process was used. Among the selection processes that may be utilized, either alone or in combination, are:

(i) Selection and elections, either within neighborhoods or within the community as a whole; at a meeting or conference, to which all neighborhood residents, and especially those who are poor, are openly invited;

(ii) Selection of representatives to a community-wide board by members of neighborhood or sub-area boards who are themselves selected by neighborhood or area residents;

(iii) Selection, on a small area basis (such as a city block); or

(iv) Selection of representatives by existing organizations whose membership is predominately composed of poor persons.

(3) Representatives of Private Groups and Interests:

(A) The Private Nonprofit or Public Organization shall select the remainder of persons to represent the private sector on the board or it may select private sector organizations from which representatives of the private sector organization would be chosen to serve on the board; and

(B) The individuals and/or organizations representing the private sector shall be selected in such a manner as to assure that the board will benefit from broad community involvement. The board composition for the private sector shall draw from officials or members of business, industry, labor,

religious, law enforcement, education, school districts, representatives of education districts and other major groups and interests in the community served.

(e) Eligible Entities must have written procedures under which a low-income individual, community organization, religious organization, or representative of such may petition for adequate representation as described in (a) - (f) of this section if such persons or organizations consider there to be inadequate representation on the board of the Eligible Entity.

#### §6.211. Board Administrative Requirements.

(a) Compensation. Board members are not entitled to compensation for their service on the board. Reimbursement of reasonable and necessary expenses incurred by a board member in carrying out his/her duties is allowed.

(b) Conflict of Interest. No board member may participate in the selection, award, or administration of a subcontract supported by CSBG funds if:

(1) the board member;

(2) any member of his/her family related within three degrees of consanguinity, adoption, or by marriage;

(3) the board member's partner or Household member; or

(4) any organization which employs or is about to employ any of the individuals described in paragraphs (1) - (3) of this subsection, has a financial or person interest in the firm or person selected to perform a subcontract.

(c) No employee of the local CSBG Subrecipient or of the Department may serve on the board.

(d) A seated board member is permitted to be appointed to serve as an interim Executive Director for up to 180 days so long as the Department is so notified, the board member did not participate in the vote that designated them as the interim Executive Director, the board member does not vote during the period for which they serve as the interim Executive Director, and the member is not considered a member for purposes of quorum. The board member seat is not considered vacated, and is available for that board member to return.

#### §6.212. Board Size.

(a) Board Service Limitations for Private Nonprofit Entities and Public Organizations Subrecipient boards may establish term limits and/or procedures for the removal of board members.

(b) Vacancies/Removal of Board Members.

(1) Vacancies. In no event shall the board allow 25% or more of either the public, private, or low-income sector board positions to remain vacant for more than 90 days. CSBG Subrecipients shall report the number of board vacancies by sector in their monthly performance reports. Compliance with the CSBG Act requirements for board membership is a condition for Eligible Entities to receive CSBG funding. There is no provision for a waiver or exception to these requirements.

(2) Removal of Board Members/Private Nonprofit Entities. Public officials or their representatives, may be removed from the board either by the board or by the entity that appointed them to serve on the board. Other members of the board may be removed by the board or pursuant to any procedure provided in the private nonprofit's Certificate of Formation/Articles of Incorporation or bylaws.

(3) Removal of Board Members/Public Organizations. Public officials or their representatives may be removed from the advisory board by the Public Organization, or by the advisory board if the board is so empowered by the Public Organization. The board may petition the Public Organization to remove a board member. All other board members may be removed by the advisory board.

(4) In order to meet the 1/3 requirement for the Public Official representation detailed in §6.210 of this rule board size shall be a number divisible by 3.

### §6.213. Board Responsibility.

(a) Tripartite boards have a fiduciary responsibility for the overall operation of the Eligible Entity. Members are expected to carry out their duties as any reasonably prudent person would do.

(b) At a minimum, board members are expected to:

(1) Maintain regular attendance of board and committee meetings;

(2) Develop thorough familiarity with core agency information as appropriate, such as the agency's bylaws, Certificate of Formation/Articles of Incorporation, sources of funding, agency goals and programs, federal and state CSBG statutes;

(3) Exercise careful review of materials provided to the board;

(4) Make decisions based on sufficient information;

(5) Ensure that proper fiscal systems and controls, as well as a legal compliance system, are in place;

(6) Maintain knowledge of all major actions taken by the agency; and

(7) Receive regular reports that include:

(A) Review and approval of all funding requests (including budgets);

(B) Review of reports on the organization's financial situation;

(C) Regular reports on the progress of goals specified in the performance statement or program proposal;

(D) Regular reports addressing the rate of expenditures as compared to those projected in the budget;

(E) Updated modifications to policies and procedures concerning employee's and fiscal operations; and

(F) Updated information on community conditions that affect the programs and services of the organization.

(c) Individuals that agree to participate on a tripartite governing board, accept the responsibility to assure that the agency they represent continues to:

(1) assess and respond to the causes and conditions of poverty in their community;

(2) achieve anticipated family and community outcomes; and

(3) remains administratively and fiscally sound.

(4) Excessive absenteeism of board members compromises the mission and intent of the program.

(d) Residence Requirement. All board members shall reside within the Subrecipient's CSBG service area designated by the CSBG contract. Board members should be selected so as to provide representation for all geographic areas within the designated service area; however, greater representation may be given on the board to areas with greater low-income population. Low-income representatives must reside in the area that they represent.

(e) Improperly Constituted Board. If the Department determines that a board of an Eligible Entity is improperly constituted, the Department shall prescribe the necessary remedial action, a timeline for implementation and possible sanctions which may include:

(1) cost reimbursement method of payment;

(2) withholding of funds;

(3) Contract suspension; or

(4) termination of funding.

### §6.214. Board Meeting Requirements.

(a) Boards of Eligible Entities must meet at least once per calendar quarter and at a minimum five (5) times per year and, must give each Board member a notice of meeting five (5) calendar days in advance of the meeting.

(b) Tex. Gov't Code, Chapter 551, Texas Open Meetings Act, addresses specific requirements regarding meetings and meeting notices. Tex. Gov't Code, §551.001(3)(J), includes in the definition of a governmental body and of a nonprofit corporation that is eligible to receive funds under the federal CSBG program and that is authorized by the state to serve a geographic area of the state. All

Eligible Entities must follow the requirements of the Texas Open Meetings Act. As set forth in that law, there is the potential for individual criminal liability for violations.

(c) Tex. Gov't Code, §551.005 requires elected or appointed officials to receive training in Texas Open Government laws. The Department requires that all board members receive training in Texas Open Government laws, according to the requirements of §551.005.

(d) A copy of the attendance roster for all Board trainings shall be maintained at the Subrecipient level.

(e) The minimum number of members required to meet quorum is three unless the Subrecipient's Certification of Formation/Articles of Incorporation, Bylaws, or the Texas Open Meetings Act requires a greater number.

### SUBCHAPTER C. COMPREHENSIVE ENERGY ASSISTANCE PROGRAM.

§6.301. Background and Definitions.

§6.302. Purpose and Goals.

§6.303. Distribution of CEAP Funds.

§6.304. Deobligation and Reobligation of CEAP Funds.

§6.305. Subrecipient Eligibility.

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§6.307. Subrecipient Requirements for Customer Eligibility Criteria and Establishing Priority for Eligible Households and Customer Eligibility Criteria.

§6.308. Allowable Subrecipient Administrative and Program Services Costs, and Assurance 16.

§6.309. Types of Assistance and Benefit Levels.

§6.310. Household Crisis Component.

§6.311. Utility Assistance Component.

§6.312. Payments to Subcontractors and Vendors.

§6.313. Outreach, Accessibility, and Coordination.

§6.301. Background and Definitions.

(a) The Comprehensive Energy Assistance Program ("CEAP") is funded through the Low Income Home Energy Assistance Act of 1981 (Title XXVI of the Omnibus Budget Reconciliation Act of 1981, Public Law 97-35, as amended). LIHEAP has been in existence since 1982. LIHEAP is a federally funded block grant program that is implemented to serve low income Households who seek assistance for their home energy bills. LIHEAP is not an entitlement program, and there are not sufficient funds to serve all eligible customers or to provide the maximum benefit for which a customer may qualify.

(b) Definitions.

(1) Extreme Weather Conditions--For winter months (November, December, January, and February), extreme weather conditions will exist when the temperature has been 2 degrees below the lowest winter month's temperature or below 32 degrees, for at least three days during the billing cycle. For summer months (June, July, August, and September), when the temperature is 2 degrees above the highest summer month's temperature for at least three days during the billing cycle. Extreme weather conditions will be based on data for "1981-2010 Normals" temperatures recorded by National Centers for Environmental Information of the National Oceanic and Atmospheric Administration ("NOAA") and available at <http://www.ncdc.noaa.gov/cdo-web/datatools/normals>. Subrecipients must maintain documentation of local temperatures and data from the NOAA.

(2) Household Crisis--A bona fide Household Crisis exists when extraordinary events or situations resulting from extreme weather conditions and/or fuel supply shortages have depleted or will deplete Household financial resources and/or have created problems in meeting basic Household expenses, particularly bills for energy so as to constitute a threat to the well-being of the Households, particularly Vulnerable Population Households.

(3) Life Threatening Crisis--A life threatening crisis exists when at least one person in the applicant Household could lose their life without the Subrecipient's utility assistance because there is a shut-off notice or a delivered fuel source is below a ten (10) day supply (by customer report) and any member of the Household is dependent upon equipment that is prescribed by a medical professional, operated on electricity or gas, and is necessary to sustain the person's life. Examples of life-sustaining equipment include, but are not limited to, kidney dialysis machines, oxygen concentrators, cardiac monitors, and in some cases heating and air conditioning when ambient temperature control is prescribed by a medical professional. Documentation must not be requested about the medical condition of the applicant/customer but must state that such a device is required in the Dwelling Unit to sustain life.

#### §6.302. Purpose and Goals.

The purpose of CEAP is to assist low-income Households, particularly those with the lowest incomes, and High Energy Consumption Households to meet their immediate home energy needs. The LIHEAP Statute requires priority be given to those with the highest home energy needs, meaning low income Households with High Energy Consumption, a High Energy Burden and/or the presence of Vulnerable Population in the Household. CEAP services include: energy education, needs assessment, budget counseling (as it pertains to energy needs), utility payment assistance, repair of existing heating and cooling units, and crisis-related purchase of portable heating and cooling units.

#### §6.303. Distribution of CEAP Funds.

(a) The Department distributes funds to Subrecipients by an allocation formula.

(b) The formula allocates funds based on the number of Low Income Households in a service area and takes into account the special needs of individual service areas. The need for energy assistance in an area is addressed through a weather factor (based on heating and cooling degree days). The extra expense in delivering services in sparsely populated areas is addressed by an inverse population density factor. The lack of additional services available in very poor counties is addressed by a county median income factor. Finally, the Elderly are given priority by giving greater weight to this population. The five factors used in the formula are calculated as:

(1) County Non-Elderly Poverty Household Factor (weight of 40%)--Defined by the Department as the number of Non-Elderly Poverty Households in the county divided by the number of Non-Elderly Poverty Households in the State;

(2) County Elderly Poverty Household Factor (weight of 40%)--Defined by the Department as the number of Elderly Poverty Households in the county divided by the number of Elderly Poverty Households in the State; and

(3) County Inverse Household Population Density Factor (weight of 5%)--Defined by the Department as:

(A) The number of square miles of the county divided by the number of Poverty Households of the county (equals the Inverse Poverty Household Population Density of the county); and

(B) Inverse Poverty Household Population Density of the county divided by the sum of Inverse Household Densities.

(4) County Median Income Variance Factor (weight of 5%)--Defined by the Department as:

(A) State Median Income minus the County Median Income (equals county variance); and

(B) County Variance divided by sum of the State County Variances.

(5) County Weather Factor (weight of 10%)--Defined by the Department as:

(A) County heating degree days plus the county cooling degree days, multiplied by the poverty Households, divided by the sum of county heating degree days and county cooling degree days of counties (equals County Weather); and

(B) County Weather divided by the total sum of the State County Weather.

(C) All demographic factors are based on the most recent decennial U.S. Census for which Census Bureau published information is available.

(D) Total sum of paragraphs (1) - (5) of this subsection multiplied by total funds allocation equals the county's allocation of funds. The sum of the county allocations within each Subrecipient service area equals the Subrecipient's total allocation of funds.

(c) To the extent balances remain in Subrecipient contracts that the Subrecipient appears to be unable to utilize or should additional funds become available, those funds will be allocated using the formula set out in this section or other method approved by the Board to ensure full utilization of funds within a limited timeframe.

(d) The Department may, in the future, undertake to reprocur the Subrecipients that comprise the network of CEAP providers, in which case this allocation formula will be reassessed and, if material changes are needed, amended by rulemaking.

#### §6.304. Deobligation and Reobligation of CEAP Funds.

(a) Based on the progress reported by the Subrecipient in their Monthly Expenditure Report for the month of May (submitted on June 15), Subrecipients shall have obligated at least 50% of their contracted CEAP funds for the current Program year that are budgeted to customer assistance under §§6.310 and 6.311 of this Subchapter. Subrecipients that show documented obligations of less than 50%, will have their Contract for that same year deobligated by an amount that is the lesser of 24.99% of the CEAP contract or the amount that brings their current obligations to be 50% of their annual award.

(1) The deobligation will include amounts proportionally from all budget categories.

(2) Subrecipient obligations will be analyzed after the submission of the May expenditure report as noted above. Within 48 hours of the Subrecipient's submission of the May report to the Department, Subrecipients must provide a report reflecting their obligations generated directly from their customer tracking software detailing the Households and amounts of pledged obligations through December 31 of that year. Failure to provide a timely filed May report or the required backup obligation documentation from the customer tracking software within the required 48 hours will automatically result in deobligation of 24.99% of the CEAP contract.

(b) The Department may determine, rather than deobligate from all Subrecipients meeting the criteria in subsection (a) above, to deobligate funds only from those Subrecipients who fall within the lowest 20% of Subrecipients based on combined expenditures and obligations as of the May report and whose expenditures are less than 80%.

(c) Whether deobligated funds are generated from option (a) or (b) above, the cumulative amount of deobligated funds will be allocated proportionally by formula amongst all Subrecipients that did not have any funds deobligated. (d) Subrecipients which have had funds deobligated under option (a) or (b) above that fully expend the reduced amount of their Contract, will have access to the full amount of their following Program Year CEAP allocation. Subrecipients which have had funds deobligated under option (a) or (b) above that fail to fully expend the reduced amount of their Contract will automatically have their following Program Year CEAP allocation deobligated by the lesser of 24.99% or the proportional amount that had been deobligated in the prior year.

(e) The cumulative balance of the funds made available through subsection (d) above will be allocated proportionally by formula to the Subrecipients not having funds reduced under that subsection.

(f) In no event will deobligations that occur through any of the clauses above exceed 24.99% of the Subrecipient's Program Year CEAP formula allocation.

#### §6.305. Subrecipient Eligibility.

(a) The Department administers the program through the existing Subrecipients that have demonstrated that they are operating the program in accordance with their Contract, the Economic Opportunity Act of 1964, the Low-Income Home Energy Assistance Act of 1981, as amended (42

U.S.C. §§8621, et seq.), and the Department rules. If a Subrecipient is successfully administering the program, the Department may offer to renew the Contract.

(b) If the Department determines that a Subrecipient is not administering the program satisfactorily, the Subrecipient will be required to take corrective actions to remedy the problem. If Subrecipient fails to correct the Finding, in order to ensure continuity of services, the Department may reassign up to 24.99% of the funds for the service area to one or more other existing Subrecipients.

(c) If the Subrecipient does not complete the corrective action within the required timeframe, the Department may conduct a solicitation for selection of an interim Subrecipient. The affected Subrecipient may request a hearing in accordance with the Tex. Gov't Code, §2105.204.

(d) If it is necessary to designate a new Subrecipient to administer CEAP, the Department shall give special consideration to Eligible Entities and entities administering Weatherization in the service area.

#### §6.306. Service Delivery Plan.

Prior to any expenditure of funds, Subrecipients are required to submit on an annual basis a Department formatted Service Delivery Plan ("SDP"), which includes information on how they plan to implement CEAP in their service area. The Department will notify CEAP Subrecipients when the SDP template and the annual updated forms are posted on the Department's website. The SDP must establish the priority rating sheet and priority households, the alternate billing method, how customer education is being addressed, and how the Subrecipient is determining the number of payments to be made and which types of Households are qualified for a given number of payments.

#### §6.307. Subrecipient Requirements for Customer Eligibility Criteria and Establishing Priority for Eligible Households.

(a) The customer income eligibility level is at or below 150% of the federal poverty level in effect at the time the customer makes an application for services.

(b) A complete application is required for all Households. Subrecipients shall determine customer income using the definition of income and process described in §6.4 (relating to income). Household income documentation must be collected by the Subrecipient for the purposes of determining the Household's benefit level.

(c) Social security numbers are not required for applicants for CEAP.

(d) Subrecipients must establish a written procedure to serve Households that have a Vulnerable Population Household member, Households with High Energy Burden, and Households with High Energy Consumption. High Energy Burden shall be the highest rated item in sliding scale priority determinations. The Subrecipient must maintain documentation of the use of the criteria.

(e) A Household unit cannot be served if the meter is utilized by another Household that is not a part of the application for assistance. In instances where separate structures share a meter and the applicant is otherwise eligible for assistance, Subrecipient must provide services if:

(1) the members of the separate structures that share a meter meet the definition of a Household per §6.2 of this Chapter;

(2) the members of the separate structures that share a meter submit one application as one Household; and

(3) all persons and applicable income from each structure are counted when determining eligibility.

#### §6.308. Allowable Subrecipient Administrative, Program Services Costs, and Assurance 16.

(a) Funds available for Subrecipient administrative activities will be calculated by the Department as a percentage of direct services expenditures. Administrative costs shall not exceed the maximum percentage of total direct services expenditures as indicated in the Contract. All other administrative costs, exclusive of administrative costs for program services, must be paid with nonfederal funds. Allowable administrative costs for administrative activities includes costs for general administration

and coordination of CEAP, and all indirect (or overhead) cost, and activities as described in paragraphs (1) - (7) of this subsection:

- (1) salaries;
- (2) fringe benefits;
- (3) non-training travel;
- (4) equipment;
- (5) supplies;
- (6) audit (limited to percentage of the contract expenditures, excluding training/travel costs as indicated in the Contract); and
- (7) office space (limited to percentage of the contract expenditures, excluding training/travel costs as indicated in the Contract).

(b) Program Services costs shall not exceed the maximum percentage of total direct services Expenditures as indicated in the Contract. Program Services costs are allowable when associated with providing customer direct services. Program services costs may include outreach activities and expenditures on the information technology and computerization needed for tracking or monitoring required by CEAP, and activities as described in paragraphs (1) - (8) of this subsection:

- (1) direct administrative cost associated with providing the customer direct service;
- (2) salaries and benefits cost for staff providing program services;
- (3) supplies;
- (4) equipment;
- (5) travel;
- (6) postage;
- (7) utilities; and
- (8) rental of office space.

(c) Assurance 16. Assurance 16 services encourage and enable households to reduce their home energy needs and thereby the need for energy assistance. The Department calculates Assurance 16 based on total Contract Expenditure. Subrecipients must provide an energy-related needs assessment and referrals, budget counseling, and energy conservation education to each CEAP customer. Subrecipients may provide education to identify energy waste, manage Household energy use, and strategies to promote energy savings. Subrecipients must maintain documentation of the assessment, referrals, counseling and education provided.

#### §6.309. Types of Assistance and Benefit Levels.

(a) Allowable CEAP expenditures include customer education, utility payment assistance; repair of existing heating and cooling units, and crisis-related purchase of portable heating and cooling units.

(b) Total maximum possible annual Household benefit (all allowable benefits combined) shall not exceed \$5,400 during a Program Year.

(c) Benefit determinations are based on the Household's income (even if the Household is Categorically Eligible), the Household size, Vulnerable Populations in the Household, plus other priority status, and the availability of funds;

(d) Benefit determinations for the Utility Payment Assistance Component and the Household Crisis Component cannot exceed the sliding scale described in paragraphs (1) - (3) of this paragraph:

(1) Households with Incomes of 0 to 50% of Federal Poverty Guidelines may receive an amount not to exceed \$1,200 per Component;

(2) Households with Incomes of 51% to 75% of Federal Poverty Guidelines may receive an amount not to exceed \$1,100 per Component; and

(3) Households with Incomes of 76% to at or below 150% of Federal Poverty Guidelines may receive an amount not to exceed \$1,000 per Component; and

(e) Service and Repair of existing heating and cooling units: Households may receive up to \$3,000 for service and repair of existing heating and cooling units when the Household has an inoperable

heating or cooling system based on requirements in §6.310, Relating to Household Crisis Component.

(f) Assistance with service and repair or purchase of portable air conditioning/evaporative coolers and heating units not to exceed \$3,000 for Households that include a Vulnerable Population member, when the Household does not have an operable or non-existing heating or cooling system, regardless of weather conditions.

(g) Subrecipients shall provide only the types of assistance described in paragraphs (1) - (11) of this subsection with funds from CEAP:

(1) Payment to vendors and suppliers of fuel/utilities, goods, and other services, such as past due or current bills related to the procurement of energy for heating and cooling needs of the residence, not to include security lights and other items unrelated to energy assistance as follows:

(A) Subrecipients may make utility payments on behalf of Households based on the previous twelve (12) month's home energy consumption history, including allowances for cost inflation. If a twelve (12) month's home energy consumption history is unavailable, Subrecipient may base payments on current Program Year's bill or utilize a Department-approved alternative method. Subrecipients will note such exceptions in customer files. Benefit amounts exceeding the actual bill shall be treated as a credit for the customer with the utility company.

(B) Vulnerable Households can receive benefits to cover up to the eight highest remaining bills within the Program Year, as long as the cost does not exceed the maximum annual benefit.

(C) Households that do not contain a Vulnerable Population member can receive benefits to cover up to the six highest remaining bills within the Program Year as long as the cost does not exceed the maximum annual benefit.

(2) Payment to vendors--only one energy bill payment per month;

(3) Needs assessment and energy conservation tips, coordination of resources, and referrals to other programs;

(4) Payment of water bills only when such costs include expenses from operating an evaporative water cooler unit or when the water bill is an inseparable part of a utility bill and documented in the Vendor Agreement. As a part of the intake process, outreach, and coordination, the Subrecipient shall confirm that a customer owns an operational evaporative cooler and has used it to cool the dwelling within 60 days prior to application. Payment of other utility charges such as wastewater and waste removal are allowable only if these charges are an inseparable part of a utility bill and documented in the Vendor Agreement. Documentation from vendor is required. Whenever possible, Subrecipient shall negotiate with the utility providers to pay only the "home energy" (heating and cooling) portion of the bill;

(5) Energy bills already paid may not be reimbursed by the program;

(6) Payment of reconnection fees in line with the registered tariff filed with the Public Utility Commission and/or Texas Railroad Commission. Payment cannot exceed that stated tariff cost. Subrecipient shall negotiate to reduce the costs to cover the actual labor and material and to ensure that the utility does not assess a penalty for delinquency in payments;

(7) Payment of security deposits only when state law requires such a payment, or if the Public Utility Commission or Texas Railroad Commission has listed such a payment as an approved cost, and where required by law, tariff, regulation, or a deferred payment agreement includes such a payment. Subrecipients shall not pay such security deposits that the energy provider will eventually return to the customer;

(8) While rates and repair charges may vary from vendor to vendor, Subrecipient shall negotiate for the lowest possible payment. Prior to making any payments to an energy vendor a Subrecipient shall have a signed vendor agreement on file from the energy vendor receiving direct CEAP payments from the Subrecipient;

(9) Subrecipient may make payments to landlords on behalf of eligible renters who pay their utility and/or fuel bills indirectly. Subrecipient shall notify each participating Household of the amount of assistance paid on its behalf. Subrecipient shall document this notification. Subrecipient shall

maintain proof of utility or fuel bill payment. Subrecipient shall ensure that amount of assistance paid on behalf of customer is deducted from customer's rent;

(10) In lieu of deposit required by an energy vendor, Subrecipient may make advance payments. The Department does not allow CEAP expenditures to pay deposits, except as noted in paragraph (7) of this subsection. Advance payments may not exceed an estimated two months' billings; and

(11) Funds for the CEAP shall not be used to weatherize dwelling units, for medicine, food, transportation assistance (i.e., vehicle fuel), income assistance, or to pay for penalties or fines assessed to customers.

#### §6.310. Household Crisis Component.

(a) Crisis assistance can be provided under the following conditions:

(1) A Life Threatening Crisis exists, as defined in §6.301 of this Subchapter;

(2) Disconnection notice - a utility disconnection notice may constitute a Household Crisis. Assistance provided to Households based on a utility disconnection notice is limited to two (2) payments per year. Weather criterion is not required to provide assistance due to a disconnection notice. The notice of disconnection must have been provided to the Subrecipient within the effective contract term and the notice of disconnection must have been issued within no more than 60 days from receipt by the Subrecipient.; or,

(3) Extreme Weather Conditions exist, as defined in §6.301 of this Subchapter.

(b) Benefit Level for Crisis Assistance.

(1) Crisis assistance payments cannot exceed the minimum amount needed to resolve the crisis; e.g. when a shut-off notice requires a certain amount to be paid to avoid disconnection and the same notice indicates that there are balances due other than the required amount. Crisis assistance payments that are less than the amount needed to resolve the crisis may only be made when other funds or options are available to resolve the Household's remaining crisis need and are documented in the customer file.

(2) Crisis assistance for one Household cannot exceed the maximum allowable benefit level in one Program Year as defined in §6.309 of this Subchapter relating to Types of Assistance and Benefit Levels. If a Household's crisis assistance needs exceed that maximum allowable benefit, Subrecipient may pay up to the Household crisis assistance limit only if the remaining amount of Household need can be paid from other funds. If the Household's crisis requires more than the Household limit to resolve and no other funds are available, the crisis exceeds the scope of this component.

(3) Payments may not exceed Household's actual utility bill.

(4) Crisis funds, whether for utility payment assistance, disconnection notice, life threatening crisis, temporary shelter, emergency fuel deliveries, assistance related to natural disasters shall be considered part of the total maximum Household allowable assistance.

(5) Service and repair or purchase of heating and or cooling units for up to \$3,000 will not be counted towards the total maximum Household allowable assistance under the utility assistance and crisis components.

(c) Where necessary to prevent undue hardships from a qualified crisis, Subrecipients may provide:

(1) Payment of utility bill(s) during the month(s) when Extreme Weather Conditions exist, as defined in §6.301 of this Subchapter.

(2) Temporary shelter not to exceed the annual Household expenditure limit for the duration of the contract period in the limited instances that supply of power to the dwelling is disrupted--causing temporary evacuation;

(3) Emergency deliveries of fuel up to 250 gallons per crisis per Household, at the prevailing price. This benefit may include coverage for tank pressure testing;

(4) For Vulnerable Population Households regardless of weather conditions, service and repair of existing heating and cooling units when the Household has an inoperable heating or cooling system when the county is experiencing Extreme Weather Conditions. If any component of the central system cannot be repaired using parts, the Subrecipient can replace the component in order to repair

the central system. Documentation of service/repair and related warranty must be included in the customer file. Costs are not to exceed \$3,000 during the Contract period.

(5) For Vulnerable Population Households regardless of weather conditions, service and repair or purchase of portable air conditioning/evaporative coolers and heating units (portable electric heaters are allowable only as a last resort), when the Household has an inoperable or there is a nonexistent heating or cooling system.. If any component of the central system cannot be repaired using parts, the Subrecipient can replace the component in order to repair the central system. Any service or repair of air conditioning or heating units must comply with the 2015 International Residential Code ("IRC") to ensure proper installation. Documentation of service/repair and related warranty must be included in the customer file. Costs are not to exceed \$3,000 during the Contract period.

(6) When a Household's crisis meets the definition of Life Threatening Crisis and the Household has a utility disconnection notice or is low on fuel, regardless of whether the county is experiencing Extreme Weather Conditions, utility or fuel assistance can be provided.

(d) When portable heating/cooling units are purchased and/or repaired, the following requirements must be met:

(1) Purchase of more than two portable heating/cooling units per Household requires prior written approval from the Department;

(2) Purchase of portable heating/cooling units which require performance of electrical work for proper installation requires prior written approval from the Department;

(3) Replacement of central systems and combustion heating units is not an approved use of crisis funds; and

(4) Portable heating/cooling units must be Energy Star®. In cases where the type of unit is not rated by Energy Star®, or if Energy Star® units are not available due to supply shortages, Subrecipient may purchase the highest rated unit available.

(e) When natural disasters result in energy supply shortages or other energy-related emergencies, LIHEAP will allow home energy related expenditures for:

(1) Costs to temporarily shelter or house individuals in hotels, apartments or other living situations in which homes have been destroyed or damaged, i.e., placing people in settings to preserve health and safety and to move them away from the crisis situation;

(2) Costs for transportation (such as cars, shuttles, buses) to move individuals away from the crisis area to shelters, when health and safety is endangered by loss of access to heating or cooling;

(3) Utility reconnection costs;

(4) Blankets, as tangible benefits to keep individuals warm;

(5) Crisis payments for utilities and utility deposits; and

(6) Purchase of fans, air conditioners and generators. The number, type, size and cost of these items may not exceed the minimum needed to resolve the crisis.

(f) Time Limits for Assistance--Subrecipients shall ensure that for customers who have already lost service or are in immediate danger of losing service, some form of assistance to resolve the crisis shall be provided within a 48-hour time limit (18 hours in life-threatening situations). The time limit commences upon completion of the application process. The application process is considered to be complete when an agency representative accepts an application and completes the eligibility process.

(g) Subrecipients must maintain written documentation in customer files showing crises resolved within appropriate timeframes. Subrecipients must maintain documentation in customer files showing that a utility bill used as evidence of a crisis was received by the Subrecipient during the effective contract term. The Department may disallow improperly documented expenditures.

#### §6.311. Utility Assistance Component.

(a) Subrecipients may use home energy payments to assist Low Income Households to reduce their home energy costs. Subrecipients shall combine home energy payments with energy conservation tips, participation by utilities, and coordination with other services in order to assist Low Income Households to reduce their home energy needs.

(b) Subrecipients must make payments directly to vendors and/or landlords on behalf of eligible Households.

#### §6.312. Payments to Subcontractors and Vendors.

(a) A bi-annual vendor agreement is required to be implemented by the Subrecipient and shall contain assurances as to fair billing practices, delivery procedures, and pricing procedures for business transactions involving CEAP beneficiaries. The Subrecipient must use the Department's current Vendor Agreement template, found on the CEAP Program Guidance page of the Department's website. These agreements are subject to monitoring procedures performed by the Department staff.

(b) Subrecipient shall maintain proof of payment to Subcontractors and vendors as required by Chapter 1, Subchapter D of this Title.

(c) Subrecipient shall notify each participating Household of the amount of assistance paid on its behalf. Subrecipient shall document this notification.

(d) Subrecipients shall use the vendor payment method for CEAP components. Subrecipient shall not make cash payments directly to eligible Household for any of the CEAP components.

(e) Payments to vendors for which a valid Vendor Agreement is not in place may be subject to disallowed costs unless prior written approval is obtained from the Department.

#### §6.313. Outreach, Accessibility, and Coordination.

(a) The Department may continue to develop interagency collaborations with other low-income program offices and energy providers to perform outreach to targeted groups.

(b) Subrecipients shall conduct outreach activities.

(c) Outreach activities may include:

(1) providing information through home visits, site visits, group meetings, or by telephone for disabled low-income persons;

(2) distributing posters/flyers and other informational materials at local and county social service agencies, offices of aging, Social Security offices, etc.;

(3) providing information on the program and eligibility criteria in articles in local newspapers or broadcast media announcements;

(4) coordinating with other low-income services to provide CEAP information in conjunction with other programs;

(5) providing information on one-to-one basis for applicants in need of translation or interpretation assistance;

(6) providing CEAP applications, forms, and energy education materials in English and Spanish (and other appropriate language);

(7) working with energy vendors in identifying potential applicants;

(8) assisting applicants to gather needed documentation; and

(9) mailing information and applications.

(d) Subrecipients shall accept applications at sites that are geographically and physically accessible to all Households requesting assistance. If Subrecipient's office is not accessible, Subrecipient shall make reasonable accommodations to ensure that all Households can apply for assistance.

(e) Subrecipients shall coordinate with other social service agencies through cooperative agreements to provide services to customer Households. Cooperative agreements must clarify procedures, roles, and responsibilities of all involved entities.

(f) Subrecipients shall coordinate with other energy related programs. Specifically, Subrecipient shall make documented referrals to the local WAP Subrecipient.

(g) Subrecipients shall coordinate with local energy vendors to arrange for arrearage reduction, reasonably reduced payment schedules, or cost reductions.

## SUBCHAPTER D. WEATHERIZATION ASSISTANCE PROGRAM

§6.401. Background.

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§6.401. Background.

The Weatherization Assistance Program was established by the Energy Conservation in Existing Buildings Act of 1976, as amended 42 U.S.C. §§6851, et seq. The Department funds the Weatherization Programs through the Department of Energy Weatherization Assistance Program (DOE-WAP) which is funded through the U.S. Department of Energy Weatherization Assistance Program for Low Income Persons grant and the Low Income Home Energy Assistance Program Weatherization Assistance Program ("LIHEAP-WAP") which is funded through the U.S. Department of Health and Human Services' Low-Income Home Energy Assistance Program (LIHEAP) grant.

§6.402. Purpose and Goals.

(a) DOE-WAP and LIHEAP-WAP offers awards to Private Nonprofit Organizations, and Public Organizations with targeted beneficiaries being Households with low incomes, with priority given to Vulnerable Populations, High Energy Burden, and Households with High Energy Consumption. In addition to meeting the income-eligibility criteria, the weatherization measures to be installed must meet specific energy-savings goals. Neither of these programs are entitlement programs and there are not sufficient funds to serve all customers that may be eligible.

(b) The programs fund the installation of weatherization materials and provide energy conservation education. The programs help control energy costs to ensure a healthy and safe living environment.

(c) Organizations administering a Department-funded weatherization program must administer both the DOE-WAP and the LIHEAP-WAP. Organizations that have one Weatherization program removed will have both programs removed.

