



### **June Board Meeting**

To be held at the offices of  
Texas State Affordable Housing Corporation  
6701 Shirley Avenue  
Austin, TX 78752

via Webinar Located:

[https://webinar.ringcentral.com/webinar/register/WN\\_RbarMvmTTpiiA0121ac6bA](https://webinar.ringcentral.com/webinar/register/WN_RbarMvmTTpiiA0121ac6bA)

Dial-in number: +1 (346) 980-4201

Webinar ID: 144 724 2004

Participant ID: Receive Upon Registration

Wednesday, June 9, 2021

10:30 a.m.

**TEXAS STATE AFFORDABLE HOUSING CORPORATION  
BOARD MEETING  
AGENDA**

**To be held at the offices of  
Texas State Affordable Housing Corporation  
6701 Shirley Avenue  
Austin, Texas 78752**

**The Governing Board of the Texas State Affordable Housing Corporation (TSAHC)  
will meet both online and in-person**

**June 9, 2021  
10:30 A.M.**

**ONLINE MEETING LOCATION:**

Considering the March 13, 2020, disaster declaration by the Office of the Governor, and the subsequent waivers of portions of Tex. Gov't Code, Ch. 551\*, this meeting of the TSAHC governing Board will be accessible to the public via the telephone and web link information, below. In order to engage in two-way communication during the meeting, persons must first register (at no cost) to attend the webinar via the link provided. Anyone who calls into the meeting without registering online will not be able to ask questions or provide comments, but the meeting will still be audible. A recording of the meeting will be made available to the public as soon as possible following the meeting.

**GOVERNING BOARD WEBINAR REGISTRATION:**

**Location:** [https://webinar.ringcentral.com/webinar/register/WN\\_RbarMvmTTpiiA0121ac6bA](https://webinar.ringcentral.com/webinar/register/WN_RbarMvmTTpiiA0121ac6bA)

**Dial-in number:** +1(346) 980-4201, **Webinar ID:** 144 724 2004; **Participant ID:** Received upon registration. (Persons who use the dial-in number and access code without registering online will only be able to hear the Board Meeting and will not be able to ask questions or provide comments). Note, this meeting will be proceeding as a teleconference under Tex. Gov't Code §551.125, as modified by waiver, and video will not be available.

**CALL TO ORDER**

**ROLL CALL**

**Bill Dietz, Chair**

**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.**

The Board of Directors of Texas State Affordable Housing Corporation will meet to consider and possibly act on the following:

**PUBLIC COMMENT**

**PRESIDENT'S REPORT**

**David Long**

Tab A: Homeownership Finance Report

Tab B: Development Finance Report

Tab C: Monthly Financial Reports

**ACTION ITEMS IN OPEN MEETING:**

Tab 1                      Presentation, Discussion and Possible Approval of Minutes of the Board Meeting held on May 12, 2021.

Tab 2	Presentation, Discussion and Possible Approval of a Resolution Regarding the Submission of One or More Applications for Allocation of Private Activity Bonds to the Texas Bond Review Board for Qualified Mortgage Revenue Bonds.
Tab 3	Presentation, Discussion and Possible Approval of a Resolution Regarding the Submission of one or more Applications for Allocation of Private Activity Bonds, Notices of Intention to Issue Bonds and State Bond Applications to the Texas Bond Review Board and Declaration of Expectation to Reimburse Expenditures with Proceeds of Future Debt for the Bluff View Apartments.
Tab 4	Presentation, Discussion and Possible Approval of a motion to resubmit Applications for Allocation of Private Activity Bonds, Notices of Intention to Issue Bonds and State Bond Applications to the Texas Bond Review Board for the Sandpiper Cove Apartments Project.
Tab 5	Presentation, Discussion, and Possible Approval of a Resolution approving a Texas Housing Impact Fund second lien bridge loan to Casa Cobe Holdings, LLC in an amount not to exceed \$1,000,000 for the Saison North Apartments Project.
Tab 6	87th Texas Legislative Session Update.

#### **CLOSED MEETING:**

Consultation with legal counsel on legal matters – Texas Government Code § 551.071

Deliberation regarding purchase, exchange, lease, or value of real property – Texas Government Code § 551.072

Deliberation regarding prospective gift or donation to the state or Texas State Affordable Housing Corporation – Texas Government Code § 551.073

Personnel Matters – Texas Government Code § 551.074

Implementation of security personnel or devices – Texas Government Code § 551.076

Other matters authorized under the Texas Government Code

#### **ACTION ITEMS IN OPEN MEETING:**

Action in Open Meeting on Items Discussed in Closed Executive Session

#### **ANNOUNCEMENTS AND CLOSING COMMENTS**

#### **ADJOURN**

*A Board member of the Corporation may participate in a Board meeting by video conference pursuant to Section 551.127 of the Texas Government Code. A quorum of the Board will meet at the Texas State Affordable Housing Corporation's headquarters located at 6701 Shirley Avenue., Austin Texas, 78752.*

*Individuals who require auxiliary aids or services for this meeting should contact Rebecca DeLeon, ADA Responsible Employee, at 512-220-1174 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that the appropriate arrangements can be made.*

*Section 46.035 of the Texas Penal Code prohibits handgun licensees from carrying their handguns at government meetings such as this one. This prohibition applies to both concealed carry and open carry by handgun licensees. Handgun licensees are required by law to refrain from carrying their handguns at this meeting.*

*Texas State Affordable Housing Corporation reserves the right to recess this meeting (without adjourning) and convene at a later stated time, if and to the extent allowed by law. If Texas State Affordable Housing Corporation adjourns this meeting and reconvenes at a later time, the later meeting will be held in the same location as this meeting. Texas State Affordable Housing Corporation also reserves the right to proceed into a closed meeting during the meeting in accordance with the Open Meetings Act, Chapter 551 of the Texas Government Code. If permitted by the Open Meetings Act, Chapter 551 of the Texas Government Code, any item on this Agenda to be discussed in open meeting may also be discussed by the Board (and any other authorized persons) in closed meeting.*

# President's Report



# Tab A

## Homeownership Finance Report



### Homeownership Programs with Down Payment Assistance January 1 to March 31, 2021

Month	Closed	# of Loans	% Total
January-21	\$ 263,007,844	1286	30.9%
February-21	\$ 236,111,199	1152	27.8%
March-21	\$ 350,757,447	1681	41.3%
<b>Totals</b>	<b>\$849,876,490</b>	<b>4119</b>	<b>100%</b>
Lender	Closed	# of Loans	% Total
Fairway Independent Mortgage Corporation	\$64,666,532	336	7.6%
Everett Financial, dba Supreme Lending	\$51,303,442	241	6.0%
DHI Mortgage Company, Ltd.	\$43,516,590	185	5.1%
Gateway Mortgage Group, a division of	\$42,836,500	215	5.0%
Stearns Lending, LLC	\$35,963,488	148	4.2%
PrimeLending	\$35,888,445	177	4.2%
Movement Mortgage, LLC	\$31,275,026	151	3.7%
Guild Mortgage Corporation	\$27,979,042	142	3.3%
Academy Mortgage Corporation	\$25,853,011	134	3.0%
SFMC, LP (Service First Mortgage)	\$23,418,034	109	2.8%
Ark-La-Tex Financial (Benchmark Mtg.)	\$22,025,834	104	2.6%
loanDepot.com LLC	\$21,830,166	107	2.6%
CMG Mortgage, Inc. dba CMG Financial	\$17,132,908	76	2.0%
Amcap Mortgage, LTD	\$16,748,725	87	2.0%
Lennar Mortgage, LLC	\$16,251,752	73	1.9%
Guaranteed Rate	\$15,289,458	75	1.8%
Pulte Mortgage LLC	\$14,776,146	64	1.7%
Security National Mortgage Company	\$14,730,394	80	1.7%
Cornerstone Home Lending, Inc.	\$14,237,771	65	1.7%
Cardinal Financial Company	\$12,959,841	65	1.5%
Wallick and Volk, Inc.	\$12,579,378	61	1.5%
American Pacific Mortgage Corporation	\$12,382,082	62	1.5%
Thrive Mortgage, LLC	\$11,226,666	53	1.3%
Town Square Mortgage & Investments, Inc.	\$10,974,007	57	1.3%
Highlands Residential Mortgage	\$10,540,507	51	1.2%
Caliber Home Loans, Inc.	\$9,615,983	44	1.1%
SWBC Mortgage Corporation	\$8,612,914	46	1.0%
Network Funding, LP	\$8,241,716	39	1.0%
Gardner Financial Services, Ltd.	\$7,988,051	39	0.9%
Hometrust Mortgage Company	\$7,715,524	42	0.9%
Waterstone Mortgage Corporation	\$7,613,460	34	0.9%
First Continental Mortgage, Ltd.	\$7,452,431	27	0.9%
Nations Reliable Lending, LLC	\$7,065,239	36	0.8%
Synergy One Lending, Inc.	\$6,484,599	32	0.8%
Southwest Funding, LP	\$6,314,928	31	0.7%
Mortgage Financial Services, LLC	\$5,869,497	30	0.7%
First United Bank & Trust	\$5,736,153	28	0.7%
NTFN, Inc.	\$5,735,056	27	0.7%
Cherry Creek Mortgage Co., Inc.	\$5,217,040	23	0.6%
Interlinc Mortgage Services, LLC	\$5,098,770	22	0.6%
Trinity Oaks Mortgage	\$4,959,258	20	0.6%
Primary Residential Mortgage, Inc.	\$4,033,995	21	0.5%
Infinity Mortgage Holdings, LLC	\$4,005,276	21	0.5%
First Bank	\$3,993,329	17	0.5%
Crosscountry Mortgage, LLC	\$3,660,667	17	0.4%
Independent Bank	\$3,628,670	18	0.4%
Republic State Mortgage Co.	\$3,569,505	15	0.4%
Patriot Mortgage Company	\$3,458,650	20	0.4%
FBC Mortgage LLC	\$3,438,657	17	0.4%
Panorama Mortgage Group, LLC	\$3,379,989	17	0.4%
Certainty Home Loans, LLC	\$3,349,550	19	0.4%
First Community Mortgage	\$3,334,659	21	0.4%
DAS Acquisition Company, LLC	\$3,114,688	13	0.4%
CLM Mortgage, Inc.	\$2,982,319	13	0.4%
Bank of England	\$2,965,829	14	0.3%
Legacy Mortgage, LLC	\$2,960,082	19	0.3%
Summit Funding, Inc.	\$2,954,450	13	0.3%
HomeBridge Financial Services	\$2,894,596	14	0.3%
Willow Bend Mortgage Company, LLC	\$2,819,183	14	0.3%

At a Glance	
Average Annual Income	\$62,066
Average Purchase Price	\$210,648
Average Loan Amount	\$206,331
Average Household Size	2
Average Interest Rate	3.210%
Program	%
<b>Home Sweet Texas</b>	<b>85.82%</b>
<b>Homes for Texas Heroes</b>	<b>14.18%</b>
Active Military	0.83%
Allied Health Faculty	0.12%
Corrections Officer	0.66%
County Jailer	0.19%
EMS Personnel	0.22%
Fire Fighter	0.80%
Peace Officer	1.36%
Professional Nurse Faculty	0.92%
Public Security Officer	0.19%
School Counselor	0.05%
School Librarian	0.00%
School Nurse	0.02%
Teacher	7.06%
Teacher Aide	0.05%
Veteran	1.70%
New/Existing Home	
Existing	67.37%
New	32.63%
Type of Loan	
Conventional - Purchase	17.48%
FHA - Purchase	76.52%
USDA-RHS Purchase	1.99%
VA - Purchase	4.01%
Ethnicity	
American Indian/Alaskan Native	0.27%
Asian/Pacific Islander	1.41%
Black	12.38%
Hispanic	39.45%
Not Defined	6.12%
Other	5.92%
White	34.45%
Top 20 Originating Counties*	# Households
Harris	621
Tarrant	407
Bexar	374
Dallas	338
Denton	129
El Paso	115
Collin	110
Williamson	107
Kaufman	107
Montgomery	98
Travis	94
Fort Bend	92
Bell	85
Cameron	74
Johnson	68
Lubbock	65
Ellis	64
Hays	63
Galveston	53
Webb	53
*Top 20 of all counties statewide. All remaining counties served 1002 households.	



**Homeownership Programs with Down Payment Assistance  
January 1 to March 31, 2021**

LeaderOne Financial	\$2,703,498	13	0.3%
First National Bank Mortgage	\$2,635,626	17	0.3%
Inspire Home Loans, Inc.	\$2,469,557	11	0.3%
BancorpSouth Bank	\$2,398,538	12	0.3%
American Neighborhood Mortgage	\$2,195,444	11	0.3%
Southwest Bank	\$2,189,759	11	0.3%
Sente Mortgage Inc.	\$2,184,414	11	0.3%
Hometown Lenders, Inc.	\$2,119,018	10	0.2%
Prosperity Home Mortgage, LLC	\$2,036,447	9	0.2%
M/I Financial, LLC	\$1,942,335	8	0.2%
Texas Bank Mortgage Company	\$1,814,581	10	0.2%
Texas Tech Federal Credit Union	\$1,804,795	12	0.2%
American Financial Network, Inc.	\$1,732,700	7	0.2%
Lend Smart Mortgage, LLC	\$1,706,400	7	0.2%
City First Mortgage Services, LLC	\$1,700,119	10	0.2%
Directions Equity, LLC	\$1,552,204	9	0.2%
Mid America Mortgage, Inc.	\$1,470,457	8	0.2%
First Bank & Trust	\$1,444,499	8	0.2%
Envoy Mortgage	\$1,394,892	7	0.2%
Commerce Home Mortgage, Inc.	\$1,241,682	6	0.1%
Moria Development/Peoples Mortgage Co	\$1,239,187	6	0.1%
America's Choice Home Loans, LP	\$1,140,963	5	0.1%
Churchill Mortgage Corporation	\$1,134,491	6	0.1%
First Financial Bank, N.A.	\$1,124,242	8	0.1%
Michigan Mutual, Inc.	\$1,062,406	4	0.1%
Sun West Mortgage Company, Inc.	\$1,047,285	5	0.1%
Rocky Mountain Mortgage Company	\$1,047,232	6	0.1%
Planet Home Lending, LLC	\$1,037,823	5	0.1%
Origin Bank	\$1,025,751	5	0.1%
Finance of America Mortgage, LLC	\$1,014,875	5	0.1%
K Hovnanian American Mortgage, LLC	\$1,003,970	4	0.1%
Midwest Mortgage Associates Corp.	\$1,003,381	4	0.1%
International Bank of Commerce	\$1,001,165	5	0.1%
Nations Lending Corporation	\$974,163	6	0.1%
New American Funding (Broker Solutions)	\$962,878	7	0.1%
Happy State Bank	\$956,258	7	0.1%
Home Financing Unlimited, Inc.(Mission)	\$944,188	3	0.1%
1st Preference Mortgage Corporation	\$892,879	4	0.1%
Finance Home America	\$875,623	6	0.1%
University Federal Credit Union	\$871,868	3	0.1%
Hancock Mortgage Partners, LLC	\$829,547	4	0.1%
Loan Simple, Inc.	\$811,419	4	0.1%
InterCap Lending, Inc.	\$718,204	4	0.1%
Open Mortgage LLC	\$691,365	3	0.1%
LHM Financial Corp., dba CNN Mortgage	\$654,816	3	0.1%
Cadence Lending Group, Inc.	\$650,869	4	0.1%
Goldwater Bank, N.A.	\$630,262	3	0.1%
Geneva Financial, LLC	\$622,892	3	0.1%
First Community Mortgage, Inc	\$619,097	3	0.1%
Mortgage Solutions of Colorado, LLC	\$539,990	2	0.1%
First Home Bank	\$511,562	3	0.1%
Pilgrim Mortgage, LLC	\$504,573	3	0.1%
Victorian Finance LLC	\$453,532	3	0.1%
Jefferson Bank	\$446,403	3	0.1%
Peoples Bank	\$438,411	3	0.1%
Central Bank	\$432,850	2	0.1%
Homevantage Mortgage	\$429,575	2	0.1%
City Bank Mortgage	\$409,518	2	0.0%
Guaranteed Rate Affinity, LLC	\$372,134	2	0.0%
TSAHC	\$350,000	2	0.0%
Residential Bancorp, Inc.	\$335,288	3	0.0%
Associated Mortgage Corporation	\$251,853	2	0.0%
LOANPEOPLE, LLC	\$240,660	1	0.0%
Paramount Residential Mortgage Group	\$227,797	1	0.0%



**Homeownership Programs with Down Payment Assistance  
January 1 to March 31, 2021**

Assurance Financial Group, LLC	\$211,105	1	0.0%
LendUS, LLC	\$206,196	1	0.0%
Capstar Lending, LLC	\$203,700	1	0.0%
US Mortgage of Florida	\$201,286	1	0.0%
Efinity Financial Inc.	\$191,526	1	0.0%
Amerifirst Financial, Inc.	\$164,465	1	0.0%
CalCon Mutual Mortgage LLC	\$160,050	1	0.0%
Guardian Mortgage	\$156,120	1	0.0%
First Centennial Mortgage Corporation	\$130,591	1	0.0%
V.I.P. Independent Mortgage, Inc.	\$126,663	1	0.0%
University Lending Group, LLC	\$114,880	1	0.0%
Wells Fargo Bank, N.A.	\$89,240	1	0.0%
<b>Grand Total</b>	<b>\$849,876,490</b>	<b>4119</b>	<b>100%</b>



**Mortgage Credit Certificate Program**  
**January 1 to March 31, 2021**

Month	Closed	# of Loans	% Total
Jan	\$ 28,404,010	141	29%
Feb	\$ 27,563,021	134	29%
Mar	\$ 40,343,649	186	42%
<b>Totals</b>	<b>\$96,310,680</b>	<b>461</b>	<b>100%</b>
Lender	Closed	# of Loans	% Total
Stearns Lending, LLC	\$8,977,712	37	8.0%
Everett Financial, dba Supreme Lending	\$8,667,272	40	8.7%
Gateway Mortgage Group, a division of	\$7,274,475	35	7.6%
PrimeLending	\$5,661,533	28	6.1%
Fairway Independent Mortgage Corporation	\$5,170,275	28	6.1%
Pulte Mortgage LLC	\$3,659,458	16	3.5%
Guild Mortgage Corporation	\$3,484,990	18	3.9%
DHI Mortgage Company, Ltd.	\$3,237,300	14	3.0%
Cardinal Financial Company	\$3,191,509	15	3.3%
Movement Mortgage, LLC	\$3,020,469	15	3.3%
SFMC, LP (Service First Mortgage)	\$2,799,273	13	2.8%
First Continental Mortgage, Ltd.	\$2,780,464	10	2.2%
Guaranteed Rate	\$2,421,505	13	2.8%
Amcap Mortgage, LTD	\$2,322,593	12	2.6%
loanDepot.com LLC	\$2,060,778	9	2.0%
Academy Mortgage Corporation	\$1,932,305	10	2.2%
Town Square Mortgage & Investments, Inc.	\$1,714,743	9	2.0%
Crosscountry Mortgage, LLC	\$1,517,348	7	1.5%
Ark-La-Tex Financial (Benchmark Mtg.)	\$1,515,016	7	1.5%
Highlands Residential Mortgage	\$1,457,237	8	1.7%
Security National Mortgage Company	\$1,380,628	7	1.5%
Inspire Home Loans, Inc.	\$1,362,654	6	1.3%
Thrive Mortgage, LLC	\$1,330,489	6	1.3%
Texas Bank Mortgage Company	\$1,313,408	7	1.5%
American Pacific Mortgage Corporation	\$1,261,146	6	1.3%
Interlinc Mortgage Services, LLC	\$943,266	3	0.7%
Hometrust Mortgage Company	\$931,626	6	1.3%
Caliber Home Loans, Inc.	\$930,312	5	1.1%
Nations Reliable Lending, LLC	\$908,560	5	1.1%
Lennar Mortgage, LLC	\$854,119	4	0.9%
Synergy One Lending, Inc.	\$785,186	4	0.9%
1st Preference Mortgage Corporation	\$640,680	3	0.7%
Waterstone Mortgage Corporation	\$562,601	2	0.4%
Mid America Mortgage, Inc.	\$513,117	2	0.4%
NTFN, Inc.	\$504,732	2	0.4%
Sente Mortgage Inc.	\$498,699	3	0.7%
Primary Residential Mortgage, Inc.	\$460,587	2	0.4%
Sun West Mortgage Company, Inc.	\$447,263	2	0.4%
SWBC Mortgage Corporation	\$414,984	2	0.4%
Network Funding, LP	\$411,014	2	0.4%
Trinity Oaks Mortgage	\$402,573	2	0.4%
Summit Funding, Inc.	\$390,791	2	0.4%
Wallick and Volk, Inc.	\$376,169	2	0.4%
Brazos National Bank	\$313,390	1	0.2%
Jefferson Bank	\$299,248	2	0.4%
M/I Financial, LLC	\$268,707	1	0.2%
Republic State Mortgage Co.	\$265,099	1	0.2%
Southwest Funding, LP	\$263,840	1	0.2%
Geneva Financial, LLC	\$249,775	1	0.2%
LHM Financial Corp., dba CNN Mortgage	\$245,471	1	0.2%
Bank of America, N.A.	\$230,600	2	0.4%
Bank of England	\$227,940	1	0.2%
Cornerstone Home Lending, Inc.	\$225,223	1	0.2%
Nations Lending Corporation	\$218,960	1	0.2%
Gardner Financial Services, Ltd.	\$218,116	1	0.2%
America's Choice Home Loans, LP	\$216,015	1	0.2%
CLM Mortgage, Inc.	\$214,780	1	0.2%
Goldwater Bank, N.A.	\$208,160	1	0.2%
City First Mortgage Services, LLC	\$201,276	1	0.2%

