



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Southwest Multifamily Region

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March 8, 2021

Texas State Affordable Housing Corporation (TSAHC)
Attn: Dave Danenfelzer, Senior Director, Development Finance
Via email: ddanenfelzer@tsahc.org
6701 Shirley Avenue
Austin, Texas 78752

Re: Compass Pointe Apartments aka Sandpiper Cove / TX24M000018
3916 Winnie Street, Galveston, Texas 77550
Letter of Support for Bond Issuance

Dear Mr. Danenfelzer,

This letter is to confirm the U.S. Department of Housing and Urban Development's (HUD) support for rehabilitation of Compass Pointe Apartments (the "Property"). HUD was informed of the proposed sale of the Development and transfer of the Housing Assistance Payments (HAP) Contract to Galveston 3916 Winnie Street, LP (the "Proposed Owner") and has been working closely with all participants to ensure an efficient and positive transition for the property and residents.

The Property was built in 1969 and is located at 3916 Winnie Street, Galveston, Texas. There are 192 units within 24 residential buildings and a community building. The market for affordable housing is very limited on Galveston Island, and this Property is the only Project Based Section 8 housing on the Island.

HUD has had serious concerns with the physical issues at the Property. Due to multiple violations at the Property, HUD issued a Notice of Default of the HAP Contract as well as issued a requirement to the current owner, Compass Pointe Apartments Texas, LLC (the "Current Owner"), to contract with a third-party property management company. The HUD approved third-party management company, J. Allen Management (the "Property Manager"), began in April 2020 and has worked tirelessly to properly address resident concerns and HUD's requirements. This Property Manager will continue as the Property Manager upon the Proposed Owner's purchase of the Property. With the assistance of the third-party Property Manager, the Current Owner provided HUD with an Action Plan and has continued to work with all parties to address deficiencies, pending the sale of the Property.

It is important to note that HUD's mission is to preserve affordable housing and to provide decent, safe, and sanitary housing for residents. To be clear, when compared to the preservation of the HAP contract as proposed at the Property, the alternative of issuing vouchers is not a viable nor desirable option. Firstly, the issuance of vouchers is pursued as a last resort when the termination of the HAP contract is warranted due to an owner's refusal to comply with the Section 8 program's contractual requirements, which is not the case in the current scenario. As evident with the proposal before

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TSAHC, the Current Owner is working to comply and ensure full correction of the physical and financial issues through the cooperative transfer of ownership and management to the Proposed Owner. Secondly, a termination of the HAP contract also guarantees a permanent loss of the preservation of those affordable apartment units under the contract. Additionally, the successful issuance of vouchers relies upon a sufficient supply of affordable housing from private owners who are willing to accept vouchers in the marketplace. With the already tight supply of affordable housing in Galveston, residents would have little choice to utilize the vouchers and remain on the Island.

Therefore, HUD is committed to retaining and preserving this affordable housing on Galveston Island. Currently, HUD has no intention of terminating the affordable housing assistance to the Property and has approved a transfer of the HAP contract to the Proposed Owner upon sale of the property, given the confidence HUD has in the Proposed Owner and Property Manager, who have a proven track record of successfully obtaining and turning around other similarly distressed and troubled affordable properties. This further warrants our support of rehabilitating the Development to provide decent, safe, and sanitary housing for the residents.

HUD understands that TSAHC and the Board of Directors are aware of and have concerns about the pending lawsuit against HUD regarding the preservation and rehabilitation of the Section 8 PBRA HAP Contract at the Property. We believe it important that you know that within the Section 8 PBRA program, HUD has not been ordered or directed by a court to take a specific enforcement action, rather courts have recognized that HUD has the discretion to choose how it enforces the owners' obligations under the HAP contract.

Notably, over the past two years, the District Court for the Southern District of Texas has addressed two Section 8 PBRA litigation cases, which address similar facts to the Property, and in neither of these cases, nor any of the cases verbally referenced by Texas Housers, has any court ordered abatement or termination of a HAP Contract or ordered a specific enforcement action, including issuance of vouchers.