(d) The Department shall administer and implement the DOE-WAP program in accordance with DOE rules (10 CFR Part 440), except that Categorical Eligibility will follow the eligibility reflected in LIHEAP plan. The Department shall administer and implement the LIHEAP-WAP program in accordance with a combination of LIHEAP statute (42 U.S.C. §§6861, et seq.) and DOE rules. LIHEAP Weatherization measures may be leveraged with DOE Weatherization measures in which case all DOE rules and requirements will apply.

#### §6.403. Definitions.

- (a) Department of Housing and Urban Development (“HUD”)--Federal department that provides funding for certain housing and community development activities.
- (b) Electric Base-Load Measure--Weatherization measures which address the energy efficiency and energy usage of lighting and appliances.
- (c) Energy Audit--The energy audit software and procedures used to determine the cost effectiveness of Weatherization measures to be installed in a Dwelling Unit. The Energy Audit shall be used for any Dwelling Unit weatherized utilizing DOE funds.
- (d) Energy Repairs--Weatherization-related repairs necessary to protect or complete regular Weatherization energy efficiency measures.
- (e) Multifamily Dwelling Unit--A structure containing more than one Dwelling Unit.
- (f) Rental Unit--A Dwelling Unit occupied by a person who pays rent for the use of the Dwelling Unit.
- (g) Renter--A person who pays rent for the use of the Dwelling Unit.
- (h) Reweatheringization—Consistent with 10 CFR §440.18(e)(2), if a Dwelling Unit has been damaged by fire, flood, or act of God and repair of the damage to Weatherization materials is not paid for by insurance; or if a Dwelling Unit was partially weatherized under a federal program during the period September 30, 1975, through September 30, 1994, the Dwelling Unit may receive further financial assistance for Reweatheringization.
- (i) Shelter-- a Dwelling Unit or Units whose principal purpose is to house on a temporary basis individuals who may or may not be related to one another and who are not living in nursing homes, prisons, or similar institutional care facilities.
- (j) Single Family Dwelling Unit--A structure containing no more than one Dwelling Unit.
- (k) Weatherization Assistance Program Policy Advisory Council (“WAP PAC”)--The WAP PAC was established by the Department in accordance with 10 CFR §440.17 to provide advisory services in regards to the DOE WAP program.
- (l) Weatherization Material--The material listed in Appendix A of 10 CFR Part 440.
- (m) Weatherization --A program conducted to reduce heating and cooling demand of Dwelling Units that are energy inefficient.

#### §6.404. Distribution of WAP Funds.

- (a) Except for the reobligation of deobligated funds, the Department distributes funds to Subrecipients by an allocation formula.
- (b) The allocation formula allocates funds based on the number of Low Income Households in a service area and takes into account certain special needs of individual service areas, as set forth below. The need for energy assistance in an area is addressed through a weather factor (based on heating and cooling degree days). The extra expense in delivering services in sparsely populated areas is addressed by an inverse Population Density factor. The lack of additional services available in very poor counties is addressed by a county median income factor. Finally, the Elderly are given priority by giving greater weight to this population. The five factors used in the formula are calculated as follows:
  - (1) County Non-Elderly Poverty Household Factor--The number of Non-Elderly Poverty Households in the County divided by the number of Non-Elderly Poverty Households in the State;
  - (2) County Elderly Poverty Household Factor--The number of Elderly Poverty Households in the county divided by the number of Elderly Poverty Households in the State;
  - (3) County Inverse Household Population Density Factor--
    - (A) The number of square miles of the county divided by the number of Households of the county (equals the inverse Household population density of the county); and
    - (B) Inverse Household Population density of the county divided by the sum of inverse Household densities.
  - (4) County Median Income Variance Factor--

(A) State median income minus the county median income (equals county variance); and

(B) County variance divided by sum of the State county variances;

(5) County Weather Factor--

(A) County heating degree days plus the county cooling degree days, multiplied by the poverty Households, divided by the sum of county heating and cooling degree days of counties (equals County Weather); and

(B) County Weather divided by the total sum of the State County Weather.

(C) The five factors carry the following weights in the allocation formula: number of Non-Elderly Poverty Households (40%), number of poverty Households with at least one member who is 60 years of age or older (40%), Household density as an inverse ratio (5%), the median income of the county (5%), and a weather factor based on heating degree days and cooling degree days (10%). All demographic factors are based on the most current decennial U.S. Census. The formula is as follows:

(i) County Non-Elderly Poverty Household Factor (0.40) plus;

(ii) County Elderly Poverty Household Factor (0.40) plus;

(iii) County Inverse Household Population Density Factor (0.05) plus;

(iv) County Median Income Variance Factor (0.05) plus;

(v) County Weather Factor (0.10);

(vi) Total sum of clauses (i) - (v) of this subparagraph multiplied by total funds allocation equals the county's allocation of funds.

(vii) The sum of the county allocation within each Subrecipient service area equals the Subrecipient's total allocation of funds.

(c) To the extent that Contract funds have been deobligated, or should additional funds become available, those funds will be allocated using this formula or other method approved by the Department's Board to ensure full utilization of funds within a limited timeframe, including possible allocation of WAP funds to Subrecipients in varying populations from each funding source (DOE and LIHEAP), based on availability of the source.

(d) Subrecipients that do not expend more than 20% of Program Year formula allocation (excluding any additional funds that may be distributed by the Department) by the end of the first quarter of the year following the Program Year for two consecutive years will have funding recaptured. LIHEAP-WAP funding recapture will be consistent with Chapter 2105. The Subrecipient of the funds will be provided a Contract for the average percentage of funds that they expended over the last two years.

(e) The cumulative balance of the funds made available through subsections (d) above will be allocated proportionally by formula to the entities that expended 90% of the prior year's Contract by the end of the original Contract Term.

(f) To the extent federal funding awarded to Texas is limited from one of the two WAP funding sources, possible allocations of funds to Subrecipients may be made in varying proportions from each source to maximize efficient program administration.

(g) The Department may, in the future, undertake to reprocur the Subrecipients that comprise the network of Weatherization providers, in which case this allocation formula will be reassessed and, if material changes are needed, amended by rulemaking.

#### §6.405. Deobligation and Reobligation of Awarded Funds.

(a) At any time that a Subrecipient believes they may be at risk of meeting one of the criteria noted in subsection (l) of this section relating to criteria for deobligation of funds, notification must be provided to the Department unless excepted under subsection (m) of this section.

(b) A written 'Notification of Possible Deobligation' will be sent to the Executive Director of the Subrecipient by the Department as soon as a criterion listed in subsection (l) of this section is at risk of being met. Written notice will be sent electronically and/or by mail. The notice will include an explanation of the criteria met. A copy of the written notice will be sent to the Board of Directors of

the Subrecipient by the Department seven (7) business days after the notice to the Executive Director has been released.

(c) Within fifteen (15) days of the date of the "Notification of Possible Deobligation" referenced in subsection (b) of this section, a Mitigation Action Plan must be submitted to the Department by the Subrecipient in the format prescribed by the Department unless excepted under subsection (m) of this section.

(d) A Mitigation Action Plan is not limited to but must include:

(1) Explanation of why the identified criteria under this section occurred setting out all fully relevant facts.

(2) Explanation of how the criteria will be immediately, permanently, and adequately mitigated such that funds are expended during the Contract Period. For example, if production or expenditures appear insufficient to complete the Contract timely, the explanation would need to address how production or expenditures will be increased in the short- and long-term to restore projected full and timely execution of the contract.

(3) If applicable because of failure to produce Unit Production or Expenditure targets under the existing Production Schedule, a detailed narrative of how the Production Schedule will be adjusted, going forward, to assure achievement of sufficient, achievable Unit Production and Expenditures to ensure timely and compliant full utilization of all funds.

(4) An explanation of how the other criteria under this section will be mitigated. For example, if Unit Production criteria for a time period were not met, then the explanation will need to include how the other criteria will not be triggered.

(5) If relating to a Unit Production or expenditure criteria, a description of activities currently being undertaken including an accurate description of the number of units in progress, broken down by number of units in each of these categories: units that have been qualified, audited, assessed, contracted, inspected, and invoiced and as reflected in an updated Production Schedule.

(6) Provide any request for a reduction in Contracted Funds, reasons for the request, desired Contracted Funds and revised Production Schedule reflecting the reduced Contracted Funds.

(e) At any time after sending a Notification of Deobligation, the Department or a third-party assigned by the Department may monitor, conduct onsite visits or other assessments or engage in any other oversight of the Subrecipient that is determined appropriate by the Department under the facts and circumstances.

(f) The Department or a third-party assigned by the Department will review the Mitigation Action Plan, and where applicable, assess the Subrecipient's ability to meet the revised Production Schedule or remedy other concern.

(g) After the Department's receipt of the Mitigation Action Plan, the Department will provide the Subrecipient a written Corrective Action Notice which may include one or more of the criteria identified in this section (relating to deobligation and other mitigating actions) or other acceptable solutions or remedies.

(h) The Subrecipient has seven (7) calendar days from the date of the Corrective Action Notice to appeal the Corrective Action Notice to the Executive Director. Appeals may include:

(1) Request to retain for the full Fund Award if Partial Deobligation was indicated;

(2) Request for only partial Deobligation of the full Contracted Fund if full Deobligation was indicated in the Corrective Action Notice;

(3) Request for other lawful action consistent with the timely and full completion of the contract and Production Schedule for all Contracted Funds.

(i) In the event that an appeal is submitted to the Executive Director, the Executive Director may grant extensions or forbearance of targets included in the Production Schedule, continued operation of a Contract, authorize Deobligation, or take other lawful action that is designed to ensure the timely and full completion of the Contract for all Contracted Funds.

(j) In the event the Executive Director denies an appeal, the Subrecipient will have the opportunity to have their appeal presented at the next meeting of the Department's governing board for which

the matter may be posted in accordance with law and submitted for final determination by the Board.

(k) In the event an appeal is not submitted within seven (7) calendar days from the date of the Corrective Action Notice, the Corrective Action Notice will automatically become final without need of any further action or notice by the Department, and the Department will amend/terminate the contract with the Subrecipient to effectuate the Corrective Action Notice.

(l) The criteria noted in this subsection will prompt the Deobligation process under this rule. If the criteria are met, then notification and ensuing processes discussed elsewhere in this subchapter will apply.

(1) Subrecipient fails to provide the Department with a Production Schedule for their current Contract within 30 days of receipt of the draft Contract. The Production Schedule must be signed by the Subrecipient Executive Director/Chief Executive Officer and approved by the Department;

(2) By the third program reporting deadline, for DOE units, Subrecipient must report at least one unit weatherized and inspected by a certified Quality Control Inspector ("QCI");

(3) By the fifth program reporting deadline, less than 25% of total expected unit production has occurred based on the Production Schedule, or less than 20% of total Awarded Funds have been expended;

(4) By the seventh program reporting deadline, less than 50% of total expected unit production has occurred based on the Production Schedule, or less than 50% of total Awarded Funds have been expended;

(5) The Subrecipient fails to submit a required monthly report explaining any variances between the Production Schedule and actual results on Production Schedule criteria;

(m) Notification of deobligation will not be required to be sent to a Subrecipient, and a Mitigation Action Plan will not be required to be provided to the Department, if any one or more of the following are satisfied:

(1) The total cumulative unit production for the Subrecipient, based on the monthly report as reported in the Community Affairs contract system, is at least 75% of the total cumulative number of units to be completed as of the end of the month according to the Subrecipient's forecast unit production within the Production Schedule for the time period applicable (i.e. cumulative through the month for which reporting has been made).

(2) The total cumulative expenditures for the Subrecipient, based on the monthly report as reported in the Community Affairs contract system, is at least 75% of the total cumulative estimated expenditures to be expended as of the end of the month according to the Subrecipient's forecast expenditures within the Production Schedule for the time period applicable (i.e., cumulative through the month for which reporting has been made).

(3) The Subrecipient's monthly reports as reported in the Community Affairs contract system, for the prior two months, as required under the Contract, reflects unit production that is 80% or more of the expected unit production amount to be completed as of the end of the month according to the Subrecipient's forecast unit production within the Production Schedule.

(n) Subrecipients which have funds deobligated under this section that fully expend the reduced amount of their Contract, will have access to the full amount of their following Program Year WAP allocation. Subrecipients which have had funds deobligated under this section that fail to fully expend the reduced amount of their Contract will automatically have their following Program Year WAP allocation deobligated by the lesser of 24.99% or the proportional amount that had been deobligated in the prior year.

#### §6.406. Subrecipient Requirements for Establishing Priority for Eligible Households and Customer Eligibility Criteria.

(a) Subrecipients shall establish eligibility and priority criteria to increase the energy efficiency of dwellings owned or occupied by Low Income persons who are particularly vulnerable such as the

Elderly, Persons with Disabilities, Families with Young Children, Households with High Energy Burden, and Households with High Energy Consumption.

(b) Subrecipients shall follow the Department rules and established state and federal guidelines for determining eligibility for Multifamily Dwelling Units as referenced in §6.414 of this chapter (relating to Eligibility for Multifamily Dwelling Units).

(c) Subrecipient shall determine applicant income eligibility in compliance with §6.4 of this chapter (relating to Income Determination).

(d) Social Security numbers are not required for applicants.

#### §6.407. Program Requirements.

(a) Each Dwelling Unit weatherized requires completion of a written whole house assessment. Subrecipients must perform the whole house assessment then let that assessment guide whether the Dwelling Unit is best served through DOE funds using the audit or through LIHEAP WAP funds using the priority list or a combination of DOE and LIHEAP funds.

(b) Any Dwelling Unit that is weatherized using DOE funds must use the audit as a guide for installed measures. Subgrantees combining DOE funds with LIHEAP WAP funds may not mix the use of the audit and the priority list.

(c) Any Dwelling Unit that is weatherized using LIHEAP only must be completed using the priority list as a guide for installed measures. Failure to complete a written whole house assessment as indicated in §6.416 of this Subchapter prior to Weatherization may lead to unit failure during quality control inspection.

(d) If a Subrecipient's Weatherization work does not consistently meet DOE Standard Work Specifications Weatherization standards, the Department may proceed with the removal of the programs from the Subrecipient.

(e) A Subrecipient may refer a contractor to the Department for debarment consistent with Chapter 1 of this Part.

#### §6.408. Department of Energy Weatherization Requirements.

(a) In addition to cost principles and administrative requirements listed in §1.402 in Chapter 1 of this Part (relating to Cost Principles and Administrative Requirements), Subrecipients administering DOE programs must also adhere to 10 CFR Part 440 10 CFR Part 600 and the International Residential Code.

(b) WAP Policy Advisory Council. In accordance with Tex. Gov't Code, §2110.005 and 10 CFR §440.17, the Department shall establish the Weatherization Assistance Program Policy Advisory Council (WAP PAC), with which it will consult prior to the submission of the annual plan and award of funds to DOE.

(c) Adjusted Average Expenditure Per Dwelling Unit. Expenditures of financial assistance provided under DOE-WAP funding for the Weatherization services for labor, weatherization materials, and program support shall not exceed the DOE adjusted average expenditure limit for the current program year per Dwelling Unit as provided by DOE, and as cited in the Contract, without special agreement via an approved waiver from the Department.

(d) Electric Base Load Measures. DOE has approved the inclusion of selected Electric Base Load (EBL) measures as part of the Weatherization of eligible residential units. EBL measures must be determined cost effective with a Savings to Investment Ratio ("SIR") of one or greater by audit analysis. Refrigerators must be metered for a minimum of two (2) hours.

(e) Subrecipients may not enter into vehicle lease agreements for vehicles used in the WAP and paid for with WAP funds.

(f) Energy Audit. Subrecipients are required to complete a State of Texas approved Energy Audit to determine allowable weatherization measures prior to commencing Weatherization work.

(g) Energy Audit Procedures.

(1) SIR for the Energy Audit procedures will determine the installation of allowable Weatherization measures. The Weatherization measures must result in energy cost savings over the lifetime of the measure(s), discounted to present value, that equal or exceed the cost of materials, and installation. An Energy Audit may consist of Incidental Repairs, Energy-Saving Measures (starting with Duct Sealing and Infiltration Reduction), and Health and Safety Measures. All Energy-Saving Measures must rank with an SIR of one or greater. The total Cumulative SIR, prior to Health and Safety measures, must be a one or greater in order to weatherize the dwelling unit.

(2) The Energy Audit has not been approved for multifamily buildings containing 25 or more units. Subrecipients that propose weatherizing a building containing 25 or more units must contact the Department for assistance prior to beginning any Weatherization activity.

(3) Energy Auditors must use the established R-values for existing measures provided in the International Energy Conservation Code ("IECC") when entering data into the Energy Audit. Subrecipients must follow minimum requirements set in the State of Texas adopted International Residential Code ("IRC") or jurisdictions authorized by state law to adopt later editions.

(4) Subrecipients utilizing the Energy Audit must enter into the audit all materials and labor measures proposed to be installed.

#### §6.409. LIHEAP Weatherization Requirements.

(a) Allowable Expenditure per Dwelling Unit. Expenditures of financial assistance provided under LIHEAP-WAP funding for the weatherization services for labor, Weatherization materials, and program support shall not exceed the allowable figure as set forth in the current Contract term, without prior written approval from the Department. The cumulative cost per unit (materials, labor and program support), shall not exceed the maximum allowable by the end of the contract term.

(b) Allowable Activities. Subrecipients are allowed to perform Weatherization measures as detailed in the priority list Exhibit to the Weatherization Contract. Measures must be performed in the order detailed in the Exhibit. Subrecipient shall include in the customer file detailed documentation to explain omitted measures.

(c) Outreach and Accessibility.

(1) Subrecipients shall conduct outreach activities, which may include but are not limited to:

(A) providing information through home visits, site visits, group meetings, or by telephone for disabled low-income persons;

(B) distributing posters/flyers and other informational materials at local and county social service agencies, offices of aging, social security offices, etc.;

(C) providing information on the program and eligibility criteria in articles in local newspapers or broadcast media announcements;

(D) coordinating with other low-income services to provide LIHEAP information in conjunction with other programs;

(E) providing information on one-to-one basis for applicants in need of translation or interpretation assistance;

(F) providing LIHEAP applications, forms, and energy education materials in English and Spanish (and other appropriate language);

(G) working with energy vendors in identifying potential applicants;

(H) assisting applicants to gather needed documentation; and

(I) mailing information and applications.

(2) Subrecipients and their field offices shall accept applications at sites that are geographically accessible to all Households requesting assistance.

(d) Priority Assessment. Subrecipients must conduct an assessment of Dwelling Units using the LIHEAP Priority List, including all required Health and Safety and energy efficiency measures.

(e) LIHEAP Subrecipient Eligibility.

(1) The Department administers the program through the existing Subrecipients that have demonstrated that they are operating the program in accordance with their Contract, the Economic

Opportunity Act of 1964, the Low-Income Home Energy Assistance Act of 1981, as amended (42 U.S.C. §§8621, et seq.), and the Department rules. If a Subrecipient is successfully administering the program, the Department may offer to renew the Contract.

(2) If the Department determines that a Subrecipient is not administering the program satisfactorily, the Subrecipient will be required to take corrective actions to remedy the problem within the timeframe referenced in the issued monitoring report, unless it is a case of customer health or safety. If Subrecipient fails to correct the Deficiency or Finding, in order to ensure continuity of services, the Department may reassign up to 24.99% of the funds for the service area to one or more other existing Subrecipient.

(3) If the Subrecipient does not complete the corrective action within the required timeframe, the Department may conduct a solicitation for selection of an interim Subrecipient. The affected Subrecipient may request a hearing in accordance with the Tex. Gov't Code, §2105.204.

(4) If it is necessary to designate a new Subrecipient to administer LIHEAP-WAP, the Department shall give special consideration to Eligible Entities and entities administering CEAP in the service area.

#### §6.410. Liability Insurance and Warranty Requirement.

Subrecipient Weatherization work shall be covered by general liability insurance for an amount not less than combined total of materials, labor, support and health and safety. The Department strongly recommends Pollution Occurrence Insurance to be part of or an addendum to Subrecipients' general liability insurance coverage. Subrecipients must ensure that each Subcontractor performing Weatherization activities maintain adequate insurance coverage for all units to be weatherized. Weatherization contractors must provide a one-year warranty on their work for parts and labor; the period for the warranty coverage shall begin at the completion of installation. If Subrecipient relinquishes its Weatherization program, Weatherization work completed within 12 months of the date of surrender of the program, must be covered by general liability insurance or contractor warranty. Public Organizations that have self insurance complying with Tex. Gov't Code Chapter 2259 covering weatherization work, may, but are not required to, purchase additional coverage.

#### §6.411. Customer Education.

Subrecipients shall provide customer education to each WAP customer on energy conservation practices. Subrecipients shall provide education to identify energy waste, manage Household energy use, and strategies to promote energy savings. Subrecipients are encouraged to use oral, written, and visual educational materials. These activities are allowable program support Expenditures.

#### §6.412. Mold-Like Substances.

(a) If the Subrecipient's energy auditor discovers the presence of mold-like substances that the Weatherization Subcontractor cannot adequately address, then the Dwelling Unit shall be referred to the Texas Department of State Health Services or its successor agency.

(b) The Subrecipient shall provide the applicant written notification that their home cannot, at this time, be weatherized and why. They should also be informed of which agency they should contact to report the presence of mold-like substances. The applicant should be advised that when the issue is resolved they may reapply for Weatherization. Should the applicant reapply for Weatherization, the Subrecipient must obtain written documentation of resolution of the issue from the applicant prior to proceeding with any Weatherization work.

(c) If the energy auditor determines that the mold-like substance is treatable and covers less than the 25 contiguous square feet limit allowed to be addressed by the Texas Department of State Health Services' guidelines, the Subrecipient shall notify the applicant of the existence of the mold-like substance and potential health hazards, the proposed action to eliminate the mold-like substance, and that no guarantee is offered that the mold-like substance will be eliminated and that the mold-

like substance may return. The auditor must obtain written approval from the applicant to proceed with the Weatherization work and maintain the documentation in the customer file.

(d) Subrecipients shall be responsible for providing mold training to their employees and Weatherization Subcontractors.

#### §6.413. Lead Safe Practices.

Subrecipients are required to document that its Weatherization staff as well as Subcontractors follow the Environmental Protection Agency's Renovation, Repair and Painting Program (RRP) Final Rule, 40 CFR Part 745 and HUD's Lead Based Housing Rule, 24 CFR Part 35, as applicable.

#### §6.414. Eligibility for Multifamily Dwelling Units.

(a) A Subrecipient may weatherize a building containing Rental Units if not less than 66% (50% for duplexes and four-unit buildings) of the Dwelling Units in the building are occupied by Low Income Households, or will become occupied by Low-income Households within 180 days under a Federal, State, or local government program for rehabilitating the building or making similar improvements to the building.

(b) In order to Weatherize large multifamily buildings containing twenty-five or more Dwelling Units or those with shared central heating (i.e., boilers) and/or shared cooling plants (i.e., cooling towers that use water as the coolant) regardless of the number of Dwelling Units, Subrecipients shall submit in writing a request for approval from the Department. When necessary, the Department will seek approval from DOE. Approvals from DOE must be received prior to the installation of any Weatherization measures in this type of structure.

(c) In order to weatherize Shelters, Subrecipients shall submit a written request for approval from the Department. Written approval from the Department must be received prior to the installation of any Weatherization measures.

(d) If roof repair is to be considered as part of repair cost under the Weatherization process, the expenses must be shared equally by all eligible Dwelling Units weatherized under the same roof. If multiple storied buildings are weatherized, eligible ground floor units must be allocated a portion of the roof cost as well as the eligible top floor units. All Weatherization measures installed in multifamily units must meet the standards set in 10 CFR §440.18(d)(9) and (15) and Appendix A- Standards for Weatherization Materials.

(e) WAP Subrecipients shall establish a multifamily master file for each multifamily project in addition to the individual unit requirements found in the record keeping requirement section of the contract. The multifamily master file must include, at a minimum, the forms listed in paragraphs (1) - (6) of this subsection: (Forms available on the Departments website.)

(1) Multifamily Pre-Project Checklist Form;

(2) Multifamily Post-Project Checklist Form;

(3) Permission to Perform an Assessment for Multifamily Project Form;

(4) Landlord Agreement Form;

(5) Landlord Financial Participation Form; and

(6) Significant Data Required in all Multifamily Projects.

(f) For DOE WAP, if a public housing, assisted multi-family or Low Income Housing Tax Credit (LIHTC) building is identified by the HUD and included on a list published by DOE, that building meets certain income eligibility and may meet other WAP requirements without the need for further evaluation or verification. A public housing, assisted housing, and LIHTC building that does not appear on the list using HUD records may still qualify for the WAP. Income eligibility can be made on an individual basis by the Subrecipient based on information supplied by property owners and the Households in accordance with subsection (a) of this section.

(g) For any Dwelling Unit that is weatherized using funding provided under DOE WAP, all Weatherization measures installed must be entered into an approved Energy Audit. Weatherization measures installed shall begin with repair items, then continue with those measures having the

greatest SIR and proceed in descending order to the measures with the smallest SIR or until the maximum allowable per unit expenditures are achieved, and finishing with Health and Safety measures.

#### §6.415. Health and Safety and Unit Deferral.

(a) Health and Safety expenditures with DOE WAP may not exceed 20% of total expenditures for Materials, Labor, Program Support, and Health and Safety at the end of the contract term. Health and Safety expenditures with LIHEAP WAP may not exceed 30% of total expenditures for Materials, Labor, Program Support, and Health and Safety at the end of the Contract term.

(b) Subrecipients shall provide Weatherization services with the primary goal of energy efficiency. The Department considers establishing a healthy and safe home environment to be important to ensuring that energy savings result from Weatherization work.

(c) Subrecipients must test for high carbon monoxide ("CO") levels and bring CO levels to acceptable levels before Weatherization work can start. The Department has defined maximum acceptable CO readings as follows:

- (1) if flame impingement exists in cook stove burners, must do clean and tune;
- (2) 200 parts per million for vented combustion appliance;
- (3) 200 parts per million for cook stove ovens;
- (4) Primary Unvented Space Heater must be removed;
- (5) if ambient CO level is 35 ppm, must shut off appliance, open a window and notify customer; and
- (6) if ambient CO level is 70 ppm, open a window, notify customer and request customer exit the unit, must cease work, turn off gas and notify gas provider.

(d) A Dwelling Unit shall not be weatherized when there is a potentially harmful situation that may adversely affect the occupants or the Subrecipient's Weatherization crew and staff, or when a Dwelling Unit is found to have structural concerns that render the Dwelling Unit unable to benefit from Weatherization. The Subrecipient must declare their intent to defer Weatherization on an eligible unit on the assessment form. The assessment form should include the customer's name and address, dates of the assessment, and the date on which the customer was informed of the issue in writing. The written notice to the customer must include a clear description of the problem, conditions under which Weatherization could continue, the responsibility of all parties involved, and any rights or options the customer has. A copy of the notice must be given to the customer, and a signed copy placed in the customer application file. Only after the issue has been corrected to the satisfaction of the Subrecipient shall Weatherization work begin.

(e) If structural concerns or health and safety issues identified (which would be exacerbated by any Weatherization work performed) on an individual unit cannot be abated within program rules or within the allowable WAP limits, the Dwelling Unit exceeds the scope of this program.

#### §6.416. Whole House Assessment.

(a) Subrecipients must conduct a whole house assessment on all eligible units. Whole house assessments must be used to determine whether the Priority List or an Energy Audit is most appropriate for the unit. Whole house assessments must include but are not limited to the items described in paragraphs (1) - (15) of this subsection:

- (1) Wall--Condition, type, orientation, and existing R-values;
- (2) Windows--Condition, type material, glazing type, leakiness, and solar screens;
- (3) Doors--Condition, type;
- (4) Attic--Type, condition, existing R-values, and ventilation;
- (5) Foundation--Condition, existing R-values, and floor height above ground level;
- (6) Heating System--For all systems: unit type, fuel source (primary or secondary), thermostat, and output; for combustion systems only: vented or unvented efficiency, CO-levels, complete fuel gas analysis, gas leaks, and combustion venting;

(7) Cooling System--Unit type, condition, area cooled, size in BTU rating, Seasonal Energy Efficiency Rating (SEER) or Energy Efficiency Rating ("EER"), manufacture date, and thermostat;

(8) Duct System--Condition, existing insulation level, evaluation of registers, duct infiltration, return air register size, and condition of plenum joints;

(9) Water Heater--For all water heaters: condition, fuel type, energy factor, recovery efficiency, input and output ratings, size, existing insulation levels, existing pipe insulation; for combustion water heaters only: carbon monoxide levels, draft test, complete fuel gas analysis;

(10) Refrigerator--Condition, manufacturer, manufacture date and make, model, and consumption reading (minutes and meter reading); customer refusal must be documented;

(11) Lighting System--Quantity, watts, and estimated hours used per day;

(12) Water Savers--Number of showerheads, estimated gallons per minute and estimated minutes used per day;

(13) Health and Safety--For all units: smoke detectors, wiring, minimum air exchange, moisture problems, lead paint present, asbestos siding present, condition of chimney, plumbing problems, mold; for units with combustion appliances: unvented space heaters, carbon monoxide levels on all combustion appliances, carbon monoxide detectors;

(14) Air Infiltration--To be determined from Blower Door testing; areas requiring air sealing will be noted;

(15) Repairs--Measures needed to preserve or protect installed Weatherization measures may include lumber, shingles, flashing, siding, masonry supplies, minor window repair, gutters, downspouts, paint, stains, sealants, and underpinning.

(b) If using the Energy Audit, all allowable Weatherization measures needed must be entered. Measures will be performed in order of highest SIR to lowest depending on funds available. If using the Priority List, included Weatherization measures must be addressed in the order they appear on the list, or an explanation for excluding a measure must be provided.

#### §6.417. Blower Door Standards.

Subrecipients are required to use the blower door/duct blower data form adopted by the Department and available on the Department's website (<http://www.tdhca.state.tx.us/community-affairs/wap/index.htm>).

3c

BOARD ACTION REQUEST  
COMMUNITY AFFAIRS DIVISION  
AUGUST 25, 2016

Presentation, Discussion, and Possible Action on an order proposing actions to 10 TAC Chapter 2, Enforcement, including the: 1) proposed amendment in Subchapter A, General, of §2.102, Definitions; 2) proposed repeal of Subchapter B, Enforcement Regarding Community Affairs Contract Subrecipients; and 3) proposed new Subchapter B, Enforcement for Noncompliance with Program Requirements of Chapter 6; and directing that they be published for public comment in the Texas Register

RECOMMENDED ACTION

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

WHEREAS, the Department is undertaking a broad reorganization of, and revision to, the rules that govern the programs administered by the Community Affairs Division of the Department, and this action item is one of several that jointly encompasses those broad changes;

WHEREAS, some rules being proposed for change as part of the CA Rules Project, relate more broadly to all Department activities, including some sections of Chapter 2, Enforcement;

WHEREAS, on June 27, 2016, a roundtable was held to discuss the proposed changes to these sections, and on July 29, 2016, a staff draft of the rules was released for public input, and input received from the roundtable and staff draft were considered in the drafting of the attached proposed rules; and

WHEREAS, upon authorization of this item, these proposed actions will be published in the Texas Register for public comment from September 9, 2016, through October 10, 2016, including a public hearing on the proposed rules to occur on September 29, 2016;

NOW, therefore, it is hereby

RESOLVED, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the proposed order taking actions to 10 TAC Chapter 2, Enforcement, including the: 1) proposed amendment in Subchapter A, General, of §2.102, Definitions; 2) proposed repeal of Subchapter B, Enforcement Regarding Community Affairs Contract Subrecipients; and 3) proposed new Subchapter B, Enforcement for Noncompliance with Program Requirements of Chapter 6, in the form presented to this meeting, to be published in the Texas Register for review and public comment, and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

## BACKGROUND

### Community Affairs Rules Project (“CA Rules Project”) and Public Input

Within Title 10 of Texas Administrative Code (“TAC”) a series of different Department rules govern the programs administered by the Community Affairs Division. Those programs include the Community Services Block Grant Program (“CSBG”), the Comprehensive Energy Assistance Program (“CEAP”), the Weatherization Assistance Program (“WAP”), the Emergency Solutions Grant Program (“ESG”), and the Homeless Housing and Services Program (“HHSP”). Over time, varying components of those rules have been amended, as needed, to address specific changes, but a wholesale review and revisit of the rules has not taken place in several years and is needed. Therefore, the Department is undertaking a broad reorganization of, and revision to, the rules that govern the Community Affairs programs.

The programmatic rules that currently govern the Community Affairs Programs are located in Chapter 5, Community Affairs Programs. However, to remove ambiguity about what program contracts are subject to which set of rules, the Department is proposing to leave Chapter 5 unchanged as it continues to apply to many existing contracts, and alternatively proposes two new chapters that will govern Community Affairs Program contracts in the future - a new Chapter 6 to govern Community Affairs Programs, and a new Chapter 7 to govern Homelessness Programs.

Other rules being proposed for change as part of the CA Rules Project, because they affect the Community Affairs Programs, include Chapter 1, Administration, and Chapter 2, Enforcement, which both relate more broadly to all Department activities. A full listing of all of the rule changes being included in the CA Rules Project is provided in Attachment A. As part of this CA Rules Project, staff is proposing a set of rule actions that jointly capture the reorganization and revisions. While proposed separately to facilitate discussion and organization, the actions are inter-related.

Staff has made sure that the organizations who administer these programs – including the non-Community Affairs programs - were made aware of the proposed changes and already has sought out initial public input. On June 27, 2016, a roundtable was held to discuss the proposed changes to these sections and input received from those round tables was considered, and a staff draft of the rules was released on July 29, 2016, for early initial input. That input has been considered in the preparation of these proposed rules. The proposed rules will, upon action by the Board, be published in the Texas Register for public comment from September 9, 2016, through October 10, 2016, including a webinar on September 19, 2016, during which the Department will answer questions about the proposed rules. A public hearing on the proposed rules is scheduled for September 29, 2016.

### Chapter 2 Proposed Rule Changes

As noted above, some parts of Chapter 2 affect the Community Affairs Programs, and are being proposed for changes. The full set of proposed rules being submitted to the Texas Register, including the preamble, are provided in Attachments B through D.

While not comprehensive of all changes proposed, below is a list of some of the more significant changes reflected in the proposed rule changes to Chapter 2:

- ❖ §2.102, Definitions, in Subchapter A, revises the introductory language to more clearly indicate that definitions refer back to other Chapters in the TAC, and revises the definition of Enforcement Committee.
- ❖ Subchapter B, currently entitled “Enforcement Regarding Community Affairs Contract Subrecipients” is being repealed, and the proposed new Subchapter is renamed to

“Enforcement for Noncompliance with Program Requirements of Chapters 6” to more clearly delineate which programs it will relate to.