At a Glance	
Total Amount Originated	\$96,310,680
Average Annual Income	\$59,107
Average Purchase Price	\$214,433
Average Loan Amount	\$208,917
Average Household Size	2
Average Interest Rate	3.169%
Program	%
Home Sweet Texas	82.86%
Homes for Texas Heroes	17.14%
Active Military	0.43%
Allied Health Faculty	0.00%
Corrections Officer	0.43%
County Jailer	0.22%
EMS Personnel	0.43%
Fire Fighter	0.65%
Peace Officer	0.87%
Professional Nurse Faculty	1.08%
Public Security Officer	0.22%
School Counselor	0.00%
School Librarian	0.00%
School Nurse	0.00%
Teacher	10.63%
Teacher Aide	0.22%
Veteran	1.95%
New/Existing Home	
Existing	61.61%
New	38.39%
Type of Loan	
Conventional - Purchase	23.64%
FHA - Purchase	69.63%
USDA-RHS Purchase	4.12%
VA - Purchase	2.60%
Ethnicity	
American Indian/Alaskan Native	0.47%
Asian/Pac Isle	2.81%
Black	12.28%
Hispanic	35.31%
Not Defined	6.37%
Other	11.50%
White	31.27%
Top 20 Originating Counties*	# of Loans
Harris	83
Tarrant	56
Bexar	46
Dallas	30
Travis	30
Williamson	22
Denton	19
Hays	17
Kaufman	12
Collin	11
Johnson	10
Montgomery	9
Ellis	7
Bastrop	6
Rockwall	6
El Paso	6
Fort Bend	5
Hidalgo	5
Bell	5
Parker	5

\*Top 20 of all counties statewide. All remaining counties served 71 households.



**Mortgage Credit Certificate Program**  
**January 1 to March 31, 2021**

TSAHC	\$200,000	2	0.4%
CMG Mortgage, Inc. dba CMG Financial	\$197,368	1	0.2%
Guaranteed Rate Affinity, LLC	\$176,739	1	0.2%
Finance of America Mortgage, LLC	\$162,600	1	0.2%
Certainty Home Loans, LLC	\$159,844	1	0.2%
Commerce Home Mortgage, Inc.	\$148,015	1	0.2%
American Financial Network, Inc.	\$140,650	1	0.2%
American Neighborhood Mortgage	\$137,750	1	0.2%
First Centennial Mortgage Corporation	\$130,591	1	0.2%
Mortgage Financial Services, LLC	\$130,099	1	0.2%
Envoy Mortgage	\$129,495	1	0.2%
New American Funding (Broker Solutions)	\$127,645	1	0.2%
Associated Mortgage Corporation	\$112,425	1	0.2%
<b>Total Committed</b>	<b>\$96,310,680</b>	<b>461</b>	<b>100%</b>

# Tab B

## Development Finance Report

### **Affordable Communities of Texas Program (ACT)**

In the past month staff prepared for three NSP home sales with local partner, Brazos Valley Affordable Housing Corporation (BVAHC). Sales are anticipated to be completed by the end of June.

TDHCA has made progress with the NSP portfolio transfer and they have issued draft conveyance documents for the Creekside subdivision (Dallas) for TSAHC and its general counsel review. Conveyance documents for other NSP subdivisions will soon follow.

Construction progresses at 1314 N. Center (San Antonio) with exterior siding and framing completed to date. Material shortages have caused framing delays at 1418 N. Navidad, also in San Antonio, but staff anticipates that both homes will be substantially construction complete by mid-summer. Both homes will be 3 bed/2bath homes built to be affordable to households at 80% or below of area median income. These projects are being funded through a program related investment from Texas Community Bank.

Here is a summary of this past month's portfolio activity:

Program	Portfolio as of May 1, 2021	Acquired	Sold	Portfolio as of June 1, 2021	Current Portfolio Value
ACT Land Bank	23		1	22	\$216,217.60
ACT Land Trust	1			1	\$650,000.00
Texas NSP	140			140	\$1,907,337.43
Totals	164			163	\$2,773,555.03

Our current pipeline report:

- 15 homes under contract with eligible buyers
- 10 homes listed for sale
- 5 homes under construction
- 2 leased to Local Partner
- 130 NSP lots prepped for return to TDHCA

### **Texas Housing Impact Fund**

This month, staff will bring to the TSAHC board a proposed loan to Casa Cobe Holdings, LLC for the Saison North Apartments, located in Austin. The loan request for \$1,000,000 in bridge financing for site acquisition is an agenda item at this month's board meeting. Additional materials and a resolution are included in the board book. Loan Committee is also reviewing this loan at its June meeting.

### **Multifamily Bond Program**

This month the board will be discussing two transactions. The first will be an inducement for the construction of a new 216-unit apartment complex to be called Bluff View Apartments in Boerne, Texas. A full write up and resolution are included in the Board's packet.



The second transaction involves the Sandpiper Cove Apartments in Galveston, Texas. With guidance from the board and executive team, staff is returning to the board with a request to confirm its intentions to move forward with the project or to terminate our involvement. A full write-up and supporting materials are included in the board's packet.

# Tab C

## Monthly Financial Reports

## Texas State Affordable Housing Corporation

### Statement of Net Position (unaudited)

As of April 30, 2021

#### Assets

##### Current assets:

Cash and cash equivalents	\$ 124,077
Pooled investments, cash & cash equivalents	12,356,166
Restricted assets:	
Cash and cash equivalents	7,843,000
Accrued interest	76,400
Custodial cash and cash equivalents	201,907
Investments, at fair value	8,962,664
Accounts receivable and accrued revenue	30,937
Accrued interest receivable	73,867
Loans receivable, current portion	73,704
Notes receivable, current portion	1,607,855
Downpayment assistance, current portion	167,547
Prepaid expenses	82,110

Total current assets	<u>31,600,234</u>
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##### Noncurrent assets:

Loans receivable, net of uncollectible amounts of \$5,703	298,825
Notes receivable	85,621,032
Investments, at fair market value	16,226,830
Mortgage servicing rights, net of accumulated amortization of \$2,584,883	143,179
Capital assets, net of accumulated depreciation of \$578,760	6,066,820
Owned real estate, federal & other programs, net of amortization of \$1,479,256	10,678,051
Downpayment assistance	877,200
Restricted investments held by bond trustee, at fair market value	<u>47,172,776</u>

Total noncurrent assets	<u>167,084,713</u>
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Total assets	<u>\$ 198,684,947</u>
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(continued)

## Texas State Affordable Housing Corporation

### Statement of Net Position (unaudited)

As of April 30, 2021

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#### Liabilities

##### Current liabilities:

Accounts payable and accrued expenses	\$ 334,540
Notes payable, current portion	58,415
Custodial reserve funds	201,907
Due to federal programs	1,452,916
Other current liabilities	377,191
Payable from restricted assets held by bond trustee:	
Revenue bonds payable, current portion	1,105,000
Accrued interest on revenue bonds	305,994

Total current liabilities	3,835,963
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##### Noncurrent liabilities:

Notes payable	2,686,467
Revenue bonds payable	46,271,212
Unearned revenue	2,936,369

Total noncurrent liabilities	51,894,048
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Total liabilities	55,730,011
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#### Deferred Inflows of Resources

Deferred revenue	157,775
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Total deferred inflows of resources	157,775
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#### Net Position

Invested in capital assets	6,066,820
Restricted for:	
Debt service	5,824,820
Other purposes	2,629,896
Unrestricted	128,275,625

Total net position	142,797,161
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Total liabilities and net position	\$ 198,684,947
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## Texas State Affordable Housing Corporation

### Statement of Revenues, Expenses and Changes in Net Position For the 8 Months Ending April 30, 2021

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Operating Revenues:	
Interest and investment income	\$ 1,905,528
Net increase (decrease) in fair value of investments	(897,630)
Single family income	62,518,425
Asset oversight and compliance fees	226,981
Rental program income	402,968
Multifamily income	343,883
Land bank income	47,884
Public support:	
Federal & state grants	755,431
Contributions	144,684
Other operating revenue	<u>26,977</u>
Total operating revenues	\$ <u>65,475,131</u>
Operating Expenses:	
Interest expense on bonds and notes payable	\$ 1,008,438
Program and loan administration	165,454
Texas Foundation Fund Grants	901,000
Salaries, wages and payroll related costs	2,289,595
Professional fees and services	349,876
Depreciation and amortization	384,922
Office and equipment rental and maintenance	59,515
Travel and meals	5,037
Other operating expenses	<u>387,412</u>
Total operating expenses	<u>5,551,249</u>
Net income	59,923,882
Total net position, beginning	<u>82,873,279</u>
Total net position, ending	\$ <u><u>142,797,161</u></u>

## Texas State Affordable Housing Corporation

## Budget Report

April 30, 2021

	Annual Budget	Actual	Percent of Annual Budget	Reference
<b>Revenue</b>				
Servicing Revenue	116,000	68,878	59%	
Single Family Program Revenue	7,759,000	20,198,177	260%	①
Multifamily Program Revenue	695,000	599,588	86%	
Texas Housing Impact Fund	1,951,000	3,480,862	178%	②
Affordable Communities of Texas Program	185,000	86,073	47%	
Grants, Donations & Other Awards	550,000	144,684	26%	
Federal & State Grants	2,549,000	775,415	30%	
Tenant Rental Income	618,000	404,164	65%	
Investment Revenue	750,000	823,334	110%	③
<b>Total Revenue</b>	<b>15,173,000</b>	<b>26,581,175</b>	175%	
<b>Expenditures</b>				
Salaries & Payroll Related Expenditures	3,500,000	2,302,697	66%	
Program & Corporate Expenditures	10,085,000	5,730,264	57%	
Professional Services	530,000	349,876	66%	
Principal & Interest on Notes Payable	155,000	94,512	61%	
Marketing	149,000	56,356	38%	
Insurance	186,000	117,959	63%	
Travel & Meals	113,000	5,037	4%	④
Furniture, Equipment & Software	77,000	44,971	58%	
Building Maintenance	101,000	24,881	25%	⑤
Professional Dues, Conferences & Training	46,000	16,657	36%	④
Bank Fees & Charges	15,000	11,494	77%	
Sponsorships	20,000	9,865	49%	
Communication	22,000	18,646	85%	
Printing & Office Supplies	9,000	5,939	66%	
Publications, Subscriptions & Other	30,000	25,444	85%	
Freight, Delivery & Postage	12,000	5,318	44%	
<b>Total Expenditures</b>	<b>15,050,000</b>	<b>8,819,916</b>	59%	
<b>Net Budgeted Income</b>	<b>123,000</b>	<b>17,761,259</b>		

Average Expected Percent Received/Expended = 67%

**Texas State Affordable Housing Corporation**  
**Budget Report**  
**April 30, 2021**

**Explanations**

- ① Single Family Revenue exceeds budget estimates due to the unusually high volume of home loans closed under the Corporation's TBA and MCC Programs.
- ② The Corporation has been successful in attaining several new funding sources for the Texas Housing Impact Fund which has resulted in a significant increase in income to the program.
- ③ Investment revenue is higher than expected due to an increase in principal received from the Corporation's mortgage backed securities resulting from refinanced homes.
- ④ "Travel & Meals" as well as "Professional Dues, Conferences & Trainings" are significantly lower than anticipated due to the COVID pandemic. We expect that these line items will be lower than originally budgeted through the end of the fiscal year.
- ⑤ The required work-from-home policy has resulted in significantly lower janitorial and other building services expenses. We anticipate that building repairs and maintenance will be lower than originally budgeted through the end of the fiscal year.

## Tab 1

Presentation, Discussion and Possible Approval of Minutes of the Board Meeting held on May 12, 2021.



**TEXAS STATE AFFORDABLE HOUSING CORPORATION  
BOARD MEETING**

**The Governing Board of the Texas State Affordable Housing Corporation (TSAHC)  
met both ONLINE and IN-PERSON:**

**May 12, 2021,  
10:30 a.m.**

**Summary of Minutes**

**Call to Order**

**Roll Call**

**Certification of Quorum**

**The Board Meeting of the Texas State Affordable Housing Corporation (the “Corporation”) was called to order by Bill Dietz, Chair, at 10:34 a.m., on May 12, 2021, at the offices of Texas State Affordable Housing Corporation, 6701 Shirley Avenue, Austin, TX 78752. Roll Call certified that a quorum was present.**

**Members Present both in-person and remotely via teleconferencing:**

Bill Dietz, Chair, in-person

Valerie Cardenas, Vice Chair, online

Andy Williams, Member, in-person

Courtney Johnson Rose, Member, online

Lemuel Williams, Member, in-person

**Guests Present both in-person and remotely via teleconferencing:**

Chris Spelbring, Raymond James, on-line

Thomas Lastrapes, PFM, on-line

W. Roult Thornhill, Coats Rose, in-person

**President’s Report**

**David Long**

See page 5 in the official transcript.

**Tab 1            Presentation, Discussion and Possible Approval of Minutes of the Board Meeting held on April 14, 2021.**

Mr. Andy Williams made a motion to approve the minutes of the Board meeting held on April 14, 2021.

Ms. Rose seconded the motion. Mr. Dietz asked for public comment and none was given. A vote was taken, and the motion passed unanimously.

See page 9 in the official transcript.

**Tab 2            Presentation, Discussion and Possible Approval of a Resolution Regarding the Submission of One or More Applications for Allocation of Private Activity Bonds to the Texas Bond Review Board for Qualified Mortgage Revenue Bonds.**

Presented by Joniel LeVecque, Director, Homeownership Programs

Mr. Andy Williams made a motion to approve a Resolution Regarding the Submission of One or More Applications for Allocation of Private Activity Bonds to the Texas Bond Review Board for Qualified Mortgage Revenue Bonds. Ms. Rose seconded the motion. Mr. Dietz asked for public comment and none was given. A vote was taken, and the motion passed unanimously.

See page 11 in the official transcript.

**Tab 3                    Presentation, Discussion and Possible Approval of a Resolution authorizing the issuance of Texas State Affordable Housing Corporation Multifamily Housing Revenue Bonds (Las Palmas Villa) Series 2021, a Trust Indenture, a Loan Agreement, a Bond Purchase Agreement, an Asset Oversight, Compliance and Security Agreement, a Regulatory Agreement, a Preliminary Official Statement and a Final Official Statement; authorizing the execution of documents and instruments necessary or convenient to carry out the issuance of the bonds; and other provisions in connection therewith.**

Presented by David Danenfelzer, Senior Director, Development Finance

Ms. Cardenas made a motion to approve a Resolution authorizing the issuance of Texas State Affordable Housing Corporation Multifamily Housing Revenue Bonds (Las Palmas Villa) Series 2021, a Trust Indenture, a Loan Agreement, a Bond Purchase Agreement, an Asset Oversight, Compliance and Security Agreement, a Regulatory Agreement, a Preliminary Official Statement and a Final Official Statement; authorizing the execution of documents and instruments necessary or convenient to carry out the issuance of the bonds; and other provisions in connection therewith. Mr. Lemuel Williams seconded the motion. Mr. Dietz asked for public comment and none was given. A vote was taken, and the motion passed unanimously.

See page 13 in the official transcript.

**Tab 4                    Presentation, Discussion and Possible Approval of a Resolution Regarding the Submission of one or more Applications for Allocation of Private Activity Bonds, Notices of Intention to Issue Bonds and State Bond Applications to the Texas Bond Review Board and Declaration of Expectation to Reimburse Expenditures with Proceeds of Future Debt for the Marketplace at Liberty Crossing.**

Presented by David Danenfelzer, Senior Director, Development Finance

Mr. Lemuel Williams made a motion to approve a Resolution Regarding the Submission of one or more Applications for Allocation of Private Activity Bonds, Notices of Intention to Issue Bonds and State Bond Applications to the Texas Bond Review Board and Declaration of Expectation to Reimburse Expenditures with Proceeds of Future Debt for the Marketplace at Liberty Crossing. Ms. Rose seconded the motion. Mr. Dietz asked for public comment and none was given. A vote was taken, and the motion passed unanimously.

See page 16 in the official transcript.

**Tab 5                    Presentation, Discussion and Possible Approval of a Resolution to Approve Certificate of Amendment for the Corporation.**

Presented by Melinda Smith, Chief Financial Officer

Ms. Rose made a motion to approve a Resolution to Approve Certificate of Amendment for the Corporation. Mr. Lemuel Williams seconded the motion. Mr. Dietz asked for public comment and none was given. A vote was taken, and the motion passed unanimously.

See page 22 in the official transcript.

**Tab 6                    Presentation, Discussion and Possible Approval of Amendment to the Corporation's Fiscal Year 2021 Investment Policy.**

Presented by Melinda Smith, Chief Financial Officer

Ms. Cardenas made a motion to approve Amendment to the Corporation's Fiscal Year 2021 Investment Policy. Ms. Rose seconded the motion. Mr. Dietz asked for public comment and none was given. A vote was taken, and the motion passed unanimously.

See page 23 in the official transcript.

**Tab 7                    87th Texas Legislative Session Update.**

Presented by Michael Wilt, Senior Manager, External Relations

No action taken.

See page 29 in the official transcript.

**Announcements and Closing Comments**

Mr. Long and Board Members tentatively scheduled the next Board Meeting for June 9, 2021, at 10:30am.

**Adjournment**

Mr. Dietz adjourned the meeting at 11:14am.

Respectfully submitted by \_\_\_\_\_  
Rebecca DeLeon, Corporate Secretary

## Tab 2

Presentation, Discussion and Possible Approval of a Resolution Regarding the Submission of One or More Applications for Allocation of Private Activity Bonds to the Texas Bond Review Board for Qualified Mortgage Revenue Bonds.