In *Kenneth Hawkins et al. v. HUD*, 4:18-cv-03052 (S.D. Tex.), the Owner received two Notices of Default for failure to correct deficiencies. Plaintiff-Tenants sought judicial review of HUD's decision not to terminate the HAP contract, and an order compelling HUD to issue vouchers to enable tenants to move out of Coppertree Village. The District Court issued an opinion dismissing the case on March 26, 2020, and adopted the Magistrate Judges' February 21, 2020 Memorandum and Recommendation, which held that HUD's rejection of certain available enforcement options are not final agency actions that may be reviewed under Sections 702 and 704 of the Administrative Procedures Act and none of Plaintiffs' rights have been affected by HUD keeping its enforcement options open. Plaintiffs complaint was dismissed for lack of subject matter jurisdiction and for failure to state a claim upon which relief may be granted.

In the matter of *Daija Jackson, et al. v. HUD and DM Arbor Court, Ltd.*, 4:18-cv-02468 (S.D. Tex.), the Owner received two Notices of Violation and after difficulty obtaining a permit to rebuild from the City of Houston, the Owner requested an 8bb transfer of budget authority, which HUD approved. Plaintiff-Tenants were given the option to relocate to the new property or accept a voucher. Plaintiffs then filed an amended complaint seeking additional relocation assistance, including moving expenses and security deposit payments. On May 19, 2018, the District Court issued a memorandum opinion and order, which held that the court cannot specify the type of relocation

assistance HUD provides and Plaintiffs' Complaint does not sufficiently allege a basis for the Court to order HUD to take specific actions Plaintiffs want HUD to take and therefore, their claim under the Administrative Procedure Act must be dismissed.

To the extent the Board is considering Texas Housers' reference to *Ralston Towers* and *Barbour Gardens*, HUD would advise that the issues in these cases are not analogous and to the extent you consider these cases, they only support HUD's position and that of the District Court for Southern District of Texas, which is that HUD has the discretion to exercise enforcement of the Owner's obligations under the HAP Contract and HUD regulations. No litigation was involved regarding the abatement of the Section 8 HAP Contract for *Ralston Towers* and the decision rested solely on the poor conditions and the Owner's unwillingness to provide more than minimum maintenance. Finally, *Barbour Gardens* involved HUD's decision to abate the HAP contract as an enforcement action. The current suit, which involves *Barbour Gardens*, challenges the administration of vouchers and the re-subsidization of the project after the HAP had been terminated. See, *Center for Leadership and Justice, et al. v. HUD, et al.*, 3:20-cv-01728. These facts are entirely separate and distinct from the facts before the TSAHC Board of Directors, but even if you consider them, they only support the fact that HUD has discretion in deciding what option it uses to exercise enforcement of the owner's obligations.

HUD is also aware of the concerns related to the potential of flooding at the Property. The Proposed Owner has indicated specific measures will be put in place to mitigate this concern. Such measures include adding a 2,700 linear ft flood wall around the perimeter of the Property, with water pumps that will remove the water from the interior of the wall so that within the walls it does not flood. This plan is contingent upon historical approval with SHPO and NPS. Additionally, the pedestrian and vehicle entrances/exits will have flood gates put in place when major events are expected to occur. There will also be covers for the drainage grates throughout the Property so that the backflow does not occur.

As referenced herein, HUD is committed to preserving the affordable housing in this area. In addition to HUD's support, the Proposed Owner has indicated they have also secured community support from the City of Galveston's Mayor and City Manager, the Galveston Independent School District's School Board President, the City of Galveston's Chamber of Commerce, State Representative Mayes Middleton, and Moody Church. However, the approval of TSAHC's bond issuance, is crucial to the preservation of this vitally important affordable housing and the future rehabilitation of the Property to ensure better living conditions for the residents.

HUD requests that TSAHC consider approval of the proposal and emphasizes the urgency of the matter to allow impending improvements to proceed for the betterment of the residents and the Island. Should you have any questions or would like to discuss HUD's support further, please feel free to reach out to me or Christie Newhouse, Division Director of Asset Management at Christie.M.Newhouse@hud.gov or 817-978-5972.

Sincerely,

Mary V. Walsh
Director
Multifamily Housing Southwest Region