- ❖ Subchapter B, as proposed new, revises §2.201; previously called “Modified Reimbursement,” this section will now be called “Cost Reimbursement,” and is revised to be more clear that cost reimbursement does not apply to non-discretionary CSBG, is not limited to 90 days, clarifies what will cause an entity to get placed on cost reimbursement and how an entity can be removed from cost reimbursement, as well as makes other associated changes.
- ❖ Subchapter B, as proposed new, revises §2.202, Sanctions and Contract Closeout, updating the list of sanctions and associated processes.
- ❖ Subchapter B, as proposed new, adds two new sections, §2.203, entitled “Termination and Reduction of Funding for CSBG Eligible Entities,” which was an issue previously covered in Chapter 5 of this Title, and describes the interplay of the IM-116 process with the Department’s procedures, and §2.204, entitled “Contents of a Quality Improvement Plan,” which describes the contents to be covered in such a plan.

Attachment A  
CA Rules Project – Rules List and Actions  
(in TAC order)

Chapter 1, Agency Administration

- Subchapter A, General Policies and Procedures
  - §1.3. Delinquent Audits and Related Issues – Repeal (Now Addressed in Ch 1, Subchapter D)
  - §1.21, Action by Dept. if Outstanding Balance - Repeal/New
- Subchapter C, Previous Participation
  - §1.302, PPR for CSBG, LIHEAP and WAP – Repeal/New (Now Covering All Non-MF from Previous §1.302 and §1.303)
  - §1.303, PPR for Homeless Programs (and Other non-CA, non-MF) - Repeal
- Subchapter D, Federal Uniform Guidance – All Proposed New
  - §1.401. Definitions
  - §1.402. Cost Principles and Administrative Requirements
  - §1.403. Single Audit Requirements
  - §1.404. Purchase and Procurement Standards
  - §1.405. Bonding Requirements
  - §1.406. Fidelity Bond Requirements
  - §1.407. Inventory Report
  - §1.408. Travel
  - §1.409. Records Retention

Chapter 2, Enforcement

- Subchapter A, Enforcement General
  - §2.102, Definitions - Amend
- Subchapter B, Enforcement Regarding Community Affairs Contract Subrecipients
  - §2.201, Modified Reimbursement - Repeal/New
  - §2.202, Sanctions and Contract Closeout - Repeal/New
  - §2.203, Termination and Reduction of Funding for CSBG Eligible Entities – New
  - §2.204, Contents of a Quality Improvement Plan

Chapter 6, CA Programs – All Proposed New

- Subchapter A, General Provisions, including Compliance Monitoring
- Subchapter B, Community Services Block Grant (CSBG)
- Subchapter C, Comprehensive Energy Assistance Program
- Subchapter D, Weatherization Assistance Program

Chapter 7, Homelessness Programs – All Proposed New

- Subchapter A, General Provisions, including Compliance Monitoring
- Subchapter B, Homeless Housing and Services Program (HHSP)
- Subchapter C, Emergency Solutions Grant (ESG)

Attachment B – Proposed amendment to Subchapter A, General, of §2.102, Definitions

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 2, Subchapter A, General, §2.102, Definitions. The purpose of the proposed amendments is to revise the introductory language to more clearly indicate that definitions refer back to other Chapters in this Title, and to revise the definition of Enforcement Committee.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the amendments will be in effect, enforcing or administering the amendments does not have any foreseeable implications related to costs or revenues for the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendments will be in effect, the public benefit anticipated as a result of the amendments will be to provide clearer guidance to Subrecipients through more organized and direct rules. There are no anticipated additional new economic costs to individuals required to comply with the amendments as a result of this action.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 9, 2016, to October 10, 2016, to receive input on the proposed amendment. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attention: Brooke Boston, CA Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by email to the following address: [brooke.boston@tdhca.state.tx.us](mailto:brooke.boston@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin Local Time on OCTOBER 10, 2016. A copy of the proposed amendment will be available on the Department's website at <http://www.tdhca.state.tx.us/public-comment.htm> under Items Open for Public Comment during the public comment period.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed amendments affect no other code, article, or statute.

§2.102, Definitions

The words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Capitalized words used herein have the meaning assigned in the specific Chapters of this Title that govern the program associated with the request, or assigned by federal or state law.

(1) Consultant--One who provides services or advice for a fee and not as an employee.

(2) Enforcement Committee ("Committee")--A committee of employees of the Department appointed by the Executive Director. The voting members of that Committee shall be no fewer than five (5) and no more than nine (9). The Executive Director may designate certain members as ex officio and non-voting. The Legal Division will designate person(s) to attend meetings and advise the Committee, but not be members of the Committee. Staff from the Compliance Division will attend at the Committee's request but will not be members of the Committee or be present during any actual deliberations in which the affected person(s) are not also present. A Legal Division designee will also serve as Secretary to the Committee. The Executive Director may designate a substitute for voting committee members who shall be permitted to attend and vote in their absence.

~~(2) Enforcement Committee (Committee) A committee of employees of the Department appointed by the Executive Director. The members of that Committee shall be no fewer than five (5) and no~~

~~more than nine (9). The Executive Director may designate certain members as ex officio and non-voting. Legal Services and Compliance will each designate persons to attend meetings and advise the Committee, but not be members of the Committee. A Legal Services designee will also serve as Secretary to the Committee. Voting Committee members may designate a substitute who shall be permitted to attend and vote in their absence.~~

(3) Legal Requirements--All requirements of state, federal, or local statute, rule, regulation, ordinance, order, court order, official interpretation, policy issuance, OMB Circulars, representations to secure awards, or any similar memorialization of requirement including a requirement of a purely contractual nature, no matter how designated, applicable to a matter.

(4) Program Agreements include:

(A) agreements between the Department and a person setting forth Legal Requirements; and

(B) agreements between a person subject to a Program Agreement and a third party to carry out one or more of those Legal Requirements as the agent, consultant, partner, contractor, subcontractor, or otherwise for a person described in paragraph (1) of this section.

(5) Responsible Party--Any Person subject to a Program Agreement.

(6) Vendor--A person who is procured by a subrecipient to provide goods or services in any way relating to a Department program or activity.

Attachment C – Proposed Repeal of Subchapter B, Enforcement Regarding Community Affairs  
Contract Subrecipients

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 2, Enforcement, Subchapter B, Enforcement Regarding Community Affairs Contract Subrecipients. The purpose of the proposed repeal is to remove this subchapter and, under separate action, rename this subchapter, revise the sections previously covered by this subchapter relating to cost reimbursement, sanctions and contract closeout, and add a new section to address Termination and Reduction of Funding for CSBG Eligible Entities.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal will be in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues for the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal will be in effect, the public benefit anticipated as a result of the repeal will be to provide clearer guidance to Subrecipients through more organized and direct rules. There are no anticipated additional new economic costs to individuals required to comply with the repeal as a result of this action.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 9, 2016, to October 10, 2016, to receive input on the proposed repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attention: Brooke Boston, CA Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by email to the following address: [brooke.boston@tdhca.state.tx.us](mailto:brooke.boston@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin Local Time on OCTOBER 10, 2016. A copy of the proposed repeal will be available on the Department's website at <http://www.tdhca.state.tx.us/public-comment.htm> under Items Open for Public Comment during the public comment period.

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed repeal affects no other code, article, or statute.

Subchapter B, Enforcement Regarding Community Affairs Contract Subrecipients  
§2.201 Modified Reimbursement  
§2.202 Sanctions and Contract Closeout

Attachment D – Proposed new Subchapter B, Enforcement for Noncompliance with  
Program Requirements of Chapters 6

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 2, Enforcement, Subchapter B, Enforcement for Noncompliance with Program Requirements of Chapters 6. The purpose of the proposed new section is to effectuate a redrafting of this rule that recrafts the sections previously covered by this subchapter relating to cost reimbursement, sanctions and contract closeout, and adds a new section to address Termination and Reduction of Funding for CSBG Eligible Entities.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the proposed new subchapter will be in effect, enforcing or administering the proposed new section does not have any foreseeable additional costs or revenues for the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new subchapter is in effect, the public benefit anticipated as a result of the new section will be to provide clearer guidance to Subrecipients through more direct rules. There are no anticipated additional new economic costs to individuals required to comply with the new section as a result of this action.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 9, 2016, to October 10, 2016, to receive input on the proposed subchapter. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attention: Brooke Boston, CA Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by email to the following address: [brooke.boston@tdhca.state.tx.us](mailto:brooke.boston@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin Local Time on OCTOBER 10, 2016. A copy of the proposed new chapter will be available on the Department's website at <http://www.tdhca.state.tx.us/public-comment.htm> under Items Open for Public Comment during the public comment period.

STATUTORY AUTHORITY. The new section is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed new section affects no other code, article, or statute.

Subchapter B, Enforcement for Noncompliance with Program Requirements of Chapters 6 and 7	
§2.201	Cost Reimbursement
§2.202	Sanctions and Contract Closeout
§2.203	Termination and Reduction of Funding for CSBG Eligible Entities
§2.204.	Contents of a Quality Improvement Plan.

<rule>

§2.201 Cost Reimbursement

(a) The Department may place on Cost Reimbursement any contract, other than non-Discretionary CSBG. Cost reimbursement requires Subrecipients to submit supporting documentation and back up for Expenditures or Obligations prior to the Department releasing funds. The Department staff shall establish appropriate review protocols for each party placed on cost reimbursement status, indicating whether all expenses will be reviewed or a sample, and the nature of any additional documentation that will be required in connection therewith. Approving the release of funds in a

cost review situation does not constitute final approval of the expenditure. Funds so advanced remain subject to future reviews, monitorings, and audits and in no way serve to constrain or limit them. By way of example and not by way of limitation, a cost reimbursement might appear facially compliant and appropriate but if it related to a matter that required procurement and a future review, monitoring, or audit identified noncompliance with the procurement, the funds could be subject to disallowance and requiring repayment from unrestricted non-federal funds.

(b) In addition to the reporting requirements outlined in Chapter 6, §6.7 of this Part (relating to Subrecipient Reporting Requirements) an entity on Cost Reimbursement must submit, at a minimum, their expanded general ledger, chart of accounts, cost allocation plan, and bank reconciliations for the previous three months. Upon review of those items the Department will request submission of back up for some or all of the reported Expenditures.

(c) The budget caps for each budget category will be enforced each month the entity is on Cost Reimbursement.

(d) An entity will be removed from Cost Reimbursement when the Department determines that identified risks or concerns have been sufficiently mitigated.

(e) An entity on Cost Reimbursement remains subject to monitoring.

(f) The Department reserves the right to outsource some or all of its work associated with the Cost Reimbursement process to a third party.

#### §2.202 Sanctions and Contract Closeout

(a) Subrecipients that enter into a Contract with the Department to administer programs are required to follow all Legal Requirements governing these programs.

(b) If a Subrecipient fails to comply with program and Contract requirements, rules, or regulations and in the event monitoring or other reliable sources reveal material Deficiencies or Findings in performance, or if the Subrecipient fails to correct any Deficiency or Finding within the time allowed by federal or state law, the Department, in order to protect state or federal funds, may take reasonable and appropriate actions, including but not limited to one or more of the items described in paragraphs (1) - (6) of this subsection. In so doing, the Department will not take any action that exceeds what it is permitted to do under applicable state and federal law. The Department, as appropriate, may provide written notice of its actions and the rights of a Subrecipient to appeal.

(1) Place it on Cost Reimbursement.

(2) With the exception of non-Discretionary CSBG, withhold all payments from the Subrecipient (both reimbursements and advances) until acceptable confirmation of compliance with the rules and regulations are received by the Department;

(3) Reduce the allocation of funds to Subrecipients as described in §2.203 of this subchapter (relating to Termination and Reduction of Funding for CSBG Eligible Entities) and as limited for LIHEAP funds as outlined in Tex. Gov't Code, Chapter 2105;

(4) With the exception of non-Discretionary CSBG, suspend performance of the Contract or reduce funds until proof of compliance with the rules and regulations are received by the Department or a decision is made by the Department to initiate proceedings for Contract termination;

(5) If permitted by applicable state and federal statute and regulations, elect not to provide future grant funds to the Subrecipient, either prospectively in general or until appropriate actions are taken to ensure compliance; or

(6) Terminate the Contract. Adhering to the requirements governing each specific program administered by the Department, as needed, the Department may determine to proceed with the termination of a Contract, in whole or in part, at any time the Department establishes there is good cause for termination. Such cause may include, but is not limited to, fraud, waste, abuse, fiscal mismanagement, or other serious Findings in the Subrecipient's performance. For CSBG contract termination procedures, refer to §2.203 of this subchapter.

(c) Contract Closeout. When a Contract is terminated, or voluntarily relinquished, the procedures described in paragraphs (1) - (12) of this subsection will be implemented. The terminology of a "terminated" Subrecipient below is intended to include a Subrecipient that is voluntarily terminating the Contract.

(1) The Department will issue a termination letter to the Subrecipient no less than 30 days prior to terminating the Contract. If the entity is an Eligible Entity the Department, following the CSBG Act, will simultaneously initiate proceedings to terminate the Eligible Entity status and the effectiveness of the contractual termination will be stayed automatically pending the outcome of those proceedings. The Department may determine to take one of the following actions: suspend funds immediately or allow a temporary transfer to another provider; require Cost Reimbursement for closeout proceedings, or provide instructions to the Subrecipient to prepare a proposed budget and written plan of action that supports the closeout of the Contract. The plan must identify the name and current job titles of staff that will perform the closeout and an estimated dollar amount to be incurred. The plan must identify the CPA or firm which will perform the Single Audit. The Department will issue an official termination date to allow all parties to calculate deadlines which are based on such date.

(2) If the Department determines that Cost Reimbursement is appropriate to accomplish closeout, the Subrecipient will submit backup documentation for all current Expenditures associated with the closeout. The required documentation will include, but not be limited to, the chart of accounts, detailed general ledger, revenue and expenditure statements, time sheets, payment vouchers and/or receipts, and bank reconciliations.

(3) No later than 30 calendar days after the Contract is terminated, the Subrecipient will take a physical inventory of client files, including case management files.

(4) The terminated Subrecipient will have 30 calendar days from the date of the physical inventory to make available all current client files, which must be boxed by county of origin. Current and active case management files also must be inventoried, and boxed by county of origin.

(5) Within 60 calendar days following the Subrecipient due date for preparing and boxing client files, Department staff will retrieve the client files.

(6) The terminated Subrecipient will prepare and submit no later than 30 calendar days from the date the Department retrieves the client files, a final report containing a full accounting of all funds expended under the contract.

(7) A final monthly expenditure report and a final monthly performance report for all remaining expenditures incurred during the closeout period must be received by the Department no later than 45 calendar days from the date the Department determines that the closeout of the program and the period of transition are complete.

(8) The Subrecipient will submit to the Department no later than 45 calendar days after the termination of the Contract, an inventory of the non-expendable personal property acquired in whole or in part with funds received under the Contract.

(9) The Department may require transfer of title to Equipment to the Department or to any other entity receiving funds under the program in question. The Department will make arrangements to remove Equipment covered by this paragraph within 90 calendar days following termination of the Contract.

(10) Upon selection of a new service provider, the Department will transfer to the new provider client files and, as appropriate, Equipment.

(11) A current year Single Audit must be performed for all entities that have exceeded the federal expenditure threshold under 2 CFR Part 200, Subpart F or the State expenditure threshold under UGMS, as applicable. The Department will allow a proportionate share of program funds to pay for accrued audit costs, when an audit is required, for a Single Audit that covers the date up to the closeout of the contract. The terminated subrecipient must have a binding contract with a CPA firm on or before the termination date of the contract. The actual costs of the Single Audit and accrued

audit costs including support documentation must be submitted to the Department no later than 45 calendar days from the date the Department determines the closeout is complete.

(12) Subrecipients shall submit within 45 calendar days after the date of the closeout process all financial, performance, and other applicable reports to the Department. The Department may approve extensions when requested by the Subrecipient. However, unless the Department authorizes an extension, the Subrecipient must abide by the 45 calendar day requirement of submitting all referenced reports and documentation to the Department.

#### §2.203. Termination and Reduction of Funding for CSBG Eligible Entities.

This section describes the Department's process for implementing HHS Information Memorandum 116 (Corrective Action, Termination, or Reduction of Funding) ("IM 116") and 42 U.S.C. 9915.

(a) Deficiencies may be identified through failure to resolve issues identified in an onsite monitoring review, a review of the Subrecipient's Single Audit, a review prompted by a complaint, through the Department's procedures for reviewing performance and expenditure reports, or in any other review under 42 U.S.C. §9914(a)(1)-(4).

(b) If a Deficiency is identified, the Department will review the training and technical assistance that has been provided to the Eligible Entity and determine if further training and technical assistance is warranted. If so, concurrent with the notification of the Deficiency, the Eligible Entity will be offered additional training and technical assistance that specifically focuses on the Deficiencies. After training and technical assistance has been delivered, the Eligible Entity will be provided the opportunity to submit corrective action or a plan for correction.

(c) If an entity does not respond, does not resolve the Deficiency, or does not propose a reasonable corrective action plan, the uncorrected Deficiency (or Deficiencies) will be considered a final decision in a review pursuant to the CSBG Act and cause for proceedings to terminate Eligible Entity status or reduce funding in accordance with IM 116 and 42 U.S.C. §§9908(b)(8) and 9915; such a determination will be issued in a final determination letter from the Department.

(d) If the Department determines that the development and implementation of a QIP is an appropriate requirement and/or that additional training and technical assistance are needed, that requirement will be stated in the final determination letter. The Eligible Entity will be provided 20 days to submit an acceptable QIP compliant with §2.204 of this Subchapter, indicating that steps are under way and identifying dates for correction. Within 30 calendar days from the date it receives the proposed QIP, the Department will review the QIP and either approve it or specify the reasons it cannot be approved.

(e) The CSBG Act requires that a QIP be implemented not later than 60 calendar days following the notification in the final determination letter. That requirement precludes a process of extended review and feedback and iterative QIP submissions (unless the QIP has been submitted sufficiently early to allow time for such Department review); a QIP that cannot be approved within the timeframe for implementation not later than the 60 calendar day deadline will generally serve to trigger the commencement of formal legal proceedings to terminate Eligible Entity status.

(f) If it is determined and/or documented that training and technical assistance is not appropriate, that the QIP has not been approved, or the processes described in subsection (d) have failed to resolve the Deficiency, the Department will contact all members of the Subrecipient's Board, and the Department will arrange and set a date for a hearing with the State Office of Administrative Hearings ("SOAH"). If the Eligible Entity does not respond or appear for the SOAH hearing, the consideration of termination of the Eligible Entity's status will be heard at the next regularly scheduled meeting of the Department's Governing Board. An entity receiving notice of the initiation of a contested case before SOAH is reminded that they will need to read and comply with SOAH's requirements in the way they handle and respond to the matter.

(g) SOAH will issue a proposal for decision to the TDHCA Board recommending whether there is cause, as defined by the CSBG Act, 42 U.S.C. §9908(c), to terminate or reduce funding to the

Subrecipient. The TDHCA Board will be provided the proposal for decision and it will be considered as part of any final order by the Board in the matter.

(h) If the TDHCA Board determines that there is cause to terminate or reduce funding, pursuant to 42 U.S.C. §9915, the Department will notify the Subrecipient that it has the right under 42 U.S.C. §9915 to seek review of the decision by the HHS. If HHS does not overturn the decision, or if the Subrecipient does not seek HHS review, the entity's status as an Eligible Entity under the CSBG Act, and all active CSBG Contracts will be terminated on the 90th day after the Board decision.

(i) Any right or remedy given to the Department by this Chapter does not preclude the existence of any other right or remedy, nor shall any action or lack of action by the Department in the exercise of any right or remedy be deemed a waiver of any other right or remedy.

#### §2.204. Contents of a Quality Improvement Plan.

(a) If a QIP is required of a Subrecipient under §2.203(d) of this Subchapter, it must be developed compliant with the guidance in this section. While each QIP developed by a Subrecipient is unique and must be responsive to the specific Deficiencies identified, all of the items below, at a minimum, must be addressed.

(1) A QIP must initially provide a clear and explicit acknowledgement of each of the Deficiencies that have prompted the need for such a plan, and must be described in sufficient detail to affirm that the Subrecipient's board and management have a solid grasp of the needed improvement.

(2) Although commencement of the implementation of a QIP is specified in statute (42 USC §9915(a)(4)) the timeline for completion is important. The QIP must set forth an aggressive but achievable timeline that plans for implementation of the planned remedies to be actively underway not later than the sixtieth day after the day on which the Department notified the Subrecipient of a final determination consistent with §2.203(c) above. The timeline should take into account the possible impact on achievement of benchmarks, plans, and other objectives. As a general rule the Subrecipient should not expect to receive an extension of any timeframes described herein.

(3) The QIP must be specific. A general statement, such as "the Subrecipient will ensure it has a compliant tripartite board" or "the Subrecipient will obtain a compliant Single Audit" will not suffice. Many such matters involve multiple steps from analysis and planning at the management level, to board presentation and approval, to procurement, to contracting, to execution under the Contract, often with follow-on requirements. If any of the steps will also require expenditure of funds, it may also be necessary to review and update the budget and possibly other matters, such as plans. Specificity must include at a minimum addressing the following questions:

(A) Whom within the Subrecipient's staff will do what specific steps/tasks, when will they do it, and what resources will they need?

(B) If staff is to be redirected or released from existing duties, how will those duties be covered?

(C) How will the agency ensure the Deficiency does not reoccur?

3d

BOARD ACTION REQUEST  
COMMUNITY AFFAIRS DIVISION  
AUGUST 25, 2016

Presentation, Discussion, and Possible Action on an order proposing actions to 10 TAC Chapter 1, Administration, including the: 1) proposed repeal of §1.3, Delinquent Audits and Related Issues; 2) proposed repeal of §1.21, Action by Department if Outstanding Balance Exists; 3) proposed new §1.21, Action by Department if Outstanding Balance Exists; 4) proposed repeal of §1.302, Previous Participation Reviews for CSBG, LIHEAP, and WAP; 5) proposed repeal of §1.303, Previous Participation Reviews for Department Program Awards Not Covered by §1.301 or §1.302 of this Subchapter; 6) proposed new §1.302, Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter; and 7) proposed new Subchapter D, Uniform Guidance for Recipients of Federal and State Funds; and directing that they be published for public comment in the Texas Register

RECOMMENDED ACTION

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

WHEREAS, the Department is undertaking a broad reorganization of, and revision to, the rules that govern the programs administered by the Community Affairs Division of the Department, and this action item is one of several that jointly encompasses those broad changes;

WHEREAS, some rules being proposed for change as part of the CA Rules Project, relate more broadly to all Department activities, including some sections of Chapter 1, Administration;

WHEREAS, on June 27, 2016, a roundtable was held to discuss the proposed changes to these sections, and on July 29, 2016, a staff draft of the rules was released for public input, and input received from the roundtable and staff draft were considered in the drafting of the attached proposed rules; and

WHEREAS, upon authorization of this item, these proposed actions will be published in the Texas Register for public comment from September 9, 2016, through October 10, 2016, including a public hearing on the proposed rules to occur on September 29, 2016;

NOW, therefore, it is hereby

RESOLVED, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the proposed order taking actions to 10 TAC Chapter 1, Administration, including the: 1) proposed repeal of §1.3, Delinquent Audits and Related Issues; 2) proposed repeal of §1.21, Action by Department if Outstanding Balance Exists; 3) proposed new §1.21, Action by Department if Outstanding

Balance Exists; 4) proposed repeal of §1.302, Previous Participation Reviews for CSBG, LIHEAP, and WAP; 5) proposed repeal of §1.303, Previous Participation Reviews for Department Program Awards Not Covered by §1.301 or §1.302 of This Subchapter; 6) proposed new §1.302, Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter; and 7) proposed new Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, in the form presented to this meeting, to be published in the Texas Register for review and public comment, and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

## BACKGROUND

### Community Affairs Rules Project ("CA Rules Project") and Public Input

Within Title 10 of Texas Administrative Code ("TAC") a series of different Department rules govern the programs administered by the Community Affairs Division. Those programs include the Community Services Block Grant Program ("CSBG"), the Comprehensive Energy Assistance Program ("CEAP"), the Weatherization Assistance Program ("WAP"), the Emergency Solutions Grant Program ("ESG"), and the Homeless Housing and Services Program ("HHSP"). Over time, varying components of those rules have been amended, as needed, to address specific changes, but a wholesale review and revisit of the rules has not taken place in several years and is needed. Therefore, the Department is undertaking a broad reorganization of, and revision to, the rules that govern the Community Affairs programs.

The programmatic rules that currently govern the Community Affairs Programs are located in Chapter 5, Community Affairs Programs. However, to remove ambiguity about what program contracts are subject to which set of rules, the Department is proposing to leave Chapter 5 unchanged as it continues to apply to many existing contracts, and alternatively proposes two new chapters that will govern Community Affairs Program contracts in the future - a new Chapter 6 to govern Community Affairs Programs, and a new Chapter 7 to govern Homelessness Programs.

Other rules being proposed for change as part of the CA Rules Project, because they affect the Community Affairs Programs, include Chapter 1, Administration, and Chapter 2, Enforcement, which both relate more broadly to all Department activities. A full listing of all of the rule changes being included in the CA Rules Project is provided in Attachment A. As part of this CA Rules Project, staff is proposing a set of rule actions that jointly capture the reorganization and revisions. While proposed separately to facilitate discussion and organization, the actions are inter-related.

Staff has made sure that the organizations who administer these programs – including the non-Community Affairs programs - were made aware of the proposed changes and already has sought out initial public input. On June 27, 2016, a roundtable was held to discuss the proposed changes to these sections and input received from those roundtables was considered, and a staff draft of the rules was released on July 29, 2016, for early initial input. That input has been considered in the preparation of these proposed rules. The proposed rules will, upon action by the Board, be published in the Texas Register for public comment from September 9, 2016, through October 10, 2016, including a webinar on September 19, 2016, during which the Department will answer questions about the proposed rules. A public hearing on the proposed rules is scheduled for September 29, 2016.

### Chapter 1 Proposed Rule Changes

As noted above, some parts of Chapter 1 affect the Community Affairs Programs and other programs that receive federal or state funds, and are being proposed for changes. The rule changes being made include removing requirements that are already stated in federal or state legislation,

streamlining uniform requirements, organizationally placing sections in more logical order or within more appropriate chapters/subchapters, incorporating new or more fully addressing existing federal program requirements, and making policy updates and process changes. The full set of proposed rules being submitted to the Texas Register, including the preamble, are provided in Attachments B through H.

While not comprehensive of all changes proposed, below is a list of some of the more significant changes reflected in the proposed rule changes to Chapter 1:

- ❖ §1.3, Delinquent Audits and Related Issues, is proposed to be repealed as the issues addressed in this section are now integrated into Chapter 1, new subchapter D, discussed below.
- ❖ §1.21, Action by Department if Outstanding Balances Exist, is proposed for repeal and new adoption to more clearly reflect that the rule is not only applicable to multifamily activities, that disallowed costs are considered to be outstanding balances, to indicate the opportunity for a repayment plan, and to make other associated changes.
- ❖ §§1.302 and 1.303 regarding Previous Participation Reviews. There are currently four sections of TAC that relate to Previous Participation Review (“PPR”) – §1.301 for Multifamily; §1.302 for CSBG, LIHEAP and WAP; §1.303 for Non-Multifamily that are also not CSBG, LIHEAP or WAP; and §1.304 relating to Appeals for PPR. We are proposing repealing §1.302 and §1.303 and proposing one clean new §1.302 addressing all Non-Multifamily PPR issues in its place as shown below.
- ❖ In the new §1.302, the rule specifies in what limited cases PPR review needs to occur for CSBG, clarifies the documentation requirement relating to litigation, ties this section by reference to the outstanding balances and single audit sections of TAC, removes a five-day comment period, and indicates that PPR is not required for extensions or for contract increases of less than 15%.
- ❖ New Subchapter D, regarding Uniform Guidance for Recipients of Federal and State Funds, more clearly outlines the federal and state guidance applicable to Department subrecipients and administrators and includes such types of issues as Cost Principles, Travel, Single Audit Requirements, Purchase and Procurement, Inventory Reports, Bonding, Records Retention, etc.

Attachment A  
CA Rules Project – Rules List and Actions  
(in TAC order)

Chapter 1, Agency Administration

- Subchapter A, General Policies and Procedures
  - §1.3. Delinquent Audits and Related Issues – Repeal (Now Addressed in Ch 1, Subchapter D)
  - §1.21, Action by Dept. if Outstanding Balance - Repeal/New
- Subchapter C, Previous Participation
  - §1.302, PPR for CSBG, LIHEAP and WAP – Repeal/New (Now Covering All Non-MF from Previous §1.302 and §1.303)
  - §1.303, PPR for Homeless Programs (and Other non-CA, non-MF) - Repeal
- Subchapter D, Federal Uniform Guidance – All Proposed New
  - §1.401. Definitions
  - §1.402. Cost Principles and Administrative Requirements
  - §1.403. Single Audit Requirements
  - §1.404. Purchase and Procurement Standards
  - §1.405. Bonding Requirements
  - §1.406. Fidelity Bond Requirements
  - §1.407. Inventory Report
  - §1.408. Travel
  - §1.409. Records Retention

Chapter 2, Enforcement

- Subchapter A, Enforcement General
  - §2.102, Definitions - Amend
- Subchapter B, Enforcement Regarding Community Affairs Contract Subrecipients
  - §2.201, Modified Cost Reimbursement - Repeal/New
  - §2.202, Sanctions and Contract Closeout - Repeal/New
  - §2.203, Termination and Reduction of Funding for CSBG Eligible Entities - New
  - §2.204, Contents of a Quality Improvement Plan

Chapter 6, CA Programs – All Proposed New

- Subchapter A, General Provisions, including Compliance Monitoring
- Subchapter B, Community Services Block Grant (CSBG)
- Subchapter C, Comprehensive Energy Assistance Program
- Subchapter D, Weatherization Assistance Program

Chapter 7, Homelessness Programs – All Proposed New

- Subchapter A, General Provisions, including Compliance Monitoring
- Subchapter B, Homeless Housing and Services Program (HHSP)
- Subchapter C, Emergency Solutions Grant (ESG)

### Attachment B – Proposed repeal of §1.3. Delinquent Audits and Related Issues

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 1, Administration, §1.3. Delinquent Audits and Related Issues. The purpose of the proposed repeal is effectuate a reorganization of the rules in which the topic covered under this section will now be addressed in a new and separately proposed section of Chapter 1; this repeal will therefore remove redundancy and avoid confusion.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal will be in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues for the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal will be in effect, the public benefit anticipated as a result of the repeal will be to provide clearer guidance to Subrecipients through more organized and direct rules. There are no anticipated additional new economic costs to individuals required to comply with the repeal as a result of this action.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 9, 2016, to October 10, 2016, to receive input on the proposed repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attention: Brooke Boston, CA Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by email to the following address: [brooke.boston@tdhca.state.tx.us](mailto:brooke.boston@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin Local Time on OCTOBER 10, 2016. A copy of the proposed repeal will be available on the Department's website at <http://www.tdhca.state.tx.us/public-comment.htm> under Items Open for Public Comment during the public comment period.

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed repeal affects no other code, article, or statute.

§1.3. Delinquent Audits and Related Issues

Attachment C – Proposed Repeal of §1.21, Action by Department if Outstanding Balance Exists

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 1, Administration, §1.21, Action by Department if Outstanding Balance Exists. The purpose of the proposed repeal is to remove this section and, under separate action, propose this section as new to effectuate a redrafting of this rule that will more clearly reflect that the rule is not only applicable to multifamily activities, that disallowed costs are considered to be outstanding balances, to indicate the opportunity for a repayment plan, and other associated changes.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal will be in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues for the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal will be in effect, the public benefit anticipated as a result of the repeal will be to provide clearer guidance to Subrecipients through more organized and direct rules. There are no anticipated additional new economic costs to individuals required to comply with the repeal as a result of this action.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 9, 2016, to October 10, 2016, to receive input on the proposed repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attention: Brooke Boston, CA Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by email to the following address: [brooke.boston@tdhca.state.tx.us](mailto:brooke.boston@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin Local Time on OCTOBER 10, 2016. A copy of the proposed repeal will be available on the Department's website at <http://www.tdhca.state.tx.us/public-comment.htm> under Items Open for Public Comment during the public comment period.

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed repeal affects no other code, article, or statute.

§1.21, Action by Department if Outstanding Balance Exists

Attachment D – Proposed new §1.21, Action by Department if Outstanding Balance Exists

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 1, Administration, §1.21, Action by Department if Outstanding Balance Exists. The purpose of the proposed new section is to effectuate a redrafting of this rule that will more clearly reflect that the rule is not only applicable to multifamily activities, that disallowed costs are considered to be outstanding balances, to indicate the opportunity for a repayment plan, and to make other associated changes.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the proposed new section will be in effect, enforcing or administering the proposed new section does not have any foreseeable additional costs or revenues for the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new proposed section is in effect, the public benefit anticipated as a result of the new section will be to provide clearer guidance to Subrecipients through more direct rules. There are no anticipated additional new economic costs to individuals required to comply with the new section as a result of this action.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 9, 2016, to October 10, 2016, to receive input on the proposed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attention: Brooke Boston, CA Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by email to the following address: [brooke.boston@tdhca.state.tx.us](mailto:brooke.boston@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin Local Time on OCTOBER 10, 2016. A copy of the proposed new chapter will be available on the Department's website at <http://www.tdhca.state.tx.us/public-comment.htm> under Items Open for Public Comment during the public comment period.

STATUTORY AUTHORITY. The new section is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed new section affects no other code, article, or statute.

<rule>

§1.21 Action by Department if Outstanding Balances Exist

(a) Purpose. The purpose of this section is to inform Persons or entities requesting Form(s) 8609, application amendments, LURA amendments, new Contracts (with the exception of a Household Commitment Contract), Contract amendments, Contract extensions, Contract renewals or loan modifications that, with the exceptions noted by this rule, if fees or loan payments (principal or interest) are past due, or Disallowed Costs have not been repaid, to the Department, the request may be denied, delayed, or the Subrecipient/ Administrator /Developer's Contract(s) terminated.