## MINUTES AND CERTIFICATION

THE STATE OF TEXAS                   §  
   §  
 TEXAS STATE AFFORDABLE       §  
 HOUSING CORPORATION         §

I, the undersigned officer of the Texas State Affordable Housing Corporation, do hereby certify as follows:

1. The Board of Directors of said corporation convened on June 9, 2021, via a videoconference as permitted by action of the Governor of Texas, and at the designated meeting place in Austin, Texas, and the roll was called of the duly constituted members of said Board, to wit:

## BOARD OF DIRECTORS

<u>Name</u>	<u>Office</u>
William H. Dietz	Chairperson
Valerie Vargas Cardenas	Vice Chairperson
Courtney Johnson-Rose	Director
Lemuel Williams	Director
Andy Williams	Director

and all of said persons were present during the meeting except \_\_\_\_\_, thus constituting a quorum. Whereupon, among other business, the following was transacted, to-wit: a written resolution (the "Resolution") bearing the following caption was introduced:

## RESOLUTION NO. 21-\_\_\_\_

## TEXAS STATE AFFORDABLE HOUSING CORPORATION

RESOLUTION Regarding the Submission of One or More Applications for  
 Allocation of Private Activity Bonds to the Texas Bond Review Board for  
 Qualified Mortgage Revenue Bonds

was duly introduced for the consideration of said Board. It was duly moved and seconded that said Resolution be adopted; and, after due discussion, said motion was adopted by the following vote:

\_\_\_\_ AYES

\_\_\_\_ NOES

\_\_\_\_ ABSTENTIONS

2. That a true, full and correct copy of the aforesaid Resolution adopted at the meeting described in the above and foregoing paragraph is attached to and follows this certificate; that said Resolution has been duly recorded in said Board's minutes of said meeting; that the above and foregoing paragraph is a true, full and correct excerpt from said Board's minutes of said meeting pertaining to the adoption of said Resolution; that the persons named in the above and foregoing paragraph are the duly chosen, qualified and acting officers and members of said Board as indicated therein; that each of the officers and members of said Board was duly and sufficiently notified officially and personally, in advance, of the time, place and purpose of the aforesaid meeting, and that said Resolution would be introduced and considered for adoption at said meeting, and each of said officers and members consented, in advance, to the holding of said meeting for such purpose.

SIGNED this June 9, 2021.

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President, Texas State Affordable Housing  
Corporation

## RESOLUTION NO. 21-\_\_\_\_

## TEXAS STATE AFFORDABLE HOUSING CORPORATION

RESOLUTION Regarding the Submission of One or More  
Applications for Allocation of Private Activity Bonds to the Texas  
Bond Review Board for Qualified Mortgage Revenue Bonds

WHEREAS, the Board of Directors (the "Board") of the Texas State Affordable Housing Corporation (the "Corporation") desires to submit one or more calendar year 2021 Applications for Allocation of Private Activity Bonds (collectively, the "Application") to the Texas Bond Review Board in connection with qualified mortgage revenue bonds;

WHEREAS, the Board desires to make all other appropriate filings and requests to the Texas Bond Review Board to enable the Corporation to issue qualified mortgage revenue bonds or to convert all or a portion of the volume allocation for qualified mortgage revenue bonds to volume allocation for mortgage credit certificates;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE TEXAS STATE AFFORDABLE HOUSING CORPORATION:

1. That the President or Executive Vice President of the Corporation or any officer of the Corporation is hereby authorized and directed to execute and deliver the Application to the Texas Bond Review Board in connection with requesting allocation for qualified mortgage revenue bonds in a maximum amount of \$300,000,000 of 2021 volume allocation for qualified mortgage revenue bonds after August 6, 2021 and before August 15, 2021, together with any documents, certificates or instruments related thereto.

2. That the President or Executive Vice President of the Corporation is hereby authorized and directed to take any and all other actions necessary or incidental to securing private activity bond allocation and the approval of the qualified mortgage revenue bonds from the Texas Bond Review Board.

3. That the President or Executive Vice President of the Corporation or any other officer of the Corporation is hereby authorized and directed to file with the Texas Bond Review Board a Notice of Intent to Issue Bonds and a State Bond Application in connection with qualified mortgage revenue bonds and such officers are further authorized and directed to request that the application be approved by the Executive Director of the Texas Bond Review Board in accordance with Section 181.9(e) of the Rules of the Texas Bond Review Board.

4. That any officer of the Corporation is authorized and directed to execute and deliver any certificates and documents relating to converting all or a portion of the volume allocation for qualified mortgage revenue bonds to volume allocation for mortgage credit certificates and to take other actions deemed necessary or appropriate to implement a mortgage credit certificate program, including, but not limited to, the publication of any notices required in connection therewith.

PASSED, APPROVED AND EFFECTIVE this 9<sup>th</sup> day of June, 2021.

TEXAS STATE AFFORDABLE HOUSING CORPORATION

\*\*\*\*\*

## Tab 3

Presentation, Discussion and Possible Approval of a Resolution Regarding the Submission of one or more Applications for Allocation of Private Activity Bonds, Notices of Intention to Issue Bonds and State Bond Applications to the Texas Bond Review Board and Declaration of Expectation to Reimburse Expenditures with Proceeds of Future Debt for the Bluff View Apartments.



# Texas State Affordable Housing Corporation

## Multifamily Private Activity Bond Project Summary

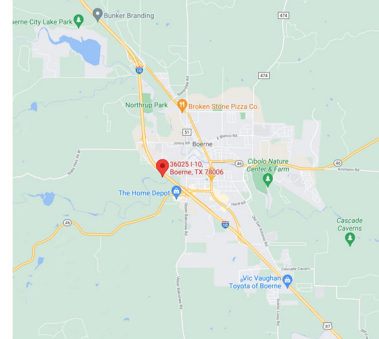
### **Agenda:**

Presentation, Discussion and Possible Approval of a Resolution Regarding the Submission of one or more Applications for Allocation of Private Activity Bonds, Notices of Intention to Issue Bonds and State Bond Applications to the Texas Bond Review Board and Declaration of Expectation to Reimburse Expenditures with Proceeds of Future Debt for the Bluff View Apartments.

### **Summary:**

TSAHC received an application from Roers, LLC (Developer) on April 4, 2021 proposing the construction of a 216-unit affordable apartment community located in Boerne, Texas to be called Bluff View. All 216-units will be reserved for low-income households.

Map of Project Area



### **Public Benefit:**

Bluff View Apartments will create 216-units of affordable rental housing targeted to families earning 60% or less than the area median income. The project qualifies under the TSAHC's Rural or Smaller Urban markets targeted housing needs. Boerne, Texas has an estimated population of 15,891 persons and is not adjacent to or share a boundary with an urbanized area.

### **Financial Summary:**

The Bluff View Apartments has a total budget of approximately \$55.9 million. The proposed financing includes tax-exempt bonds and 4% housing tax credits. Approximately \$2.8 million will be used for property acquisition costs, with total construction costs of \$35.1 million or \$162,962 per unit. Financing costs, soft costs, developer fees and reserves account for the remaining \$18 million in total costs.

The anticipated par amount of the bonds is \$33.8 million. The bonds will be issued through a private placement agreement, with a yet to be determined buyer. The bond volume cap may be requested through the State's collapse period or from TSAHC 2022 volume cap. Tax credit equity is anticipated to provide \$17.8 million and deferred developer fees in the amount of \$946,000 round out the project's financial sources.

### **Market Conditions:**

The community of Boerne is located along Interstate 10, approximately 35-miles northwest of San Antonio. It has seen steady population growth since the 2010 census, growing from 10,000 to over 15,800 persons in the past ten years. Unemployment rates for the County are lower at 4.6% than the state as a

## Texas State Affordable Housing Corporation

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### Multifamily Private Activity Bond Project Summary

whole (7.2%). The local economy relies heavily on educational services (i.e., schools), construction, finance and insurance industries.

Since the project targets families, staff focused its market assessment on jobs, education and community services. The property is located in the Boerne ISD footprint and will be served by Fabra Elementary and Boerne Middle School North. The site also has excellent access to professional medical services and clinics.

### **Developer Summary:**

Roers is a Minnesota based privately held company focused on the development of residential properties across a wide geographic footprint. Since 2012 the company has completed more than 5,000 units of housing, totaling more than \$800 million in construction activity. They have properties in 6 states and employ over 90 staff. The company is led by Kent and Brian Roers, and Jeff Koch. TSAHC's main contact will be Logan Schmidt, who has completed other developments with TSAHC while working at his previous employer.

### **Recommendation:**

Staff recommends approval of the Resolution Regarding the Submission of one or more Applications for Allocation of Private Activity Bonds, Notices of Intention to Issue Bonds and State Bond Applications to the Texas Bond Review Board and Declaration of Expectation to Reimburse Expenditures with Proceeds of Future Debt for the Bluff View Apartments.

## Bluff View - Underwriting - Project Summary

### Project Summary

Applicant TDI Affordable Development LLC  
 Project Name Bluff View Apartments

### Location

Address 36025 I-10 City Boerne  
 County: Kendall State Texas 78006  
 Census Tract: 48529970302

### Bonds

Max. Par Amount: \$ 35,000,000 Bond Type: PAB  
 Term of Bonds: 18 Allocation Year: 2021/22

### Perm Funding Souces

	Amount	% of Total
TSAHC - Bonds	\$ 33,825,000	60.42%
	\$ -	0.00%
HTC Equity	\$ 17,827,293	31.85%
Deferred Developer Fee	\$ 4,327,102	7.73%
	\$ -	0.00%
<b>Totals</b>	<b>\$ 55,979,395</b>	<b>100%</b>

\* not included in total

### Market Summary

	City	County	State	Census Tract
Population:	15,891	43,769	28,260,856	4,146
Median Age:	39	41	35	52
Diversity Index:	n/a	40	-	-
% Hispanic:	27%	24%	39%	16%
% Persons with Disability:	13%	13%	11%	14%
% Households that Rent:	45%	26%	38%	13%
Median Rents:	1,260	1,196	1,045	1,146
% Renters Who are Cost Burdened:	48%	37%	44%	43%
Median Home Price:	\$ 286,300	\$ 348,600	\$ 172,500	\$ 329,800
Median Household Income:	\$ 87,798	\$ 101,793	\$ 73,349	\$ 105,887
Unemployment:	0.00%	4.60%	7.20%	0.00%
Persons w/o Insurance:	11.57%	9.73%	17.24%	9.60%
Medically Underserved Area:	No	-	-	-
% Attending Public Schools:	87.49%	87.08%	93.09%	67.50%
Graduation Rate (Boerne ISD)	95%			
CRA Eligible Census Tract:	No			
# of LI Projects and Units:	4	437		

## Bluff View - Underwriting - Summary Sources and Uses

### Summary of Sources and Uses

Applicant TDI Affordable Development LLC  
 Project Name Bluff View Apartments  
 Number of Units 216

Sources	Amount	Amount Per Unit	Percentage of Total
TSAHC - Bonds	\$ 33,825,000	\$ 156,597	60%
	\$ -	\$ -	0%
HTC Equity	\$ 17,827,293	\$ 82,534	32%
Deferred Developer Fee	\$ 4,327,102	\$ 20,033	8%
	\$ -	\$ -	0%
<b>Total Sources</b>	<b>\$ 55,979,395</b>	<b>\$ 259,163.87</b>	<b>100%</b>

Uses	Amount	Amount Per Unit	Percentage of Total
Acquisition	\$ 2,875,000	\$ 13,310.19	5%
Off-Site Construction		\$ -	0%
On-Site Work	\$ 50,000	\$ 231.48	0%
Site Amenities	\$ -	\$ -	0%
Building Costs	\$ 29,318,421	\$ 135,733.43	52%
Other Const/Contingency	\$ 5,785,579	\$ 26,785.09	10%
Soft Costs	\$ 4,232,150	\$ 19,593.29	8%
Financing Costs	\$ 5,721,528	\$ 26,488.56	10%
Developer Fees	\$ 6,320,011	\$ 29,259.31	11%
Reserve Accounts	\$ 1,676,706	\$ 7,762.53	3%
<b>Total Uses</b>	<b>\$ 55,979,395</b>	<b>\$ 259,163.87</b>	<b>100%</b>

(Gap) / Reserve	\$ -
Percent of Developer Fee Deferred	68.47%

## Bluff View - Underwriting - Operating Proforma

### Operating Proforma

Applicant Roers Companies  
 Project Name Bluff View Apartments

Number of Units <u>216</u>	Affordable Units <u>216</u>	Min. Set Aside <u>87</u>
Set Aside election <u>40% @ 60% AMI</u>	Affordable % <u>100%</u>	Accessible Unit Min. <u>11</u>

#### Residential Income

Unit Type	Unit Sq. Ft.	Net Sq. Ft.	# units	Rent	Mo. Income	Inflator	Rent Limiter
1/1	752	33,088	44	\$ 1,109	\$ 48,796	1.02	60% AMI
2/2	900	77,400	86	\$ 1,325	\$ 113,950	1.02	60% AMI
		-			\$ -		
3/2	1095	94,170	86	\$ 1,526	\$ 131,236	1.02	60% AMI
Subtotals:				204,658	216	\$ 293,982	

Other income: \$ 20.00 \$ 4,320 1.02

Potential gross income

Residential vacancy loss

7.00%

**Effective Gross Residential Income**

Year 1	Year 2	Year 3	Year 4	Year 5	Year 10	Year 15
\$ 585,552	\$ 597,263	\$ 609,208	\$ 621,392	\$ 633,820	\$ 699,789	\$ 772,623
\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
\$ 1,367,400	\$ 1,394,748	\$ 1,422,643	\$ 1,451,096	\$ 1,480,118	\$ 1,634,170	\$ 1,804,255
\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
\$ 1,574,832	\$ 1,606,329	\$ 1,638,455	\$ 1,671,224	\$ 1,704,649	\$ 1,882,070	\$ 2,077,957
\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
\$ 51,840.00	\$ 52,877	\$ 53,934	\$ 55,013	\$ 56,113	\$ 61,954	\$ 68,402
\$ 3,579,624	\$ 3,651,216	\$ 3,724,241	\$ 3,798,726	\$ 3,874,700	\$ 4,277,982	\$ 4,723,238
\$ (250,574)	\$ (255,585)	\$ (260,697)	\$ (265,911)	\$ (271,229)	\$ (299,459)	\$ (330,627)
\$ 3,329,050	\$ 3,395,631	\$ 3,463,544	\$ 3,532,815	\$ 3,603,471	\$ 3,978,523	\$ 4,392,611

#### Operating Expenses

	TSAHC est.	Borrower Yr 1	% EGI	Variance	Per Unit	Inflator
General & Administrative	\$ 100,008	\$ 106,600	3.20	7%	\$ 494	1.03
Management Fee	\$ 90,288	\$ 116,612	3.50	29%	\$ 540	1.03
Payroll and Related	\$ 288,144	\$ 302,400	9.08	5%	\$ 1,400	1.03
Maintenance & Repair	\$ 168,048	\$ 162,000	4.87	-4%	\$ 750	1.03
Utilities	\$ 182,520	\$ 167,400	5.03	-8%	\$ 775	1.03
Insurance	\$ 73,656	\$ 50,000	1.50	-32%	\$ 231	1.03
Taxes	\$ 221,849	\$ 221,849	6.66	0%	\$ 1,027	1.03
Operating Debt Service Reserves			0.00	#DIV/0!	\$ -	1.03
Replacement reserves	\$ 54,000	\$ 54,000	1.62	0%	\$ 250	1.03
HTC/HOME Compliance Fees	\$ 6,578	\$ 8,640	0.26	31%	\$ 40	1.03
Bond Compliance Fees	\$ 9,720	\$ 9,720	0.29	0%	\$ 45	1.03
Other (specify): <u>tenant services</u>	\$ 21,600	\$ 21,600	0.65	0%	\$ 100	1.03
<b>Total Operating Expenses</b>	<b>\$ 1,216,411</b>	<b>\$ 1,220,821</b>		<b>0.36%</b>	<b>\$ 5,651.95</b>	

state avg \$ 5,439.00 *per unit*

*Operating Expenses as a percentage of Effective Gross Income*

\$ 106,600	\$ 109,798	\$ 113,092	\$ 116,485	\$ 119,979	\$ 139,089	\$ 161,242
\$ 116,612	\$ 120,110	\$ 123,714	\$ 127,425	\$ 131,248	\$ 152,152	\$ 176,386
\$ 302,400	\$ 311,472	\$ 320,816	\$ 330,441	\$ 340,354	\$ 394,563	\$ 457,407
\$ 162,000	\$ 166,860	\$ 171,866	\$ 177,022	\$ 182,332	\$ 211,373	\$ 245,040
\$ 167,400	\$ 172,422	\$ 177,595	\$ 182,922	\$ 188,410	\$ 218,419	\$ 253,208
\$ 50,000	\$ 51,500	\$ 53,045	\$ 54,636	\$ 56,275	\$ 65,239	\$ 75,629
\$ 221,849	\$ 228,504	\$ 235,360	\$ 242,420	\$ 249,693	\$ 289,463	\$ 335,567
\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
\$ 54,000	\$ 55,620	\$ 57,289	\$ -	\$ -	\$ -	\$ -
\$ 8,640	\$ 8,899	\$ 9,166	\$ 9,441	\$ 9,724	\$ 11,273	\$ 13,069
\$ 9,720	\$ 10,012	\$ 10,312	\$ 10,621	\$ 10,940	\$ 12,682	\$ 14,702
\$ 21,600	\$ 22,248	\$ 22,915	\$ 23,603	\$ 24,311	\$ 28,183	\$ 32,672
\$ 1,220,821	\$ 1,257,446	\$ 1,295,169	\$ 1,275,017	\$ 1,313,267	\$ 1,522,437	\$ 1,764,921
\$ 5,652	\$ 5,822	\$ 5,996	\$ 5,903	\$ 6,080	\$ 7,048	\$ 8,171
36.7%	37.0%	37.4%	36.1%	36.4%	38.3%	40.2%

**NET OPERATING INCOME**

\$ 2,108,229	\$ 2,138,186	\$ 2,168,375	\$ 2,257,798	\$ 2,290,204	\$ 2,456,087	\$ 2,627,690
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## Bluff View - Underwriting - Operating Proforma

### NET OPERATING INCOME

\$	2,108,229	\$	2,138,186	\$	2,168,375	\$	2,257,798	\$	2,290,204	\$	2,456,087	\$	2,627,690
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### PRIMARY DEBT SERVICE

	Principal	Rate	Amort	Term
TSAHC - Bonds	\$ 33,825,000	4.40%	40	15
Total Primary Debt	\$ 33,825,000			

TSAHC Issuer Fee	\$ 33,825		
Net Cashflow After Primary Debt			
DSCR Primary Debt			

### SOFT SUBORDINATE DEBT & EQUITY

HTC Equity	\$ 17,827,293			
Deferred Developer Fee	\$ 4,327,102			
Total Secondary Debt	\$ 22,154,395			

Net Cash Flow of Secondary Debts

Year 1	Year 2	Year 3	Year 4	Year 5	Year 10	Year 15
\$ 1,798,766	\$ 1,798,766	\$ 1,798,766	\$ 1,798,766	\$ 1,798,766	\$ 1,798,766	\$ 1,798,766
\$ 1,798,766	\$ 1,798,766	\$ 1,798,766	\$ 1,798,766	\$ 1,798,766	\$ 1,798,766	\$ 1,798,766

\$ 33,825	\$ 33,825	\$ 33,825	\$ 33,825	\$ 33,825	\$ 33,825	\$ 33,825
\$ 275,638	\$ 305,594	\$ 335,784	\$ 425,207	\$ 457,613	\$ 623,495	\$ 795,099
1.15	1.17	1.18	1.23	1.25	1.34	1.43

\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
\$ 275,638	\$ 305,594	\$ 335,784	\$ 425,207	\$ 457,613	\$ 623,495	\$ 795,099

## MINUTES AND CERTIFICATION

THE STATE OF TEXAS	§
	§
TEXAS STATE AFFORDABLE	§
HOUSING CORPORATION	§

The Board of Directors of the Texas State Affordable Housing Corporation (the "Corporation") convened on June 9, 2021, via a videoconference meeting as permitted by action of the Governor of Texas and at the designated meeting place in Austin, Texas, and roll was called of the duly constituted members of said Board of Directors, to-wit:

<u>Name</u>	<u>Office</u>
William H. Dietz	Chairperson
Valerie Vargas Cardenas	Vice Chairperson
Courtney Johnson-Rose	Director
Lemuel Williams	Director
Andy Williams	Director

and all of said persons were present during the videoconference meeting except \_\_\_\_\_, thus constituting a quorum. Whereupon, among other business, the following was transacted, to-wit: a written resolution (the "Resolution") bearing the following caption was introduced for the consideration of said Board:

## "RESOLUTION NO. 21-\_\_\_\_"

RESOLUTION Regarding the Submission of one or more Applications for Allocation of Private Activity Bonds, Notices of Intention to Issue Bonds and State Bond Applications to the Texas Bond Review Board and Declaration of Expectation to Reimburse Expenditures with Proceeds of Future Debt for the Bluff View Apartments"

Upon motion duly made and seconded, the Resolution was finally passed and adopted by the following vote:

\_\_\_\_\_ AYES                      \_\_\_\_\_ NOES                      \_\_\_\_\_ ABSTENTIONS

MINUTES APPROVED AND CERTIFIED TO BE TRUE AND CORRECT and to reflect accurately the duly constituted officers and members of the Board of Directors of the Corporation, and the attached and following copy of such Resolution is hereby certified to be a true and correct copy of an official copy thereof on file among the official records of the Corporation.

SIGNED this June 9, 2021.

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President, Texas State Affordable Housing  
Corporation



## RESOLUTION NO. 21-\_\_\_\_

RESOLUTION Regarding the Submission of one or more Applications for Allocation of Private Activity Bonds, Notices of Intention to Issue Bonds and State Bond Applications to the Texas Bond Review Board and Declaration of Expectation to Reimburse Expenditures with Proceeds of Future Debt for the Bluff View Apartments

WHEREAS, the Board of Directors of the Texas State Affordable Housing Corporation (the "Corporation") desires to submit one or more calendar year 2021 Applications for Allocation of Private Activity Bonds, a calendar year 2021 Application for Carryforward for Private Activity Bonds, one or more calendar year 2022 Applications for Allocation of Private Activity Bonds or a calendar year 2022 Application for Carryforward for Private Activity Bonds (collectively, the "Application") to the Texas Bond Review Board in connection with tax-exempt obligations in a principal amount not to exceed \$35,000,000 (the "Bonds") relating to a qualified residential rental housing project to be located at or about 36025 I-10, Boerne, Texas 78006, Kendall County (the "Project");

WHEREAS, the Corporation intends to issue the Bonds and loan the proceeds to Roers Boerne Apartments Owner LLC (the "Borrower"), which will be the initial legal owner and will use the proceeds for acquiring, constructing and equipping the Project;

WHEREAS, it is anticipated that the Borrower will make certain capital expenditures with respect to the Project and currently desires and expects to reimburse the capital expenditures with proceeds of such debt;

WHEREAS, under Treas. Reg. § 1.150-2 (the "Regulation"), to fund such reimbursement with proceeds of tax-exempt obligations, the Corporation must declare its expectation to make such reimbursement;

WHEREAS, the Corporation desires to preserve the ability of the Borrower to reimburse the capital expenditures with proceeds of tax-exempt obligations; and

WHEREAS, the Board desires to make all other appropriate filings and requests to the Texas Bond Review Board to enable the Corporation to issue the Bonds.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE TEXAS STATE AFFORDABLE HOUSING CORPORATION:

1. That the President of the Corporation or any officer of the Corporation is hereby authorized and directed to execute and deliver the Application to the Texas Bond Review Board in connection with requesting allocation in the maximum amount of \$35,000,000 for the Bonds, together with any documents, certificates or instruments related thereto.

2. That the President of the Corporation or any other officer of the Corporation is hereby authorized and directed to file with the Texas Bond Review Board one or more Notices of Intent to Issue Bonds and one or more State Bond Applications in connection with the Bonds and such officers are further authorized and directed to request that the application(s) be approved by the Texas Bond Review Board in accordance with Chapter 181 of the Texas Administrative Code, as amended.

3. That the President of the Corporation or any other officer of the Corporation is hereby authorized and directed to take any and all other actions necessary or incidental to securing the private activity bond allocation(s), the approval of the Bonds from the Texas Bond Review Board and requesting non-traditional carryforward of private activity bond allocation if needed.

4. That the Corporation reasonably expects that the Borrower will reimburse capital expenditures with respect to the Project with proceeds of debt hereafter to be incurred by the Corporation, and that this resolution shall constitute a declaration of official intent under the Regulation. The maximum principal amount of obligations expected to be issued for the Project by the Corporation is \$35,000,000.

PASSED, APPROVED AND EFFECTIVE this June 9, 2021.

TEXAS STATE AFFORDABLE  
HOUSING CORPORATION

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## Tab 4

Presentation, Discussion and Possible Approval of a motion to resubmit Applications for Allocation of Private Activity Bonds, Notices of Intention to Issue Bonds and State Bond Applications to the Texas Bond Review Board for the Sandpiper Cove Apartments Project.

# Texas State Affordable Housing Corporation

## Multifamily Private Activity Bond Project Summary

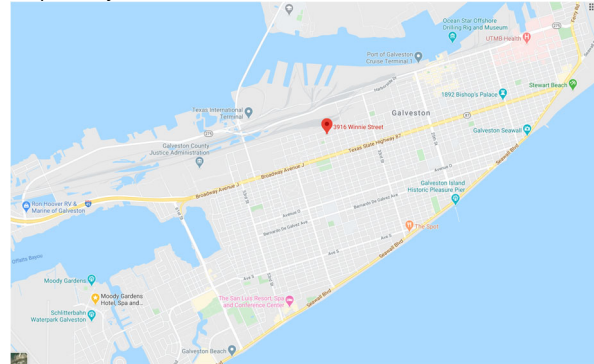
### **Agenda:**

Presentation, Discussion and Possible Approval of a motion to resubmit Applications for Allocation of Private Activity Bonds, Notices of Intention to Issue Bonds and State Bond Applications to the Texas Bond Review Board for the Sandpiper Cove Apartments Project.

### **Summary:**

TSAHC received an application from ITEX Group and Jeshurun Development on May 8, 2020 proposing the acquisition and rehabilitation of an affordable housing community called Sandpiper Cove. The property, located in Galveston, has 192-units targeted to families.

Map of Project Area



### **Public Benefit:**

Sandpiper Cove is an existing affordable apartment community serving low and very-low income families in Galveston. Built in 1969, the property consists of apartments from 1 to 5 bedrooms. The property qualifies under TSAHC's Targeted Housing Needs for At-Risk Preservation. The refinancing and rehabilitation will be coupled with an extended Section 8 Rental Assistance Contract, which means tenants pay 30% of their income towards rent and the owner receives a subsidy from the U. S. Department of Housing and Urban Development (HUD) that equals the difference between the tenant's payment (30% of their income) and a contract rent.

### **Public Comment:**

Public comments have been submitted through written letters and during the public hearing process. Letters of support for the project were received from the Mayor of Galveston, City Manager of Galveston, Galveston ISD Board President, HUD, State Representative Mayes Middleton, U. S. Congressman Randy Weber and the Moody Methodist Church. Verbal public comments were provided during the TEFRA hearing process with 11 of 14 speakers opposed to the transaction. Nine of the eleven speakers opposed to the transaction identified themselves as tenants of the property. Two speakers who opposed the transaction are employees of the Texas Low Income Housing Information Service (TxLIHIS), a statewide advocacy group working with Sandpiper Cove tenants. Three speakers who were in favor of the transaction are employees or members of the ownership entity.

In July 2020, tenants of the property, with legal support provided by Lone Star Legal Aid filed a lawsuit in federal court asking HUD to enforce its own policies and claiming that "the federal investment in and subsidies for the owners of the apartment, the unit, project, site, and neighborhood conditions at Sandpiper Cove Apartments are dangerous and unfit for family life and the presence of children." Filings in support of the tenant's claims have been detailed in a letter provided to TSAHC by TxLIHIS and were presented to the board during our February meeting. Lone Star Legal Aid has also provided a letter detailing their arguments in the case and reasoning. A letter in support for the transaction was drafted by

## Texas State Affordable Housing Corporation

### Multifamily Private Activity Bond Project Summary

tenant, John Mathews, requesting other tenants to sign on to the letter. Sixty persons signed on to the letter drafted by Mr. Mathews. The letter was forwarded by the Developer to TSAHC staff after the public hearing was held in December.

The property is also in-line to be nominated to the National Register of Historic Places. The Developer has already received initial approvals on their planned scope of work from the U.S. Department of the Interior, which oversees historic preservation of national register sites. TSAHC staff also confirmed with the Texas Historical Commission, which approves the historic register nomination process, that the property is scheduled for review in September of this year. If approved, the project may be eligible for an estimated \$7.9 million in historic tax credits noted in the financial summary.

#### **Financial Summary:**

The proposed acquisition and rehabilitation of Sandpiper Cove has a total budget of approximately \$43.8 million. The financing includes long-term tax-exempt bonds, 4% housing tax credits, and state historic tax credits. Roughly \$16.3 million will be used for property acquisition costs, with a total rehabilitation of \$12.7 million, or \$67,000 per unit. Financing costs, soft costs, developer fees and reserves account for the remaining \$12.24 million.

The maximum par amount of the bonds is anticipated to total \$36.9 million. Long-term bond debt will total \$22.5 million, with tax credit equity fee paying down a significant portion of the initial bond amount. Housing tax credits will total \$11.9 million, with state and federal historic tax credits adding another \$8.2 million. Deferred developer fees totaling \$271,651 and income during operations of \$845,000 will cover the remaining balance of permanent funding needs.

Feasibility of the project is made possible through the continuation of the project-based Section-8 contract. The lawsuit by tenants may bring this commitment into question, if HUD loses the suit and is required by the courts to convert the project-based subsidy into tenant-based vouchers, allowing tenants to move from the property and take rental subsidies with them. Staff has received a letter from Lone Star Legal Aid detailing the lawsuits claims supporting its validity. We have also received letters from HUD and the Developer's legal team claiming the lawsuit does not pose a risk to the project-based rental contract. TSAHC staff is not able to determine that actual level of risk, but has determined that if tenants win the suit, the loss of just 9% of voucher supported units would cause the project to fail TSAHC's feasibility requirements of a minimum debt coverage ratio of 1.15%.

Staff has also updated our underwriting and the project sources and uses since our previous presentation. These numbers represent the latest information used by the Texas Department of Housing and Community Affairs in their underwriting process. Total costs for the project increased by approximately \$2 million. The largest part of this increase is attributed to the proposed flood wall and pumping system added to the project plan, which staff was informed of after our previous write-up had been circulated for approval. Total rehabilitation costs were also lowered from approximately \$74,000 per unit to \$67,000 per unit. Additional costs were added to the project budget for financing, site amenities and off-site costs. The contribution from deferred developer fee was also lowered from \$3.2 million to \$271,651, with

## Texas State Affordable Housing Corporation

### Multifamily Private Activity Bond Project Summary

additional capital coming from an increase in the par value of the bonds and higher tax credit contributions.

#### **Market Conditions:**

Sandpiper Cove is three blocks north of State Highway 87 in a predominantly residential neighborhood in Galveston. The neighborhood is bound by railyard and shipping docks on the northside of the island, with adequate green space buffering noise and contact to heavier industrial areas. The neighborhood includes several low-income housing developments and is located only 8 blocks from the City's Housing Authority headquarters.

The City of Galveston has struggled to rebuild local housing stock and neighborhoods since Hurricane Ike made landfall in 2008. With additional damage caused by Hurricane Harvey in 2017, the island was dealt another blow to its planned revitalization efforts. One primary indicator of this struggle is the City's median household incomes of \$44,902 compared to the state's median household income of \$59,570. With a local economy heavily dependent upon service industry jobs related to tourism and conventions this income disparity is understandable. The impacts of COVID-19 over the past year have added additional pressures to the City's economy, however figures from the Bureau of Labor Statistics for March 2021 showed the City's unemployment rate of 8.2% was only slightly behind the statewide unemployment rate of 7.2%.

Letters of opposition to the project from TxLIHIS included information about undesirable site characteristics, as defined by the Texas Department of Housing and Community Affairs Qualified Allocation Plan, the document that guides the issuance of housing tax credits. The letter pointed out concerns about high poverty rates within the census tract that the property is located, the existence of abandoned and vacant structures within 1,000 feet of the property, high voltage transmission lines within 100 feet of the property line and potential environmental hazards within 2-miles of the property site.

The Developer has responded to several issues related to environmental hazards and provided TSAHC with both the Phase I and Phase II environmental site assessments. Clean up of contaminated soils, identified in the Phase II assessment, is planned as part of the construction and environmental remediation process. Staff has reviewed additional reports and updates provided by the Developer since the March board meeting. The area effected by contaminated soils is relatively small (approximately 1,000 square feet) but will require long-term monitoring wells and possibly future remediation steps. The Developer has provided an estimate for remediation services that ranges from \$150,000 to \$230,000, with a three-year timeline for completion of final clearance from the Texas Commission on Environmental Quality.

TSAHC staff visited the property in April at the request of the Developer. The tour involved a walk to observe the exterior of all buildings and parking lots, as well as interior views of recently "make-ready" units. We use the term "make-ready" to denote that a full renovation was not completed. The only work easily observed was painting of walls and ceilings through each of the three units observed. All three units showed clear signs of past water damage, uneven flooring, old cabinetry and in some cases mold. Staff was informed that these "make-ready" units would be fully renovated if the project financing is approved.

## Texas State Affordable Housing Corporation

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### Multifamily Private Activity Bond Project Summary

On May 26, staff joined a virtual tour of the property by tenants and community organizers from TxLIHIS. The tour consisted of interior viewings of three occupied units and exterior areas, along with comment provided by tenants. Common observations in each of the units included, visible mold or mildew in bedrooms, hallways, kitchens, and bathrooms. At least two units did not have functioning air conditioning units at the time of the tour, and at least two unit had rooms without functioning electrical outlet or lighting. During the exterior walk of the property several units were shown to have broken windows that had been boarded up for significant periods of time, and multiple stairwells were missing railing and failing treads.

In March of this year, 4% housing tax credits were awarded for the Oleander Homes apartment project, located approximately 1 mile from Sandpiper Cove. The project will provide 348 new affordable rental homes for families and is schedule to be complete in spring 2023. Of the 348 units, 174 are supported by project based rental assistance, and the remaining 174 units will be required to accept tenant-based vouchers, per LIHTC regulations. Staff notes this project since it is highly likely that some current tenants from Sandpiper Cove may choose to move to the new property, and a significant shift might impact the feasibility of the project.

#### **Relocation and Tenant Resources:**

The renovation of Sandpiper Cove will be significant. Interior renovations of the property will include removal of sheetrock and wall coverings in most ground floor units to treat for mold, prevent future moisture build up and reinsulate exterior walls. Interior work will also include the replacement of cabinets, flooring, countertops, tile, lighting fixtures, doors and hardware. Exterior renovations will include new roofing, pavement repairs and landscaping. The cost of renovations for the project average \$67,000 per unit, much higher than the required minimum rehab spending requirement of \$35,000 per unit for the housing tax credit program.

TSAHC staff believes that most current tenants will remain in the property during renovations through a process of cycling rehab through individual buildings and moving tenants into completed units before starting construction on other buildings. Though some tenants may be temporarily displaced, the Developer is required to assist with temporary moves and the cost of all relocation for tenants. All tenants, pursuant to federal and state law, will be protected from permanent relocation and the Developer's rehabilitation and relocation plan will be approved by the City of Galveston and TDHCA, prior to closing.

The City of Galveston also operates both Public Housing facilities and Tenant Based Housing Voucher programs through its Housing Authority. The Housing Authority replied to our inquiry that 849 families are on its waiting list for Section 8 units and vouchers. The current property owner confirmed that there are 34 families on the property's waiting list.

#### **Developer Summary:**

The development is being completed through a partnership between ITEX Group and Jeshurun Development LLC., an affiliated company of J. Allen Management (JAMC). In an August 2020 presentation to the Board staff explained that ITEX Group would have a reduced role in ownership and development of this project. The reason was due to compliance issues raised by the Texas Department of Housing and

## Texas State Affordable Housing Corporation

### Multifamily Private Activity Bond Project Summary

Community Affairs (TDHCA) on three properties owned and operated by ITEX. In October 2020, ITEX agreed to take several steps to resolve its previous compliance issues with TDHCA and their application for 4% housing tax credits was allowed to move forward. ITEX has resumed a primary role in ownership and development of this project and received a conditional approval from TDHCA's Executive Award Review and Advisory Committee (EARAC) with the approval of the 4% tax credits on March 15, 2021. A copy of the EARAC approval letter is attached to this agenda item.

The ITEX Group, LLC (ITEX) is a Texas-based for-profit limited liability company with headquarters in Port Arthur and executive offices in Houston. ITEX and its affiliates employ more than 250 people throughout the United States. ITEX's primary business is in developing, constructing and managing multifamily housing. ITEX currently has a portfolio of 53 properties in Texas, Louisiana and Colorado that includes more than 6,900 units.

Formed in 1981, JAMC has grown into a multifaceted affordable housing provider and property manager. Based in Beaumont, JAMC has owned and operated more than 1,200 units of housing throughout South East Texas, primarily in the Houston and Beaumont metro areas. JAMC's property management company, J. Allen Management, reaches well beyond the region and currently operates more than 5,000 units of HUD and tax credit financed properties across the states of Texas, Louisiana and New Mexico.

In April 2020, JAMC took over property management duties at Sandpiper Cove. The change in management companies was done by the current owner, Compass Point Apartments, LLC, at the request of HUD. HUD has issued several default notices due to multiple violations at the property over a several year period. Knowing that JAMC and ITEX Group were proposing an acquisition of the property, HUD approved the replacement of management companies prior to the closing of the sale.

#### **Recommendation:**

Staff has not changed its position from our presentation on March 10, 2021 and does not recommend approval of the motion. The following risks continue to give us pause and remain real risks to the future feasibility of the project.

1. The lawsuit filed by tenants poses a minimal but real risk to the project. While HUD and attorneys for the Developer have provided letters detailing reasons why the risk is minimal, HUD staff have noted to us on several occasions that the poor living conditions and defaults by the current owner have been occurring over the past several years.
2. Flooding and damage from hurricanes will always be a risk to the property. While the Developer has proposed building a flood wall with flood resistant gates and pumps, information provided to date clearly states that the wall can mitigate, but not eliminate flood risk to the property. With a consistent and frequent history of flooding at the property, there is a likelihood that future storms will negatively impact tenants and cause millions in damage to the property.
3. The National Register of Historic Places nomination for the project is scheduled for approval in September 2021. If the project is not approved by the State Historic Preservation Office, it will not



## Texas State Affordable Housing Corporation

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### Multifamily Private Activity Bond Project Summary

be eligible for state and federal historic tax credits. This will be a condition to closing for the bonds, if the board approves the motion.