(b) Definitions. Capitalized words used herein have the meaning assigned in the specific Chapters and Rules of this Part that govern the program associated with the request, or assigned by federal or state law.

(1) Disallowed Costs: Expenses claimed by a Subrecipient/ Administrator /Developer, paid by the Department, and subsequently determined by the Department to be ineligible and subject to repayment.

(c) Except in the case of interim construction loans, the Department will not issue Form(s) 8609, amend applications, LURAs or Contracts, extend or renew Contracts or modify loan documents if fees or loan payments are past due to the Department related to the subject of the request.

(d) Except in the case of Contracts for CSBG non-discretionary funds, the Department will not issue Contracts or amend Contracts when Disallowed Costs identified by the Department remain unpaid, unless the entity has entered into, and is complying with, an agreed-upon repayment plan that is approved by the Department's Executive Director or Enforcement Committee.

(e) Once the Department notifies a Person or entity that they are responsible for the payment of a required fee or payment that is past due, if no corrective action is taken within five business days of notification, the Executive Director may deny the requested action for failure to comply with this rule.

(f) Exception for a Work Out Development. If fees (not including application or amendment fees) or payments affiliated with a work out are past due, then the past due amounts affiliated with a work out may be excepted from this rule so long as the work out is actively underway by Department staff. In which case, in the Department's sole discretion, LURA or any other kinds of amendments may be considered for the subject Development or Contract.

(g) In accordance with Subchapter C of this Chapter (relating to Previous Participation Reviews), if a Person or entity applies for funding or an award from the Department, any payment of principal or interest to the Department that is past due beyond any grace period provided for in the applicable loan documents and any past due fees (not just those related to the subject of the request) will be reported to the EARAC.

Attachment E – Proposed Repeal of §1.302, Previous Participation Reviews for CSBG, LIHEAP, and WAP

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 1, Administration, §1.302, Previous Participation Reviews for CSBG, LIHEAP, and WAP. The purpose of the proposed repeal is to remove this section and, under separate action, propose this section as new to effectuate a redrafting and consolidation of this rule that will more clearly provide for guidance on the previous participation process for non-multifamily applicants.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal will be in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues for the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal will be in effect, the public benefit anticipated as a result of the repeal will be to provide clearer guidance to Subrecipients through more organized and direct rules. There are no anticipated additional new economic costs to individuals required to comply with the repeal as a result of this action.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 9, 2016, to October 10, 2016, to receive input on the proposed repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attention: Brooke Boston, CA Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by email to the following address: [brooke.boston@tdhca.state.tx.us](mailto:brooke.boston@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin Local Time on OCTOBER 10, 2016. A copy of the proposed repeal will be available on the Department's website at <http://www.tdhca.state.tx.us/public-comment.htm> under Items Open for Public Comment during the public comment period.

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed repeal affects no other code, article, or statute.

§1.302, Previous Participation Reviews for CSBG, LIHEAP, and WAP

Attachment F – Proposed Repeal of §1.303, Previous Participation Reviews for Department Program Awards Not Covered by §1.301 or §1.302 of This Subchapter

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 1, Administration, §1.303, Previous Participation Reviews for Department Program Awards Not Covered by §1.301 or §1.302 of This Subchapter. The purpose of the proposed repeal is to remove this section and, under separate action, propose this section as new to effectuate a redrafting and consolidation of this rule that will more clearly provide for guidance on the previous participation process for non-multifamily applicants.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal will be in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues for the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal will be in effect, the public benefit anticipated as a result of the repeal will be to provide clearer guidance to Subrecipients through more organized and direct rules. There are no anticipated additional new economic costs to individuals required to comply with the repeal as a result of this action.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 9, 2016, to October 10, 2016, to receive input on the proposed repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attention: Brooke Boston, CA Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by email to the following address: [brooke.boston@tdhca.state.tx.us](mailto:brooke.boston@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin Local Time on OCTOBER 10, 2016. A copy of the proposed repeal will be available on the Department's website at <http://www.tdhca.state.tx.us/public-comment.htm> under Items Open for Public Comment during the public comment period.

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed repeal affects no other code, article, or statute.

§1.303, Previous Participation Reviews for Department Program Awards Not Covered by §1.301 or §1.302 of This Subchapter

Attachment G – Proposed New §1.302, Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 1, Administration, §1.302, Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter. The purpose of the proposed new section is to effectuate a redrafting of this rule, consolidate what had previously been covered by both §1.302 and §1.303 of this Subchapter and more clearly provide for guidance on the previous participation process for non-multifamily applicants.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the proposed new section will be in effect, enforcing or administering the proposed new section does not have any foreseeable additional costs or revenues for the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new proposed section is in effect, the public benefit anticipated as a result of the new section will be to provide clearer guidance to Subrecipients through more direct rules. There are no anticipated additional new economic costs to individuals required to comply with the new section as a result of this action.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 9, 2016, to October 10, 2016, to receive input on the proposed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attention: Brooke Boston, CA Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by email to the following address: [brooke.boston@tdhca.state.tx.us](mailto:brooke.boston@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin Local Time on OCTOBER 10, 2016. A copy of the proposed new chapter will be available on the Department's website at <http://www.tdhca.state.tx.us/public-comment.htm> under Items Open for Public Comment during the public comment period.

STATUTORY AUTHORITY. The new section is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed new section affects no other code, article, or statute.

<rule>

§1.302. Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of This Subchapter

a) This section applies to program awards not covered by §1.301 of this subchapter. With the exception of a household or project commitment contract, prior to awarding or allowing access to Department funds through a Contract or through a Reservation Agreement a previous participation review will be performed in conjunction with the presentation of award actions to the Department's Board.

(b) Capitalized terms used in this section herein have the meaning assigned in the specific Chapters and Rules of this Part that govern the program associated with the request, or assigned by federal or state laws. For this Section, the word Applicant means the entity that the Department's Board will consider for an award of funds or a Contract.

(c) Upon Department request, Applicants will be required to submit:

(1) A listing of the members of its board of directors, council, or other governing body as applicable or certification that the same relevant information in the Community Affairs contract system is current and accurate;

(2) A description of any pending state or federal litigation (including administrative proceedings including, but not limited to, proceedings to impose any penalty or revoke or suspend any funding, license, or permit) and any final decrees within the last three years that involve federal or state program administration or funds (if the requested judgment or notice against or with respect to an entity would represent a twenty percent reduction or more in the entity's current year operating budget) or any conviction of any Applicant or Affiliate for a crime of moral turpitude that would relate to their fitness to act in their Applicant or Affiliate role, or final notice of any termination or reduction of any program or programmatic award;

(3) A list of any multifamily Developments owned or Controlled by the Applicant or Affiliate that are monitored by the Department; and

(4) Identification of all Department programs that the Applicant or Affiliate has participated in within the last three years.

(5) In addition to direct requests for information from the Applicant or Affiliate, information is considered to be requested for purposes of this section if the requirement to submit such information is made in a notice of funding availability or application for funding.

(6) Applicants will be provided a reasonable period of time, but not less than five business days, to provide the requested information.

(d) The Applicant's/Affiliate's financial obligations to the Department will be reviewed to determine if any of the following conditions exist:

(1) The Applicant or an Affiliate owes an outstanding balance in accordance with §1.21 of Chapter 1 of this Title, and a repayment plan has not been executed between the Subrecipient and the Department or the repayment plan has been violated;

(2) The Department has requested and not been provided evidence that the Owner has maintained required insurance on any collateral for any loan held by the Department; or

(3) The Department has requested and not been provided evidence that property taxes have been paid or satisfactory evidence of a tax exemption on any collateral for any loan held by the Department.

(e) The information provided by the Applicant, the results of the most recent Single Audit, any noncompliance identified in the sections above and summary information regarding monitoring Deficiencies, Findings and Concerns identified during any monitoring visits conducted within the last three years (whether or not the Findings were corrected during the corrective action period), and Department's record of complaints concerning the Applicant will be compiled and a summary provided to EARAC.

(f) EARAC will review the information and may recommend approval, denial or approval with conditions. During the monitoring process and the Single Audit review process Subrecipients will be notified that Deficiencies, Findings, and Concerns are reported to EARAC, and provided the opportunity to submit comments for consideration. If an Applicant submitted comments during the monitoring or Single Audit process, those will be shared with EARAC. EARAC may request any other information from the Department staff or the Applicant.

(g) Any Applicant which will be recommended for denial or an award with conditions will be informed in writing. If EARAC recommends denial or if the Applicant does not agree with the conditions recommended by EARAC, the Applicant will have the opportunity to appeal EARAC's recommendation in accordance with §1.304 of this subchapter.

(h) Consistent with §1.403 of Subchapter D of this chapter, concerning Single Audit Requirements, the Department will not enter into a Contract or extend a Contract with any Applicant who is delinquent in the submission of their Single Audit unless an extension has been approved in writing by the cognizant federal agency except as required by law, and in the case of certain programs, funds may be reserved for the Applicant or the service area covered by the Applicant.

(i) Except as required by law, the Department will not enter into a Contract with any entity who has a Board member on the Department's debarment list or the federal debarred and suspended listing. Applicants will be notified of the debarred status of a board member and will be given an opportunity to remove and replace that board member so that funding may proceed. However, individual Board member's participation in other Department programs is not required to be disclosed and will not be taken into consideration.

(j) Except as required by law, the Department will not enter into a Contract with any Applicant who is on the Department's or the federal debarred and suspended listing.

(k) Previous Participation reviews will not be conducted for Contract extensions. However, if the Applicant is delinquent in submission of its Single Audit, the Contract will not be extended except as required by law.

(l) For non-discretionary CSBG, EARAC will only evaluate the considerations under subsections (i) and (j) of this section, but the Board Action on the award may contain the information gathered as part of the previous participation review.

(m) Previous Participation reviews will not be conducted for Contract Amendments that staff is authorized to approve if the increase in funds is 15% or less of the initial award of funds. Previous Participation reviews will be conducted for Contract amendments if the increase in funds from the initial award is greater than 15%.

Attachment H – Proposed New Subchapter D, Uniform Guidance for Recipients of Federal and State Funds

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 1, Administration, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds. The purpose of the proposed new section is to establish more clearly for program participants in one central rule location the federal and state guidance applicable to Department subrecipients and administrators and includes such types of issues as Cost Principles, Travel, Single Audit Requirements, Purchase and Procurement, Inventory Reports, Bonding, and Record Retention.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the proposed new subchapter will be in effect, enforcing or administering the proposed new section does not have any foreseeable additional costs or revenues for the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new subchapter is in effect, the public benefit anticipated as a result of the new section will be to provide clearer guidance to Subrecipients through more direct rules. There are no anticipated additional new economic costs to individuals required to comply with the new section as a result of this action.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 9, 2016, to October 10, 2016, to receive input on the proposed subchapter. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attention: Brooke Boston, CA Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by email to the following address: [brooke.boston@tdhca.state.tx.us](mailto:brooke.boston@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin Local Time on OCTOBER 10, 2016. A copy of the proposed new chapter will be available on the Department's website at <http://www.tdhca.state.tx.us/public-comment.htm> under Items Open for Public Comment during the public comment period.

STATUTORY AUTHORITY. The new section is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed new section affects no other code, article, or statute.

<rule>

Subchapter D, Uniform Guidance for Recipients of Federal and State Funds

§1.401. Definitions.

§1.402. Cost Principles and Administrative Requirements.

§1.403. Single Audit Requirements.

§1.404. Purchase and Procurement Standards.

§1.405. Bonding Requirements.

§1.406. Fidelity Bond Requirements.

§1.407. Inventory Report.

§1.408. Travel.

§1.409. Records Retention.

#### 1.401. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Capitalized words used herein have the meaning assigned in the specific Chapters and Rules of this Title that govern the program associated with the request, or assigned by federal or state law.

(1) Affiliate--Shall have the meaning assigned by the specific program or programs described in this title.

(2) Department--The Texas Department of Housing and Community Affairs.

(3) Equipment--tangible personal property having a useful life of more than one year or a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by entity for financial statement purposes, or \$5,000. Entities not subject to UGMS do not have to include information technology systems unless the item exceeds the lesser of the capitalization level established by entity for financial statement purposes, or \$5,000.

(4) Executive Award Review and Advisory Committee ("EARAC")--the Committee established in Tex. Gov't Code chapter 2306, that recommends the award or allocation of any Department funds.

(5) Professional services--for a unit of government is as defined by state law. For Private Nonprofit Organizations it means services:

(A) within the scope of the practice, as defined by state law, of:

- (i) accounting;
- (ii) architecture;
- (iii) landscape architecture;
- (iv) land surveying;
- (v) medicine;
- (vi) optometry;
- (vii) professional engineering;
- (viii) real estate appraising;
- (ix) professional nursing; or
- (x) legal services or

(B) provided in connection with the professional employment or practice of a person who is licensed or registered as:

- (i) a certified public accountant;
- (ii) an architect;
- (iii) a landscape architect;
- (iv) a land surveyor;
- (v) a physician, including a surgeon;
- (vi) an optometrist;
- (vii) a professional engineer;
- (viii) a state certified or state licensed real estate appraiser;
- (ix) attorney or
- (x) a registered nurse.

(6) Single Audit--The audit required by Office of Management and Budget ("OMB"), 2 CFR Part 200, Subpart F, or Tex. Gov't Code, chapter 783, Uniform Grant and Contract Management, as reflected in an audit report.

(7) Single Audit Certification Form--A form that lists the source(s) and amount(s) of Federal funds and/or State funds expended by the Subrecipient during their fiscal year along with the outstanding balance of any loans made with federal or state funds if there are continuing compliance requirements other than repayment of the loan.

(8) Subrecipient--Includes any entity, or Administrator as defined under Chapter 20, receiving or applying for federal or state funds from the Department. Except as otherwise noted, the definition does not include Applicants/Owners in the Multifamily program, except for CHDO Operating funds.

(9) Supplies--means tangible personal property other than "Equipment" in this section.

(10) Uniform Grant Management Standards ("UGMS")--The standardized set of financial management procedures and definitions established by Tex. Gov't Code, chapter 783 to promote the efficient use of public funds by requiring consistency among grantor agencies in their dealings with grantees, and by ensuring accountability for the expenditure of public funds. State agencies are required to adhere to these standards when administering grants and other financial assistance agreements with cities, counties and other political subdivisions of the state. This includes all Public Organizations including public housing and housing finance agencies. In addition, Tex. Gov't Code Chapter 2105, subjects subrecipients of federal block grants (as defined therein) to the Uniform Grant and Contract Management Standards.

#### §1.402. Cost Principles and Administrative Requirements.

(a) Subrecipients shall comply with the cost principles and uniform administrative requirements set forth in UGMS provided, however, that all references therein to "local government" shall be construed to mean Subrecipient. Private Nonprofit Subrecipients of ESG, HOME, NSP, National Housing Trust Fund, and DOE WAP do not have to comply with UGMS unless otherwise required by Notice of Funding Availability ("NOFA") or Contract. For federal funds, Subrecipients will also follow 2 CFR Part 200, as interpreted by the federal funding agency.

(b) In order to maintain adequate separation of duties, the Subrecipient shall ensure that no individual has the ability to perform more than one of the functions described in paragraphs (1) - (5) that might result in a release of funds without appropriate controls:

(1) Requisition authorization;

(2) Encumbrance into software;

(3) Check creation and/or automated payment disbursement;

(4) Authorized signature/electronic signature; and

(5) Distribution of paper check.

#### §1.403. Single Audit Requirements.

(a) For this section, the word Subrecipient includes Multifamily Development Owners who have Direct Loan Funds from the Department who are or have an Affiliate that is required to submit a Single Audit, i.e. units of government and nonprofit organizations.

(b) Procurement of a Single Auditor. A Subrecipient or Affiliate must procure their single auditor in the following manner unless subject to a different requirement in the Local Government Code:

(1) Competitive Proposal procedures whereby competitors' qualifications are evaluated and a contract awarded to the most qualified competitor. Proposals should be advertised broadly, which may include going outside the entity's service area, and solicited from an adequate number (usually two or more) of qualified sources. Procurements must be conducted in a manner that prohibits the use of in-state or local geographical preferences in the evaluation of bids or proposals;

(2) Subrecipients may not use a sealed bid method for procurement of the Single Auditor. There is no requirement that the selected audit firm be geographically located near the Subrecipient. If a Subrecipient does not receive proposals from firms with appropriate experience or responses with a price that is not reasonable compared to the cost price analysis, the submissions must be rejected and procurement must be re-performed.

(c) Subrecipients and Affiliates must confirm that they are contracting with an audit firm that is properly licensed to perform the Single Audit and is not on a limited scope status or under any other sanction, reprimand or violation with the Texas State Board of Public Accountancy. The Subrecipient must ensure that the Single Audit is performed in accordance with the limitations on the auditor's license.

(d) Subrecipients are required to submit a Single Audit Certification form within two (2) months after the end of their fiscal year indicating the amount they expended in Federal and State funds

during their fiscal year and the outstanding balance of any loans made with federal funds if there are continuing compliance requirements other than repayment of the loan.

(e) Subrecipients that expend \$750,000 or more in federal and/or state awards or have an outstanding loan balance associated with a federal or state resource with continuing compliance requirements, or a combination thereof must have a Single Audit or program-specific audit conducted. If the Subrecipient's Single Audit is required by 2 CFR 200, subpart F, the report must be submitted to the Federal Audit Clearinghouse the earlier of 30 days after receipt of the auditor's report or nine (9) months after the end of its respective fiscal year. If a Single Audit is required but not under 2 CFR 200, subpart F, the report must be submitted to the Department the earlier of 30 days after receipt of the auditor's report or nine months after the end of its respective fiscal year.

(f) Subrecipients are required to submit a notification to the Department within five business days of submission to the Federal Audit Clearinghouse. Along with the notice, the Subrecipient must indicate if the auditor issued a management letter. If a management letter was issued by the auditor, a copy must be sent to the Department.

(g) The Department will review the Single Audit and issue a management decision letter. If the Single Audit results in disallowed costs, those amounts must be repaid or an acceptable repayment plan must be entered into with the Department in accordance with 10 TAC §1.21.

(h) In evaluating a Single Audit, the Department will consider both audit findings and management responses in its review. The Department will notify Subrecipients and Affiliates (if applicable) of any Deficiencies or Findings from within the Single Audit for which the Department requires additional information or clarification and will provide a deadline by which that resolution must occur.

(i) All findings identified in the most recent Single Audit will be reported to EARAC through the Previous Participation review process described in Subchapter C of this Chapter. The Subrecipient may submit written comments for consideration within five (5) business days of the Department's management decision letter.

(j) If the Subrecipient disagreed with the auditor's finding(s), and the issue is related to administration of one of the Department's programs, an appeal process is available to provide an opportunity for the auditee to explain its disagreement to the Department. This is not an appeal of audit findings themselves. The Subrecipient may submit a letter of appeal and documentation to support the appeal. The Department will take the documentation and written appeal into consideration prior to issuing a management decision letter. If the Subrecipient did not disagree with the auditor's finding, no appeal to the Department is available.

(k) In accordance with 2 CFR Part 200 and the State of Texas Single Audit Circular §.225, with the exception of nondiscretionary CSBG funds except as otherwise required by federal laws or regulations, the Department may suspend and cease payments under all active Contracts until the Single Audit is received. In addition, the Department may fail to renew, amend, extend and/or not enter into a new Contract with a Subrecipient until receipt of the required Single Audit Certification form or the submission requirements detailed in subparagraph (e) of this section.

(l) In accordance with Subchapter C of this Chapter (relating to Previous Participation Reviews), if a Subrecipient applies for funding or an award from the Department, findings noted in the Single Audit and the failure to timely submit a Single Audit Certification Form or Single Audit will be reported to EARAC.

#### §1.404. Purchase and Procurement Standards.

(a) The procurement of all goods and services shall be conducted, to the maximum extent practical, in a manner providing full and open competition consistent with the standards of 2 CFR Part 200 and UGMS, as applicable.

(b) Subrecipients shall establish, and require Subcontractors to establish, written procurement procedures that when followed, result in procurements that comply with federal, state and local standards, and grant award contracts. Procedures must:

(1) include a cost or price analysis that provides for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Where appropriate, analyzing lease versus purchase alternatives, performing the proposed service in-house, and performing any other appropriate analysis to determine the most economical approach.

(2) require that solicitations for goods and services provide for a clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition, but must contain requirements that the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals. A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards. The specific features of "brand name or equal value" descriptions that bidders are required to meet when such items are included in the solicitation.

(3) include a method for conducting technical evaluations of the proposals received and for selecting awardees.

(c) Documentation of procurement processes, to include but not be limited to, rationale for the type of procurement, cost or price analysis, procurement package, advertising, responses, selection process, contractor selection or rejection, certification of conflict of interest requirements being satisfied, and evidence that the awardee is not an excluded entity in the System for Award Management ("SAM") must be maintained by the Subrecipient in accordance with the record retention requirements of the applicable program.

(d) In accordance with 34 Texas Administrative Code §20.13, each Subrecipient shall make a good faith effort to utilize the state's Historically Underutilized Business Program in contracts for construction, services (including consulting and Professional Services) and commodities purchases.

(e) The State of Texas conducts procurement for many materials, goods, and appliances. Use of the State of Texas Co-Op Purchasing Program does not satisfy the requirements of 2 CFR 200. For more detail about how to purchase from the state contract, please contact: State of Texas Co-Op Purchasing Program, Texas Comptroller of Public Accounts. If Subrecipients choose to use the Cooperative Purchasing Program, documentation of annual fee payment is required.

(f) All vehicles considered for purchase with state or federal funds must be pre-approved by the Department via written correspondence from the Department. Procurement procedures must include provisions for free and open competition. Any vehicle purchased without approval may result in disallowed costs.

#### §1.405. Bonding Requirements.

(a) The requirements described in this subsection relate only to construction or facility improvements for DOE WAP, HOME, CDBG, NSP, and ESG Subrecipients.

(1) For contracts exceeding \$100,000, the Subrecipient must request and receive Department approval of the bonding policy and requirements of the Subrecipient to ensure that the Department is adequately protected.

(2) For contracts in excess of \$100,000, and for which the Department has not made a determination that the Department's interest is adequately protected, a "bid guarantee" from each bidder equivalent to 5% of the bid price shall be requested. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified. A bid bond in the form of any of the documents described in this paragraph may be accepted as a "bid guarantee."

(A) A performance bond on the part of the Subrecipient for 100% of the contract price. A "performance bond" is one executed in connection with a contract, to secure fulfillment of all Subcontractors' obligations under such contract.

(B) A payment bond on the part of the Subcontractor for 100% of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(C) Where bonds are required, in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR Part 223, "Surety Companies Doing Business with the United States."

(b) A unit of government must comply with the bond requirements of Texas Civil Statutes, Articles 2252, 2253, and 5160, and Local Government Code, §252.044 and §262.032, as applicable.

#### §1.406. Fidelity Bond Requirements.

(a) The Department is required to assure that fiscal control and accounting procedures for federally funded entities will be established to assure the proper disbursement and accounting for the federal funds paid to the state. In compliance with that assurance the Department requires program Subrecipients to maintain adequate fidelity bond coverage. A fidelity bond is a bond indemnifying the Subrecipient against losses resulting from the fraud or lack of integrity, honesty or fidelity of one or more of its employees, officers, or other persons holding a position of trust.

(1) In administering Contracts, Subrecipients shall observe their regular requirements and practices with respect to bonding and insurance. In addition, the Department may impose bonding and insurance requirements by Contract.

(2) If a Subrecipient is a non-governmental organization, the Department requires an adequate fidelity bond. If the amount of the fidelity bond is not prescribed in the contract, the fidelity bond must be for a minimum of \$10,000 or an amount equal to the contract if less than \$10,000. The bond must be obtained from a company holding a certificate of authority to issue such bonds in the State of Texas.

(3) The fidelity bond coverage must include all persons authorized to sign or counter-sign checks or to disburse sizable amounts of cash. Persons who handle only petty cash (amounts of less than \$250) need not be bonded, nor is it necessary to bond officials who are authorized to sign payment vouchers, but are not authorized to sign or counter-sign checks or to disburse cash.

(4) The Subrecipient must receive an assurance letter from the bonding company or agency stating the type of bond, the amount and period of coverage, the positions covered, and the annual cost of the bond. Compliance must be continuously maintained thereafter. A copy of the actual policy shall remain on file with the Subrecipient and shall be subject to monitoring by the Department.

(5) Subrecipients are responsible for filing claims against the fidelity bond when a covered loss is discovered.

(6) The Department may take any one or more of the actions described in Chapter 2, of this Part, titled "Enforcement" in association with issues identified as part of filing claims against the fidelity bond.

#### §1.407. Inventory Report.

(a) The Department requires the submission of an inventory report for all Contracts on an annual basis to be submitted to the Department, no later than 45 days after the end of the Contract Term, or a more frequent period as reflected in the Contract. Real Property and Equipment must be inventoried and reported on the Department's required form. The form and instructions are found on the Department's website.

(b) Real property and Equipment purchased with funds under a Contract with the Department must be inventoried and reported to the Department during the Contract term.

#### §1.408. Travel.

The governing body of each Subrecipient must adopt travel policies that adhere to 2 CFR Part 200, for cost allowability. The Subrecipient must follow either the federal travel regulations or State of

Texas travel rules and regulations found on the Comptroller of Public Accounts website at [www.cpa.state.tx.us](http://www.cpa.state.tx.us), as applicable.

§1.409. Records Retention.

(a) Client Records including Multifamily Development Owners. The Department requires Subrecipient organizations to document client services and assistance. Subrecipient organizations must arrange for the security of all program-related computer files through a remote, online, or managed backup service. Confidential client files must be maintained in a manner to protect the privacy of each client and to maintain the same for future reference. Subrecipient organizations must store physical client files in a secure space in a manner that ensures confidentiality and in accordance with Subrecipient organization policies and procedures. To the extent that it is financially feasible, archived client files should be stored offsite from Subrecipient headquarters, in a secure space in a manner that ensures confidentiality and in accordance with organization policies and procedures.

(b) Records of client eligibility must be retained for five (5) years starting from the date the household activity is completed, unless otherwise provided in federal regulations governing the program.

(c) Other records must be maintained as described in the Contract or the LURA, and in accordance with federal or state law for the programs described in the Chapters of this Part.

3e

**BOARD ACTION REQUEST**

**COMPLIANCE DIVISION**

**AUGUST 25, 2016**

Presentation, Discussion, and Possible Actions on: first, withdrawal of previously proposed repeal and concurrent proposed new 10 TAC Chapter 10 Uniform Multifamily Rules, Subchapter F, Compliance Monitoring, §10.614 (concerning Utility Allowances); second, the proposed repeal of §10.614 (concerning Utility Allowances); and third, the proposed new §10.614 (concerning Utility Allowances) and directing that these be published for public comment in the *Texas Register*

**RECOMMENDED ACTION**

**WHEREAS**, at the Board meeting of March 31, 2016, the Board approved the proposed repeal of, and adoption of new, section 10.614 (concerning Utility Allowances); and

**WHEREAS**, the Community Planning and Development Division of the U.S. Department of Housing and Urban Affairs (“HUD”) published a HOMEfire guidance in May of 2016, that directly impacts the proposed new §10.614 (concerning Utility Allowances).

**NOW, therefore, it is hereby**

**RESOLVED**, that the Executive Director and his designees be and each of them are hereby authorized, empowered, and directed, for and on behalf of the Department, to cause both the withdrawal of the previously published proposed repeal, and concurrent proposed new 10 TAC Chapter 10 Uniform Multifamily Rules, Subchapter F, Compliance Monitoring §10.614 (concerning Utility Allowances) as presented at the Board meeting of March 31, 2016, to be published in the *Texas Register*; and

**FURTHER RESOLVED**, that the Executive Director and his designees be and each of them are hereby authorized, empowered, and directed, for and on behalf of the Department, to propose the repeal of 10 TAC Chapter 10 Uniform Multifamily Rules, Subchapter F, Compliance Monitoring, §10.614, (concerning Utility Allowances), and the proposed new §10.614, (concerning Utility Allowances) in the *Texas Register* and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

## **BACKGROUND**

As a result of further federal guidance released after the end of the public comment period, the Department is withdrawing the repeal and proposed new §10.614 (concerning Utility Allowances) that was presented at the Board meeting of March 31, 2016.

**Attachment 1: Preamble and proposed withdrawal of both the proposed repeal of and concurrent new 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter F, Compliance Monitoring, §10.614 Utility Allowances**

At the Board meeting of March 31, 2016, staff proposed a repeal of 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter F, Compliance Monitoring, §10.614, concerning Utility Allowances and concurrently proposed a new §10.614. The intent was to codify federal requirements related to utility allowances under the HOME Final Rule, 24 CFR Part 92, which was updated in August 2013, and Treasury Regulation §1.42-10, which was updated on March 3, 2016.

The repeal and proposed new section was published in the April 15, 2016, issue of the *Texas Register* (41 Tex.Reg. 2655). A public comment period was held April 15, 2016, thru May 16, 2016. After the end of the public comment period, the Community Planning and Development Division of the U.S. Department of Housing and Urban Affairs (“HUD”) published a HOMEfire (Vol.13 No. 2) that provided further guidance related to the utility allowance requirements outlined in the updated HOME Final Rule.

**Attachment 2: Preamble and proposed repeal of 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter F, Compliance Monitoring, §10.614, concerning Utility Allowances**

The Texas Department of Housing and Community Affairs (the “Department”) proposes the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter F, Compliance Monitoring, §10.614, concerning Utility Allowances. This repeal is being proposed concurrently with the proposal of new §10.614, concerning Utility Allowances which will improve compliance with new requirements related to the HOME program concerning utility allowances and guidance from Treasury for the Housing Tax Credit (“HTC”) program.

**FISCAL NOTE.** Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

**PUBLIC BENEFIT/COST NOTE.** Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, there will be no change in the public benefit anticipated as a result of the repeal. There will be no economic impact to any individuals required to comply with the repeal.

**ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES.** The Department has determined that there will be no economic effect on small or micro-businesses.

**REQUEST FOR PUBLIC COMMENT.** The public comment period will be held September 9, 2016, through October 10, 2016, to receive input on the proposed repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Stephanie Naquin, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-3359. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time OCTOBER 10, 2016.

**STATUTORY AUTHORITY.** The repeal is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed repeal affects no other code, article, or statute.

**§10.614 Utility Allowances**

### **Attachment 3. Preamble and proposed new 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter F, Compliance Monitoring, §10.614, concerning Utility Allowances**

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter F, Compliance Monitoring, §10.614, concerning Utility Allowances. This rule applies to all multifamily Department programs.

The HOME Final Rule, §24 CFR Part 92, was updated in August 2013 and the Department proposed a new rule to codify the requirements at the Board meeting of December 17, 2015. Upon conclusion of the public comment period, Treasury released final Treasury Regulation §1.42-10 Utility Allowance in the Federal Register on March 3, 2016, which impacted Housing Tax Credit requirements. The Department proposed a new rule to codify the requirements at the Board meeting of March 31, 2016. Upon conclusion of that public comment period, HUD released a HOMEfire that provided additional guidance related to the changes made in the August 2013 HOME Final Rule. The HOMEfire allows the Department to seek a waiver from HUD in the event that a household, in a HOME unit, has a Section 8 voucher for rental assistance to use the utility allowance established by the issuing housing authority. The Department is currently seeking comment on circumstances where a waiver might be appropriate.

In addition to the federally required changes to this rule, the Department has also identified the need to define a process for applicants seeking Department multifamily funds to follow when choosing to use an alternative method to calculate the utility allowance or when the application involves a Direct Loan (*e.g.* HOME funds).

**FISCAL NOTE.** Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments.

**PUBLIC BENEFIT/COST NOTE.** Mr. Irvine also has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be improved compliance with affordable housing program administered by the Department. There will not be any increased economic cost to any individuals required to comply with the new section that are not required by participating in a federal program.

**ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES.** The Department has determined that there will be no economic effect on small or micro-businesses.

**REQUEST FOR PUBLIC COMMENT.** The public comment period will be held September 9, 2016, through October 10, 2016, to receive input on the proposed new section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Stephanie Naquin, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-3359. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time OCTOBER 10, 2016.

**STATUTORY AUTHORITY.** The new section is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed new section affects no other code, article, or statute

#### **§10.614. Utility Allowances**

§10.614. Utility Allowances.

(a) Purpose. The purpose of this section is to provide the guidelines for calculating a Utility Allowance under the Department's multifamily programs. The Department will cite noncompliance and/or not approve a Utility Allowance if it is not calculated in accordance with this section. Owners are required to comply with the provisions of this section, as well as, any existing federal or state program guidance.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. Other capitalized terms used in this section herein have the meaning assigned in Chapters 1, 2 and 10 of this part.

(1) Building Type. The HUD Office of Public and Indian Housing (“PIH”) characterizes building and unit configurations for HUD programs. The Department will defer to the guidance provided by HUD found at: [http://portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_11608.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_11608.pdf) (or successor Uniform Resource Locator (“URL”)) when making determinations regarding the appropriate building type(s) at a Development.

(2) Power to Choose. The Public Utility Commission of Texas database of retail electric providers in the areas of the state where the sale of electricity is open to retail competition <http://www.powertochoose.org/> (or successor URL). In areas of the state where electric service is deregulated, the Department will verify the availability of residential service directly with the Utility Provider. If the Utility Provider is not listed as a provider of residential service in the Development's ZIP code for an area that is deregulated, the request will not be approved.

(3) Component Charges. The actual cost associated with the billing of a residential utility. Each Utility Provider may publish specific utility service information in varying formats depending on the service area. Such costs include, but are not limited to:

(A) Rate(s). The cost for the actual unit of measure for the utility (*e.g.* cost per kilowatt hour for electricity);

(B) Fees. The cost associated with a residential utility that is incurred regardless of the amount of the utility the household consumes (*e.g.* Customer Charge); and,

(C) Taxes. Taxes for electricity and gas are regulated by the Texas Comptroller of Public Accounts and can be found <http://comptroller.texas.gov/> (or successor URL). Local Utility Providers have control of the tax structure related to water, sewer and trash. To identify if taxes are imposed for these utilities, obtain documentation directly from the Utility Provider.