4. The awarding of 4% housing tax credits to Oleander Homes in March of this year will have an impact on the marketability of Sandpiper Cove. Since this new property will be built above flood plain levels and offer modern amenities, along with project based rental units, it does pose a risk to the marketability and feasibility of Sandpiper Cove.

If the motion before the board today is approved, Staff will re-engage bond counsel and the rest of the finance team to update the project's bond resolution and closing documents. We will return to the board and seek approval of that final resolution in order to move the project quickly to closing. The project will also require approval from the Texas Bond Review Board, which cannot occur until after approval of the final bond resolution.

## Sandpiper Cove - Underwriting - Project Summary

### Project Summary

Applicant ITEX Group and Jeshurun Development  
 Project Name Sandpiper Cove

### Location

Address 3916 Winnie Street City Galveston  
 County: Galveston State Texas 77550  
 Census Tract: 48167724600

### Bonds

Max. Par Amount: \$ 37,500,000 Bond Type: PAB  
 Term of Bonds: 3 yrs Allocation Year: 2020

### Perm Funding Souces

	Amount	% of Total
Citi - Perm Loan	\$ 22,500,000	51.36%
	\$ -	0.00%
RBC - Housing Tax Credit Equity	\$ 11,940,294	27.25%
RBC - Federal Historic Credits	\$ 3,538,945	8.08%
Foss - State Historic Credits	\$ 4,714,712	10.76%
Income During Construction	\$ 845,011	1.93%
Deferred Dev Fee	\$ 271,651	0.62%
<b>Totals</b>	<b>\$ 43,810,613</b>	<b>100%</b>

\* not included in total

### Market Summary

	City	County	State	Census Tract
Population:	50,039	327,089	27,885,195	1,791
Median Age:	39	38	34	33
Diversity Index:	-	59	-	57
% Hispanic:	30%	24%	39%	25%
% Persons with Disability:	18%	14%	12%	25%
% Households that Rent:	56%	34%	38%	76%
Median Rents:	803	844	863	325
% Renters Who are Cost Burdened:	47%	45%	44%	53%
Median Home Price:	\$ 122,900	\$ 97,750	\$ 161,700	NA
Median Household Income:	\$ 44,902	\$ 69,369	\$ 59,570	\$ 15,625
Unemployment:	0.00%	4.00%	3.50%	0.00%
Persons w/o Insurance:	20%	14%	17%	21%
Medically Underserved Area:	Yes	-	-	-
% Attending Public Schools:	91%	92%	93%	93%
Graduation Rate (Galveston ISD)	65%			
CRA Eligible Census Tract:	Yes - LI			
# of LI Projects and Units:	16	749		

## Sandpiper Cove - Underwriting - Summary Sources and Uses

### Summary of Sources and Uses

Applicant ITEX Group and Jeshurun Development

Project Name Sandpiper Cove

Number of Units 192

Sources	Amount	Amount Per Unit	Percentage of Total
Citi - Perm Loan	\$ 22,500,000	\$ 117,188	51%
	\$ -	\$ -	0%
RBC - Housing Tax Credit Equity	\$ 11,940,294	\$ 62,189	27%
RBC - Federal Historic Credits	\$ 3,538,945	\$ 18,432	8%
Foss - State Historic Credits	\$ 4,714,712	\$ 24,556	11%
Income During Construction	\$ 845,011	\$ 4,401	2%
Deferred Dev Fee	\$ 271,651	\$ 1,415	1%
<b>Total Sources</b>	<b>\$ 43,810,613</b>	<b>\$ 228,180.28</b>	<b>100%</b>

Uses	Amount	Amount Per Unit	Percentage of Total
Acquisition	\$ 16,350,000	\$ 85,156.25	37%
Off-Site Construction	\$ 10,000	\$ 52.08	0%
On-Site Work	\$ 1,871,895	\$ 9,749.45	4%
Site Amenities	\$ 539,825	\$ 2,811.59	1%
Building Costs	\$ 9,714,252	\$ 50,595.06	22%
Other Const/Contingency	\$ 3,082,536	\$ 16,054.88	7%
Soft Costs	\$ 2,072,418	\$ 10,793.84	5%
Financing Costs	\$ 3,609,643	\$ 18,800.22	8%
Developer Fees	\$ 5,084,044	\$ 26,479.40	12%
Reserve Accounts	\$ 1,476,000	\$ 7,687.50	3%
<b>Total Uses</b>	<b>\$ 43,810,613</b>	<b>\$ 228,180.28</b>	<b>100%</b>

(Gap) / Reserve	\$ -
Percent of Developer Fee Deferred	5.34%

Note: This budget does not include the cost of a proposed \$1.3 million flood wall to be constructed around the perimeter of the property. Staff has not received an updated budget, but does believe the additional cost can be offset by additional deferred developer fees and tax credit equity.

## Sandpiper Cove - Underwriting - Operating Proforma

### Operating Proforma

Applicant ITEX Group and Jeshurun Development

Project Name Sandpiper Cove

Number of Units	192	Affordable Units	192	Min. Set Aside	77
Min. Set-Aside Requirement	77	Affordable %	100%	Accessible Unit Min.	10

#### Residential Income

Unit Type	Unit Sq. Ft.	Net Sq. Ft.	# units	Rent	Mo. Income	Inflator	Rent Limiter
1/1	573	5,730	10	\$ 895	\$ 8,950	1.02	60% AMI
2/1	684	62,928	92	\$ 1,115	\$ 102,580	1.02	60% AMI
3/1	858	54,912	64	\$ 1,440	\$ 92,160	1.02	60% AMI
4/2	999	23,976	24	\$ 1,615	\$ 38,760	1.02	60% AMI
5/2	1084	2,168	2	\$ 1,725	\$ 3,450	1.02	60% AMI

<b>Subtotals:</b>	149,714	192	\$ 245,900
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Other income: \$ 20.00 \$ 3,840 1.02

Potential gross income

Residential vacancy loss 7.50%

Effective Gross Residential Income

Year 1	Year 2	Year 3	Year 4	Year 5	Year 10	Year 15
\$ 107,400	\$ 109,548	\$ 111,739	\$ 113,974	\$ 116,253	\$ 128,353	\$ 141,712
\$ 1,230,960	\$ 1,255,579	\$ 1,280,691	\$ 1,306,305	\$ 1,332,431	\$ 1,471,111	\$ 1,624,226
\$ 1,105,920	\$ 1,128,038	\$ 1,150,599	\$ 1,173,611	\$ 1,197,083	\$ 1,321,677	\$ 1,459,238
\$ 465,120	\$ 474,422	\$ 483,911	\$ 493,589	\$ 503,461	\$ 555,861	\$ 613,716
\$ 41,400	\$ 42,228	\$ 43,073	\$ 43,934	\$ 44,813	\$ 49,477	\$ 54,626
\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
\$ 46,080.00	\$ 47,002	\$ 47,942	\$ 48,900	\$ 49,878	\$ 55,070	\$ 60,802
\$ 2,996,880	\$ 3,056,818	\$ 3,117,954	\$ 3,180,313	\$ 3,243,919	\$ 3,581,549	\$ 3,954,320
\$ (224,766)	\$ (229,261)	\$ (233,847)	\$ (238,523)	\$ (243,294)	\$ (268,616)	\$ (296,574)
\$ 2,772,114	\$ 2,827,556	\$ 2,884,107	\$ 2,941,790	\$ 3,000,625	\$ 3,312,933	\$ 3,657,746

#### Operating Expenses

	TSAHC est.	Borrower Yr 1	% EGI	Variance	Per Unit	Inflator
General & Administrative	\$ 87,936	\$ 63,249	2.28	-28%	\$ 329	1.03
Management Fee	\$ 101,376	\$ 136,635	4.93	35%	\$ 712	1.03
Payroll and Related	\$ 250,560	\$ 192,728	6.95	-23%	\$ 1,004	1.03
Maintenance & Repair	\$ 144,576	\$ 140,061	5.05	-3%	\$ 729	1.03
Utilities	\$ 160,704	\$ 240,111	8.66	49%	\$ 1,251	1.03
Insurance	\$ 76,416	\$ 191,094	6.89	150%	\$ 995	1.03
Taxes	\$ 99,648	\$ 215,514	7.77	116%	\$ 1,122	1.03
Operating Debt Service Reserves			0.00	#DIV/0!	\$ -	1.03
Replacement reserves	\$ 57,408	\$ 57,600	2.08	0%	\$ 300	1.03
HTC/HOME Compliance Fees	\$ 7,680	\$ 7,680	0.28	n/a	\$ 40	1.03
Bond Compliance Fees	\$ 8,640	\$ 8,640	0.31	0%	\$ 45	1.03
Other (specify): SupServ/Security	\$ 71,911	\$ 71,911	2.59	0	\$ 375	1.03
<b>Total Operating Expenses</b>	<b>\$ 1,066,855</b>	<b>\$ 1,325,223</b>		<b>24%</b>	<b>\$ 6,902.20</b>	

state avg \$ 5,251.00 per unit  
Operating Expenses as a percentage of Effective Gross Income

\$ 63,249	\$ 65,146	\$ 67,101	\$ 69,114	\$ 71,187	\$ 82,526	\$ 95,670
\$ 136,635	\$ 140,734	\$ 144,956	\$ 149,305	\$ 153,784	\$ 178,278	\$ 206,673
\$ 192,728	\$ 198,510	\$ 204,465	\$ 210,599	\$ 216,917	\$ 251,466	\$ 291,518
\$ 140,061	\$ 144,263	\$ 148,591	\$ 153,048	\$ 157,640	\$ 182,748	\$ 211,855
\$ 240,111	\$ 247,314	\$ 254,734	\$ 262,376	\$ 270,247	\$ 313,290	\$ 363,189
\$ 191,094	\$ 196,827	\$ 202,732	\$ 208,814	\$ 215,078	\$ 249,334	\$ 289,047
\$ 215,514	\$ 221,979	\$ 228,639	\$ 235,498	\$ 242,563	\$ 281,197	\$ 325,984
\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
\$ 57,600	\$ 59,328	\$ 61,108		\$ -	\$ -	\$ -
\$ 7,680	\$ 7,910	\$ 8,148	\$ 8,392	\$ 8,644	\$ 10,021	\$ 11,617
\$ 8,640	\$ 8,899	\$ 9,166	\$ 9,441	\$ 9,724	\$ 11,273	\$ 13,069
\$ 71,911	\$ 74,068	\$ 76,290	\$ 78,579	\$ 80,936	\$ 93,828	\$ 108,772
\$ 1,325,223	\$ 1,364,980	\$ 1,405,929	\$ 1,385,166	\$ 1,426,721	\$ 1,653,960	\$ 1,917,394
\$ 6,902	\$ 7,109	\$ 7,323	\$ 7,214	\$ 7,431	\$ 8,614	\$ 9,986
47.8%	48.3%	48.7%	47.1%	47.5%	49.9%	52.4%

#### NET OPERATING INCOME

\$ 1,446,891	\$ 1,462,577	\$ 1,478,178	\$ 1,556,624	\$ 1,573,904	\$ 1,658,972	\$ 1,740,352
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## Sandpiper Cove - Underwriting - Operating Proforma

### NET OPERATING INCOME

\$	1,446,891	\$	1,462,577	\$	1,478,178	\$	1,556,624	\$	1,573,904	\$	1,658,972	\$	1,740,352
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### PRIMARY DEBT SERVICE

	Principal	Rate	Amort	Term
Citi - Perm Loan	\$ 22,500,000	4.00%	35	18
Total Primary Debt	\$ 22,500,000			

TSAHC Issuer Fee	\$ 22,500		
Net Cashflow After Primary Debt			
DSCR Primary Debt			

### SOFT SUBORDINATE DEBT & EQUITY

RBC - Housing Tax Credit Equity	\$ 11,940,294			
RBC - Federal Historic Credits	\$ 3,538,945			
Foss - State Historic Credits	\$ 4,714,712			
Income During Construction	\$ 845,011			
Deferred Dev Fee	\$ 271,651			
Total Secondary Debt	\$ 5,831,374			

Net Cash Flow of Secondary Debts

Year 1	Year 2	Year 3	Year 4	Year 5	Year 10	Year 15
\$ 1,195,492	\$ 1,195,492	\$ 1,195,492	\$ 1,195,492	\$ 1,195,492	\$ 1,195,492	\$ 1,195,492
\$ 1,195,492	\$ 1,195,492	\$ 1,195,492	\$ 1,195,492	\$ 1,195,492	\$ 1,195,492	\$ 1,195,492

\$ 22,500	\$ 22,500	\$ 22,500	\$ 22,500	\$ 22,500	\$ 22,500	\$ 22,500
\$ 228,899	\$ 244,585	\$ 260,187	\$ 338,632	\$ 355,913	\$ 440,981	\$ 522,360
1.19	1.20	1.21	1.28	1.29	1.36	1.43

\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
\$ 228,899	\$ 244,585	\$ 260,187	\$ 338,632	\$ 355,913	\$ 440,981	\$ 522,360

TEXAS STATE AFFORDABLE HOUSING CORPORATION

PUBLIC HEARING

REGARDING THE ISSUANCE OF BONDS  
FOR  
SANDPIPER COVE APARTMENTS

via RingCentral

Tuesday,  
December 1, 2020  
11:30 a.m.

BEFORE:

DAVID DANENFELZER, Hearing Officer

I N D E X

<u>SPEAKER</u>	<u>PAGE</u>
Elizabeth Roehm	5
Ericka Bowman	8
Tina Harris	10
Larry Bernard Brooks, Sr.	12
Carlika Johnson	14
Adrienne Littlejohn	15
Cynthia Mendez	17
Antoinette Gray	19
Bobken Simonians	23
Christopher Akbari	25
Raynold Richardson	26
Eric McCrea	28
Kenya Gordon	35
Betty Durgin	37

1                                   P R O C E E D I N G S

2                   MR. DANENFELZER:   Good day.   My name is David  
3   Danenfelzer, and I am a Hearing Officer for the Texas  
4   State Affordable Housing Corporation.

5                   I am here to conduct the public hearing on  
6   behalf of the Corporation with respect to an issuance of  
7   tax-exempt private activity bonds relating to the  
8   Sandpiper Cove Apartments transaction.

9                   Let the record show that it is now 11:37 a.m.  
10   on December 1, 2020, and we are holding this public  
11   hearing in accordance with Revenue Procedure 2020-21,  
12   issued by the Internal Revenue Service, specifically in  
13   light of the coronavirus disease 2019 pandemic.   This  
14   hearing is in regards to the issuance of bonds for the  
15   Sandpiper Cove Apartments.

16                  This hearing is being held to collect public  
17   comment on the proposed transaction to fulfill the public  
18   hearing requirements of Internal Revenue Code.   A  
19   transcript, or summary of this hearing, will be made  
20   available to the Corporation's board of directors and to  
21   the Texas Attorney General.   This hearing does not  
22   constitute a Board meeting of the Corporation, and no  
23   decisions regarding the proposed financings will be made  
24   at this hearing.

25                  Also, please be advised that this is not a



1 question and answer hearing. The Corporation expects to  
2 issue tax-exempt private activity bonds to Galveston 3916  
3 Winnie Street, LP, a Texas Limited Partnership. The bonds  
4 will be issued in one or more series to provide financing  
5 for the acquisition, and construction of a multifamily  
6 rental property.

7 The maximum aggregate face amount of the Bonds  
8 to be issued with respect to the Projects is  
9 \$37,500,000. The Bonds shall not constitute or create an  
10 indebtedness, general or specific, or a liability of the  
11 State of Texas, or any political subdivision thereof. The  
12 Bonds shall never constitute or create a charge against  
13 the credit or taxing power of the State of Texas, or any  
14 political subdivision thereof.

15 Neither the State of Texas, nor any political  
16 subdivision thereof, shall in any manner be liable for the  
17 payment of the principal or interest of the Bonds, or for  
18 the performance of any agreement or pledges of any kind  
19 which may be undertaken by the Issuer. And no breach by  
20 the Issuer of any agreements will create an obligation  
21 upon the State of Texas, or any political subdivision  
22 thereof.

23 Only individuals who have -- choose to speak  
24 today will be allowed to provide public comment, or asked  
25 to provide public comment. I will now open the hearing up

1       for public comment.

2               I will call speakers based on the order that I  
3       have previously mentioned, or as they request through the  
4       chat function. I will also go through the order in which  
5       they appear in the presentation screen by number, or  
6       telephone number.

7               When you begin your testimony, please state for  
8       the record your name and address, along with your intent  
9       to testify in favor or opposition of the transaction.  
10       Each person's testimony will be limited to approximately  
11       three minutes. I will attempt to provide each speaker  
12       with a notice 30 seconds prior to the end of their three-  
13       minute period.

14              The first witness to provide public comment  
15       will be Elizabeth Roehm. Elizabeth, I am going to unmute  
16       you now.

17              And please state your name, your home address,  
18       and intent to testify in favor or opposition of the  
19       transaction. You don't have to have a specific address.  
20       You just have to say the city and state in which you live  
21       in.

22              MS. ROEHM: Okay. Thank you. My name is  
23       Elizabeth Roehm. R-O-E-H-M. I'm a staff attorney at  
24       Texas Housers. My home and work addresses are in Austin,  
25       Texas. So, I work with Texas Housers, a non-profit group,

1     working with tenants.

2             Today, we have a few comments about this  
3     application for bonds. Sandpiper Cove Apartments on  
4     Winnie Street in Galveston has many problems that a  
5     superficial rehab will not address.

6             And a rehab would have to include significant  
7     elevation and rehabs down to the studs to reach some of  
8     these issues. And other problems with the location cannot  
9     be addressed by rehab of the building.

10            So first, regarding the proposed rehab, in an  
11     industrial area, in a flood plain, where buildings should  
12     be elevated eleven feet, this is not a place to invest and  
13     compel tenants to live. Anything not sufficiently  
14     elevated is going to flood in the coming years,  
15     reintroducing mold, and harming residents.

16            Major systems of the building may need an  
17     overhaul that is not addressed by the proposed rehab.  
18     Tenants have experienced sewage backups, multi-day power  
19     outages, and persistent mold. Walls would need to be  
20     gutted to solve mold, and the foundation may need to be  
21     dug up to resolve sewer backups.

22            This is not a simple rehab, and application for  
23     bonds and tax credits do not address all these issues.  
24     Regarding the current management, J. Allen Management  
25     shared leadership staff with the new buyer developers that

1 are planning for bonds for the rehab. J. Allen Management  
2 took over on this site from the previous managers in April  
3 2020, and they appear to be the intended ongoing  
4 management company after purchase and rehab. Tenants  
5 report a general lack of respect from management, and this  
6 has been from previous managers through now, including the  
7 time in which J. Allen Management Company has been in  
8 charge.

9 We would also like to point out that an  
10 environment of possible retaliation from management and  
11 owners. Tenants may not want to speak out -- I'm sorry --  
12 they may want to speak out, but not feel safe doing so.

13 Regarding the location of Sandpiper Cove on  
14 Winnie Street, there is no rehab that can address the  
15 problem with the current -- the problems with the current  
16 Sandpiper site itself. A high voltage line runs along the  
17 border of the property. Proximity to high voltage lines  
18 have been shown to have severe negative health effects,  
19 including female infertility, and elevated risk of  
20 leukemia among children. The site is far from grocery  
21 stores, and in a very high poverty area.

22 Sandpiper Cove is currently located on the edge  
23 of a large industrial area that include the Port and is  
24 zoned for heavy industry. This is not a healthy area for  
25 people to live, with air pollutants, and other hazards so

1 close by.

2 We draw your attention to these issues, and  
3 hope that the Board will seek out and hear the concerns of  
4 tenants, both in today's TEFRA hearing and via future  
5 outreach. Thank you so much for your time.

6 MR. DANENFELZER: Elizabeth, thank you. I am  
7 going to go -- I know there was a request to have Erika go  
8 next. I don't see her having joined.

9 Do you happen to have at least the last four  
10 digits of her phone number? All right.

11 MS. ROEHM: At the end, it is the one ending in  
12 7044.

13 MR. DANENFELZER: 7044. Okay.

14 MS. ROEHM: Thank you.

15 MR. DANENFELZER: Okay. I will go ahead and  
16 unmute her now. Thank you.

17 Ericka, can you hear me?

18 MS. BOWMAN: Hi. My name is Ericka Bowman. I  
19 am a -- I want to say, I want to say community  
20 navigator. But I am a navigator -- a community navigator  
21 for Texas Housers. I reside in Houston, Texas.

22 I am here to speak on not only -- I don't want  
23 to repeat everything that Elizabeth has just said, which  
24 is absolutely true for Sandpiper Cove. But I wanted to  
25 give a quick comment on what I have also experienced by

1 visiting Sandpiper Cove and working with the tenants for  
2 over a year now.

3           These conditions and speaking -- I know that  
4 there is some tenants here that's going to be speaking  
5 today and giving you more detail on the issues that they  
6 have to face on a daily basis. But I also wanted to speak  
7 on behalf of the tenants that aren't able to be on this  
8 call today.

9           Throughout the process of working over at  
10 Sandpiper Cove, the majority of the doors are the homes  
11 that I have walked inside --

12           OPERATOR: This meeting is now being recorded.

13           MS. BOWMAN: -- have all been in very bad  
14 living, very bad living standards. There is extreme  
15 mold. There are holes in the walls. The stair casing and  
16 stairwells are falling apart.

17           People are complaining of being sick,  
18 constantly. There is lots of retaliation that takes place  
19 on property when tenants decide to speak up against the  
20 living conditions they are being forced to live in. There  
21 are sewage issues that children are forced to walk and  
22 play in, on the premises.

23           No one, no human being should have to be forced  
24 to live in these conditions. And a lot of these tenants  
25 have been here for five, ten, 20, 30 years, and have seen

1 no repairs, no remodeling, nothing done. But the housing  
2 continuously falling apart and falling in on them as they  
3 reside at Sandpiper Cove.

4 I wish, I wish I could paint a picture of the  
5 conditions that these tenants are having to live in. But  
6 I can only say that it's unsafe. It is hazardous, and  
7 something needs to be done.

8 And the tenants have lost faith in HUD. They  
9 have lost faith in any -- give me one second, please.  
10 They have lost faith in anyone coming and helping them in  
11 this, in the conditions that they are faced to live in  
12 right now. So, I am not going to be long.

13 But I still just want to make a comment on what  
14 I witnessed, and what I have seen. And I know that these  
15 tenants are hoping and praying for an outcome that will  
16 allow them to live in a home that is safe for them and  
17 their families.

18 MR. DANENFELZER: Thank you. Thank you for  
19 that testimony.

20 I am going to go ahead and go through the  
21 telephone numbers now, one by one. I am going to first  
22 unmute area code (409)457-\*\*\*\*. You are now live. And if  
23 you would, please, state -- first, would you like to  
24 provide public comment on the record?

25 MS. HARRIS: Yes.

1                   MR. DANENFELZER: Okay. Then, would you please  
2 state your name, the city and state where you live, and  
3 your intent to testify in favor or opposition of the  
4 transaction.

5                   MS. HARRIS: My name is Tina Harris. I live in  
6 Galveston. I live in Sandpiper Cove.

7                   (Pause.)

8                   MR. DANENFELZER: And what else would you like  
9 to provide for the public record?

10                  MS. HARRIS: Oh, the comments about it -- well,  
11 I am the one that my daughter has tested mold in her  
12 system. My home has tested positive for mold inside my  
13 home.

14                  They came here about a month ago, and tried to  
15 fix my porch, because my porch is literally falling. They  
16 came up and put asphalt on my railing and said that was  
17 all they could do with it.

18                  MR. DANENFELZER: Okay.

19                  MS. HARRIS: And my daughter is sick.

20                  MR. DANENFELZER: Okay. Is there anything else  
21 you would like to add to the record?

22                  MS. HARRIS: Just that we need out of here. I  
23 mean, that is our biggest concern. You know, I am trying  
24 on my own, if that is what I have to do.

25                  There is no way that I can do it. But to have



1 my daughter healthy again would be my option --

2 MR. DANENFELZER: Right. All right.

3 MS. HARRIS: -- because my daughter has been in  
4 the ICU four times.

5 MR. DANENFELZER: Okay. Well. All right.

6 Thank you very much, Tina, and I appreciate your public  
7 comment. I am going to go ahead and mute you. And I am  
8 going to move to the next caller on the --

9 MS. HARRIS: Okay. No, I have --

10 MR. DANENFELZER: I'm sorry. Hold on one  
11 moment.

12 MS. HARRIS: I had to call --

13 MR. DANENFELZER: Was there something else that  
14 you wanted to add?

15 MR. BROOKS: Yes. My name is Larry Brooks. I  
16 am also on this line, because I don't have a phone.

17 MR. DANENFELZER: Okay. And Larry, would you  
18 state for the record your full name, and the city and  
19 state where you live?

20 MR. BROOKS: Okay. My name is Larry Bernard  
21 Brooks, Sr. My address is 3916 Winnie Street, Apartment  
22 57, Galveston, Texas, 77550.

23 MR. DANENFELZER: Great. All right, and would  
24 you like to testify in favor or opposition of the  
25 transaction, Larry?

1 MR. BROOKS: Yes. I would.

2 MR. DANENFELZER: I need you to state whether  
3 you are in favor or opposition. I'm sorry that wasn't  
4 clear.

5 MR. BROOKS: So in favor of the opposition,  
6 yes, I am. You said --

7 MR. DANENFELZER: Okay.

8 MR. BROOKS: Let me get it right. Okay. What  
9 is going on. He was right here. Yes. Okay.

10 MR. DANENFELZER: Okay. Is there anything else  
11 you would like to add, Larry, to the record?

12 MR. BROOKS: Yeah, I would like to add, you  
13 know, we put work orders in here for them to fix things  
14 and they never come through. They tell them they have got  
15 a long list.

16 And I mean, I have been on a work order for a  
17 lot of things. My closet, I had too many clothes hung on  
18 it, and it just caved in. And they haven't fixed that  
19 yet.

20 And I am just waiting to see what they are  
21 going to do. Then, they claim they are going to  
22 remodel. And I don't believe they are going to do that,  
23 neither.

24 MR. DANENFELZER: Okay. All right. If that is  
25 all, Larry, I am going to go ahead and put you on mute.

1 MR. BROOKS: Okay. That is fine.

2 MR. DANENFELZER: Thank you for your comments  
3 today. I am going to move to the next dialer that I have  
4 on my list, which is area code (409)502-\*\*\*\*. You are  
5 unmuted. Would you please state for the record your name,  
6 the city and state where you live, and your intent to  
7 testify in favor or in opposition of the transaction.

8 MS. JOHNSON: Hi, there. My name is Carlika  
9 Johnson. I live in Sandpiper Cove. And I testify in  
10 favor of the opposition.

11 MR. DANENFELZER: Okay. So, you do oppose the  
12 transaction? Is that correct?

13 MS. JOHNSON: Yes.

14 MR. DANENFELZER: All right. Thank you. Is  
15 there anything else you would like to add for the record?

16 MS. JOHNSON: I'm sorry?

17 MR. DANENFELZER: Is there anything else you  
18 would like to say on the record?

19 MS. JOHNSON: Well, yes. The living conditions  
20 out here are getting worse and worse every day. And some  
21 people are still forced to pay rent, even though they are  
22 living in the conditions that they are living in with  
23 mildew, mold, leakage in their apartments, holes in their  
24 apartment. Unsafe, unstable environments around here,  
25 sir.

1 VOICE: [indiscernible].

2 MS. JOHNSON: I know, Mom. I am just also  
3 speaking for everybody else, as well as myself.

4 MR. DANENFELZER: All right. Well, Carli --

5 MS. JOHNSON: Yes.

6 MR. DANENFELZER: Is there anything else you  
7 would like to add at this time?

8 MS. JOHNSON: No. Not at this time. I just  
9 hope that we can get out of here.

10 MR. DANENFELZER: Okay.

11 MS. JOHNSON: And I hope that this can go  
12 through.

13 MR. DANENFELZER: Right. Well, thank you for  
14 your public comment. I am going to mute you, and I am  
15 going to move to the next number I have on the list.

16 The next number I have is area code (409)599-  
17 \*\*\*\*. I have unmuted you. Would you like to provide  
18 public comment?

19 MS. LITTLEJOHN: Yes, I would.

20 MR. DANENFELZER: And would you please state  
21 for the record your name, the city and state where you  
22 live, and your intent to testify either in favor or in  
23 opposition of the transaction.

24 MS. LITTLEJOHN: I am in favor of opposition to  
25 the transaction. Adrienne Littlejohn. I stay at

1 Sandpiper Cove now --

2 MR. DANENFELZER: Okay. And is there anything  
3 else you would like to add for the record?

4 MS. LITTLEJOHN: Yes, I would. I would like to  
5 state that I am speaking for the people here, let alone,  
6 my family and myself.

7 I would like to state that the conditions at  
8 Sandpiper Cove are horrible. I believe people deserve  
9 better, and no human should be treated like this. There  
10 is mold. There is -- this place is falling apart.

11 There is no respect from the management. There  
12 is no respect for the people. I, myself, have tried to go  
13 to several different organizations and people trying to  
14 fight for people's rights here at Sandpiper Cove.

15 Against that, I have been made a target. I  
16 have also been put upon by intimidation, defamation of  
17 character. I have been given the runaround.

18 Like other people have said, there is mold.  
19 This place is caving in. It is not good for anyone  
20 here. I believe that a better situation should be  
21 provided for kids to have a healthy environment to grow up  
22 in, let alone their parents and anybody else behind them.

23 I have been met by, like I said, intimidation,  
24 defamation of character, sexual harassment upon everything  
25 else. Along to go with everything, this has affected me

1 and my family by me having to move my kids out of my  
2 home. It is just horrible. It is really horrible here.

3 If I do not -- if I believe that people are not  
4 able to receive a voucher or a different solution to get  
5 out of here, it wouldn't be good for mental health, for  
6 health alone. It is very toxic here, and I don't think  
7 people deserve any of this, especially having to go to the  
8 higher ups and asking for help and being sent back to the  
9 people who are terrorizing them.

10 And just, we are trying to make a better  
11 situation for everybody here.

12 MR. DANENFELZER: Okay. Thank you. Is  
13 there -- your time is about to expire. Is there anything  
14 else you would like to state for the record?

15 MS. LITTLEJOHN: No. That'll be all for my  
16 part.

17 MR. DANENFELZER: All right. Thank you very  
18 much.

19 The next caller I am going to unmute is  
20 (409) 692-\*\*\*\*. You are unmuted. Would you like to speak  
21 on the record?

22 MS. MENDEZ: Yes.

23 MR. DANENFELZER: And would you please state  
24 your name, the city and state where you live, and your  
25 intent to testify in favor or opposition of the

1 transaction?

2 MS. MENDEZ: My name is Cynthia Mendez. I stay  
3 at Sandpiper Cove, Apartment 59, in Galveston, Texas.

4 MR. DANENFELZER: All right. And do you have  
5 other comments you would like to provide on the record?

6 MS. MENDEZ: Yes. I have a disabled husband  
7 that stays with me. Mold's bad. Management -- the  
8 manager and the assistant manager talk to you, nice and  
9 crazy.

10 You know, I mean, it is just terrible. And we  
11 don't have no rights to nothing. And it is really bad.  
12 My light can fall, but these -- it is hard to talk to the  
13 manager. If you talk to the manager, they will call the  
14 police like we are harassing them. Like they are the  
15 victim, and that ain't right.

16 We need better assistance out here. It is  
17 really bad. The mold is really bad.

18 MR. DANENFELZER: All right. Is there anything  
19 else you would like to add for the record?

20 MS. MENDEZ: We deserve better than this. No,  
21 that is it. I know it is bad out here.

22 MR. DANENFELZER: Okay.

23 MS. MENDEZ: People are sick. They don't get  
24 no help from them, or nothing. It is really bad. No  
25 voucher. We just need a voucher to leave. People can't

1     afford to get out on their own. It is really bad out  
2     here.

3                 MR. DANENFELZER: Cynthia, I really appreciate  
4     your comments. And, I am going to go ahead and mute you.

5                 And then, I am going to move to the next  
6     caller. The next caller is area code is (409)692-\*\*\*\*.  
7     And I have unmuted you.

8                 Would you like to provide public comment on the  
9     record?

10                MS. GRAY: Yes. I will.

11                MR. DANENFELZER: And would you please, for the  
12     record, state your full name, the city and state where you  
13     live, and your intent to testify in favor or opposition of  
14     the transaction.

15                MS. GRAY: Hi. My name is Antoinette Gray. I  
16     live in Sandpiper Cove, Unit 144. And I am in favor of  
17     the transaction.

18                MR. DANENFELZER: Okay. And would you like to  
19     provide any additional comments?

20                MS. GRAY: Yes, sir. Okay. First, I want to  
21     start with the living conditions. Like everyone else  
22     said, the mold is absolutely ridiculous. When I complain  
23     about the mold, all they do is paint over it. Or you  
24     know, they don't do any -- take any real action to get rid  
25     of it.



1                   And for about two months, my AC was broke, and  
2   no one -- I called every day for the whole two months, and  
3   no one came out to fix it. I have two toddlers. So, we  
4   couldn't even stay in the apartment, because it was so  
5   hot. And we were staying at my mom's house. But they  
6   still forced me to pay rent and everything on time.

7                   On top of that, I have been here for about two  
8   years, almost three years. And since I have moved in,  
9   three weeks within me moving in, I noticed that I had an  
10   infestation of mice and rats. And I called and I called  
11   about that and they weren't taking any action.

12                  I had to go out and try to take care of it on  
13   my own, which is really hard when you have toddlers,  
14   because there is not much you can buy, you know. The kids  
15   want to touch the sticky traps. They want to touch the  
16   pellets.

17                  It was really hard to get rid of them. And I  
18   just recently got rid of them, probably a month ago, and I  
19   have been here two years.

20                  Also, the environment is just horrible. There  
21   is always gun -- there is always people shooting around,  
22   and you know, I can't take my kids to the park, because  
23   they were just shooting at the park. And so, you know, we  
24   are basically forced to either stay inside or we'll go to  
25   my mom's house for a little while.

1                   And we stay in an upstairs apartment. And the  
2 railings, like Ms. Ericka stated, the railings are always  
3 very loose. And my kids, they like to hang on them. And  
4 I have to tell them to get off, because they are so loose.

5                   And I would tell the -- when I asked the  
6 apartment manager, could we move to a downstairs unit, so  
7 it would be safer for my kids, she said, there is nothing  
8 they can do, even though they had open units downstairs.  
9 She said there is nothing she can do. She can't move  
10 me. I basically have to stay in the apartment I am  
11 already in.

12                  Along with the main -- no matter how many times  
13 you call the maintenance, they don't come out. I have  
14 been calling for months about my lights, my kitchen. My  
15 hot water has been out for about six months. And I have  
16 been calling every day. No one has come out to fix my hot  
17 water.

18                  And my sink is stopped up. I have been calling  
19 for two days, and no one still came out. The lady told me  
20 there is no -- there is no maintenance people to come out  
21 to fix anything.

22                  MR. DANENFELZER: Okay. Thank you.  
23 Antoinette, I appreciate that comment. Is there anything  
24 else you would like to add on the record? I will note  
25 that you've got less than 30 seconds.

1 MS. GRAY: Oh, I am not in favor of the  
2 transaction. I'm sorry. And no, that is all I would like  
3 to add.

4 MR. DANENFELZER: All right. Thank you very  
5 much. Before I go to the next speaker, I am going to go  
6 back to one speaker previously.

7 The court reporter has informed me that we  
8 didn't quite hear the name for the caller in area code  
9 (409)599-\*\*\*\*. I am going to unmute you, and ask if you  
10 could, for the record, state your name again, so the court  
11 reporter has the correct name.

12 MS. LITTLEJOHN: My name is Adrienne  
13 Littlejohn.

14 MR. DANENFELZER: Adrienne Littlejohn.

15 MS. LITTLEJOHN: Yes, sir.

16 MR. DANENFELZER: Yes. Thank you, Adrienne.  
17 Okay.

18 I am going to go then -- I apologize. I am  
19 trying to go through all of the speakers in order. And  
20 the system tends to change the order after everyone  
21 speaks.

22 So, I am trying to keep notes. The next person  
23 I am going to unmute will be Adam Pirtle. Adam, do you  
24 have any comments for the record?

25 MR. PIRTLE: No. I don't have any comments for

1 the record. Elizabeth and Ericka summed them up.

2 MR. DANENFELZER: Okay. Adam, thank you. I am  
3 going to go ahead and put you back on mute. The next  
4 person I will unmute is Karen Paup.

5 Karen, do you have any comments for the record?

6 MS. PAUP: No. I do not.

7 MR. DANENFELZER: Thank you, Karen. Next  
8 person I will unmute will be Miranda Sprague.

9 Miranda, do you have any comments for the  
10 record?

11 MS. SPRAGUE: No. I do not. Thank you.

12 MR. DANENFELZER: Okay. Thank you. The next  
13 person I will unmute is Bobken Simonians.

14 Bobken, do you have any comments for the  
15 record?

16 MR. SIMONIANS: Yes, I do.

17 MR. DANENFELZER: Okay. Your three  
18 minutes -- would you please state your name for the  
19 record, your full name, the city and state where you live,  
20 and your intent to testify in favor or opposition of the  
21 transaction.

22 MR. SIMONIANS: My name is Bobken Simonians.  
23 I'm with ITEX. I live in Houston, Texas. And I would  
24 like to speak on behalf of or for the transaction.

25 MR. DANENFELZER: Okay.

1                   MR. SIMONIANS: As part of the development  
2     entity, I would like to thank all the tenants and all of  
3     those who spoke against the transaction, because arguments  
4     that were made are the basis why this transaction should  
5     take place.

6                   We are planning to spend more than \$45 million  
7     to remedy most of the concerns that were raised, to make  
8     life better for everyone. We have over 7,000 units under  
9     management with deals. And we manage our projects. And  
10    we take pride in making sure that our tenants are well  
11    taken care of, and they live in safe and sanitary places.

12                  Would we do a new construction in that  
13    location? Probably not, because of flooding issues in  
14    Galveston. All of Galveston is subject to flooding. And  
15    the problems that exist in the City of Galveston.

16                  But this is an existing project. It provides a  
17    very, very needed affordable housing to the community.  
18    And our goal is, by spending over \$45 million, to make  
19    life better, to make the place better for everybody.

20                  And I again, thank you, everyone who spoke  
21    about their concerns and the problems that the project  
22    has, which is a very good reason why we should take care  
23    of these problems. And we are proposing to do so, as soon  
24    as the project is approved.

25                  Thank you.

1                   MR. DANENFELZER: Thank you, Bobken. I am  
2 going to go ahead and mute you now. Going to go ahead and  
3 unmute Chris Akbari next.

4                   Chris, do you have any comments you would like  
5 to provide for the record?

6                   MR. AKBARI: I do.

7                   MR. DANENFELZER: Please go ahead and state  
8 your name, the city and state where you live, and your  
9 intent to testify in favor or opposition of the  
10 transaction.

11                  MR. AKBARI: Okay. My name is Chris Akbari. I  
12 am the CEO of ITEX, the proposed developer for this  
13 project. I reside in Houston, Texas. I am in support of  
14 approving this project.