(4) Direct Loan- Funds provided through the HOME Program (“HOME”), Neighborhood Stabilization Program (“NSP”), National Housing Trust Fund (“NHTF”), Repayments from the Tax Credit Assistance Program (“TCAP RF”), or other program available through the Department or local political subdivision, for multifamily development that require a Utility Allowance. Direct Loans may also include deferred forgivable loans or other similar direct funding, regardless if it is required to be repaid. Housing Tax Credits, Tax Exempt Bonds and Project Based Vouchers are not Direct Loans.

(5) Renewable Source. Energy produced from energy property described in IRC §48 or IRC §45(d)(1) through (4), (6), (9), or (11). The manner in which a resident is billed is limited to the rate at which the local Utility Provider would have charged the residents for the utility if that entity had provided it to them, and as may be further limited by the Texas Utilities Code or by regulation.

(6) Submetered Utility. A utility purchased from or through a local Utility Provider by the building Owner where the resident is billed directly by Owner of the building or to a third party billing company and the utility is:

(A) Based on the residents’ actual consumption of that utility and not an allocation method or Ratio Utility Billing System (“RUBS”); and,

(B) The rate at which the utility is billed does not exceed the rate incurred by the building owner for that utility.

(7) Utility Allowance. An estimate of the expected monthly cost of any utility for which a resident is financially responsible, other than telephone, cable television, or internet.

(A) For HTC, TCAP, Exchange buildings, and SHTF include:

- (i) Utilities paid by the resident directly to the Utility Provider;
  - (ii) Submetered Utilities; and,
  - (iii) Renewable Source Utilities.
- (B) For a Development with a Direct Loan, unless otherwise prescribed in the program's Regulatory Agreement, include all utilities regardless of how they are paid.
- (8) Utility Provider. The company that provides residential utility service (*e.g.* electric, gas, water, wastewater, and/or trash) to the buildings.

(c) Methods. The following options are available to establish a Utility Allowance for all programs except Developments funded with Direct Loan funds, which are addressed in subsection (d) of this section.

(1) Rural Housing Services ("RHS") buildings or buildings with RHS assisted residents. The applicable Utility Allowance for the Development will be determined under the method prescribed by the RHS (or successor agency). No other utility method described in this section can be used by RHS buildings or buildings with RHS assisted residents.

(2) HUD-Regulated buildings layered with any Department program. If neither the building nor any resident in the building receives RHS rental assistance payments, and the rents and the Utility Allowances of the building are regulated by HUD (HUD-regulated building), the applicable Utility Allowance for all rent restricted Units in the building is the applicable HUD Utility Allowance. No other utility method described in this section can be used by HUD-regulated buildings. Unless further guidance is received from the U.S. Department of Treasury or the Internal Revenue Service ("IRS"), the Department considers Developments awarded a Direct Loan (*e.g.* HOME) to be HUD-Regulated buildings.

(3) Other Buildings. For all other rent-restricted Units, Development Owners must use one of the methods described in subparagraphs (A) - (E) of this paragraph:

(A) Public Housing Authority ("PHA"). The Utility Allowance established by the applicable PHA for the Housing Choice Voucher Program. The Department will utilize the Texas Local Government Code, Chapter 392 to determine which PHA is the most applicable to the Development.

(i) If the PHA publishes different schedules based on Building Type, the Owner is responsible for implementing the correct schedule based on the Development's Building Type(s). Example 614(1): The applicable PHA publishes a separate Utility Allowance schedule for Apartments (5+ units), one for Duplex/Townhomes and another for Single Family Homes. The Development consists of 20 buildings, ten of which are Apartments (5+ units) and the other ten buildings are Duplexes. The Owner must use the correct schedule for each Building Type.

(ii) In the event the PHA publishes a Utility Allowance schedule specifically for energy efficient units, and the Owner desires to use such a schedule, the Owner must demonstrate that the building(s) meet the housing authority's specifications for energy efficiency once every five years.

(iii) If the applicable PHA allowance lists flat fees for any utility, those flat fees must be included in the calculation of the Utility Allowance if the resident is responsible for that utility.

(iv) If the individual components of a Utility Allowance are not in whole number format, the correct way to calculate the total allowance is to add each amount and then round the total up to the next whole dollar. Example 614(2): Electric cooking is \$8.63, Electric Heating is \$5.27, Other Electric is \$24.39, Water and Sewer is \$15. The Utility Allowance in this example is \$54.00.

(v) If an Owner chooses to implement a methodology as described in subparagraph (B), (C), (D), or (E) of this paragraph, for Units occupied by Section 8 voucher holders, the Utility Allowance remains the applicable PHA Utility Allowance established by the PHA from which the household's voucher is received.

(vi) If the Development is located in an area that does not have a municipal, county, or regional housing authority that publishes a Utility Allowance schedule for the Housing Choice Voucher Program, Owners must select an alternative methodology, unless the building(s) is located in the published Housing Choice Voucher service area of:

(I) A Council of Government created under Texas Local Government Code, Chapter 303, that operates a Housing Choice Voucher Program; or,

(II) The Department's Housing Choice Voucher Program.

(B) Written Local Estimate. The estimate must come from the local Utility Provider, be signed by the Utility Provider representative, and specifically include all Component Charges for providing the utility service.

(C) HUD Utility Schedule Model. The HUD Utility Schedule Model and related resources can be found at <http://www.huduser.gov/portal/resources/utillallowance.html> (or successor URL). Each item on the schedule must be displayed out two decimal places. The total allowance must be rounded up to the next whole dollar amount. The Component Charges used can be no older than those in effect 60 days prior to the beginning of the 90 day period described in described in paragraph (f)(3) of this section related to Effective Dates.

(i) The allowance must be calculated using the MS Excel version available at <http://www.huduser.org/portal/resources/utilmodel.html> (or successor URL), as updated from time to time, with no changes or adjustments made other than entry of the required information needed to complete the model.

(ii) In the event that the PHA code for the local PHA to the Development is not listed in "Location" tab of the workbook, the Department will use the PHA code for the PHA that is closest in distance to the Development using online mapping tools (e.g. MapQuest).

(iii) Green Discount. If the Owner elects any of the Green Discount options for a Development, documentation to evidence that the units and the buildings meet the Green Discount standard as prescribed in the model is required for the initial approval and every subsequent annual review. In the event the allowance is being calculated for an application of Department funding (e.g. 9% Housing Tax Credits), upon request, the Department will provide both the Green Discount and the non-Green Discount results for application purposes; however, to utilize the Green Discount allowance for leasing activities, the Owner must evidence that the units and buildings have met the Green Discount elected when the request is submitted as required in subsection (l) of this section.

(iv) Do not take into consideration any costs (e.g. penalty) or credits that a consumer would incur because of their actual usage. Example 614(3) The Electric Fact Label for ABC Electric Utility Provider provides a Credit Line of \$40 per billing cycle that is applied to the bill when the usage is greater than 999 kWh and less than 2000 kWh. Example 614(4) A monthly minimum usage fee of \$9.95 is applied when the usage is less than 1000 kWh in the billing cycle. When calculating the allowance, disregard these types costs or credits.

(D) Energy Consumption Model. The model must be calculated by a properly licensed mechanical engineer. The individual must not be related to the Owner within the meaning of §267(b) or §707(b) of the Code. The utility consumption estimate must, at minimum, take into consideration specific factors that include, but are not limited to, Unit size, building type and orientation, design and materials, mechanical systems, appliances, characteristics of building location, and available historical data. Component Charges used must be no older than in effect 60 days prior to the beginning of the 90 day period described in paragraph (f)(3) of this section related to Effective Dates; and,

(E) An allowance based upon an average of the actual use of similarly constructed and sized Units in the building using actual utility usage data and Component Charges, provided that the Development Owner has the written permission of the Department. This methodology is referred to as the "Actual Use Method." For a Development Owner to use the Actual Use Method they must:

(i) Provide a minimum sample size of usage data for at least five Continuously Occupied Units of each Unit Type or 20 percent of each Unit Type whichever is greater. If there are less than five Units of any Unit Type, data for 100 percent of the Unit Type must be provided;

(ii) Upload the information in subclause (I) - (IV) of this clause to the Development's CMTS account no later than the beginning of the 90 day period after which the Owner intends to implement the allowance,

reflecting data no older than 60 days prior to the 90 day implementation period described in described in paragraph (f)(3) of this section related to Effective Dates.

(I) An Excel spreadsheet listing each Unit for which data was obtained to meet the minimum sample size requirement of a Unit Type, the number of bedrooms, bathrooms and square footage for each Unit, the household's move-in date, the utility usage (*e.g.* actual kilowatt usage for electricity) for each month of the 12 month period for each Unit for which data was obtained, and the Component Charges in place at the time of the submission;

(II) All documentation obtained from the Utility Provider (or billing entity for the utility provider) and/or copies of actual utility bills gathered from the residents, including all usage data not needed to meet the minimum sample size requirement and any written correspondence from the utility provider;

(III) The rent roll showing occupancy as of the end of the month for the month in which the data was requested from the utility provider; and

(IV) Documentation of the current Utility Allowance used by the Development.

(iii) Upon receipt of the required information, the Department will determine if the Development Owner has provided the minimum information necessary to calculate an allowance using the Actual Use Method. If so, the Department shall calculate the Utility Allowance for each bedroom size using the guidelines described in subclause (I) - (V) of this clause;

(I) If data is obtained for more than the sample requirement for the Unit Type, all data will be used to calculate the allowance;

(II) If more than 12 months of data is provided for any Unit, only the data for the most current twelve 12 will be averaged;

(III) The allowance will be calculated by multiplying the average units of measure for the applicable utility (*i.e.*, kilowatts over the last 12 months by the current rate) for all Unit Types within that bedroom size. For example, if sufficient data is supplied for 18 two bedroom/one bath Units, and 12 two bedroom/two bath Units, the data for all 30 Units will be averaged to calculate the allowance for all two bedroom Units;

(IV) The allowance will be rounded up to the next whole dollar amount. If allowances are calculated for different utilities, each utility's allowance will be rounded up to the next whole dollar amount and then added together for the total allowance; and

(V) If the data submitted indicates zero usage for any month, the data for that Unit will not be used to calculate the Utility Allowance.

(iv) The Department will complete its evaluation and calculation within forty-five (45) days of receipt of all the information requested in clause (ii) of this subparagraph;

(d) In accordance with 24 CFR §92.252, for a Direct Loan in which the Department is the funding source, the Utility Allowance will be established in the following manner:

(1) For Developments that, as a result of funding, must calculate the Utility Allowance under HUD Multifamily Notice H-2014-4, as revised from time to time, the applicable Utility Allowance for all rent restricted Units in the building is the applicable Utility Allowance calculated under that Notice. No other utility method described in this section can be used.

(2) Other Buildings. The Utility Allowance may be initiated by the Owner using the methodologies described in subparagraphs (3)(B),(C), (D), or (E) of subsection (c) related to Methods.

(3) If a request is not received by October 1<sup>st</sup>, the Department will calculate the Utility Allowance using the HUD Utility Schedule Model. For property specific data, the Department will use:

(A) The information submitted in the Annual Owner's Compliance Report;

(B) Entrance Interview Questionnaires submitted with prior onsite reviews; or,

(C) The owner may be contacted and required to complete the Utility Allowance Questionnaire. In such case, a five day period will be provided to return the completed questionnaire.

(D) Utilities will be evaluated in the following manner:

(i) For regulated utilities, the Department will contact the Utility Provider directly and apply the Component Charges in effect no later than 60 days before the allowance will be effective.

(ii) For deregulated utilities:

(I) The Department will use the Power to Choose website and search available Utility Providers by ZIP code;

(II) The plan chosen will be the median cost per kWh based on average price per kWh for the average monthly use of 1000 kWh of all available plans; and,

(III) The actual Component Charges from the plan chosen in effect no later than 60 days before the allowance will be effective will be entered into the Model.

(E) The Department will notify the Owner contact in CMTS of the new allowance and provide the backup for how the allowance was calculated. The owner will be provided a five day period to review the Department's calculation and note any errors. Only errors related to the physical characteristics of the building(s) and utilities paid by the residents will be reconsidered; the utility plan and Utility Provider selected by the Department and Component Charges used in calculating the allowance will not be changed. During this five day period, the owner also has the opportunity to submit documentation and request use of any of the available Green Discounts.

(F) The allowance must be implemented for rent due in all program units thirty days after the Department notifies the Owner of the allowance.

(4) HTC Buildings in which there are units under a Direct Loan program are considered HUD- Regulated buildings and the applicable Utility Allowance for all rent restricted Units in the building is the Utility Allowance calculated under the Direct Loan program. No other utility method described in this section can be used by HUD-regulated buildings. If the Department is not the awarding jurisdiction, Owners are required to obtain the Utility Allowance established by the awarding jurisdiction, and to document all efforts to obtain such allowance to evidence due diligence in the event that the jurisdiction is nonresponsive.

(e) Acceptable Documentation. For the Methods where utility specific information is required to calculate the allowance (*e.g.* base charges, cost per unit of measure, taxes) Owners should obtain documentation directly from the Utility Provider and/or Regulating State Agency. Any Component Charges related to the utility that are published by the Utility Provider and/or Regulating State Agency must be included. In the case where a utility is billed to the Owner of the building(s) and the Owner is billing residents through a third party billing company, the Component Charges published by the Utility Provider and not the third party billing company will be used.

(f) Changes in the Utility Allowance. An Owner may not change Utility Allowance methods, start or stop charging residents for a utility without prior written approval from the Department. Example 614(5): A Housing Tax Credit Development has been paying for water and sewer since the beginning of the Compliance Period. In year 8, the Owner decides to require residents to pay for water and sewer. Prior written approval from the Department is required. Any such request must include the Utility Allowance Questionnaire found on the Department's website and supporting documentation.

(1) The Department will review all requests, with the exception of the methodology prescribed in subparagraphs (3)(E) of subsection (c) related to Methods, within 90 days of the receipt of the request.

(2) If the Owner fails to post the notice to the residents and simultaneously submit the request to the Department by the beginning of the 90 day period, the Department's approval or denial will be delayed for up to 90 days after Department notification. Example 614(6): The Owner has chosen to calculate the electric portion of the Utility Allowance using the written local estimate. The annual letter is dated July 5, 2014, and the notice to the residents was posted in the leasing office on July 5, 2014. However, the Owner failed to submit the request to the Department for review until September 15, 2014. Although the Notice to the Residents was dated the date of the letter from the utility provider, the Department was not provided the full 90 days for review. As a result, the allowance cannot be implemented by the owner until approved by the Department.

(3) Effective dates. If the Owner uses the methodologies as described in subparagraphs (3)(A) of subsection (c) related to Methods of this section, any changes to the allowance can be implemented immediately, but must be implemented for rent due at least 90 days after the change. For methodologies as described in subparagraphs (3)(B), (C), (D) and (E) of subsection (c) related to Methods, the allowance cannot be implemented until the estimate is submitted to the Department and is made available to the residents by posting in a common area of the leasing office at the Development. This action must be taken by the beginning of the 90 day period in which the Owner intends to implement the Utility Allowance. Nothing in this section prohibits an Owner from reducing a resident's rent prior to the end of the 90 day period when the proposed allowance would result in a gross rent issue.

Figure: 10 TAC §10.614

(g) Requirements for Annual Review.

(1) RHS and HUD-Regulated Buildings. Owners must demonstrate that the utility allowance has been reviewed annually and in accordance with the RHS or HUD regulations.

(2) Buildings using the PHA Allowance. Owners are responsible for periodically determining if the applicable PHA released an updated schedule to ensure timely implementation. When the allowance changes or a new allowance is made available by the PHA, it can be implemented immediately, but must be implemented for rent due 90 days after the PHA releases an updated scheduled.

(3) Written Local Estimate, HUD Utility Model Schedule and Energy Consumption Model. Owners must update the allowance once a calendar year. The update and all back up documentation required by the method must be submitted to the Department no later than October 1st of each year. However, Owners are encouraged to submit prior to the deadline to ensure the Department has time to review. At the same time the request is submitted to the Department, the Owner must post, at the Development, the Utility Allowance estimate in a common area of the leasing office where such notice is unobstructed and visible in plain sight. The Department will review the request for compliance with all applicable requirements and reasonableness. If, in comparison to other approved Utility Allowances for properties of similar size, construction and population in the same geographic area, the allowance does not appear reasonable or appears understated, the Department may require additional support and/or deny the request.

(4) Actual Use Method. Owners must update the allowance once a calendar year. The update and all back up documentation required by the method must be submitted to the Department no later than August 1st of each year. However, Owners are encouraged to submit prior to the deadline to ensure the Department has time to review.

(h) For Owners participating in the Department's Section 811 Project Rental Assistance ("PRA") Program, the Utility Allowance is the allowance established in accordance with this section related to the other multifamily program(s) at the Development. Example 614(7) ABC Apartments is an existing HTC Development now participating in the PRA Program. The residents pay for electricity and the Owner is using the PHA method to calculate the Utility Allowance for the HTC Program. The appropriate Utility Allowance for the PRA Program is the PHA method.

(i) Combining Methods. In general, Owners may combine any methodology described in this section for each utility service type paid directly by the resident and not by or through the Owner of the building (e.g. electric, gas). For example, if residents are responsible for electricity and gas, an Owner may use the appropriate PHA allowance to determine the gas portion of the allowance and use the Actual Use Method to determine the electric portion of the allowance. RHS and certain HUD-Regulated buildings are not allowed to combine methodologies.

(j) The Owner shall maintain and make available for inspection by the resident all documentation, including, but not limited to, the data, underlying assumptions and methodology that was used to calculate the allowance. Records shall be made available at the resident manager's office during reasonable business hours or, if there is no resident manager, at the dwelling Unit of the resident at the convenience of both the Owner and resident.

(k) Utility Allowances for Applications.

(1) If the application includes RHS assisted buildings or tenants, the utility allowance is prescribed by the RHS program. No other method is allowed.

(2) If the application includes HUD-Regulated buildings for HUD programs other than a Direct Loan program the applicable Utility Allowance for all rent restricted Units in the building is the applicable HUD Utility Allowance. No other utility method is allowed.

(3) If the application includes a Direct Loan where the Department is the Participating Jurisdiction, the Department will establish the initial Utility Allowance in accordance with paragraph (3) subsection (d) of this section. In the event that the application has a Direct Loan from the Department and another Participating Jurisdiction, the Department will require the use of the allowance calculated by the Department.

(4) If the application includes a Direct Loan where the Department is not the Participating Jurisdiction, Applicants are required to request in writing the Utility Allowance from the awarding jurisdiction. If the awarding jurisdiction does not respond or requests the Department to calculate the allowance, the Department will establish the initial Utility Allowance in accordance with paragraph (3) subsection (d) of this section.

(5) For all other applications, Applicants may calculate the utility allowance in accordance with (3)(A)(B),(C), (D), or (E) of subsection (c) related to Methods.

(A) Upon request, the Compliance Division will calculate or review an allowance within 21 days but no earlier than 90 days from when the application is due.

(B) Example 614(8) An application for a 9% HTC is due March 1, 2017. The applicant would like Department approval to use an alternative method by February 15, 2017. The request must be submitted to the Compliance Division no later than January 25, 2017, three weeks before February 15, 2017.

(C) Example 614(9) An Applicant intends to submit an application for a 4% HTC with Tax Exempt Bonds on August 11, 2017, and would like to use an alternative method. Because approval is needed prior to application submission, the request can be submitted no earlier than May 13, 2017, (90 days prior to August 11, 2017) and no later than July 21, 2017, (21 days prior to August 11, 2017).

(6) All Utility Allowance requests related to applications of funding must:

(A) Be submitted directly to [ua\\_application@tdhca.state.tx.us](mailto:ua_application@tdhca.state.tx.us). Requests not submitted to this email address will not be recognized.

(B) Include the "Utility Allowance Questionnaire for Applications" along with all required back up based on the method.

(7) If the Applicant is successful in obtaining an award, the Utility Allowance may be calculated in accordance with subsection (d) of this section.

(l) If Owners want to utilize the HUD Utility Schedule Model, the Written Local Estimate or the Energy Consumption Model to establish the initial Utility Allowance for the Development, the Owner must submit Utility Allowance documentation for Department approval, at minimum, 90 days prior to the commencement of leasing activities. This subsection does not preclude an Owner from changing to one of these methods after commencement of leasing.

(m) The Department reserves the right to outsource to a third party the review and approval of all or any Utility Allowance requests to use the Energy Consumption Model or when review requires the use of

expertise outside the resources of the Department. In accordance with Treasury Regulation §1.42-10(c) any costs associated with the review and approval shall be paid by the Owner.

(n) All requests described in this subsection must be complete and uploaded directly to the Development's CMTS account using the "Utility Allowance Documents" in the type field and "Utility Allowance" as the TDHCA Contact. The Department will not be able to approve requests that are incomplete and/or are not submitted correctly.

4a

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**AUGUST 25, 2016**

Presentation, Discussion, and Possible Action Regarding the Issuance of Multifamily Housing Revenue Bonds (Skyline Place Apartments) Series 2016 Resolution No. 16-024 and a Determination Notice of Housing Tax Credits

**RECOMMENDED ACTION**

**WHEREAS**, the Board adopted the inducement resolution for Skyline Place Apartments at the Board meeting of January 28, 2016;

**WHEREAS**, the 4% Housing Tax Credit application, sponsored by Dalcors Holdings, LLC, was submitted on April 1, 2016;

**WHEREAS**, a Certification of Reservation was issued, in the amount of \$19,000,000, for Skyline Place Apartments, on May 31, 2016, with a bond delivery deadline of October 28, 2016;

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

**WHEREAS**, the applicant disclosed the presence of such characteristics, specifically, that one of the schools in the attendance zone, Harold Wendell Lang Sr. Middle School, did not achieve a 2015 Met Standard rating by the Texas Education Agency (“TEA”);

**WHEREAS**, based on preliminary data from mid-year student assessments which indicated improvement across the majority of subjects and across all grade levels and indicated they were on track in meeting the goals and performance objectives identified in the School Improvement Plan, staff does not believe the facts and circumstances surrounding the school rating are severe or systemic in nature and recommends the site not be considered ineligible under §10.101(a)(4) of the Uniform Multifamily Rules;

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

**WHEREAS**, the EARAC recommends the issuance of Multifamily Housing Revenue Bonds (Skyline Place Apartments) Series 2016 and the issuance of a Determination Notice;

**NOW, therefore, it is hereby**

**RESOLVED**, that the issuance of up to \$19,000,000 in tax-exempt Multifamily Housing Revenue Bonds Series 2016, Resolution No. 16-024 is hereby approved in the form presented to this meeting;

**FURTHER RESOLVED**, the issuance of a Determination Notice of \$955,499 in 4% Housing Tax Credits for Skyline Place Apartments, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department's website, is hereby approved in the form presented to this meeting and

**FURTHER RESOLVED**, that if approved, staff is authorized, empowered, and directed, for and on behalf of the Department to execute such documents, instruments and writings and perform such acts and deeds as may be necessary to effectuate the foregoing.

### **BACKGROUND**

*General Information:* The Bonds will be issued in accordance with Tex. Gov't Code Chapter 1371 and Tex. Gov't Code Chapter 2306, the Department's Enabling Statute (the "Statute"), which authorizes the Department to issue revenue bonds for its public purposes, as defined therein. *(The Statute provides that the Department's revenue bonds are solely obligations of the Department, and do not create an obligation, debt or liability of the State of Texas or a pledge or loan of faith, credit or taxing power of the State of Texas.)*

Skyline Place Apartments, located at 4700 Wimbeldon Way in Dallas, Dallas County, consists of the acquisition and rehabilitation of 318 units, originally constructed in 1987. It will serve the general population and the site conforms to current zoning. The Certificate of Reservation from the Bond Review Board was issued under the Priority 3 designation which does not have a prescribed restriction on the percentage of Area Median Family Income ("AMFI") that must be served; however, all of the units will be rent and income restricted at 60% AMFI. The census tract (0122.07) has a median household income of \$38,981, is in the fourth quartile, and has a poverty rate of 28.20%.

*Site Analysis:* The proposed development is to be located within the Dallas Independent School District ("DISD") and the Harold Wendall Lang Sr. Middle School ("Lang") failed to achieve the 2015 Met Standard rating by three points on Performance Index 4 (relating to Post-secondary Readiness). From a historical perspective, Lang achieved a Met Standard in previous years 2013 and 2014. Preliminary data from mid-year student assessments indicated improvement across the majority of subjects and across all grade levels and indicated they were on track in meeting the goals and performance objectives identified in the School Improvement Plan. On August 15, 2016, the TEA released the 2016 Accountability Ratings. Lang fell one point shy of achieving the Met Standard rating. Improvement was shown on Performance Index 4 and they exceeded the target score; however, on Performance Index 3 (relating to Closing Performance Gaps) Lang missed the target score by one point.

Under §10.101(a)(4) of the Uniform Multifamily Rules, there is a consideration for acceptable mitigation regarding the undesirable neighborhood characteristics on the basis that there is a factual determination that such characteristic is not of such a nature or severity that it should render the development site ineligible. After reviewing the historical ratings, aforementioned facts and improvement over the past year, staff does

not believe the development site should be considered ineligible under §10.101(a)(4) of the Uniform Multifamily Rules.

*Organizational Structure and Previous Participation:* The Borrower is Dalcor Skyline, Ltd. and includes the entities and principals as illustrated in Exhibit A. The applicant is considered a small Category 3 portfolio and the compliance history was reviewed by EARAC and was approved with no conditions.

*Public Hearing/Public Comment:* A public hearing for the proposed development was conducted by staff on July 5, 2016, and there was no one in attendance. A copy of the hearing transcript is included herein. The Department has not received any letters of support or opposition for this development.

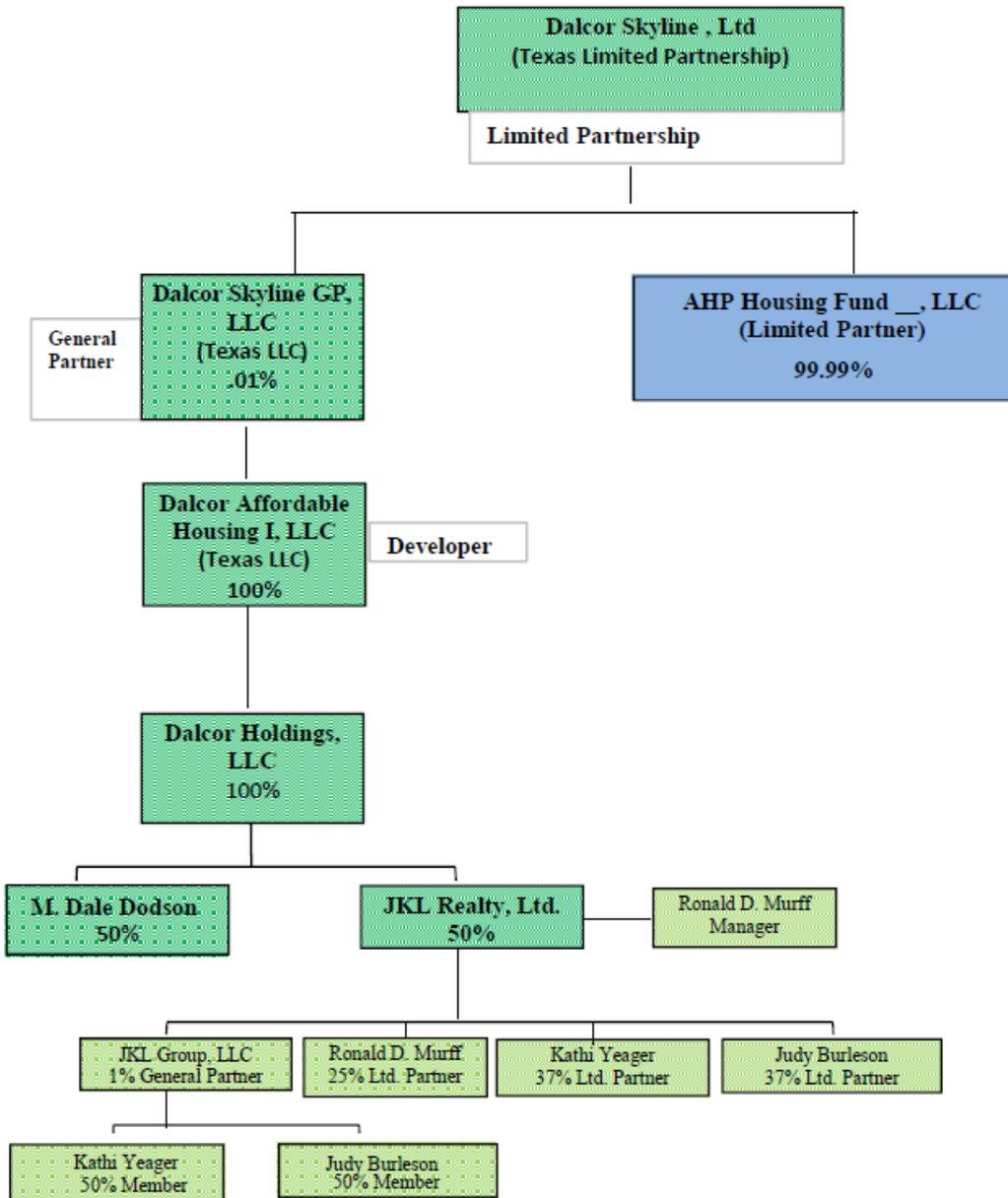
On August 9, 2016, the Department received a copy of a Housing Discrimination Complaint that was filed with the U.S. Department of Housing and Urban Development by Lockey/MacKenzie, with supporting documentation from Daniel & Beshara, P.C., relating to the resolution of no objection passed by the City of Dallas, to fulfill the requirements of §10.204 of the Uniform Multifamily Rules and Tex. Gov't Code §2306.67071. A copy of the complaint is included herein in addition to the resolution of no objection that was adopted.

### **Summary of Financial Structure**

This transaction utilizes a Fannie Mae Multifamily Pass-Through Mortgage-Backed Security (“MBS”) and mirrors the financing structure used for Williamsburg Apartments approved by the Board in November 2015, and sponsored by the same development team. The mortgage loan will be originated by the Department to the Borrower on the closing date and funded with bond proceeds. Simultaneously with the closing, the loan will be assigned to the Fannie Mae lender (Red Mortgage Capital) and the funds used by the lender by which to acquire the loan will be deposited into the collateral account to secure the bonds. In this respect, the transaction mirrors prior FHA 221(d)(4) multifamily transactions where the project will be 100% cash collateralized at all times, which offers protection for the bondholders. Approximately 10-15 days from the closing date Red Mortgage Capital will assign the loan to Fannie Mae and in exchange, Fannie Mae will deliver the MBS to the trustee. The trustee will use the funds (loan proceeds from Red Mortgage Capital) in the collateral account to purchase the MBS which will be used to secure the bonds from that point forward. Payments on the bonds will be guaranteed by Fannie Mae.

Under the proposed structure, the Department will issue tax-exempt fixed rate bonds in an amount not to exceed \$19,000,000, but currently sized at \$18,750,000. The bonds will have an interest rate that mirrors the pass-through rate on the MBS, currently estimated to be 2.70%, which does not include servicing or guarantee fees. The loan will have a term of 16 years and a 35-year amortization. The bonds will have a maturity date of October 1, 2032, and are estimated to have a Aaa rating by Moody's.

Exhibit A



# APPLICATION SUMMARY

REAL ESTATE ANALYSIS DIVISION

August 18, 2016

PROPERTY IDENTIFICATION		RECOMMENDATION					
Application #	16600	TDHCA Program	Request	Approved			
Development	Skyline Place Apartments			LIHTC (4% Credit)	\$955,499	\$955,499	
City / County	Dallas / Dallas		Amount	Rate	Amort	Term	Lien
Region/Area	3 / Urban	Private Activity Bonds	\$18,750,000	3.61%	35	16	1st
Population	General	MDLP (Repayable)					
Set-Aside	General	MDLP (Non-Repayable)					
Activity	Acquisition/Rehab (Built in 1987)	CHDO Expenses					

KEY PRINCIPAL / SPONSOR			
General Partner(s)			
Dalcors Skyline, Ltd			
Dale Dodson			
Developer(s)			
Dalcors Affordable Housing I, LLC			
Dale Dodson			
Related-Parties	Contractor -	Yes	Seller - No

## TYPICAL BUILDING ELEVATION/PHOTO



UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	-	0%	30%	-	0%
1	222	70%	40%	-	0%
2	96	30%	50%	-	0%
3	-	0%	60%	318	100%
4	-	0%	MR	-	✓
<b>TOTAL</b>	<b>318</b>	<b>100%</b>	<b>TOTAL</b>	<b>318</b>	<b>100%</b>

PRO FORMA FEASIBILITY INDICATORS			
Pro Forma Underwritten		Applicant's Pro Forma	
Debt Coverage	✓ 1.28	Expense Ratio	✓ 55.0%
Breakeven Occ.	✓ 83.8%	Breakeven Rent	\$699
Average Rent	\$775	B/E Rent Margin	✓ \$76
Property Taxes	\$930/unit	Exemption/PILOT	0%
Total Expense	\$4,733/unit	Controllable	\$2,679/unit

## SITE PLAN



MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (10% Maximum)			✗ 24.2%
Highest Unit Capture Rate	ⓘ 74%	1 BR/60%	222
Dominant Unit Cap. Rate	ⓘ 74%	1 BR/60%	222
Premiums (↑60% Rents)	0	✓	\$/Avg.
Rent Assisted Units	N/A		

DEVELOPMENT COST SUMMARY			
Costs Underwritten		TDHCA's Costs - Based on PCA	
Avg. Unit Size	776 SF	Density	26.8/acre
Acquisition		\$51K/unit	\$16,081K
Building Cost	\$31.24/SF	\$24K/unit	\$7,712K
Hard Cost		\$28K/unit	\$8,782K
Total Cost		\$104K/unit	\$33,146K
Developer Fee	\$3,899K	(68% Deferred)	Paid Year: 9
Contractor Fee	\$1,171K	30% Boost	Yes

REHABILITATION COSTS / UNIT			
Site Work		Finishes/Fixtures	\$15K 53%
Building Shell	\$4K 15%	Amenities	\$2K 7%
HVAC	\$4K 14%	Total Exterior	\$6K 23%
Appliances	\$2K 7%	Total Interior	\$20K 77%

DEBT (Must Pay)					CASH FLOW DEBT / GRANT FUNDS					EQUITY / DEFERRED FEES	
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount
Red Mortgage Capital, LLC	16/35	3.61%	\$18,750,000	1.28						Affordable Housing Partners, Inc.	\$9,554,963
					Net Operating income	0/0	0.00%	\$2,175,453	1.28	Dalcor Affordable Housing I, LLC	\$2,665,532
					General Partner Equity	0/0	0.00%	\$100	1.28		
<b>TOTAL DEBT (Must Pay)</b>			<b>\$18,750,000</b>		<b>CASH FLOW DEBT / GRANTS</b>			<b>\$2,175,553</b>		<b>TOTAL EQUITY SOURCES</b>	<b>\$12,220,495</b>
										<b>TOTAL DEBT SOURCES</b>	<b>\$20,925,553</b>
										<b>TOTAL CAPITALIZATION</b>	<b>\$33,146,048</b>

**CONDITIONS**

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

**BOND RESERVATION / ISSUER**

Issuer	TDHCA
Expiration Date	10/28/2016
Bond Amount	\$19,000,000
BRB Priority	Priority 3
Expected Close	9/15/2016
Bond Structure	Fannie Mae MBS

**RISK PROFILE**

**STRENGTHS/MITIGATING FACTORS**

- Existing stabilized development, currently 99%
- Renovated units more likely to command program
- Proximity to schools and potential employers
- Experienced Developer

**WEAKNESSES/RISKS**

- 1 and 2 BR units only, with 1BR's comprising 70% of the
- Existing rents are below net 60% limits
- Possibility of unforeseen deferred maintenance

**AERIAL PHOTOGRAPH(S)**



## RESOLUTION NO. 16-024

RESOLUTION AUTHORIZING AND APPROVING THE ISSUANCE, SALE AND DELIVERY OF TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS MULTIFAMILY HOUSING REVENUE BONDS (PASS-THROUGH – SKYLINE PLACE APARTMENTS), SERIES 2016; APPROVING THE FORM AND SUBSTANCE AND AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS AND INSTRUMENTS PERTAINING THERETO; AUTHORIZING AND RATIFYING OTHER ACTIONS AND DOCUMENTS; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT

WHEREAS, the Texas Department of Housing and Community Affairs (the “Department”) has been duly created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code, as amended (the “Act”), for the purpose, among others, of providing a means of financing the costs of residential ownership, development, construction and rehabilitation that will provide decent, safe, and affordable living environments for individuals and families of low, very low and extremely low income (as defined in the Act) and families of moderate income (as described in the Act and determined by the Governing Board of the Department (the “Board”) from time to time); and

WHEREAS, the Act authorizes the Department: (a) to make mortgage loans to housing sponsors to provide financing for multifamily residential rental housing in the State of Texas (the “State”) intended to be occupied by individuals and families of low, very low and extremely low income and families of moderate income, as determined by the Department; (b) to issue its revenue bonds, for the purpose, among others, of obtaining funds to make such loans and provide financing, to establish necessary reserve funds and to pay administrative and other costs incurred in connection with the issuance of such bonds; and (c) to pledge all or any part of the revenues, receipts or resources of the Department, including the revenues and receipts to be received by the Department from such multifamily residential rental development loans, and to mortgage, pledge or grant security interests in such loans or other property of the Department in order to secure the payment of the principal or redemption price of and interest on such bonds; and

WHEREAS, the Board has determined to authorize the issuance of its Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Pass-Through – Skyline Place Apartments), Series 2016 (the “Bonds”) pursuant to and in accordance with the terms of an Indenture of Trust (the “Indenture”) between the Department and Wilmington Trust, National Association, as trustee (the “Trustee”), for the purpose of obtaining funds to finance the Development (defined below), all under and in accordance with the Constitution and laws of the State; and

WHEREAS, the Department desires to use the proceeds of the Bonds to fund a mortgage loan to Dalcors Skyline, Ltd, a Texas limited partnership (the “Borrower”) in order to finance the cost of acquisition, equipping and rehabilitation of a qualified residential rental development described in Exhibit A attached hereto (the “Development”) located within the State and required by the Act to be occupied by individuals and families of low and very low income and families of moderate income, as determined by the Department; and

WHEREAS, the Board, by resolution adopted on January 28, 2016, declared its intent to issue its revenue bonds to provide financing for the Development; and

WHEREAS, the Borrower has requested and received a reservation of private activity bond allocation from the State of Texas;

WHEREAS, it is anticipated that the Department and the Borrower will execute and deliver a Financing Agreement (the “Financing Agreement”) pursuant to which (i) the Department will agree to make a mortgage loan (the “Loan”) to the Borrower to enable the Borrower to finance the cost of acquisition, equipping and rehabilitation of the Development and related costs, and (ii) the Borrower will execute and

deliver to the Department a promissory note (the “Note”) in an original principal amount equal to the original aggregate principal amount of the Bonds, and providing for payment of interest on such principal amount sufficient to pay the interest on the Bonds in accordance with the terms of a Multifamily Loan and Security Agreement (Non-Recourse) (the “Loan Agreement”) by and between the Borrower and the Department and to pay other costs described in the Financing Agreement; and

WHEREAS, it is anticipated that the Note will be secured by a Multifamily Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the “Mortgage”) from the Borrower for the benefit of the Department; and

WHEREAS, it is anticipated that the obligations of the Borrower under the Financing Agreement (other than for the repayment of principal and interest) will be secured by a Subordinate Multifamily Deed of Trust, Security Agreement and Fixture Filing (the “Subordinate Mortgage”) from the Borrower for the benefit of the Department and the Trustee; and

WHEREAS, the Borrower will obtain a loan from Red Mortgage Capital, LLC (the “Lender”), and the Lender will deposit a portion of the proceeds of such loan with the Trustee, to be held by the Trustee as security for the Bonds in accordance with the Indenture; and

WHEREAS, the Board has determined that the Department, the Trustee, and the Borrower will execute a Regulatory and Land Use Restriction Agreement (the “Regulatory Agreement”) with respect to the Development, which will be filed of record in the real property records of Dallas County, Texas; and

WHEREAS, the Lender has agreed to permit the Loan and to allow the lien of the Subordinate Mortgage in accordance with the terms of a Subordination Agreement (the “Subordination Agreement”) among the Lender, the Issuer and the Borrower; and

WHEREAS, the Board has been presented with a draft of, has considered and desires to ratify, approve, confirm and authorize the use and distribution in the public offering of the Bonds of an Official Statement (the “Official Statement”) and to authorize the authorized representatives of the Department to deem the Official Statement “final” for purposes of Rule 15c2-12 of the Securities and Exchange Commission and to approve the making of such changes in the Official Statement as may be required to provide a final Official Statement for use in the public offering and sale of the Bonds; and

WHEREAS, the Board has further determined that the Department will enter into a Purchase Contract (the “Bond Purchase Agreement”) with RBC Capital Markets, LLC (the “Underwriter”), and the Borrower, setting forth certain terms and conditions upon which the Underwriter will purchase all of the Bonds from the Department and the Department will sell the Bonds to the Underwriter; and

WHEREAS, the Board has examined proposed forms of (a) the Indenture, the Financing Agreement, the Regulatory Agreement, the Loan Agreement, the Subordination Agreement, the Official Statement and the Bond Purchase Agreement (collectively, the “Issuer Documents”), all of which are attached to and comprise a part of this Resolution and (b) the Mortgage, the Subordinate Mortgage and the Note; has found the form and substance of such documents to be satisfactory and proper and the recitals contained therein to be true, correct and complete; and has determined, subject to the conditions set forth in Article I, to authorize the issuance of the Bonds, the execution and delivery of the Issuer Documents, the acceptance of the Mortgage, the Subordinate Mortgage and the Note and the taking of such other actions as may be necessary or convenient in connection therewith;

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

## ARTICLE 1

### ISSUANCE OF BONDS; APPROVAL OF DOCUMENTS

Section 1.1 Issuance, Execution and Delivery of the Bonds. That the issuance of the Bonds is hereby authorized pursuant to the Act, including particularly Section 2306.353 thereof, and Chapter 1371, Texas Government Code, all under and in accordance with the conditions set forth herein and in the Indenture, and that, upon execution and delivery of the Indenture, the Authorized Representatives of the Department named in this Resolution are each hereby authorized to execute, attest and affix the Department's seal to the Bonds and to deliver the Bonds to the Attorney General of the State (the "Attorney General") for approval, the Comptroller of Public Accounts of the State for registration and the Trustee for authentication (to the extent required in the Indenture), and thereafter to deliver the Bonds to or upon the order of the initial purchaser thereof pursuant to the Bond Purchase Agreement.

Section 1.2 Interest Rate, Principal Amount, Maturity and Price. That the Chair or Vice Chair of the Board or the Executive Director of the Department are hereby authorized and empowered, in accordance with Chapter 1371, Texas Government Code, to fix and determine the interest rate, principal amount and maturity of, the redemption and tender provisions related to, and the price at which the Department will sell to the Underwriter or another party to the Bond Purchase Agreement, the Bonds, all of which determinations shall be conclusively evidenced by the execution and delivery by the Chair or Vice Chair of the Board or the Executive Director of the Department of the Indenture and the Bond Purchase Agreement; provided that the interest rate on the Bonds shall not exceed 5%; (ii) the aggregate principal amount of the Bonds shall not exceed \$18,750,000; (iii) the final maturity of the Bonds shall occur not later than October 1, 2034; and (iv) the price at which the Bonds are sold to the initial purchaser thereof under the Bond Purchase Agreement shall not exceed 103% of the principal amount thereof.

Section 1.3 Approval, Execution and Delivery of the Indenture. That the form and substance of the Indenture are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Indenture, and to deliver the Indenture to the Trustee.

Section 1.4 Approval, Execution and Delivery of the Financing Agreement and the Loan Agreement. That the form and substance of the Financing Agreement and the Loan Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Financing Agreement and the Loan Agreement, and to deliver the Financing Agreement and the Loan Agreement to the Borrower.

Section 1.5 Approval, Execution and Delivery of the Regulatory Agreement. That the form and substance of the Regulatory Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute, attest and affix the Department's seal to the Regulatory Agreement, and to deliver the Regulatory Agreement to the Borrower and the Trustee and to cause the Regulatory Agreement to be filed of record in the real property records of Dallas County, Texas.

Section 1.6 Approval, Execution and Delivery of the Bond Purchase Agreement. That the sale of the Bonds to the Underwriter and/or any other parties pursuant to the Bond Purchase Agreement is hereby approved, that the form and substance of the Bond Purchase Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute, attest and affix the Department's seal to the Bond Purchase Agreement and to deliver the Bond Purchase Agreement to the Borrower, the Underwriter, and/or any other parties to the Bond Purchase Agreement, as appropriate.

Section 1.7 Acceptance of the Note, the Mortgage and the Subordinate Mortgage. That the form and substance of the Note, the Mortgage and the Subordinate Mortgage are hereby accepted by the Department and that the Authorized Representatives each are hereby authorized to endorse and deliver the Note to the order of the Trustee without recourse.

Section 1.8 Approval, Execution and Delivery of the Subordination Agreement. That the form and substance of the Subordination Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute, attest and affix the Department's seal to the Subordination Agreement, and to deliver the Subordination Agreement to the Lender and the Borrower and to cause the Subordination Agreement to be filed of record in the real property records of Dallas County, Texas.

Section 1.9 Approval, Execution, Use and Distribution of the Official Statement. That the form and substance of the Official Statement and its use and distribution by the Underwriter in accordance with the terms, conditions and limitations contained therein are hereby approved, ratified, confirmed and authorized; that the Chair and Vice Chair of the Board and the Executive Director of the Department are hereby severally authorized to deem the Official Statement "final" for purposes of Rule 15c2-12 under the Securities and Exchange Act of 1934; that the Authorized Representatives named in this Resolution each are authorized hereby to make or approve such changes in the Official Statement as may be required to provide a final Official Statement for the Bonds; that the Authorized Representatives named in this Resolution each are authorized hereby to accept the Official Statement, as required; and that the use and distribution of the Official Statement by the Underwriter hereby is authorized and approved, subject to the terms, conditions and limitations contained therein, and further subject to such amendments or additions thereto as may be required by the Bond Purchase Agreement and as may be approved by the Executive Director of the Department and the Department's counsel.

Section 1.10 Taking of Any Action; Execution and Delivery of Other Documents. That the Authorized Representatives are each hereby authorized to take any actions and to execute, attest and affix the Department's seal to, and to deliver to the appropriate parties, all such other agreements, commitments, assignments, bonds, certificates, contracts, documents, instruments, releases, financing statements, letters of instruction, notices of acceptance, written requests and other papers, whether or not mentioned herein, as they or any of them consider to be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution.

Section 1.11 Power to Revise Form of Documents. That, notwithstanding any other provision of this Resolution, the Authorized Representatives are each hereby authorized to make or approve such revisions in the form of the documents attached hereto as exhibits as, in the judgment of such Authorized Representative, and in the opinion of Bracewell LLP, Bond Counsel to the Department, may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution, such approval to be evidenced by the execution of such documents by the Authorized Representatives.

Section 1.12 Exhibits Incorporated Herein. That all of the terms and provisions of each of the documents listed below as an exhibit shall be and are hereby incorporated into and made a part of this Resolution for all purposes:

- Exhibit B - Indenture
- Exhibit C - Financing Agreement
- Exhibit D - Regulatory Agreement
- Exhibit E - Bond Purchase Agreement
- Exhibit F - Note
- Exhibit G - Loan Agreement
- Exhibit H - Mortgage
- Exhibit I - Subordinate Mortgage
- Exhibit J - Subordination Agreement
- Exhibit K - Official Statement

Section 1.13 Authorized Representatives. That the following persons are each hereby named as authorized representatives of the Department for purposes of executing, attesting, affixing the Department's seal to, and delivering the documents and instruments and taking the other actions referred to in this Article I:

the Chair or Vice Chair of the Board, the Executive Director of the Department, the Deputy Executive Director of Asset Analysis and Management of the Department, the Director of Bond Finance of the Department, the Director of Multifamily Finance of the Department, the Director of Texas Homeownership of the Department and the Secretary or any Assistant Secretary to the Board. Such persons are referred to herein collectively as the “Authorized Representatives.” Any one of the Authorized Representatives is authorized to act individually as set forth in this Resolution.

## ARTICLE 2

### APPROVAL AND RATIFICATION OF CERTAIN ACTIONS

Section 2.1 Approval and Ratification of Application to Texas Bond Review Board. That the Board hereby ratifies and approves the submission of the application for approval of state bonds to the Texas Bond Review Board on behalf of the Department in connection with the issuance of the Bonds in accordance with Chapter 1231, Texas Government Code.

Section 2.2 Approval of Submission to the Attorney General. That the Board hereby authorizes, and approves the submission by the Department’s Bond Counsel to the Attorney General, for his approval, of a transcript of legal proceedings relating to the issuance, sale and delivery of the Bonds.

Section 2.3 Certification of the Minutes and Records. That the Secretary or Assistant Secretary to the Board hereby is authorized to certify and authenticate minutes and other records on behalf of the Department for the Bonds and all other Department activities.

Section 2.4 Approval of Requests for Rating from Rating Agency. That the action of the Executive Director of the Department or any successor and the Department’s consultants in seeking a rating from Moody’s Investors Service, is approved, ratified and confirmed hereby.

Section 2.5 Authority to Invest Proceeds. That the Department is authorized to invest and reinvest the proceeds of the Bonds and the fees and revenues to be received in connection with the financing of the Development in accordance with the Indenture and to enter into any agreements relating thereto only to the extent permitted by the Indenture.

Section 2.6 Underwriter. That the underwriter with respect to the issuance of the Bonds will be RBC Capital Markets, LLC, or any other party identified in the Bond Purchase Agreement.

Section 2.7 Engagement of Other Professionals. That the Executive Director of the Department or any successor is authorized to engage auditors to perform such functions, audits, yield calculations and subsequent investigations as necessary or appropriate to comply with the Bond Purchase Agreement and the requirements of Bond Counsel to the Department, provided such engagement is done in accordance with applicable law of the State.

Section 2.8 Ratifying Other Actions. That all other actions taken by the Executive Director of the Department and the Department staff in connection with the issuance of the Bonds and the financing of the Development are hereby ratified and confirmed.

## ARTICLE 3

### CERTAIN FINDINGS AND DETERMINATIONS

Section 3.1 Findings of the Board. That in accordance with Section 2306.223 of the Act and after the Department’s consideration of the information with respect to the Development and the information with respect to the proposed financing of the Development by the Department, including but not limited to the

information submitted by the Borrower, independent studies commissioned by the Department, recommendations of the Department staff and such other information as it deems relevant, the Board hereby finds:

(a) Need for Housing Development.

(i) that the Development is necessary to provide needed decent, safe, and sanitary housing at rentals or prices that individuals or families of low and very low income or families of moderate income can afford,

(ii) that the financing of the Development is a public purpose and will provide a public benefit, and

(iii) that the Development will be undertaken within the authority granted by the Act to the housing finance division and the Borrower.

(b) Findings with Respect to the Borrower.

(i) that the Borrower, by operating the Development in accordance with the requirements of the Financing Agreement and the Regulatory Agreement, will supply well-planned and well-designed housing for individuals or families of low and very low income or families of moderate income,

(ii) that the Borrower is financially responsible, and

(iii) that the Borrower is not, and will not enter into a contract for the Development with, a housing developer that (A) is on the Department's debarred list, including any parts of that list that are derived from the debarred list of the United States Department of Housing and Urban Development; (B) breached a contract with a public agency; or (C) misrepresented to a subcontractor the extent to which the developer has benefited from contracts or financial assistance that has been awarded by a public agency, including the scope of the developer's participation in contracts with the agency and the amount of financial assistance awarded to the developer by the Department.

(c) Public Purpose and Benefits.

(i) that the Borrower has agreed to operate the Development in accordance with the Financing Agreement and the Regulatory Agreement, which require, among other things, that the Development be occupied by individuals and families of low and very low income and families of moderate income, and

(ii) that the issuance of the Bonds to finance the Development is undertaken within the authority conferred by the Act and will accomplish a valid public purpose and will provide a public benefit by assisting individuals and families of low and very low income and families of moderate income in the State to obtain decent, safe, and sanitary housing by financing the costs of the Development, thereby helping to maintain a fully adequate supply of sanitary and safe dwelling accommodations at rents that such individuals and families can afford.

Section 3.2 Determination of Eligible Tenants. That the Board has determined, to the extent permitted by law and after consideration of such evidence and factors as it deems relevant, the findings of the staff of the Department, the laws applicable to the Department and the provisions of the Act, that eligible tenants for the Development shall be (1) individuals and families of low and very low income, (2) persons with special needs, and (3) families of moderate income, with the income limits as set forth in the Regulatory Agreement.

Section 3.3 Sufficiency of Loan Interest Rate. That, in accordance with Section 2306.226 of the Act, the Board hereby finds and determines that the interest rate on the Loan will produce the amounts required, when combined with other available funds, to pay for the Department's costs of operation with respect to the Bonds and the Development and enable the Department to meet its covenants with and responsibilities to the holders of the Bonds.

Section 3.4 No Gain Allowed. That, in accordance with Section 2306.498 of the Act, no member of the Board or employee of the Department may purchase any Bond in the secondary open market for municipal securities.

#### ARTICLE 4

#### GENERAL PROVISIONS

Section 4.1 Limited Obligations. That the Bonds and the interest thereon shall be special limited obligations of the Department payable solely from the trust estate created under the Indenture, including the revenues and funds of the Department pledged under the Indenture to secure payment of the Bonds, and under no circumstances shall the Bonds be payable from any other revenues, funds, assets or income of the Department.

Section 4.2 Non-Governmental Obligations. That the Bonds shall not be and do not create or constitute in any way an obligation, a debt or a liability of the State or create or constitute a pledge, giving or lending of the faith or credit or taxing power of the State. Each Bond shall contain on its face a statement to the effect that the State is not obligated to pay the principal thereof or interest thereon and that neither the faith or credit nor the taxing power of the State is pledged, given or loaned to such payment.

Section 4.3 Effective Date. That this Resolution shall be in full force and effect from and upon its adoption.

Section 4.4 Notice of Meeting. This Resolution was considered and adopted at a meeting of the Governing Board that was noticed, convened, and conducted in full compliance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, and with §2306.032 of the Texas Government Code, regarding meetings of the Governing Board.

*[Execution page follows]*

PASSED AND APPROVED this 25<sup>th</sup> day of August, 2016.

[SEAL]

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J. Paul Oxer, Chair

ATTEST:

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James B. Eccles, Secretary

**EXHIBIT A**

**Description of Development**

Borrower: Dalcor Skyline, Ltd, a Texas limited partnership

Development: The Development is a 318-unit affordable multifamily community known as Skyline Place Apartments, at 4700 Wimbleton Way, Dallas, TX 75227. It consists of thirty-one (31) residential apartment buildings with approximately 246,850 net rentable square feet. The unit mix will consist of:

222	one-bedroom/one-bath units
96	two-bedroom/one and a half-bath units
318	Total Units

Unit sizes will range from approximately 605 square feet to approximately 975 square feet.

## Housing Discrimination Complaint

### Filed With:

Mr. Garry L. Sweeney, Director

Fort Worth Regional Office of Fair Housing and Equal Opportunity, Region VI

U.S. Department of Housing and Urban Development

801 Cherry Street, Unit #45, Suite 2500

Fort Worth, Texas 76102

### Filed On: August 9, 2016

Pursuant to The Fair Housing Act (42 U.S.C. §3610(a)(1)(A)) and the implementing regulations (24 C.F.R. §103.30), the undersigned file this Housing Discrimination Complaint against the City of Dallas, Texas for violations of the non-discrimination provisions of the Fair Housing Act (42 U.S.C. §§ 3604, 3605, 3606, 3607).

1. On August 3, 2016, the Dallas City Council authorized by “no objection” and approved (hereafter “August 3rd actions”) Agenda Items 3 (Peoples El Shaddai Village, 2836 East Overton Road, Dallas, Texas, and St. James Manor Apartments, 3119 Easter Avenue, Dallas, Texas), 4 (Silver Gardens Apartments, 2620 Ruidosa Avenue, Dallas, Texas), and 5 (Skyline Place Apartments, 4700 Wimbleton Way, Dallas, Texas) (See 8-3-16 City Council Agenda, available at: <http://dallascityhall.com>) all concerning applications to the Texas Department of Housing and Community Affairs for 4% Tax Credits and other forms of financing for the rehabilitation of low-income multifamily housing projects.
2. HUD’s new AFFH regulation emphasizes that a participant’s AFFH obligation is not bounded by what it can do with the HUD funds it has received: The duty to affirmatively further fair housing extends to all of a program participant’s activities and programs relating to housing and urban development,” including those supported with non-Federal funds. (80 Fed. Reg. 42272, 42353, July 16, 2015).

3. The City's August 3rd actions violate the non-discrimination provisions of the Fair Housing Act because the City is using methods of administration which have the effect of subjecting persons to discrimination based on race, national origin, and disability, perpetuating segregation within the City.
  
4. The geographic locations of the low income multifamily projects described in the City Council Agenda items all lie within the City's Southern Sector, an area well-known to exhibit poverty, low opportunity, high crime rates, high minority populations, poor services, and a high concentration of the City's existing low income housing stock. The City's August 3rd actions encouraging, incentivizing, and approving the rehabilitation of low income housing in these segregated neighborhoods, while ignoring locations of higher opportunity within the City of Dallas, violates the spatial de-concentration goals and objectives at Title 42, Chapter 69, Section 5301, and promote further segregation in the City of Dallas by depriving the occupants of the low income multifamily projects of higher opportunities, and subjecting the low income occupants to another 30 years of living in poverty.
  
5. The City's August 3rd actions do not comport with the November 5, 2014 Voluntary Compliance Agreement settlement action V.1.a):

“A strategy, and a plan for implementation of such strategy, to encourage: (i) the development of affordable housing throughout the City, including housing for low and very low income residents; and (ii) the creation of greater economic opportunity in sectors of the City that are concentrated by poverty, through local tax abatements, economic investment and/or other incentives, and use of HUD or other federal resources. The strategy shall include actions that affirmatively further fair housing and encourage developers to partner with organizations that counsel low and very-low income persons.”

Clearly, the agreement by HUD and the City of Dallas “to encourage the development of affordable housing *throughout the City*, including housing for low and very low income residents” is not met by the City's August 3rd actions. Nor does the City's rehabilitation of these low income multifamily units satisfy “*the creation of greater economic opportunity in sectors of the City that are*

*concentrated by poverty*'. Finally, the City's August 3rd actions do not satisfy the City's federally mandated obligation to "*affirmatively further fair housing*" and are contrary to the goals of increasing housing choice within the City of Dallas.

6. The Secretary of HUD should conduct, as part of the investigation of this complaint, a review of the City of Dallas' current Analysis of Impediments to determine if the City's August 3rd actions are consistent with eliminating impediments to fair housing.
7. The Secretary of HUD should conduct, as part of the investigation of this complaint, a review of the City of Dallas' Civil Rights Obligations (hereafter "CRO") certifications to determine if the City's August 3rd actions render their certifications as inaccurate or void.
8. The Secretary of HUD should conduct, as part of the investigation of this complaint, a review of the City of Dallas' current Annual Action Plan to determine if the City's August 3rd actions are consistent with the HUD-approved Annual Action Plan.
9. The Secretary of HUD should conduct, as part of the investigation of this complaint, a review of the City of Dallas' current 5-year Consolidated Plan to determine if the City's August 3rd actions are consistent with the HUD-approved Consolidated Plan.
10. Inasmuch as the City of Dallas is an entitlement community and, as such, a recipient of Federal Funds, the Secretary of HUD, pursuant to 24 C.F.R. §103.5, should conduct, as part of the investigation of this complaint, the City of Dallas' compliance with "Other Civil Rights Authorities" including, but not limited to: the Fair Housing Act (42 U.S.C. § 3601-3619) including the implementing regulations (24 C.F.R. Part 103), the Civil Rights Act of 1964 (42 U.S.C. § 2000d) including the implementing regulations (24 C.F.R. Part 1), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) including the implementing regulations (24 C.F.R. Part 6), Section 109 of Title I of the Housing and Community Act of 1974 (42 U.S.C. § 5309) including the implementing regulations (24 C.F.R. Part 8), and Executive Order 11063 (24 C.F.R. Part 107).
11. See Exhibit A (attached hereto) Letter from Michael Daniel supporting same.

(Complainants: contact information on file with HUD)

/s/ Craig S. MacKenzie 8-9-16  
(Contact information on file with HUD)

/s/ Curtis Lockey 8-9-16  
(Contact information on file with HUD)

DANIEL & BESHARA, P.C.  
ATTORNEYS AT LAW  
3301 Elm Street  
Dallas, Texas 75226  
(214) 939-9230  
FAX (214) 741-3596  
danbesh@danielbesharalawfirm.com

Michael M. Daniel

August 2, 2016  
email delivery

Councilman Scott Griggs  
Chair, City of Dallas City Council Housing Committee  
City of Dallas  
1500 Marilla Street, Room 5FN  
Dallas, Texas 75201  
Via U.S. Postal Mail and Email [to:scott.griggs@dallascityhall.com](mailto:scott.griggs@dallascityhall.com)

Re: ICP opposition to proposed no objection resolutions on 8/3/2016 City Council Briefing Agenda

Dear Councilman Griggs:

We represent The Inclusive Communities Project, Inc. (ICP). ICP opposes approval of no objection letters for the four applications on the 8/3/2016 Briefing Session Agenda. The no objection letter will have the same effect as an express approval. Either the no objection or an approval will satisfy the legal requirement that the applications not be opposed by the City. Tex. Local Gov't Code § 2306.67071(c). The basis for the opposition is set out below.

Each of the family projects and the elderly project will perpetuate racial segregation by continuing to concentrate low income housing tax credit projects in low income, minority concentrated areas marked by conditions of slum and blight. There is nothing the public record to show that the City staff took into account whether or not approving these applications would violate the Fair Housing Act or comply with the City's obligation to affirmatively further fair housing.

Each of the applications on the Council agenda are for the use of low income housing tax credits and tax exempt bonds in neighborhoods that require substantial City investment and revitalization. These conditions are likely to require justification in order to meet the Texas Department of Housing and Urban Affairs Multifamily approval rules. 10 TAC 10.101. The most current U.S. Census report states that the poverty rate for the St. James Manor and People's El Shaddai projects is 44%. People's El Shaddai is located in a City of Dallas Police Department Crime Hot Spot. The City has twice before, 2008 and 2011, refused to clear these projects for low income housing tax credits.

The Skyline Place Apartments is located between two Crime Hot Spots. It is in census

tract 122.07 which has the maximum score (4 of 4) on two of the Habitat for Humanity Blight to Light index categories (SocioEconomic, and Composite) and a 3 on the Physical conditions index. There are 102 vouchers and 119 project based vouchers in this census tract according to the HUD 2015 data.

The Silver Gardens Apartments is in census tract 127.01 which has the maximum score (4 of 4) on one of the Habitat for Humanity Blight to Light index categories (SocioEconomic) and a 3 on both the Physical conditions and Composite indexes.

Three of the sites include at least one school that does not have the TEA "Met Standard" rating for 2015.

### **2015 DISD School Accountability Rating**

#### **St James Manor Apts**

John Neely Bryan El Improvement Required  
Oliver Wendell Holmes Middle Improvement Required

#### **People's El Shaddai**

Sarah Zumwalt Middle Improvement Required  
South Oak Cliff High Improvement Required

#### **Skyline Village**

Harold W. Lang Sr. Middle Improvement Required

ICP requests that the City deny the requested resolutions.

Sincerely,



Michael M. Daniel  
Laura B. Beshara

cc: Bernadette Mitchell, Director Housing/Community Services Department  
Demetria McCain, President ICP  
Elizabeth K. Julian, Founder/Senior Counsel ICP



City of Dallas

August 5, 2016

Tim Irvine  
 Director  
 Texas Dept. of Housing & Community Affairs  
 P.O. Box 13941  
 Austin, TX 78711-3941

M. Dale Dodson, Developer  
 Dalcor Skyline, Ltd.  
 15950 North Dallas Parkway, Suite 300  
 Dallas, Texas 75248

Re: Compliance and Eligibility with §11.9(d)(1) of the 2016 Qualified Allocation Plan for the Skyline Place Apartments (318-Unit)

Dear Mr. Irvine:

Pursuant to 11.9(d)(1), of the TDHCA 2016 Qualified Allocation Plan (QAP), this letter is being sent to you to demonstrate the City of Dallas ("City") no objection to the TDHCA 4% Low Income Housing Tax Credit (LIHTC) application and allocation for Skyline Place Apartments located at 4700 Wimbelton Way for the rehabilitation of the proposed 318-unit multifamily residential housing development for low income families. On August 3, 2016, the Dallas City Council voted to formally support the Skyline Place Apartments project by Resolution No. 16-1149 which is attached.

The Dallas City Council has provided no objection to the Skyline Place Apartments project; however, the developer did not request a Firm Commitment of Development Funding pursuant to §11.9(d)(2), §11.9(d)(2)(B), and §11.9(d)(2)(C) of the TDHCA 2016 QAP. The applicant anticipates requesting tax exempt bond financing to TDHCA.

It is our understanding that this letter accompanied by the Dallas City Council Resolution is due in your office by August 5, 2016 in order for the application for Skyline Place Apartments to be considered for the 4% LIHTC allocation.

If you need additional information, please contact me at (214) 670-3601.

Sincerely,

Cynthia Rogers-Ellickson, Interim Assistant Director  
 Department of Housing/Community Services

c: Teresa Morales, Multifamily Division Manager, TDHCA  
 Bernadette Mitchell, Director, City of Dallas



STATE OF TEXAS §  
COUNTY OF DALLAS §  
CITY OF DALLAS §

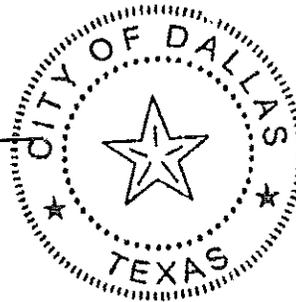
I, **BILIERAE JOHNSON**, Assistant City Secretary of the City of Dallas, Texas, do hereby certify that the attached is a true and correct copy of:

**RESOLUTION NO. 16-1149**

which was passed by the Dallas City Council on **August 3, 2016**.

WITNESS MY HAND AND THE SEAL OF THE CITY OF DALLAS, TEXAS, this the 5<sup>th</sup> day of August, 2016.

**BILIERAE JOHNSON**  
**ASSISTANT CITY SECRETARY**  
**CITY OF DALLAS, TEXAS**



PREPARED BY: MY

161149

August 3, 2016

**WHEREAS**, M. Dale Dodson, Chief Executive Officer of Dalcov Corporation, on behalf of Dalcov Skyline, Ltd. (the "Applicant"), has proposed the rehabilitation for affordable rental housing at 4700 Wimbelton Way named Skyline Place Apartments in the City of Dallas and has advised that it intends to submit an application to the Texas Department of Housing & Community Affairs (TDHCA) for 2016 4% Housing Tax Credits for Skyline Place Apartments; and

**WHEREAS**, on August 1, 2016, the Skyline Place Apartments' Housing Tax Credit multifamily project was briefed and supported by the Housing Committee; and

**WHEREAS**, as a condition for being considered for the award of the 4% tax credit, the Applicant has proposed to renting 318 units or 100% of the units to tenants with household incomes capped at 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**, the City of Dallas provides no objection to the TDHCA 2016 4% LIHTC application for the Skyline Place Apartments project located at 4700 Wimbelton Way;  
**NOW, THEREFORE,**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:**

**SECTION 1.** That the City of Dallas hereby has no objection to the Texas Department of Housing & Community Affairs (TDHCA) 4% Low Income Housing Tax Credit (LIHTC) application and allocation for Skyline Place Apartments located at 4700 Wimbelton Way for the rehabilitation of the proposed 318-unit multifamily residential project for low income families.

**SECTION 2.** That in accordance with the requirements of Texas Government Code §2306.67071 and Texas Administrative Code §10.204(4), it is hereby found that:

1. Notice has been provided to the Governing Body in accordance with Texas Government Code, §2306.67071 (a); and
2. The Governing Body has had sufficient opportunity to obtain a response from the Applicant regarding any questions or concerns about the proposed Development; and
3. The Governing Body has held a hearing at which public comment may be made on the proposed Development in accordance with Texas Government Code, §2306.67071(b); and
4. After due consideration of the information provided by the Applicant and public comment, the Governing Body has no objection to the proposed Application.
5. The Governing Body acknowledges the substantial, legitimate, nondiscriminatory governmental interest served by completion of the project.