15                  I believe that our team has a track record of  
16 preserving affordable housing, having worked on over 5,000  
17 units of very similar housing throughout the state of  
18 Texas. We have had a lot of success in taking properties  
19 that have had damaged sidewalks, that have had no  
20 sidewalks, that have had mold in the units, that have been  
21 flooded, and have been able to take those units and  
22 preserve them, just as I believe we'll be very capable of  
23 doing with Sandpiper Cove.

24                  Our budget is over 75,000 in rehabilitation per  
25 unit. This will be to take the units all the way down to

1 the studs and build them back. And not only do that but  
2 treat the studs and the existing materials with anything  
3 necessary to kill the mold, or bacteria that may be  
4 existing there.

5 We also have taken into consideration the  
6 sewage issues, and a lot of the other complaints of the  
7 tenants in developing our scope of work, and believe that  
8 we will adequately address all of those issues in the  
9 preservation of this property. Again, thank you for your  
10 time, and I appreciate it.

11 (Pause.)

12 MR. RICHARDSON: Hello? I cannot hear you,  
13 Dave.

14 MR. DANENFELZER: I'm sorry, user error  
15 there. Raynold, I have unmuted you. Would you like to  
16 provide comment on the public record?

17 MR. RICHARDSON: Yes.

18 MR. DANENFELZER: Would you please state for  
19 your name your -- please state for the record your full  
20 name, the city and state where you live, and your intent  
21 to testify in favor or opposition of the transaction.

22 MR. RICHARDSON: My name is Raynold  
23 Richardson. I live in Houston, Texas. I plan to testify  
24 in favor of the transaction.

25 MR. DANENFELZER: Thank you. You can go

1 ahead. You have three minutes.

2 MR. RICHARDSON: Okay. I just wanted to state  
3 for the record, I am the Vice President of J. Allen  
4 Management Company. We currently manage the site on  
5 behalf of the current ownership.

6 And from the inception of this -- I am part of  
7 the development team also. And from the inception of  
8 this, we did meet with the HUD office in Fort Worth, Chris  
9 Akbari and myself. And we communicated to them our plans,  
10 in order to address all of the issues at the site with  
11 regard to the physical plan and the other type issues that  
12 the residents have spoken to.

13 We have closed out all of the physical  
14 deficiencies, you know, previously, in the past, to TDHCA  
15 on the annual report for the owner, and the report as far  
16 physical conditions are concerned. As the management  
17 company, we are meeting with HUD biweekly on this asset to  
18 provide them updates of the physical repairs that are  
19 going on in the unit and exterior of the unit.

20 So, the issues are not just being overlooked.  
21 We are trying to address those issues as funding is  
22 available to address the specific need. The overall  
23 physical rehabilitation is needed. We actually ask for  
24 that.

25 But this is why we are applying for the tax



1 credits, in order to address all physical plan. I have  
2 met with the residents personally myself, several months  
3 ago. I met with Ericka.

4 I have tried to communicate with them every  
5 step of the way what we are attempting to do at the  
6 site. And we do have our actual residents calling us and  
7 telling us that they are in favor of this transaction  
8 happening also.

9 So, we are addressing those specific needs.  
10 And everything that those residents have addressed on this  
11 phone call, we will be pursuing that once the transaction  
12 is approved.

13 The Department of Housing and Urban  
14 Development, the local municipalities, the state rep,  
15 everybody is on board to support this transaction, in  
16 order to meet the needs of the residents, right there in  
17 Galveston. Thank you.

18 MR. DANENFELZER: Thank you, Raynold.  
19 Appreciate your comments. I am putting you back on mute.

20 I am going to go to the next speaker. And at  
21 this point, is the last speaker I have on my list. Eric  
22 McCrea.

23 Eric, would you like to provide comments on the  
24 public record?

25 MR. McCREA: Yes, sir. I would.

1                   MR. DANENFELZER: Will you please state then,  
2     for the record, your full name, the city and state where  
3     you live, and your intent to speak in favor or opposition  
4     of the transaction.

5                   MR. McCREA: Yes, sir. I oppose this because  
6     for one, this area is very notorious for drugs, violence,  
7     and it is really way out of hand, when they start shooting  
8     at the park, at little children. And I mean, it is very,  
9     very dangerous out here.

10                  I am scared for my children to go out and  
11     play. I mean, I am scared to be here myself. But I mean,  
12     I can't afford, at the moment, to move anywhere else.

13                  And as far as the people that were saying they  
14     were in favor, to that, I have -- I have been here for six  
15     years now. And we have been through quite a few different  
16     management.

17                  And each time this particular deal happens,  
18     they get the money that they are saying that they are  
19     going to use to fix up the place with, and it sounds real  
20     nice, you know. And I mean, I am all for it, if that was  
21     to be. But from what I have been seeing, it has been six  
22     years, and I am still in the same condition.

23                  My roof is caving in. I have two ADHD children  
24     that have special needs. And I have -- my tub was backed  
25     up for about what, two months. And when they finally came

1 after the two months to fix my tub, of me complaining  
2 numerous times, and putting numerous work requests in,  
3 they -- yeah.

4 And I pay rent. And I don't just pay rent, I  
5 pay my rent a year in advance. And they told me, when the  
6 new management came just now, that I couldn't do that.  
7 That I would have to let that deplete before I could start  
8 paying rent again.

9 And I am not understanding why would that be.  
10 And I mean, if I am ahead of my rent, wouldn't that be a  
11 great thing?

12 But at the same time, once they fixed my tub,  
13 they busted holes in my wall, and the holes are still  
14 there. All they did was put plastic tarp and taped it on  
15 my wall. And I have big giant holes, bigger than both of  
16 my feet put together.

17 And I have three young children in here, that,  
18 you know, I am taking care of. And what if something was  
19 to crawl out of one of those holes and bite one of my  
20 kids, you know.

21 And it is crazy. So, then, I have a crack in  
22 my ceiling. My roof is leaking. And my windows are --  
23 they have been leaking since I very first moved in. And I  
24 mean, my roof has been leaking since the storm. And that  
25 has been a long time ago.

1                   And I have been complaining on that. They  
2                   still never fixed that. My plugs in my house does not  
3                   work. None of my plugs in my kitchen work.

4                   I mean, it is really out of hand. And from the  
5                   looks of things, if they would just not approve the  
6                   management getting the money, and approve us, instead of  
7                   getting vouchers to get us a better living environment, a  
8                   better living habitat. Then, I believe they could do the  
9                   repairs or whatever without anyone here.

10                  That will be a better solution for everything.

11                  MR. DANENFELZER: Thank you, Eric. I will  
12                  note, your time just expired. So, I appreciate those  
13                  comments, and we will put those on the record. I am going  
14                  to go ahead and mute you now.

15                  For everyone on the call, I want to -- or in  
16                  the hearing, I want you to understand that there are two  
17                  names on the list, for those of you in the web meeting, J.  
18                  Taylor, and Michael Wilt. They are both employees of the  
19                  Texas State Affordable Housing Corporation and will not be  
20                  providing any comments today.

21                  I am going to -- because I have received a  
22                  couple of notes in the chat, as well as through email from  
23                  some of the participants, I am going to go through a few  
24                  of the callers early who spoke, just to clarify their  
25                  position. I have written down the positions I understood

1       that they spoke on.

2               But it is my understanding that others in the  
3       hearing have not quite understood whether they were in  
4       favor or opposition.  So, hopefully, everyone is still on  
5       the phone.  I am going to unmute Tina Harris.  Tina?

6               MS. HARRIS:  Yes.

7               MR. DANENFELZER:  Tina, would you please  
8       clarify?  My understanding is that you are in -- you are  
9       in opposition to the proposed transaction.  Is that  
10      correct?

11              MS. HARRIS:  Well, I want a voucher.  I don't  
12      know exactly what that means.  So, if you don't care,  
13      explain that.

14              MR. DANENFELZER:  Right.  So, if you are in  
15      favor of the transaction, that means that you would like  
16      them to move forward with the financing and fix up the  
17      apartments with the plan that they have.  If you are in  
18      opposition to the transaction, then you do not want them  
19      to get the funds, and not fix up the property.

20              MS. HARRIS:  Okay.  I'm opposed, then.

21              MR. DANENFELZER:  Okay.  Thank you.

22              And Larry, you were also on the same line with  
23      Tina.  Would you also please provide me a clarification,  
24      if you are in favor of the transaction, or are you opposed  
25      to the transaction?

1 MR. BROOKS: I oppose.

2 MR. DANENFELZER: Thank you. I am going to  
3 move to the next person. I believe this is Carli.

4 Carli, I understood that you were opposed to  
5 the transaction. Could you please state for the record  
6 again, though, whether you are opposed to the transaction  
7 or are you in favor of the transaction?

8 MS. JOHNSON: Yes, sir. My answer was right  
9 the first time. I am still opposed to it. I am not in  
10 favor.

11 MR. DANENFELZER: All right. Thank you very  
12 much for the clarification. I am going to mute you now.

13 MS. JOHNSON: Thank you.

14 MR. DANENFELZER: The next person I have, is, I  
15 believe, Adrienne. Adrienne, would you state clearly, are  
16 you in favor of the transaction, or are you opposed to the  
17 transaction?

18 MS. JOHNSON: Okay. I've got it straight,  
19 girl, I've got it straight. We oppose now. We vote now.  
20 I've got it straight. So I did oppose to it.

21 MR. DANENFELZER: I'm sorry. Adrienne, there  
22 was -- I had not muted the previous caller. I am going to  
23 go ahead and ask that you -- here, let me -- yes.

24 Would you please restate, Adrienne? Are you  
25 opposed or are you in favor of the transaction?

1 MS. LITTLEJOHN: I am completely opposed.

2 MR. DANENFELZER: Okay. Thank you very much.

3 Appreciate that. The next person I have was Cynthia.

4 Cynthia, would you please clarify. Are you  
5 opposed to the transaction, or are you in favor of the  
6 transaction?

7 (No response.)

8 MR. DANENFELZER: Cynthia, I believe you are  
9 unmuted.

10 (No response.)

11 MR. DANENFELZER: I don't hear a response from  
12 Cynthia.

13 MS. MENDEZ: Not. We're opposed.

14 MR. DANENFELZER: So you do oppose the  
15 transaction?

16 MS. MENDEZ: Yes.

17 MR. DANENFELZER: Okay. Thank you. I am going  
18 to go to the next speaker, and I think it is the last one  
19 that there was some confusion on the answer. But just  
20 trying to make sure I get the right person unmuted.

21 Antoinette, I believe you were the last person  
22 that I had -- there was a question about. Would you  
23 please state clearly for the record, again, whether or not  
24 you are in favor of the transaction, or do you oppose the  
25 transaction?

1 MS. GRAY: I 100 percent oppose the  
2 transaction.

3 MR. DANENFELZER: Thank you very much. I  
4 believe that is everyone on my list that provided public  
5 comment. I don't know that there were other questions. I  
6 will double check the chat right now, though, and also  
7 other forms of information to make sure I get this  
8 correct.

9 All right. It does look like I do have it  
10 correct at this point. Hold on one second. Another  
11 message.

12 (Pause.)

13 MR. DANENFELZER: My apologies, it appears that  
14 there is another new caller on the line. And going to see  
15 if I can identify the phone numbers here. I believe the  
16 number that is new to the line is area code (409) 995-\*\*\*\*.  
17 I have unmuted your line.

18 Would you like to provide public comment for  
19 the record?

20 MS. GORDON: Yes.

21 MR. DANENFELZER: Okay. Would you please state  
22 your name and the city and state where you live, as well  
23 as whether you are in favor of the transaction, or are you  
24 opposed to the transaction.

25 MS. GORDON: Okay. Do you need first and last



1 name?

2 MR. DANENFELZER: Yes. Please.

3 MS. GORDON: Okay. My name is Kenya Gordon. I  
4 live in Galveston, Texas. And you said, if I am opposed?

5 MR. DANENFELZER: Correct. Are you opposed, or  
6 are you in favor of the transaction?

7 MS. GORDON: No. I am extremely opposed.

8 MR. DANENFELZER: Okay. Is there anything else  
9 you would like to say on the public record?

10 MS. GORDON: Well, for one, you know, I have a  
11 lot of issues going on, you know, with my apartment. And  
12 you know, I am not getting any help like I have asked, you  
13 know.

14 It is freezing outside. It is freezing in my  
15 apartment, because I told them that my heater was broke,  
16 over three or four months ago. And my heater still hasn't  
17 been fixed. Like, I have so many issues in my apartment,  
18 it is ridiculous.

19 Like, I am so ready to go, but I have nowhere  
20 else to go. Like, this is my only option, so I have to  
21 sit through these problems and just suck it up. Because  
22 without them, I don't have anything else.

23 So, I mean, the conditions are horrible. They  
24 don't care about anybody. It is awful, extremely awful.

25 MR. DANENFELZER: Okay. Kenya, thank you for

1     your comments today. I am going to go ahead and mute your  
2     line.

3             And it does appear one more number which I have  
4     not previously called has dialed in. I am going to go  
5     ahead and unmute that line. It is area code (409)939-  
6     \*\*\*\*.

7             Would you like to provide public comment on the  
8     record?

9             MS. DURGIN: Hello?

10            MR. DANENFELZER: Hello, yes. Would you like  
11     to provide public comment today?

12            MS. DURGIN: Yes.

13            MR. DANENFELZER: And for the record, could you  
14     state your name, and the city and state where you live in?

15            MS. DURGIN: Yes. Betty Durgin. The city of  
16     Galveston, Texas.

17            MR. DANENFELZER: Okay. And, Betty, are you in  
18     favor of the transaction, or opposed to the transaction?

19            MS. DURGIN: I am very opposed to it, because  
20     this apartment here is falling apart.

21            MR. DANENFELZER: Okay. Is there anything else  
22     you would like to say in the public record?

23            MS. DURGIN: Yes. I just need to say that I  
24     need to get out of here. I want to move out, because  
25     there is nothing they are doing in here. I even broke my

1 ankle in this raggedy-ass place.

2 MR. DANENFELZER: Okay. Is that all that you  
3 have for the public record today?

4 MS. DURGIN: All I need to say is that they  
5 need to tear these apartments down, and they need to redo  
6 them, or they need to move us out of here, get us  
7 somewhere else to stay. Because this is ridiculous to  
8 live like this.

9 MR. DANENFELZER: All right. Okay. Well,  
10 thank you, Betty, for that public comment. I am going to  
11 go ahead and mute your line now.

12 I am going to make one more quick check. I  
13 don't believe any other new callers have dialed in at this  
14 time. Just give me one moment to double check, to make  
15 sure that we give everyone a chance to speak.

16 Yes. I have gone ahead and reviewed all the  
17 persons who are on the phone or on the web meeting. I  
18 have called on all of the participants with the exception  
19 of J. Taylor and Michael Wilt, who again, are employees of  
20 the Texas State Affordable Housing Corporation.

21 With that, I am going to go ahead and just let  
22 everyone know again that the record will show -- a  
23 transcript and record of this call and public hearing will  
24 be provided to the Corporation's Board, and to the Texas  
25 Attorney General. This information will be used in a

1 determination of an award, or not, for the project, as it  
2 moves forward through our process.

3 I do want to let the record show before I  
4 close, though, that there are -- I apologize -- there are  
5 21 participants on the call or in the meeting at this  
6 time. Of the individuals who are in attendance, three are  
7 individuals who are employees -- three of the individuals  
8 in attendance are employees or representatives of the  
9 Texas State Affordable Housing Corporation.

10 At this time, I will declare the hearing  
11 closed, and thank everyone for coming today.

12 (Whereupon, at 12:28 p.m., the hearing was  
13 concluded.)

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C E R T I F I C A T E

IN RE: Sandpiper Cove Apartments  
LOCATION: via RingCentral  
DATE: December 1, 2020

I do hereby certify that the foregoing pages,  
numbers 1 through 40, inclusive, are the true, accurate,  
and complete transcript prepared from the verbal recording  
made by electronic recording by Elizabeth Stoddard before  
the Texas State Affordable Housing Corporation.

DATE: December 7, 2020

/s/ Carol Bourgeois  
(Transcriber)

On the Record Reporting &  
Transcription, Inc.  
7703 N. Lamar Blvd., Ste 515  
Austin, Texas 78752



**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**  
Southwest Multifamily Region  
*Serving Arkansas, Iowa, Kansas, Louisiana, Missouri, Nebraska,  
New Mexico, Oklahoma, and Texas*  
Multifamily Customer Service Telephone Line 1-800-568-2893  
[www.hud.gov](http://www.hud.gov)

May 21, 2021

Texas State Affordable Housing Corporation (TSAHC)  
Attn: David Long, President  
Via email: [dlong@tsahc.org](mailto:dlong@tsahc.org)  
6701 Shirley Avenue  
Austin, Texas 78752

Re: Compass Pointe Apartments aka Sandpiper Cove/TX24M000018  
3916 Winnie Street, Galveston, Texas 77550  
Clarification Regarding Lone Star Legal Aid Letter

Dear Mr. Long:

This letter is in reference to the letter dated March 19, 2021, from Lone Star Legal Aid to Texas State Affordable Housing Corporation (TSAHC) regarding the pending bond application for Compass Pointe Apartments aka Sandpiper Cove (the "Property"). The U.S. Department of Housing and Urban Development (HUD) was provided a copy of the letter and would like to address several misstatements regarding the Property.

As you may recall, HUD sent you a letter dated March 8, 2021, supporting the proposed sale of the Property and transfer of the Housing Assistance Payments (HAP) Contract from Compass Pointe Apartments Texas, LLC (the "Current Owner") to Galveston 3916 Winnie Street, LP (the "Proposed Owner"). This is a privately-owned asset, and therefore, the sale is negotiated between the two private ownership parties and not HUD. However, HUD sees no windfall profit to either owner, contrary to the statements made in the letter from Lone Star Legal Aid. Please keep in mind this action is part of an enforcement strategy to preserve and improve much-needed affordable housing on the island. As a reminder, the Proposed Owner has committed to invest \$15 MM to rehabilitate the struggling asset but needs the bond issuance approval from TSAHC to complete the financing structure. With the support of tenants, Mayor and City Manager of Galveston, TDHCA and HUD, we encourage TSAHC to partner in the success of the rehabilitation as the viable solution to improve the residents' lives and home at Compass Pointe on Galveston Island.

HUD supports this proposed preservation transaction as Compass Pointe is HUD's only project-based subsidized multifamily housing development on Galveston Island. Although J. Allen Management (the "Property Manager") has improved the living conditions of the Property within its current financial constraints, a substantial rehabilitation is urgently necessary to "serve the housing needs of moderate,

---

*Fort Worth Regional Office  
307 W. 7<sup>th</sup> St. Suite 1000  
Fort Worth, Texas 76102*

---

*Kansas City Satellite Office  
400 State Avenue, Suite 300  
Kansas City, Kansas 66101*

low, very low, and extremely low-income Texans and other underserved populations” as expressed in TSAHC’s mission statement.

Lone Star Legal Aid initially requested that HUD terminate the Project’s HAP Contract and provide tenant-based vouchers to its residents. This would be detrimental to the residents as Galveston Island’s housing stock is not sufficient to absorb the Project’s 192 households via tenant-based vouchers. Consequently, a disproportionate number of low-income and minority households would be forced to move from the island in search of housing inland to utilize the vouchers.

While HUD declines to litigate the pending suit in this forum, we nonetheless note that Lone Star Legal Aid’s assertion that their clients are *not* seeking to terminate the HAP contract is a helpful clarification. That said, HUD notes that less than a month after Lone Star Legal Aid submitted its March 19, 2021 letter, the Court ruled in HUD’s favor in *Daija Jackson, et al. v. HUD*, 4:18-cv-02468 (S.D.Tex.), dismissing the case on April 21, 2021. In recent years, courts have now on four occasions ruled in HUD’s favor and dismissed similar complaints related to Section 8 PBRA properties in Texas.