161149

August 3, 2016**SECTION 2. (continued)**

6. The Governing Body confirms that the governmental interest could not have been served in a less discriminatory way.
7. The Governing Body will create a Community Revitalization Plan for the census tract in which the project is located.
8. The City Council directs the City Manager to identify funding to create access to opportunity for the residents of the census tract.
9. The developer will cooperate with the City on the development of a community revitalization plan.

**SECTION 3.** That the City of Dallas, acting through its governing body, hereby confirms that it has no objection to the proposed Skyline Place Apartments project and allocation of 2016 4% Housing Tax Credits for the rehabilitation of the apartments located at 4700 Wimbelton Way.

**SECTION 4.** That this formal action has been taken to put on record the opinion expressed by the City of Dallas on August 3, 2016, and that for and on behalf of the Governing Body, City Manager, or his designee, is hereby authorized, empowered, and directed to certify this resolution to the Texas Department of Housing and Community Affairs.

**SECTION 5.** That as provided for in 10 TAC §11.3(c), it is hereby acknowledged that the Skyline Place Apartments will not be located one linear mile or less from a Development that serves the same type of household as the proposed Development and has received an allocation of Housing Tax Credits for New Construction since January 4, 2013; however, if data changes or if another Development that serves the same type of household is approved for Housing Tax Credits, the City of Dallas continues to have no objection and specifically allows the Skyline Place Apartments to receive an allocation of Housing Tax Credit.

**SECTION 6.** That as provided for in 10 TAC §11.3(b), it is hereby acknowledged that the City of Dallas is not a municipality that has more than twice the state average of units per capita supported by LIHTC; however, if data changes occur, the City of Dallas would continue to have no objection to the Skyline Place Apartments.

**SECTION 7.** That as provided for in 10 TAC §11.3(d) and §11.4(c)(1), it is hereby acknowledged that the proposed Skyline Place Apartments will not be located in a census tract that has more than 20% Housing Tax Credit Units per total household in the census tract; however, if data changes occur, the City of Dallas would continue to have no objection to the Skyline Place Apartments.

161149

**SECTION 8.** 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 9.** That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so resolved.

APPROVED BY  
CITY COUNCIL  
  
AUG 03 2016  
  
*Steve P. Rice*  
City Secretary

161149

## AGENDA ITEM # 5

AGENDA DATE: August 3, 2016  
 COUNCIL DISTRICT(S): 7  
 DEPARTMENT: Housing/Community Services  
 CMO: Alan Sims, Chief of Neighborhood Plus, 670-1611  
 MAPSCO: 48Q

SUBJECT

A public hearing to receive comments regarding an application to the Texas Department of Housing and Community Affairs (TDHCA) for 2016 4% Low Income Housing tax Credits for Skyline Place Apartments, a 318-unit multifamily rehabilitation project located at 4700 Wimbelton Way, in accordance with the requirements of Texas Government Code §2306.67071 and Texas Administrative Code §10.204(4); and at the close of the public hearing, authorize a resolution for no objection to the Texas Department of Housing and Community Affairs (TDHCA) 4% Low Income Housing Tax Credit (LIHTC) application and allocation for Skyline Place Apartments, located at 4700 Wimbelton Way for the rehabilitation of the proposed 318-unit multifamily residential housing development for low income families - Financing: No cost consideration to the City

Total amount: \$0.00 No cost consideration to the City  
 Funding types: \_\_\_\_\_ NO COST CONSIDERATION TO THE CITY

BACKGROUND

On June 22, 2016, the City of Dallas (the "City") issued a Request for Application (RFA) for multifamily rehabilitation projects utilizing the Texas Department of Housing & Community Affairs (TDHCA) Low Income Housing Tax Credit (LIHTC) Program to all known developers and posted it to the City's website. On July 15, 2016, the proposals were due back to the City. In July 2016, the Applications were reviewed by the Loan Review Committee.

On July 13, 2016, M. Dale Dodson, Manager of Affordable Housing I, LLC submitted an application to the City of Dallas on behalf of Dalcors Skyline, Ltd. (the "Applicant"), for no objection to their application to TDHCA for the 2016 Low Income Housing Tax Credit Program. The project includes 318 multifamily units for low income families, 222 one-bedroom and 96 two-bedroom units.

161149

**BACKGROUND (continued)**

The Applicant has proposed renting 318 units or 100% of the units to tenants with household incomes capped at 60% or below the area median family income (AMFI) with rents affordable to tenants whose household incomes are 60% or below AMFI.

As a new requirement for applicants applying for Housing Tax Credits after September 1, 2013, the Governing Body must adhere to the new notification and hearing requirements of the Texas Government Code §2306.67071 and Texas Administrative Code §10.204(4). More specifically, those notices are as follows: notice has been provided to the Governing Body in accordance with Texas Government Code §2306.67071 (a) the Governing Body has had sufficient opportunity to obtain a response from the Applicant regarding any questions or concerns about the proposed Development; the Governing Body has held a hearing at which public comment may be made on the proposed Development in accordance with Texas Government Code, §2306.67071; and (b) after due consideration of the information provided by the Applicant and public comment, the Governing Body does not object to the proposed Application.

This project is not located within one mile of another LIHTC multifamily project that serves the same type of household as the proposed Development. The project is not located in a census tract that has more than 20 percent housing tax credit units per total households as established by the 5-year American Community Survey.

The Applicant has submitted an application to request tax exempt bond financing to the Texas Department of Housing and Community Affairs (TDHCA). The Applicant did not request any gap funding from the City of Dallas.

**PRIOR ACTION/REVIEW (Council, Boards, Commissions)**

On February 10, 2010, 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.

On June 18, 2016, the Housing Committee was briefed on the Low Income Housing Tax Credit Program for 4% rehabilitation projects.

On August 1, 2016, the Skyline Place Apartments Low Income Housing Tax Credit multifamily project was briefed and supported by the Housing Committee.

161149

**FISCAL INFORMATION**

No cost consideration to the City

**OWNER(S)**

**Dalcor Skyline Ltd. – Limited Partner**  
M. Dale Dodson, CEO

**Dalcor Skyline GP, LLC - General Partner**

**Dalcor Affordable Housing I, LLC**

**Dalcor Holdings, LLC**  
M. Dale Dodson – 50%

**JKL Realty, Ltd. – 50%**  
Ronald D. Murff, Manager  
Kathi Yeager  
Judy Burleson

**JKL Group, LLC**  
Kathi Yeager  
Judy Burleson

**MAP**

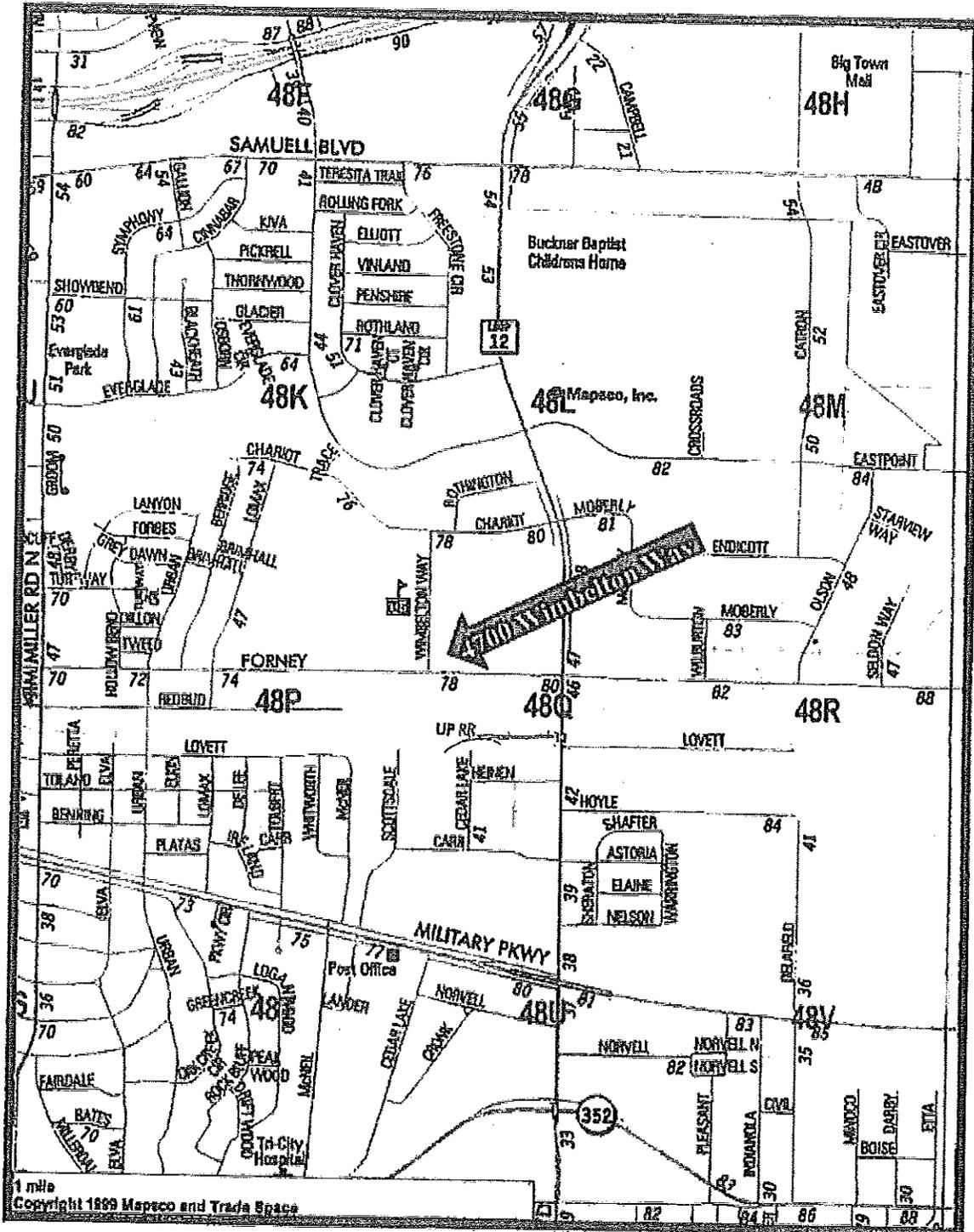
Attached

**DEVELOPER**

**Dalcor Affordable Housing I, LLC**

**Dalcor Holdings, LLC**  
M. Dale Dodson, Managing Member  
Ronald D. Murff, Manager

161149



**MAPSCO 48Q**

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

PUBLIC HEARING  
ON  
ISSUANCE OF TAX-EXEMPT MULTIFAMILY REVENUE BONDS  
RELATING TO  
SKYLINE PLACE APARTMENTS

Meeting Room  
Skyline Branch Library  
6006 Everglade Road  
Dallas, Texas

Tuesday,  
July 5, 2016  
6:00 p.m.

BEFORE: NICOLE FISHER, TDHCA Housing  
Specialist

ON THE RECORD REPORTING  
(512) 450-0342

P R O C E E D I N G S

1  
2 MS. FISHER: Good evening. My name is Nicole  
3 Fisher. I would like to proceed with the public hearing.

4 Let the record show it is 6:10 p.m., Tuesday, July 5,  
5 2016, and we are at the Skyline Branch Library, located at  
6 6006 Everglade Road, Dallas, Texas..

7 I'm here to conduct a public hearing on behalf  
8 of the Texas Department of Housing and Community Affairs  
9 with respect to an issue of tax-exempt multifamily revenue  
10 bonds for a residential rental community.

11 This hearing is required by the Internal  
12 Revenue Code. The sole purpose of this hearing is to  
13 provide a reasonable opportunity for interested  
14 individuals to express their views regarding the  
15 development and the proposed bond issue.

16 No decisions regarding the development will be  
17 made at this hearing. The Department's board is scheduled  
18 to meet to consider this transaction on August 25, 2016.  
19 In addition to providing your comments at this hearing,  
20 the public is also invited to provide comment directly to  
21 the board at any of their meetings. The Department staff  
22 will also accept written comments from the public up to  
23 5:00 p.m. on August 16, 2016.

24 The bonds for the Skyline Place Apartments will  
25 be issued as tax-exempt multifamily revenue bonds in the

1 aggregate principal amount not to exceed \$19 million and  
2 taxable bonds, if necessary, in an amount to be determined  
3 and issued in one or more series by the Texas Department  
4 of Housing and Community Affairs, the Issuer.

5 The proceeds of the bonds will be loaned to  
6 Dalcor Skyline, Ltd., or a related person or affiliate  
7 entity thereof, to finance the acquisition and  
8 rehabilitation of a multifamily housing development  
9 described as follows: a 318-unit multifamily residential  
10 rental development to be constructed on approximately 11.8  
11 acres of land located at 4700 Wimbelton Way, Dallas,  
12 Dallas County, Texas. The proposed multifamily rental  
13 housing community will be initially owned and operated by  
14 the borrower or a related person or affiliate thereof.

15 Let the record show that there are no  
16 attendees; therefore, the meeting is now adjourned. The  
17 time is 6:12 p.m.

18 (Whereupon, at 6:12 p.m., the public hearing  
19 was concluded.)

C E R T I F I C A T E

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IN RE: Skyline Place Apartments  
LOCATION: Dallas, Texas  
DATE: July 5, 2016

I do hereby certify that the foregoing pages, numbers 1 through 4, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Barbara Wall before the Texas Department of Housing and Community Affairs.

*Samuel H. Stoddard* 07/07/2016  
(Transcriber) (Date)

On the Record Reporting  
3636 Executive Ctr Dr., G-22  
Austin, Texas 78731

4b

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**AUGUST 25, 2016**

Presentation, Discussion, and Possible Action on Inducement Resolution No. 16-025 for Multifamily Housing Revenue Bonds Regarding Authorization for Filing Applications for Private Activity Bond Authority and Determination regarding Eligibility under 10 TAC §10.101(a)(4) related to Undesirable Neighborhood Characteristics

**RECOMMENDED ACTION**

**WHEREAS**, a bond pre-application for Piney Woods Village (#16608), sponsored by David Russell, A. Richard Wilson, Gerald Russell, and Mountain Top Development, a Texas nonprofit, was submitted to the Department for consideration of an inducement resolution;

**WHEREAS**, pursuant to 10 TAC §10.101(a)(4) of the Uniform Multifamily Rules related to Undesirable Neighborhood Characteristics, applicants are required to disclose the existence of certain characteristics of a proposed development site and can do so at the time of pre-application or full application;

**WHEREAS**, the applicant disclosed the presence of such characteristics; specifically that the proposed site is located in a census tract where the Part I violent crime rate exceeds 18 per 1,000 persons annually according to Neighborhoodscout and the site is located within 1,000 feet of multiple vacant, blighted structures;

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

**WHEREAS**, the Board approval of the inducement resolution is the first step in the application process for a multifamily bond issuance by the Department which will be followed by additional review of the financial structure and economics of the proposed development; and

**WHEREAS**, the inducement allows staff to submit an application to the Bond Review Board (“BRB”) to await a Certificate of Reservation;

**NOW, therefore, it is hereby**

**RESOLVED**, the Inducement Resolution No. 16-025 to proceed with the application submission to the BRB for possible receipt of State Volume Cap issuance authority from the 2016 Private Activity Bond Program for Piney Woods Village is hereby approved in the form presented to this meeting; and

**FURTHER RESOLVED**, the determination of eligibility is based upon the mitigation submitted at the time of pre-application and submission of a full application under the 2016 Uniform Multifamily Rules. Should additional information become available that could necessitate a reassessment of the undesirable neighborhood characteristics or should the applicant receive a 2017 Certificate of Reservation the development site will be reevaluated for eligibility.

### **BACKGROUND**

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

During the 150-day process, the Department will review the complete application for compliance with the Department's Rules and underwrite the transaction in accordance with the Real Estate Analysis Rules. The Department will schedule and conduct a public hearing, and the complete application, including a transcript from the hearing, will then be presented to the Board for a decision on the issuance of bonds as well as a determination on the amount of housing tax credits anticipated to be allocated to the development.

Each year, the State of Texas is notified of the cap on the amount of private activity tax exempt revenue bonds that may be issued within the state. Approximately \$604 million is set aside for multifamily until August 15<sup>th</sup> for the 2016 program year, which includes the TDHCA set aside of approximately \$120 million. Inducement Resolution No. 16-025 would reserve approximately \$24 million in state volume cap.

*General Information:* The proposed development is to be located at approximately 5318 Aldine Bender Road in Houston, Harris County, and will include the new construction of 290 units serving the general population. This transaction is proposed to be Priority 3 with 288 of the units rent and income restricted at 60% of the Area Median Family Income ("AMFI") and the remaining two units will be Employee Occupied. The Department received letters of opposition from US Representative Gene Green, Aldine ISD, and State Representative Armando Walle. The applicant has stated to the Department that they have been in contact with these offices and are discussing their concerns and possible ways to alleviate those concerns. No letters of support have been received.

*Site Analysis* The applicant disclosed the presence of undesirable neighborhood characteristics under §10.101(a)(4)(B) of the Uniform Multifamily Rules, which requires additional site analysis; specifically, that the rate of Part I violent crimes is greater than 18 per 1,000 persons annually and that there is what could be considered blight within 1,000 feet of the site.

Crime: With respect to the rate of Part I violent crimes, while the proposed site is not located within a census tract (2231.00) that exceeds the threshold, it is located within 1,000 feet of another census tract (2227.00) where the rate of such crimes is 21.56 per 1,000 persons annually, according to Neighborhoodscout.com. The proposed site is located in unincorporated northeast Houston and portions of the two census tracts noted are within the City of Houston and portions are in Harris County. Because of this, the applicant provided violent crime data from information available from the City of Houston's Police Department as well as Harris County Sheriff's Department, based on the police beat of the adjacent

census tract, consistent with acceptable mitigation allowed under §10.101(a)(4)(D) of the Uniform Multifamily Rules. It should be noted that the police beat for the adjacent census tract is the same police beat that serves the census tract containing the development. The data indicated that the average violent crime for the adjacent census tract (2227.00) was 3.70 per 1,000 persons. Moreover, because the adjacent census tract could still be considered characteristic of the neighborhood in that there are not any physical features that could easily distinguish it from the census tract containing the proposed development, the applicant also provided information on the number of violent crimes within a one half mile radius (as allowed under the rule for acceptable mitigation regarding crime) and a three-quarter mile radius of the proposed development site and the ratio of violent crime was 2.38 per 1,000 persons. Both of these assessments regarding crime in the adjacent census tract were well below the threshold in the rule of 18 per 1,000 persons.

Moreover, the applicant intends to have an office in the clubhouse for county sheriffs and Houston police officers to use for completing paperwork and congregating between shifts. This will help detract from any criminal activity and behavior that may occur on the proposed site. The applicant is also exploring the possibility of instituting a contract to have law enforcement patrol the area specific to this neighborhood; outside of the regular patrol that is occurring. Some of the security features planned for the development include nightly patrols from the courtesy officers, the installation of security cameras on site, and safety meetings with local law enforcement who provide information and tips regarding what to look out for. Similar strategies have been implemented by the applicant at other developments in Houston and, according to the applicant, they have been successful.

Blight: The proposed development is located in northeast Houston on Aldine Bender Road and is bordered by Sequoia Bend Blvd. on the west and Surles Drive on the east, in a neighborhood of primarily older single family homes as well as several multifamily developments across the street and along Aldine Bender. Surles Drive runs parallel to the property and it is along this road that staff observed, during a site visit on June 7, 2016, some blighted structures that appeared to be vacant. Staff did not determine whether any of the blight was within 1,000 feet of the site according to the rule, which states the following: *“the site is located within 1,000 feet of multiple vacant structures visible from the street, which have fallen into such significant disrepair, overgrowth, and/or vandalism that they would commonly be regarded as blighted or abandoned.”* The applicant provided a map with a 1,000 foot radius from each of the four corners of the site which revealed two structures that the applicant believed could be considered blight, both of which are in proximity to Surles Drive and are located towards the southern boundary of the site. Upon further assessment of the structures identified, staff believes only one of them to be considered blight according to the rule and; therefore, not of a magnitude that would render the site ineligible. Staff notes that the characteristics of this area, in particular the eastern boundary of the proposed development site, are much older, dilapidated and somewhat run-down housing with various piles of debris throughout. The applicant has expressed a willingness to pursue efforts that could address these characteristics that include assisting the Aldine Management District in their efforts to create a Public Safety Plan that addresses these types of issues in neighborhoods and hosting a community-wide clean-up several times a year with the goal of removing the various piles of debris that was noticed throughout the neighborhood. These efforts are further identified in the agreement included herein submitted by the applicant. Although the presence of this undesirable neighborhood characteristic was not specifically triggered under the rule, staff believes the efforts noted by the applicant to demonstrate a good faith effort to be a partner in the community of which they would be a part with the proposed development is acceptable and should be pursued to the extent possible and within their control.

Under §10.101(a)(4) of the Uniform Multifamily Rules, there is a consideration for the Board to find a development site eligible despite the presence of undesirable neighborhood characteristics on the basis that

there is a factual determination that such characteristic is not of such a nature or severity that it should render the development site ineligible based on acceptable mitigation efforts identified in the rule. After reviewing the aforementioned facts relating to crime and the different methods by which crime was evaluated, consistent with the mitigation allowed under the rule, there were not additional concerns noted by staff. Moreover, staff believes that the one blighted structure is not of a magnitude that warrants concern and the efforts noted by the applicant to address the older housing in this particular portion of the neighborhood demonstrates their willingness to work with community members to help improve the overall neighborhood. The information contained herein leads to a supported conclusion that the development site should not be considered ineligible under §10.101(a)(4) of the Uniform Multifamily Rules based on what has been submitted.

Staff notes that if additional information becomes available during the full application process for any of the undesirable neighborhood characteristics, staff will re-evaluate the proposed development site for eligibility and will present the Board with additional information at that time, if applicable. Moreover, should the applicant pursue a 2017 Certificate of Reservation then the application will be re-evaluated based on the 2017 rules in effect.

## RESOLUTION NO. 16-025

RESOLUTION DECLARING INTENT TO ISSUE MULTIFAMILY REVENUE BONDS WITH RESPECT TO RESIDENTIAL RENTAL DEVELOPMENTS; AUTHORIZING THE FILING OF ONE OR MORE APPLICATIONS FOR ALLOCATION OF PRIVATE ACTIVITY BONDS WITH THE TEXAS BOND REVIEW BOARD; AND AUTHORIZING OTHER ACTION RELATED THERETO

WHEREAS, the Texas Department of Housing and Community Affairs (the “Department”) has been duly created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code, as amended, (the “Act”) for the purpose, among others, of providing a means of financing the costs of residential ownership, development and rehabilitation that will provide decent, safe, and affordable living environments for persons and families of low, very low and extremely low income and families of moderate income (all as defined in the Act); and

WHEREAS, the Act authorizes the Department: (a) to make mortgage loans to housing sponsors to provide financing for multifamily residential rental housing in the State of Texas (the “State”) intended to be occupied by persons and families of low, very low and extremely low income and families of moderate income, as determined by the Department; (b) to issue its revenue bonds, for the purpose, among others, of obtaining funds to make such loans and provide financing, to establish necessary reserve funds and to pay administrative and other costs incurred in connection with the issuance of such bonds; and (c) to pledge all or any part of the revenues, receipts or resources of the Department, including the revenues and receipts to be received by the Department from such multifamily residential rental development loans, and to mortgage, pledge or grant security interests in such loans or other property of the Department in order to secure the payment of the principal or redemption price of and interest on such bonds; and

WHEREAS, it is proposed that the Department issue its revenue bonds in one or more series for the purpose of providing financing for the multifamily residential rental developments (the “Developments”) more fully described in Exhibit A attached hereto. The ownership of the Developments as more fully described in Exhibit A will consist of the applicable ownership entity and its principals or a related person (the “Owners”) within the meaning of the Internal Revenue Code of 1986, as amended (the “Code”); and

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

WHEREAS, the Owners have indicated their willingness to enter into contractual arrangements with the Department providing assurance satisfactory to the Department that the requirements of the Act and the Department will be satisfied and that the Developments will satisfy State law, Section 142(d) and other applicable Sections of the Code and Treasury Regulations; and

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

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

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

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

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

## ARTICLE 1

### OFFICIAL INTENT; APPROVAL OF CERTAIN ACTIONS

Section 1.1. Authorization of Issue. The Department declares its intent to issue its Multifamily Housing Revenue Bonds (the "Bonds") in one or more series and in amounts estimated to be sufficient to (a) fund a loan or loans to the Owners to provide financing for the respective Developments in an aggregate principal amount not to exceed those amounts, corresponding to the Developments, set forth in Exhibit A; (b) fund a reserve fund with respect to the Bonds if needed; and (c) pay certain costs incurred in connection with the issuance of the Bonds. Such Bonds will be issued as qualified residential rental development bonds. Final approval of the Department to issue the Bonds shall be subject to: (i) the review by the Department's credit underwriters for financial feasibility; (ii) review by the Department's staff and legal counsel of compliance with federal income tax regulations and State law requirements regarding tenancy in the respective Development; (iii) approval by the Bond Review Board, if required; (iv) approval by the Attorney General of the State of Texas (the "Attorney General"); (v) satisfaction of the Board that the respective Development meets the Department's public policy criteria; and (vi) the ability of the Department to issue such Bonds in compliance with all federal and State laws applicable to the issuance of such Bonds.

Section 1.2. Terms of Bonds. The proposed Bonds shall be issuable only as fully registered bonds in authorized denominations to be determined by the Department; shall bear interest at a rate or rates to be determined by the Department; shall mature at a time to be determined by the Department but in no event later than 40 years after the date of issuance; and shall be subject to prior redemption upon such terms and conditions as may be determined by the Department.

Section 1.3. Reimbursement. The Department reasonably expects to reimburse the Owners for all costs that have been or will be paid subsequent to the date that is 60 days prior to the date hereof in connection with the acquisition of real property and construction of its Development and listed on Exhibit A attached hereto ("Costs of the Developments") from the proceeds of the Bonds, in an amount which is reasonably estimated to be sufficient: (a) to fund a loan to provide financing for the acquisition and construction or rehabilitation of its Development, including reimbursing the applicable Owner for all

costs that have been or will be paid subsequent to the date that is 60 days prior to the date hereof in connection with the acquisition and construction or rehabilitation of the Developments; (b) to fund any reserves that may be required for the benefit of the holders of the Bonds; and (c) to pay certain costs incurred in connection with the issuance of the Bonds.

Section 1.4. Principal Amount. Based on representations of the Owners, the Department reasonably expects that the maximum principal amount of debt issued to reimburse the Owners for the Costs of the Developments will not exceed the amount set forth in Exhibit A which corresponds to the applicable Development.

Section 1.5. Limited Obligations. The Owners may commence with the acquisition and construction or rehabilitation of the Developments, which Developments will be in furtherance of the public purposes of the Department as aforesaid. On or prior to the issuance of the Bonds, each Owner will enter into a loan agreement, on terms agreed to by the parties, on an installment payment basis with the Department under which the Department will make a loan to the applicable Owner for the purpose of reimbursing the Owner for the Costs of the Development and the Owner will make installment payments sufficient to pay the principal of and any premium and interest on the applicable Bonds. The proposed Bonds shall be special, limited obligations of the Department payable solely by the Department from or in connection with its loan or loans to the Owner to provide financing for its Development, and from such other revenues, receipts and resources of the Department as may be expressly pledged by the Department to secure the payment of the Bonds.

Section 1.6. The Developments. Substantially all of the proceeds of the Bonds shall be used to finance the Developments, which are to be occupied entirely by Eligible Tenants, as determined by the Department, and which are to be occupied partially by persons and families of low income such that the requirements of Section 142(d) of the Code are met for the period required by the Code.

Section 1.7. Payment of Bonds. The payment of the principal of and any premium and interest on the Bonds shall be made solely from moneys realized from the loan of the proceeds of the Bonds to reimburse the Owners for costs of its Development.

Section 1.8. Costs of Developments. The Costs of the Developments may include any cost of acquiring, constructing, reconstructing, improving, installing and expanding the Developments. Without limiting the generality of the foregoing, the Costs of the Developments shall specifically include the cost of the acquisition of all land, rights-of-way, property rights, easements and interests, the cost of all machinery and equipment, financing charges, inventory, raw materials and other supplies, research and development costs, interest prior to and during construction and for one year after completion of construction whether or not capitalized, necessary reserve funds, the cost of estimates and of engineering and legal services, plans, specifications, surveys, estimates of cost and of revenue, other expenses necessary or incident to determining the feasibility and practicability of acquiring, constructing, reconstructing, improving and expanding the Developments, administrative expenses and such other expenses as may be necessary or incident to the acquisition, construction, reconstruction, improvement and expansion of the Developments, the placing of the Developments in operation and that satisfy the Code and the Act. The Owners shall be responsible for and pay any costs of its Development incurred by it prior to issuance of the Bonds and will pay all costs of its Development which are not or cannot be paid or reimbursed from the proceeds of the Bonds.

Section 1.9. No Commitment to Issue Bonds. Neither the Owners nor any other party is entitled to rely on this Resolution as a commitment to issue the Bonds and to loan funds, and the Department reserves the right not to issue the Bonds either with or without cause and with or without

notice, and in such event the Department shall not be subject to any liability or damages of any nature. Neither the Owners nor any one claiming by, through or under the Owners shall have any claim against the Department whatsoever as a result of any decision by the Department not to issue the Bonds.

Section 1.10. Conditions Precedent. The issuance of the Bonds following final approval by the Board shall be further subject to, among other things: (a) the execution by the Owners and the Department of contractual arrangements, on terms agreed to by the parties, providing assurance satisfactory to the Department that all requirements of the Act will be satisfied and that the Development will satisfy the requirements of Section 142(d) of the Code (except for portions to be financed with taxable bonds); (b) the receipt of an opinion from Bracewell LLP or other nationally recognized bond counsel acceptable to the Department (“Bond Counsel”), substantially to the effect that the interest on the tax-exempt Bonds is excludable from gross income for federal income tax purposes under existing law; and (c) receipt of the approval of the Bond Review Board, if required, and the Attorney General.

Section 1.11. Authorization to Proceed. The Board hereby authorizes staff, Bond Counsel and other consultants to proceed with preparation of the Developments’ necessary review and legal documentation for the filing of one or more Applications and the issuance of the Bonds, subject to satisfaction of the conditions specified in this Resolution. The Board further authorizes staff, Bond Counsel and other consultants to re-submit an Application that was withdrawn by an Owner.

Section 1.12. Related Persons. The Department acknowledges that financing of all or any part of the Developments may be undertaken by any company or partnership that is a “related person” to the respective Owner within the meaning of the Code and applicable regulations promulgated pursuant thereto, including any entity controlled by or affiliated with the Owners.

Section 1.13. Declaration of Official Intent. This Resolution constitutes the Department’s official intent for expenditures on Costs of the Developments which will be reimbursed out of the issuance of the Bonds within the meaning of Sections 1.142-4(b) and 1.150-2, Title 26, Code of Federal Regulations, as amended, and applicable rulings of the Internal Revenue Service thereunder, to the end that the Bonds issued to reimburse Costs of the Developments may qualify for the exemption provisions of Section 142 of the Code, and that the interest on the Bonds (except for any taxable Bonds) will therefore be excludable from the gross incomes of the holders thereof under the provisions of Section 103(a)(1) of the Code.

Section 1.14. Execution and Delivery of Documents. The Authorized Representatives named in this Resolution are each hereby authorized to execute and deliver all Applications, certificates, documents, instruments, letters, notices, written requests and other papers, whether or not mentioned herein, as may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution.

Section 1.15. Authorized Representatives. The following persons are hereby named as Authorized Representatives of the Department for purposes of executing, attesting, affixing the Department’s seal to, and delivering the documents and instruments and taking the other actions referred to in this Article 1: the Chair or Vice Chair of the Board, the Executive Director of the Department, the Deputy Executive Director of Asset Analysis and Management of the Department, the Director of Bond Finance of the Department, the Director of Texas Homeownership of the Department, the Director of Multifamily Finance of the Department, and the Secretary or any Assistant Secretary to the Board. Such persons are referred to herein collectively as the “Authorized Representatives.” Any one of the Authorized Representatives is authorized to act individually as set forth in this Resolution.

## ARTICLE 2

### CERTAIN FINDINGS AND DETERMINATIONS

Section 2.1. Certain Findings Regarding Developments and Owners. The Board finds that:

- (a) the Developments are necessary to provide decent, safe and sanitary housing at rentals that individuals or families of low and very low income and families of moderate income can afford;
- (b) the Owners will supply, in their Development, well-planned and well-designed housing for individuals or families of low and very low income and families of moderate income;
- (c) the Owners are financially responsible;
- (d) the financing of the Developments is a public purpose and will provide a public benefit;  
and
- (e) the Developments will be undertaken within the authority granted by the Act to the Department and the Owners.

Section 2.2. No Indebtedness of Certain Entities. The Board hereby finds, determines, recites and declares that the Bonds shall not constitute an indebtedness, liability, general, special or moral obligation or pledge or loan of the faith or credit or taxing power of the State, the Department or any other political subdivision or municipal or political corporation or governmental unit, nor shall the Bonds ever be deemed to be an obligation or agreement of any officer, director, agent or employee of the Department in his or her individual capacity, and none of such persons shall be subject to any personal liability by reason of the issuance of the Bonds. The Bonds will be a special limited obligation of the Department payable solely from amounts pledged for that purpose under the financing documents.

Section 2.3. Certain Findings with Respect to the Bonds. The Board hereby finds, determines, recites and declares that the issuance of the Bonds to provide financing for the Developments will promote the public purposes set forth in the Act, including, without limitation, assisting persons and families of low and very low income and families of moderate income to obtain decent, safe and sanitary housing at rentals they can afford.

## ARTICLE 3

### GENERAL PROVISIONS

Section 3.1. Books and Records. The Board hereby directs this Resolution to be made a part of the Department's books and records that are available for inspection by the general public.

Section 3.2. Notice of Meeting. This Resolution was considered and adopted at a meeting of the Board that was noticed, convened, and conducted in full compliance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, and with §2306.032 of the Texas Government Code, regarding meetings of the Board.

Section 3.3. Effective Date. This Resolution shall be in full force and effect from and upon its adoption.

*[Execution page follows]*

PASSED AND APPROVED this 25<sup>th</sup> day of August, 2016.

[SEAL]

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

ATTEST:

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

*Signature Page to Inducement Resolution*

**EXHIBIT “A”**

Description of the Owner and the Development

Project Name	Owner	Principals	Amount Not to Exceed
Piney Woods Village	PWV Partners LP	PWV GP LLC, a Texas limited liability company	\$24,000,000
Costs: Construction of a 290-unit affordable, multifamily housing development to be known as Piney Woods Village, to be located at 5318 Aldine Bender Road, Houston, Harris County, Texas 77032.			

**GENE GREEN**

29TH DISTRICT, TEXAS

- 2470 RAYBURN  
WASHINGTON, DC 20515  
(202) 225-1688
  - 256 N. SAM HOUSTON PKWY. E.  
SUITE 29  
HOUSTON, TEXAS 77060  
(281) 999-5879
  - 11811 I-10 EAST  
SUITE 430  
HOUSTON, TEXAS 77029  
(713) 330-0761
- WWW.HOUSE.GOV/GREEN

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-4329**

**COMMITTEE ON ENERGY AND COMMERCE**

- SUBCOMMITTEE ON ENERGY AND POWER
- SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY
- SUBCOMMITTEE ON HEALTH RANKING MEMBER
- SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

**DEMOCRATIC SENIOR WHIP**

August 3, 2016

Mr. Tim Irvine  
Executive Director  
Texas Department of Housing and Community Affairs  
PO Box 13941  
Austin, Texas 78711-3941

Dear Mr. Irvine:

I am writing to express my opposition to TDHCA Application #16608, for the proposed Piney Woods Village multi-family housing complex at 5318 Aldine Bender Road, Houston, Texas 77032 which lies within my congressional district.

This area currently has an overabundance of multi-family housing which has placed a severe strain on public services and the local school district. While this particular applicant proposes to set aside a portion of their units to house veterans, the planned location of the Piney Woods Village is in close proximity to several complexes built with the assistance of TDHCA tax credits. An enormous complex known as Haverstock Hills apartments which has a history of criminal activity and is an ongoing challenge to law enforcement is also nearby the property. Placing additional multi-family in an area already struggling to deal with public safety and overcrowded schools would not be advisable at this time.

Thank you for your consideration in this matter and please do not hesitate to contact me if I can provide assistance to you.

Sincerely,  
  
Gene Green  
Member of Congress

GG:raj



# ARMANDO L. WALLE

STATE REPRESENTATIVE

HOUSE DISTRICT 140

June 23, 2016

Mr. Tim Irvine, Executive Director  
Texas Department of Housing & Community Affairs  
P.O. Box 13941  
Austin, Texas 78711-3941

*SUBMITTED VIA ELECTRONIC DELIVERY*

RE: TDHCA Application #16608, Piney Woods Village (5318 Aldine Bender Road, Houston, Texas 77032)

Dear Mr. Irvine:

I write you today to express my opposition to the housing tax credit application for the proposed affordable multi-family housing complex, Piney Woods Village Apartments. On behalf of my constituents, I strongly advocate against adding another unnecessary multi-family housing complex to our community.

My Texas House district encompasses a northern section of Harris County, with some areas falling within City of Houston boundaries with the rest in unincorporated Harris County. Community residents end up depending on a variety of different sources, government and otherwise, to access basic service needs like law enforcement, water and wastewater, trash pickup, and others. Despite spotty public services and the modest means of many of residents, we are a proud, hard-working, family-oriented community. As such, our community is always concerned and skeptical of development in our neighborhoods that do not potentially improve on these values.

As part of encouraging a safe, family-oriented community, my constituents and I prioritize public safety. My district has previously encountered issues related to apartment developers using tax incentives to build and fill new multi-family construction, but later failing to hold up promises to maintain their new properties, letting properties fall in to disrepair. Such neglect not only creates more visual blight and diminishes living conditions, but also invites criminal activity to the area and surrounding neighborhoods.

An unfortunate recent example of this is only a few blocks down the road, across the street from this proposed Piney Woods development: the Haverstock Hills apartment complex at 5619 Aldine Bender. The Haverstock Hills complex is well-known to be a nexus of criminal activity, often related to gang activity. A simple search on Google for "Haverstock Hills" pulls up reports of murder and gang-related vandalism, drug trafficking, trespass and other criminal activities, as well as different local efforts to curtail this activity. The problems are of such a scale that a multi-jurisdictional effort among local law enforcement entities established a 217-acre East Aldine "safety zone" designed to mitigate the gang-related criminal activity at Haverstock Hills and other nearby apartment complexes.

While efforts like this have had some occasional success, problems persist to the extent that this “safety zone” continues to be necessary. Violent crime is still a too-common occurrence in the area. I am confident this type of environment is not safe for our families and children. The elevated level of criminal activity also makes the nearby residential areas less safe. Building a new, large multi-family complex across the street, along the existing “safety zone,” despite their admirable yet non-guaranteed goal of serving U.S. veterans, sets this proposed development up for failure and potentially following the infamous footsteps of the Haverstock Hills apartments.

My concern with this proposal is also derived from my experience in helping constituents living in Haverstock Hills and other nearby complexes needing assistance dealing with the neglect of their apartment units. Issues include rental contract disputes, lack of interior and exterior maintenance, and rodent infestations among others. My experience with these repeated issues over time and under different property management continue to give me pause. I worry about developers, knowingly, negligently, or otherwise, adding to this ongoing public safety and quality of life problem.

Three multi-family complexes have been built directly across the street from the Piney Woods Village site with TDHCA financial assistance since 2001: Costa Rialto, Timber Ridge I, and Timber Ridge II. Another two TDHCA-assisted complexes are located just north of these, around a half mile from the Piney Woods site: Villas in the Pines (funded in 1999) on Crosswinds Boulevard and Northland Woods (funded in 2003) on Vickery Drive. The area community does not have a need or interest to take on another multi-family development experiment until, at the minimum, existing criminal and poverty issues are addressed and balanced with existing community need. For all of the foregoing reasons, I respectfully oppose the approval of TDHCA assistance for the proposed Piney Woods Village Apartments.

To note, I am a strong proponent of housing affordability, especially programs that serve senior citizens and families and help them purchase an affordable property to live in. I support giving people the opportunity to live in residences that foster a safe environment and help them build their credit in working toward property ownership.

I appreciate your time and consideration in this matter. I appreciate if you could please keep my office informed of any updates. Please feel free to contact me should you have any questions by phone at (713) 694-8620 or by e-mail at [Armando.Walle@house.texas.gov](mailto:Armando.Walle@house.texas.gov).

Sincerely,



Armando Walle

State Representative, House District 140

CC: Members of Texas Department of Housing & Community Affairs Board  
Shannon Roth, Housing Specialist, Multifamily Finance Division, Texas Department of Housing & Community Affairs



## ALDINE INDEPENDENT SCHOOL DISTRICT

Donaldson Administration Building • 2520 W.W. Thorne Dr. • Houston, Texas 77073 • (281) 985-6319 • (281) 985-6321 - Fax

June 14, 2016

TDHCA/Multifamily Department  
221 E. 11<sup>th</sup> Street  
Austin, Texas 78701  
Attn: Shannon Roth, Program Specialist

Re: Letter of Opposition/ TDHCA #16608  
Piney Woods Village, 5318 Aldine Bender Road, Houston, Texas 77032

Dear Ms. Roth:

On behalf of Aldine Independent School District, we would like express our opposition to the Private Activity Bond application by PWV Partners, LP for a 4% Low Income Housing Tax Credit and Mortgage Revenue Bond. PWV Partners, LP is proposing to build a 290 unit apartment complex, Piney Woods Village, at 5318 Aldine Bender Road, Houston, Harris County, Texas 77032. Over 95% of the units will be reserved for low-income families.

The 4% Low Income Housing Tax Credits were created to provide developers with financial incentives to build affordable housing for low-income families. However, developers should be focused on providing low-income housing in high opportunity areas and in areas that are not already saturated with low-income housing.

The area surrounding the proposed complex is already comprised of affordable low-income housing. Specifically, within less than a half mile radius there are six (6) affordable low-income apartment complexes with a total of one thousand seven hundred fifty-two (1752) units.

Additionally, Aldine anticipates an increase in school enrollment as a direct result of the building of the proposed complex. Although the complex will add to the District's tax base, it is anticipated that the tax revenue generated will be disproportional to the costs associated with increased enrollment.

RECEIVED

JUN 23 2016

TDHCA  
Multifamily Finance Dept.

Aldine Independent School District and its leadership strongly opposes the building of the Piney Woods Village development in a largely minority area that already sees high levels of poverty with a saturation of low-income housing.

Aldine believes that the building of this complex will have a negative impact on our community and is opposed to its development. Please feel free to contact our office if you would like additional information from the District or would like to speak to me directly.

Sincerely,



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Dr. Wanda Bamberg  
Superintendent, Aldine ISD



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Rose Avalos  
President, Aldine ISD School Board

**LOW INCOME HOUSING WITHIN ONE HALF MILE OF THE  
PROPOSED PINEY WOODS VILLAGE**

Costa Rialto Apartments 5015 Aldine Bender Road Houston, Texas 77032	216 Units
Haverstock Hill Apartments 5519 Aldine Bender Road Houston, Texas 77032	700 Units
TimberRidge Apartments I & II 5335 Aldine Bender & 5350 Aeropark Drive Houston, Texas 77032	316 Units
Northland Woods Apartments 15165 Vickery Drive Houston, Texas 77032	280 Units
Crosswinds Apartments 14810 Crosswinds Blvd. Houston, Texas 77032	240 Units

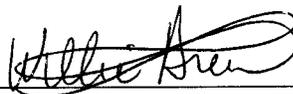
## Mountain Top Development, Inc

Mountain Top Development, Inc. is proposing the below services in the vicinity of Piney Woods Village located at 5318 Aldine Bender Road, Houston, Texas.

The proposed services shall begin upon funding of the Piney Woods Village project, tentatively scheduled for September 2016.

**Mountain Top Development will be responsible for the following in the Aldine community:**

- \* Provide an office space at Piney Woods Village for the East Aldine Management District and Mountain Top Development staff to periodically conduct informational briefings/meetings pertaining to the maintenance, needs or services of the community
- \* Provide law enforcement services (contract deputy) on a fee basis in the geographical area
- \* Coordinate with the EAMD and Harris County Sheriff's Office Nuisance Abatement Team on the removal of blight
- \* Acquire blighted structures, if available for purchase, and build single family homes
- \* Coordinate and conduct public safety meetings bi-annually
- \* Coordinate with the East Aldine Management District on implementing safety programs in the community
- \* Conduct 3 community cleanup days annually
- \* Assist the Aldine ISD, churches, and community partners on initiatives/programs for students in the Aldine Bender vicinity

  
\_\_\_\_\_  
Mountain Top Development, Inc

*Executive Director*  
\_\_\_\_\_  
Title

*7-13-16*  
\_\_\_\_\_  
Date

4c

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**AUGUST 25, 2016**

Presentation, Discussion, and Possible Action on Inducement Resolution No. 16-026 for Multifamily Housing Revenue Bonds Regarding Authorization for Filing Applications for Private Activity Bond Authority on the 2016 Waiting List for Robert E. Lee Apartments

**RECOMMENDED ACTION**

**WHEREAS**, a bond pre-application for Robert E. Lee, sponsored by John H. McClutchy Jr., Todd D. McClutchy and Richard P. Richman, was submitted to the Department for consideration of an inducement resolution;

**WHEREAS**, pursuant to 10 TAC §10.101(a)(4) of the Uniform Multifamily Rules related to Undesirable Neighborhood Characteristics, applicants are required to disclose the existence of certain characteristics of a proposed development site and can do so at the time of pre-application or full application;

**WHEREAS**, the applicant disclosed the presence of such characteristics, specifically that one of the schools located in the attendance zone of the development did not achieve a 2015 Met Standing rating by the Texas Education Agency (“TEA”);

**WHEREAS**, while the aforementioned undesirable characteristic was disclosed at pre-application, staff will conduct further review, present findings and make a recommendation as to eligibility of the application under 10 TAC §10.101(a)(4) of the Uniform Multifamily Rules at the time of consideration for an award of Housing Tax Credits and issuance of Private Activity Bonds;

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

**WHEREAS**, the inducement allows staff to submit an application to the Bond Review Board (“BRB”) to await a Certificate of Reservation;

**NOW, therefore, it is hereby**

**RESOLVED**, the Inducement Resolution No. 16-026 to proceed with the application submission to the BRB for possible receipt of State Volume Cap issuance authority from the 2016 Private Activity Bond Program for Robert E. Lee Apartments (#16609) is hereby approved in the form presented to this meeting.

**BACKGROUND**

The BRB administers the state’s annual private activity bond authority for the State of Texas. The Department is an issuer of Private Activity Bonds and is required to induce an application for bonds prior

to the submission to the BRB. Approval of the inducement resolution does not constitute approval of the Development but merely allows the Applicant the opportunity to move into the full application phase of the process. Once the application receives a Certificate of Reservation, the Applicant has 150 days to close on the private activity bonds.

During the 150-day process, the Department will review the complete application for compliance with the Department's Rules, including but not limited to a determination on site eligibility due to one of the schools in the attendance zone not achieving the 2015 Met Standard rating. Staff will also underwrite the transaction and determine financial feasibility in accordance with the Real Estate Analysis Rules. The Department will schedule and conduct a public hearing, and the complete application, including a transcript from the hearing, will then be presented to the Board for a decision on the issuance of bonds as well as a determination on the amount of housing tax credits anticipated to be allocated to the development.

Each year, the State of Texas is notified of the cap on the amount of private activity tax exempt revenue bonds that may be issued within the state. Approximately \$604 million is set aside for multifamily until August 15<sup>th</sup> for the 2016 program year, after which all sub-ceilings collapse and volume cap is available on a first come first served basis. This Inducement would reserve approximately \$6.2 million in state volume cap.

The Robert E. Lee Apartments is an existing development located at 111 West Travis Street in San Antonio, Bexar County, and would include the acquisition and rehabilitation of 72 units serving the general population. The existing 10-story structure was originally constructed in the early 1920s and was last renovated in 1994 after having received an award of non-competitive housing tax credits. The initial compliance period ended in 2011; however, the extended use period runs through 2026. Preliminary information submitted in the pre-application reflects approximately \$35,000 per unit in rehabilitation costs. At this time, there is no onsite parking provided other than street parking; however, there are several nearby parking lots that can be utilized for a fee and public transportation nearby. Staff conversations with the City of San Antonio indicated that this development is located in the central business district and therefore parking is not required. Staff will evaluate this in more detail upon review of the full application included but not limited to accessibility requirements. As part of the proposed renovation, a portion of the underutilized ground floor will be converted to create more common space for the residents while the remaining space will be commercial retail. Moreover, based on the age and historic nature of the building, the Applicant is pursuing both state and federal Historic Tax Credits through the Texas Historic Commission and the National Park Service, respectively. The applicant indicated that they already have received initial approval from each of the aforementioned entities. Another layer of financing involves a City of San Antonio HOME loan that is currently outstanding and expected to be re-cast in connection with the proposed financing for another 40 years. This transaction is proposed to be Priority 3 with all of the units rent and income restricted at 60% of the Area Median Family Income.

The Department received letters of support from Mayor Ivy R. Taylor, State Representative Diego M. Bernal, City Councilman Roberto Trevino and San Antonio ISD Superintendent Pedro Martinez. No letters of opposition have been received.

## RESOLUTION NO. 16-026

RESOLUTION DECLARING INTENT TO ISSUE MULTIFAMILY REVENUE BONDS WITH RESPECT TO RESIDENTIAL RENTAL DEVELOPMENTS; AUTHORIZING THE FILING OF ONE OR MORE APPLICATIONS FOR ALLOCATION OF PRIVATE ACTIVITY BONDS WITH THE TEXAS BOND REVIEW BOARD; AND AUTHORIZING OTHER ACTION RELATED THERETO

WHEREAS, the Texas Department of Housing and Community Affairs (the “Department”) has been duly created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code, as amended, (the “Act”) for the purpose, among others, of providing a means of financing the costs of residential ownership, development and rehabilitation that will provide decent, safe, and affordable living environments for persons and families of low, very low and extremely low income and families of moderate income (all as defined in the Act); and

WHEREAS, the Act authorizes the Department: (a) to make mortgage loans to housing sponsors to provide financing for multifamily residential rental housing in the State of Texas (the “State”) intended to be occupied by persons and families of low, very low and extremely low income and families of moderate income, as determined by the Department; (b) to issue its revenue bonds, for the purpose, among others, of obtaining funds to make such loans and provide financing, to establish necessary reserve funds and to pay administrative and other costs incurred in connection with the issuance of such bonds; and (c) to pledge all or any part of the revenues, receipts or resources of the Department, including the revenues and receipts to be received by the Department from such multifamily residential rental development loans, and to mortgage, pledge or grant security interests in such loans or other property of the Department in order to secure the payment of the principal or redemption price of and interest on such bonds; and

WHEREAS, it is proposed that the Department issue its revenue bonds in one or more series for the purpose of providing financing for the multifamily residential rental developments (the “Developments”) more fully described in Exhibit A attached hereto. The ownership of the Developments as more fully described in Exhibit A will consist of the applicable ownership entity and its principals or a related person (the “Owners”) within the meaning of the Internal Revenue Code of 1986, as amended (the “Code”); and

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

WHEREAS, the Owners have indicated their willingness to enter into contractual arrangements with the Department providing assurance satisfactory to the Department that the requirements of the Act and the Department will be satisfied and that the Developments will satisfy State law, Section 142(d) and other applicable Sections of the Code and Treasury Regulations; and

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

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

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

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

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

## ARTICLE 1

### OFFICIAL INTENT; APPROVAL OF CERTAIN ACTIONS

Section 1.1. Authorization of Issue. The Department declares its intent to issue its Multifamily Housing Revenue Bonds (the "Bonds") in one or more series and in amounts estimated to be sufficient to (a) fund a loan or loans to the Owners to provide financing for the respective Developments in an aggregate principal amount not to exceed those amounts, corresponding to the Developments, set forth in Exhibit A; (b) fund a reserve fund with respect to the Bonds if needed; and (c) pay certain costs incurred in connection with the issuance of the Bonds. Such Bonds will be issued as qualified residential rental development bonds. Final approval of the Department to issue the Bonds shall be subject to: (i) the review by the Department's credit underwriters for financial feasibility; (ii) review by the Department's staff and legal counsel of compliance with federal income tax regulations and State law requirements regarding tenancy in the respective Development; (iii) approval by the Bond Review Board, if required; (iv) approval by the Attorney General of the State of Texas (the "Attorney General"); (v) satisfaction of the Board that the respective Development meets the Department's public policy criteria; and (vi) the ability of the Department to issue such Bonds in compliance with all federal and State laws applicable to the issuance of such Bonds.

Section 1.2. Terms of Bonds. The proposed Bonds shall be issuable only as fully registered bonds in authorized denominations to be determined by the Department; shall bear interest at a rate or rates to be determined by the Department; shall mature at a time to be determined by the Department but in no event later than 40 years after the date of issuance; and shall be subject to prior redemption upon such terms and conditions as may be determined by the Department.

Section 1.3. Reimbursement. The Department reasonably expects to reimburse the Owners for all costs that have been or will be paid subsequent to the date that is 60 days prior to the date hereof in connection with the acquisition of real property and construction of its Development and listed on Exhibit A attached hereto ("Costs of the Developments") from the proceeds of the Bonds, in an amount which is reasonably estimated to be sufficient: (a) to fund a loan to provide financing for the acquisition and construction or rehabilitation of its Development, including reimbursing the applicable Owner for all

costs that have been or will be paid subsequent to the date that is 60 days prior to the date hereof in connection with the acquisition and construction or rehabilitation of the Developments; (b) to fund any reserves that may be required for the benefit of the holders of the Bonds; and (c) to pay certain costs incurred in connection with the issuance of the Bonds.

Section 1.4. Principal Amount. Based on representations of the Owners, the Department reasonably expects that the maximum principal amount of debt issued to reimburse the Owners for the Costs of the Developments will not exceed the amount set forth in Exhibit A which corresponds to the applicable Development.

Section 1.5. Limited Obligations. The Owners may commence with the acquisition and construction or rehabilitation of the Developments, which Developments will be in furtherance of the public purposes of the Department as aforesaid. On or prior to the issuance of the Bonds, each Owner will enter into a loan agreement, on terms agreed to by the parties, on an installment payment basis with the Department under which the Department will make a loan to the applicable Owner for the purpose of reimbursing the Owner for the Costs of the Development and the Owner will make installment payments sufficient to pay the principal of and any premium and interest on the applicable Bonds. The proposed Bonds shall be special, limited obligations of the Department payable solely by the Department from or in connection with its loan or loans to the Owner to provide financing for its Development, and from such other revenues, receipts and resources of the Department as may be expressly pledged by the Department to secure the payment of the Bonds.

Section 1.6. The Developments. Substantially all of the proceeds of the Bonds shall be used to finance the Developments, which are to be occupied entirely by Eligible Tenants, as determined by the Department, and which are to be occupied partially by persons and families of low income such that the requirements of Section 142(d) of the Code are met for the period required by the Code.

Section 1.7. Payment of Bonds. The payment of the principal of and any premium and interest on the Bonds shall be made solely from moneys realized from the loan of the proceeds of the Bonds to reimburse the Owners for costs of its Development.

Section 1.8. Costs of Developments. The Costs of the Developments may include any cost of acquiring, constructing, reconstructing, improving, installing and expanding the Developments. Without limiting the generality of the foregoing, the Costs of the Developments shall specifically include the cost of the acquisition of all land, rights-of-way, property rights, easements and interests, the cost of all machinery and equipment, financing charges, inventory, raw materials and other supplies, research and development costs, interest prior to and during construction and for one year after completion of construction whether or not capitalized, necessary reserve funds, the cost of estimates and of engineering and legal services, plans, specifications, surveys, estimates of cost and of revenue, other expenses necessary or incident to determining the feasibility and practicability of acquiring, constructing, reconstructing, improving and expanding the Developments, administrative expenses and such other expenses as may be necessary or incident to the acquisition, construction, reconstruction, improvement and expansion of the Developments, the placing of the Developments in operation and that satisfy the Code and the Act. The Owners shall be responsible for and pay any costs of its Development incurred by it prior to issuance of the Bonds and will pay all costs of its Development which are not or cannot be paid or reimbursed from the proceeds of the Bonds.

Section 1.9. No Commitment to Issue Bonds. Neither the Owners nor any other party is entitled to rely on this Resolution as a commitment to issue the Bonds and to loan funds, and the Department reserves the right not to issue the Bonds either with or without cause and with or without

notice, and in such event the Department shall not be subject to any liability or damages of any nature. Neither the Owners nor any one claiming by, through or under the Owners shall have any claim against the Department whatsoever as a result of any decision by the Department not to issue the Bonds.

Section 1.10. Conditions Precedent. The issuance of the Bonds following final approval by the Board shall be further subject to, among other things: (a) the execution by the Owners and the Department of contractual arrangements, on terms agreed to by the parties, providing assurance satisfactory to the Department that all requirements of the Act will be satisfied and that the Development will satisfy the requirements of Section 142(d) of the Code (except for portions to be financed with taxable bonds); (b) the receipt of an opinion from Bracewell LLP or other nationally recognized bond counsel acceptable to the Department (“Bond Counsel”), substantially to the effect that the interest on the tax-exempt Bonds is excludable from gross income for federal income tax purposes under existing law; and (c) receipt of the approval of the Bond Review Board, if required, and the Attorney General.

Section 1.11. Authorization to Proceed. The Board hereby authorizes staff, Bond Counsel and other consultants to proceed with preparation of the Developments’ necessary review and legal documentation for the filing of one or more Applications and the issuance of the Bonds, subject to satisfaction of the conditions specified in this Resolution. The Board further authorizes staff, Bond Counsel and other consultants to re-submit an Application that was withdrawn by an Owner.

Section 1.12. Related Persons. The Department acknowledges that financing of all or any part of the Developments may be undertaken by any company or partnership that is a “related person” to the respective Owner within the meaning of the Code and applicable regulations promulgated pursuant thereto, including any entity controlled by or affiliated with the Owners.

Section 1.13. Declaration of Official Intent. This Resolution constitutes the Department’s official intent for expenditures on Costs of the Developments which will be reimbursed out of the issuance of the Bonds within the meaning of Sections 1.142-4(b) and 1.150-2, Title 26, Code of Federal Regulations, as amended, and applicable rulings of the Internal Revenue Service thereunder, to the end that the Bonds issued to reimburse Costs of the Developments may qualify for the exemption provisions of Section 142 of the Code, and that the interest on the Bonds (except for any taxable Bonds) will therefore be excludable from the gross incomes of the holders thereof under the provisions of Section 103(a)(1) of the Code.

Section 1.14. Execution and Delivery of Documents. The Authorized Representatives named in this Resolution are each hereby authorized to execute and deliver all Applications, certificates, documents, instruments, letters, notices, written requests and other papers, whether or not mentioned herein, as may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution.

Section 1.15. Authorized Representatives. The following persons are hereby named as Authorized Representatives of the Department for purposes of executing, attesting, affixing the Department’s seal to, and delivering the documents and instruments and taking the other actions referred to in this Article 1: the Chair or Vice Chair of the Board, the Executive Director of the Department, the Deputy Executive Director of Asset Analysis and Management of the Department, the Director of Bond Finance of the Department, the Director of Texas Homeownership of the Department, the Director of Multifamily Finance of the Department, and the Secretary or any Assistant Secretary to the Board. Such persons are referred to herein collectively as the “Authorized Representatives.” Any one of the Authorized Representatives is authorized to act individually as set forth in this Resolution.

## ARTICLE 2

### CERTAIN FINDINGS AND DETERMINATIONS

Section 2.1. Certain Findings Regarding Developments and Owners. The Board finds that:

- (a) the Developments are necessary to provide decent, safe and sanitary housing at rentals that individuals or families of low and very low income and families of moderate income can afford;
- (b) the Owners will supply, in their Development, well-planned and well-designed housing for individuals or families of low and very low income and families of moderate income;
- (c) the Owners are financially responsible;
- (d) the financing of the Developments is a public purpose and will provide a public benefit;  
and
- (e) the Developments will be undertaken within the authority granted by the Act to the Department and the Owners.

Section 2.2. No Indebtedness of Certain Entities. The Board hereby finds, determines, recites and declares that the Bonds shall not constitute an indebtedness, liability, general, special or moral obligation or pledge or loan of the faith or credit or taxing power of the State, the Department or any other political subdivision or municipal or political corporation or governmental unit, nor shall the Bonds ever be deemed to be an obligation or agreement of any officer, director, agent or employee of the Department in his or her individual capacity, and none of such persons shall be subject to any personal liability by reason of the issuance of the Bonds. The Bonds will be a special limited obligation of the Department payable solely from amounts pledged for that purpose under the financing documents.

Section 2.3. Certain Findings with Respect to the Bonds. The Board hereby finds, determines, recites and declares that the issuance of the Bonds to provide financing for the Developments will promote the public purposes set forth in the Act, including, without limitation, assisting persons and families of low and very low income and families of moderate income to obtain decent, safe and sanitary housing at rentals they can afford.

## ARTICLE 3

### GENERAL PROVISIONS

Section 3.1. Books and Records. The Board hereby directs this Resolution to be made a part of the Department's books and records that are available for inspection by the general public.

Section 3.2. Notice of Meeting. This Resolution was considered and adopted at a meeting of the Board that was noticed, convened, and conducted in full compliance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, and with §2306.032 of the Texas Government Code, regarding meetings of the Board.

Section 3.3. Effective Date. This Resolution shall be in full force and effect from and upon its adoption.

*[Execution page follows]*

PASSED AND APPROVED this 25<sup>th</sup> day of August, 2016.

[SEAL]

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

ATTEST:

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

*Signature Page to Inducement Resolution*

**EXHIBIT “A”**

Description of the Owner and the Development

Project Name	Owner	Principals	Amount Not to Exceed
Robert E. Lee Apartments	RELEE Preservation Associates, LLC, a Connecticut limited liability company	Member: RELEE Associates, LLC, a Connecticut limited liability company	\$6,200,000
Costs: Acquisition/rehabilitation of a 72-unit affordable, multifamily housing development known as Robert E. Lee Apartments, located at 111 W. Travis Street, Bexar County, San Antonio, Texas 78205.			



**CITY OF SAN ANTONIO**

**IVY R. TAYLOR**

**MAYOR**

August 15, 2016

Mr. Todd D. McClutchy  
RELEE Preservation Associates, LLC  
c/o JHM Group of Companies  
1281 E Main Street, Suite #201  
Stamford, CT 06902

**RE: Letter of Support for Rehabilitation of the Robert E. Lee Apartments, 111 W Travis Street, San Antonio, TX 78205**

Dear Mr. McClutchy:

The office of Mayor Ivy R. Taylor hereby confirms support for RELEE Preservation Associates, LLC in its application for tax exempt bond financing and 4% low income housing tax credits from the Texas Department of Housing & Community Affairs ("TDHCA") to rehabilitate the Robert E. Lee Apartments ("RELEE"). State and federal historic tax credits will be leveraged to preserve one of our historic structures and a much needed quality affordable housing resource.

Residents living in RELEE's 72 affordable units will continue to benefit from its close proximity to San Antonio's downtown, parks, and public transportation which will provide convenient access to several employment centers and all necessary public/community facilities. The project has the potential to support long-term success for the economic revitalization of the downtown.

For these reasons I support this project and efforts to obtain the necessary financial assistance. I would greatly appreciate your keeping me apprised of this matter. In addition, should you have any questions or need any additional information, please do not hesitate to contact my office.

Sincerely,

A handwritten signature in blue ink that reads "Ivy R. Taylor".

Ivy R. Taylor  
Mayor



# TEXAS HOUSE *of* REPRESENTATIVES

**Diego M. Bernal**

*State Representative, District 123*

July 22, 2016

Todd D. McClutchy  
RELEE Preservation Associates, LLC  
C/o JHM Group of Companies  
1281 E Main Street, Suite #201  
Stamford, CT 06902

RE: Letter of Support for Rehabilitation of the Robert E. Lee Apartments, 111 W Travis Street, San Antonio, TX 78205

Mr. McClutchy:

The office of State Representative Diego Bernal hereby confirms that it supports RELEE Preservation Associates, LLC in its application for tax exempt bond financing and 4% low income housing tax credits from the Texas Department of Housing & Community Affairs ("TDHCA") to rehabilitate the Robert E. Lee Apartments ("RELEE") in San Antonio Texas. This funding assistance will be leveraged with state and federal historic tax credits to not only preserve one of the many very important historic structures in the City but preserve a much needed quality affordable housing resource as well.

Residents living in RELEE's 72 affordable units will continue to benefit from its close proximity to San Antonio's downtown, parks, and public transportation which will provide convenient access to several employment centers and all necessary public/Community facilities. The project has the potential to support long-term success for the economic revitalization of the Downtown Neighborhood.

It is for these reasons that I have identified, herein, that I write in support of this project and in its efforts to obtain the necessary financial assistance. I would greatly appreciate your keeping me apprised of this matter. In addition, should you have any questions or need any additional information, please do not hesitate to contact my office.

Respectfully,

A handwritten signature in blue ink, appearing to read "Diego M. Bernal".

Diego M. Bernal

State Representative District 123



## CITY OF SAN ANTONIO

---

ROBERTO C. TREVIÑO  
OFFICE OF CITY COUNCILMAN  
DISTRICT 1

August 15, 2016

Todd D. McClutchy  
RELEE Preservation Associates, LLC  
C/o JHM Group of Companies  
1281 E Main Street, Suite #201  
Stamford, CT 06902

RE: Letter of Support for Rehabilitation of the Robert E. Lee Apartments, 111 W Travis Street, San Antonio, TX 78205

Mr. McClutchy:

The office of District 1 City Councilman Roberto Treviño hereby confirms that it supports RELEE Preservation Associates, LLC in its application for tax exempt bond financing and 4% low income housing tax credits from the Texas Department of Housing & Community Affairs ("TDHCA") to rehabilitate the Robert E. Lee Apartments ("RELEE") in San Antonio Texas. This funding assistance will be leveraged with state and federal historic tax credits to not only preserve one of the many very important historic structures in the City but preserve a much needed quality affordable housing resource as well.

Residents living in RELEE's 72 affordable units will continue to benefit from its close proximity to San Antonio's downtown, parks, and public transportation which will provide convenient access to several employment centers and all necessary public/Community facilities. The project has the potential to support long-term success for the economic revitalization of the Downtown Neighborhood.

It is for these reasons that I have identified, herein, that I write in support of this project and in its efforts to obtain the necessary financial assistance. I would greatly appreciate your keeping me apprised of this matter. In addition, should you have any questions or need any additional information, please do not hesitate to contact my office.

Respectfully,

A handwritten signature in blue ink, appearing to read 'RCA', written over a blue horizontal line.

Roberto C. Treviño

City Councilman, District 1



# San Antonio Independent School District

141 Lavaca Street • San Antonio, Texas 78210-1095

Telephone (210) 554-2200

*Office of the Superintendent*

**BOARD OF EDUCATION**

August 8, 2016

Todd D. McClutchy  
RELEE Preservation Associates, LLC  
c/o JHM Group of Companies  
1281 E Main Street, Suite #201  
Stamford, CT 06902

**PATTI RADLE**  
President  
**ARTHUR V. VALDEZ**  
Vice President  
**DEBRA GUERRERO**  
Secretary  
**ED GARZA**  
Member  
**OLGA M. HERNANDEZ**  
Member  
**JAMES HOWARD**  
Member  
**STEVE LECHOLOP**  
Member  
**PEDRO MARTINEZ**  
Superintendent

RE: Letter of Support for Rehabilitation of the Robert E. Lee Apartments, 111 W Travis Street, San Antonio, TX 78205

Mr. McClutchy:

The San Antonio Independent School District hereby confirms that it supports RELEE Preservation Associates, LLC in its application for tax exempt bond financing and 4% low income housing tax credits from the Texas Department of Housing & Community Affairs ("TDHCA") to rehabilitate the Robert E. Lee Apartments ("RELEE") in San Antonio Texas. This funding assistance will be leveraged with state and federal historic tax credits to not only preserve one of the many very important historic structures in the City but preserve a much needed quality affordable housing resource as well.

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It is for these reasons that I have identified, herein, that I write in support of this project and in its efforts to obtain the necessary financial assistance. I would greatly appreciate your keeping me apprised of this matter. In addition, should you have any questions or need any additional information, please do not hesitate to contact my office.

Respectfully,

Pedro Martinez  
Superintendent

4d

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