We hope this gives clarity and reassures you on the facts-both legal and programmatic-supporting HUD’s position on the matter. As such, HUD strongly believes that the Proposed Owner’s plan to rehabilitate the Project utilizing low-income housing tax credits and bond financing is the best approach to preserve quality affordable housing for the residents of Galveston Island for years to come. We realize HUD’s support is valued and appreciate your awareness and communication of the dynamics of this critical proposal when reviewing and presenting for a Board vote on the Proposed Owner’s bond application.

Should you have any further questions or would like to again discuss HUD’s support, please feel free to reach out to me or Christie Newhouse, Division Director of Asset Management at [Christie.M.Newhouse@hud.gov](mailto:Christie.M.Newhouse@hud.gov) or 817-978-5972.

Sincerely,

Mary V. Walsh  
Director  
Multifamily Housing Southwest Region

Cc: Dave Danenfelzer, Senior Director, Development Finance  
Via email: [ddanenfelzer@tsahc.org](mailto:ddanenfelzer@tsahc.org)



## MEMORANDUM

2003

5/10/21

### *Flood Protection*

**Sandpiper Cove     Galveston, Texas**  
**(AKA Parkland Apartments and Compass Pointe)**

The Base Flood Elevation (BFE) is defined as the predicted high water surface elevation of a flood event as determined by historic weather data, local topography and science. The National Flood Insurance Program (NFIP) and The Federal Emergency Management Agency (FEMA) uses this data to set guidelines of how to protect a building from a flood by requiring that the structure be elevated or “flood-proof” to a set height that is determined by the BFE and the type of floods that effect the area.

FEMA divides the flood areas into different zones that reflect the type of flood that the area is most prone to. For coastal areas, it begins with a type “V-Zone” where in addition to the BFE, the area experiences waves in excess of 3 feet. The next zone is the “Coastal A-Zone” where the wave action is between 18 inches and 3 feet. Finally, they have the “AE-Zones,” which experience wave action less than 18 inches. For Coastal Areas, a building needs to be protected to an elevation above the base flood that includes the projected wave action.

Sandpiper Cove Apartments are located in a type “AE-Zone” with a base flood elevation of 12.9 feet. With consideration of the wave action, the structures would need to be protected to an elevation of 14.40 feet (12.9 BFE + 1.5 Wave Action). The existing buildings have a Finish Floor elevation of 10.0 feet and the site has elevations between 7 and 9 feet. The Streets that border the site on all sides have an average elevation of 5 feet.

There are three common methods that engineers use to address flood issues: 1) Elevate the structure so that it is above the base flood elevation and associated wave action; 2) Install a flood barrier around the structure; or 3) Build the part of the structure located within the flood area with flood-proof materials.

Because of the Historic Nature of the Site, it is our proposal to build a Flood Wall around the site that will have a top of wall elevation of 14.5 feet. This is a very common method of protecting an area and is used on thousands of sites around the world. While the height of the wall will vary depending on the grade elevation, it is our desire for the wall to appear to be approximately 6 feet tall with an 18 inch wrought iron decorative cap. Thus, we may raise some of the grades along the wall to accomplish this.

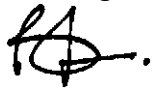


In addition to the wall, there are several other elements that are required to complete the flood-proofing protection. There will be flood barriers installed at all openings in the wall (driveways and pedestrian accesses), valves installed in the storm drainage system so that flood water does not back-up into the site, and pumps installed at strategic locations to remove any rain water that falls behind the wall. Because the existing structures are set at an elevation high enough to weather all but the most severe storms, which are hurricanes, we expect that there will be ample warning to prepare the facility for the flood event.

Thus, the floodwall or levee, in conjunction with the flood gates are designed to keep the flood water out, while the pump system is used to remove any rain water that enters the site from the sky back over the wall. The City of Texas City, which is located approximately 8 miles from this project, has used a similar system to protect its town for more than forty years.

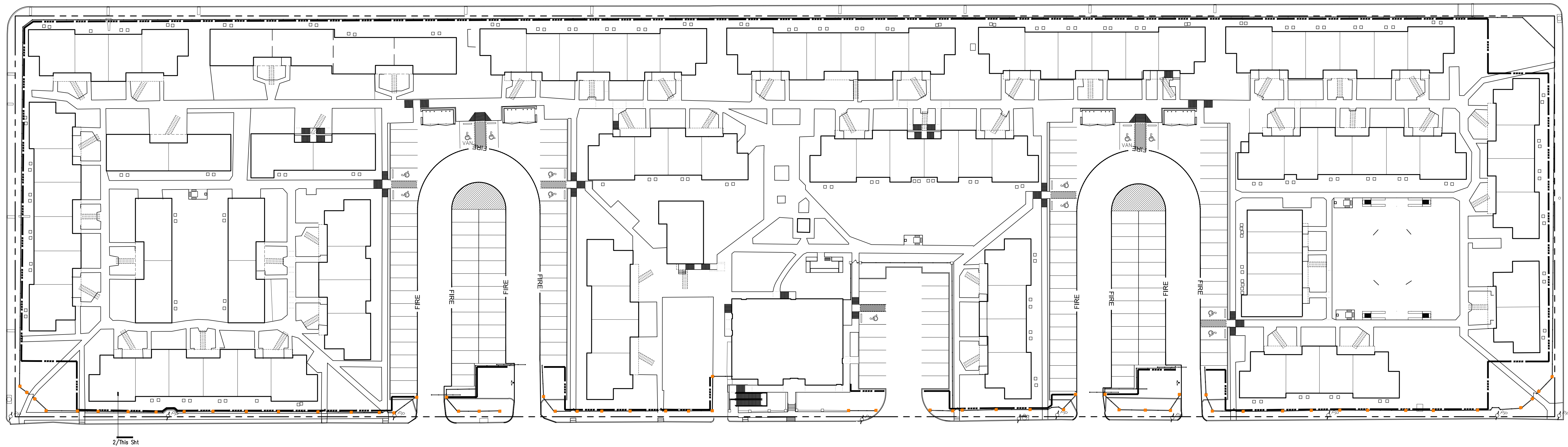
Please feel free to contact me with questions, comments or additional information that I may assist you with.

Best Regards,

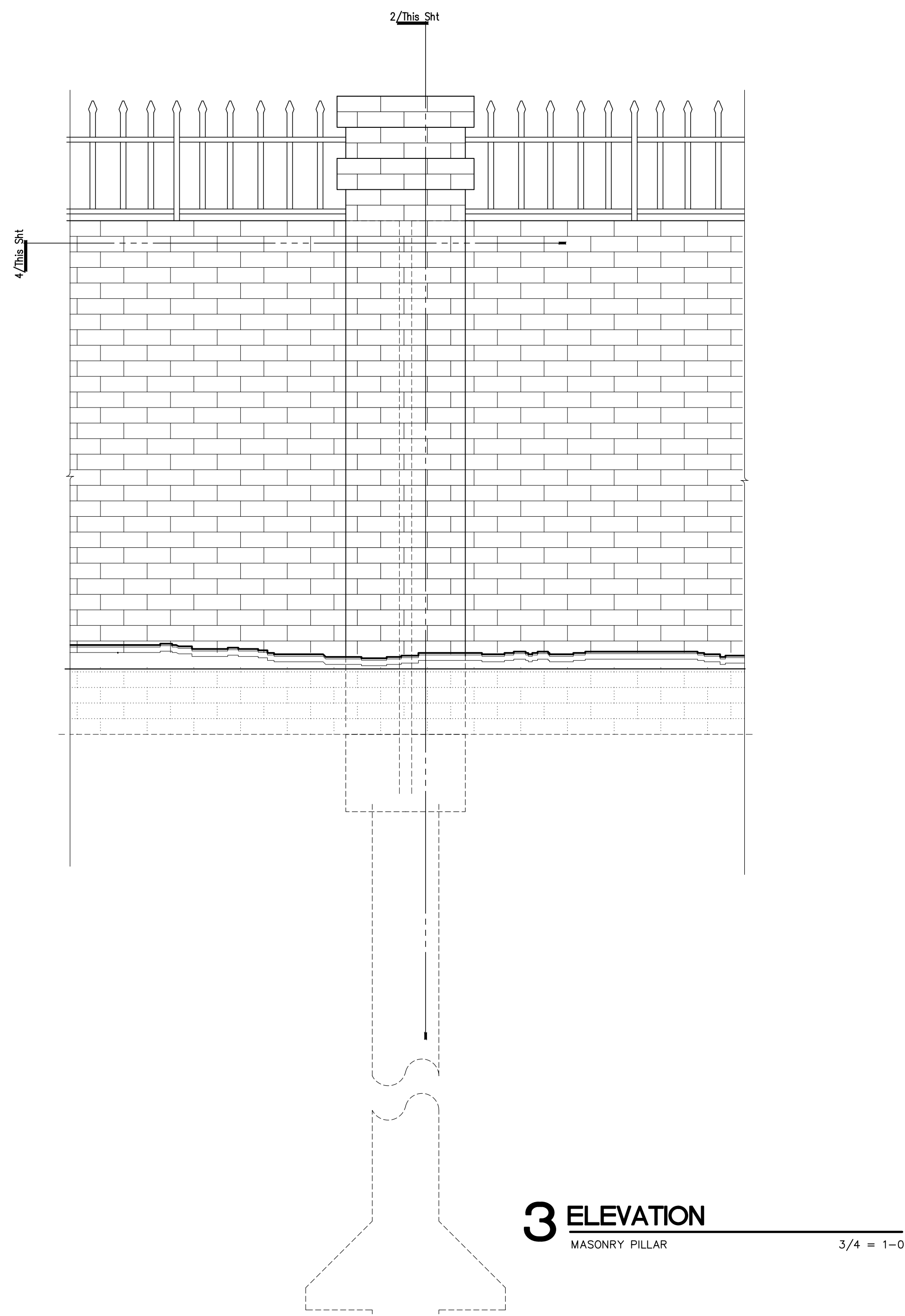
A handwritten signature in black ink, appearing to read 'BK' followed by a stylized flourish and a period.

Blair Korndorffer

**Diamond Development Group**

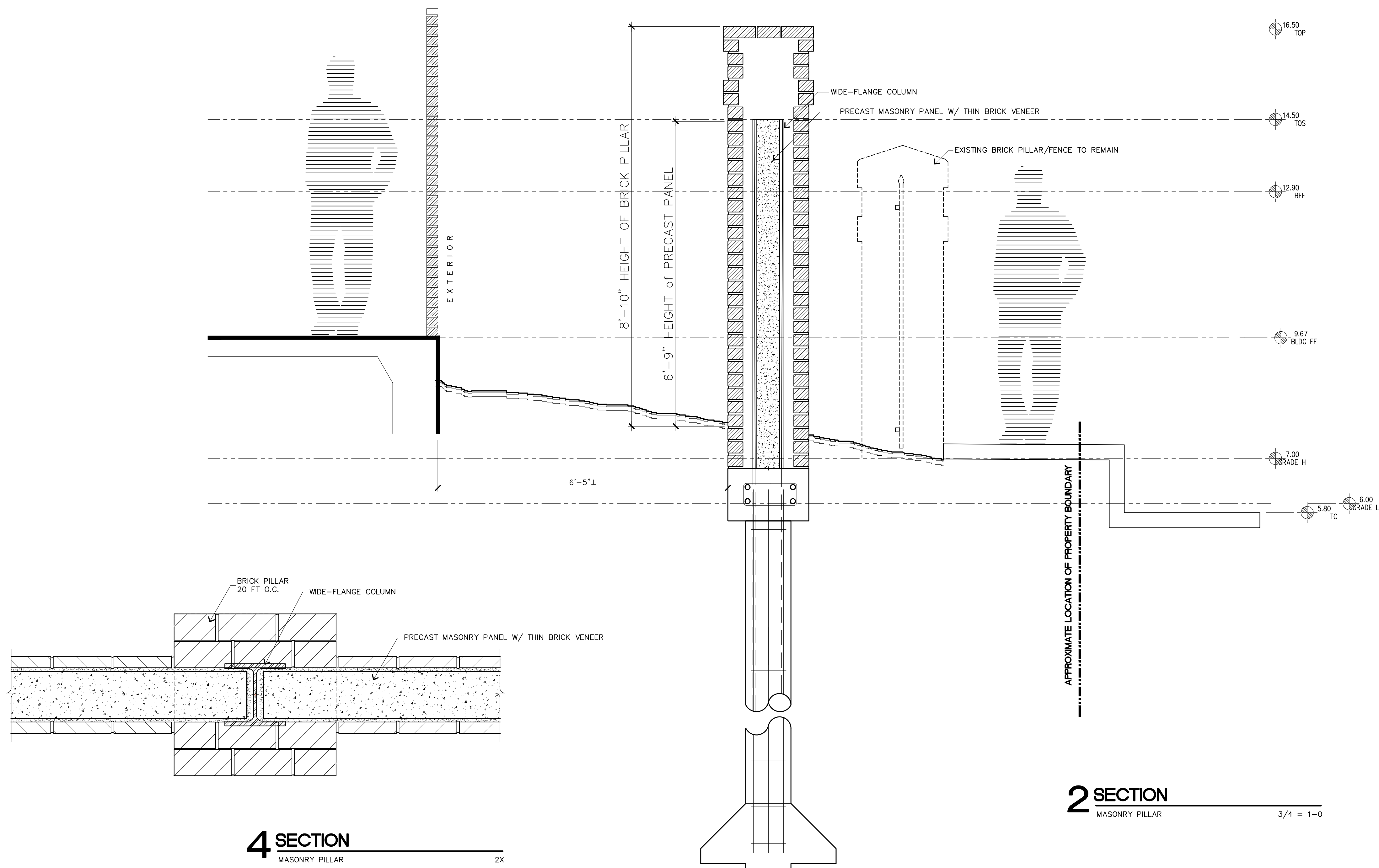
**1 SITE**

NTS

----- PROPOSED LOCATION  
OF FLOOD WALL**3 ELEVATION**

MASONRY PILLAR

3/4 = 1'-0"

**4 SECTION**

MASONRY PILLAR

2X

**2 SECTION**

MASONRY PILLAR

3/4 = 1'-0"

**DIAMOND**  
DEVELOPMENT GROUP  
ARCHITECTURE PLANNING CONSTRUCTION700 Gemini • Suite 260  
Houston • Texas  
7 7 0 5 8  
8 3 2 • 2 2 4 • 6 4 0 0

HAWARCH © AOL.COM

**Revisions**

No.	IOC	Date	Description
		03/16/21	ISSUE FOR PRICING
		03/16/21	ISSUE FOR PERMIT
		03/16/21	ISSUE FOR CONSTRUCTION

**NOT FOR CONSTRUCTION  
OR PERMIT  
FOR REFERENCE ONLY**This Document is for Information Only and may NOT be  
used for Regulatory Approval, Permit or Construction.0 2 4 6 8 10 12  
SCALE: 1 inch = 20 FT

PLOTTER: Mon 16, 2021 11:01 AM 2003 CC 2307-8-00.mpg

**SAND PIPER  
COVE****3916 WINNIE ST  
GALVESTON, TEXAS****2003 CC**

Sheet Date: 03/16/21

Sheet Title:

**SITE DETAILS**

Sheet No.:

**A2-09**

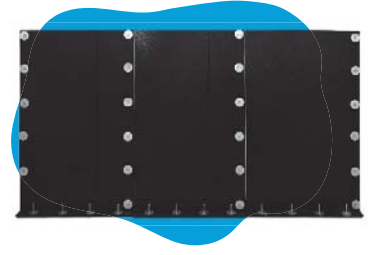
Drawn By: MHB Project Manager: JAG Project Arch: JBK

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The Texas Board of Architectural Examiners has jurisdiction over complaints regarding the Professional Practices of persons registered as Architects in Texas.  
333 Guadalupe, Suite 2-350, Austin, Texas 78701



# Custom Door + Window Flood Barrier

FRA FLOOD PANEL



**A custom-engineered barrier that protects any sized opening against intrusion + flood water damage.**

The Flood Risk America (FRA) Flood Panel uses sustainable flood-seal technology to protect any opening against flood water + is highly resistant to heavy impact forces. Each panel is custom-engineered to meet individual installation requirements + job-specific demands. It is easy to install, deploy, + remove.



*Storefront Protection Door + Window Barrier*

## Applications

Storefronts | Windows/Doors | Vehicle Access Points | Drain Covers





Spline Connection For Interlocking Sections



Storefront Flood Protection

Technical Specifications

MATERIAL	High Density Foam Core, Fiberglass Skin, Structural Coating
SEAL	Gasket Compression
HARDWARE	Stainless Steel Anchors
WEIGHT	< 5 lbs PSF
DESIGN	Meets FEMA + ASCE Requirements
WARRANTY	Lifetime (Panel Only)



Door Barrier



Window Barrier



Interior Wall Barrier With Corner

HAND TIGHTENING TOOLLESS DEPLOYMENT



FEATURES



Durable

Strong Composite Materials



Custom Sizes

Dimensions to Fit Your Needs



Lightweight

Less Than 5 Pounds Per Ft²



Quick Deployment

Panels Are Easy To Transport + Install



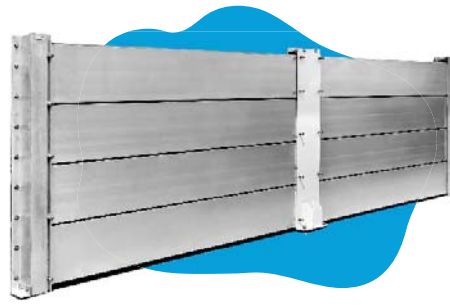
Versatile

Gasket Conforms To Uneven Surfaces

Example of what will be used for the pedestrian gates.



MULTIPLE OPTIONS



## A customizable, stackable aluminum flood barrier that is a time-tested solution for flood or hurricane prone locations

The Flood Log system is designed to be resistant to impact forces + withstand high-velocity water loads. Ideal for uses where higher protection is needed. Meets ASCE + FEMA requirements.



Front Entrance Barrier

### Applications

Storefronts | Select Windows | Doors | Vehicle Access Points

MOUNTING OPTIONS JAM | OFFSET | FLUSH



Corner Bend



Extended Flush-Mounted Run



Offset Bracket Gives Wall Clearance

FEATURES



User Friendly

Color Coded For Guided Assembly



Durable

Interlocking Planks that fill with water to increase strength

STACKABLE "C" POSTS

Flood Logs are strengthened by stackable "C" shaped posts + hollow aluminum beams fitted with watertight rubber seals, ensuring maximum stability + flood protection. Each support post can easily be removed, minimizing aesthetic impact to any building.



Versatile

Engineered to Accommodate Slopes of 20°



Storefront Window Barrier



Commercial Window Barrier

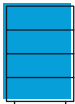


Custom Sizes

Dimensions to Fit Your Needs



Stages of Set Up for Flood Logs. Color Coded For Easy Assembly



Storage Solutions

Custom Rack Configurations Available

DIMENSIONS

Customizable

MATERIAL

Aluminum Log Panels, Compression Gaskets

IMPACT RESISTANT

Yes



Example of what will be used for  
the vehicle entrances and exits.



# Standard Perimeter Flood Barrier

MUSCLE WALL®



**A rapidly-deployed, portable flood barrier engineered to withstand rushing or standing water.**



Muscle Wall can replace thousands of sandbags all while being quick, easy, reusable, reliable, + customizable. It is engineered to withstand the immense force of rushing or standing water due to its patented toe design.



*Extended Run of Muscle Wall*

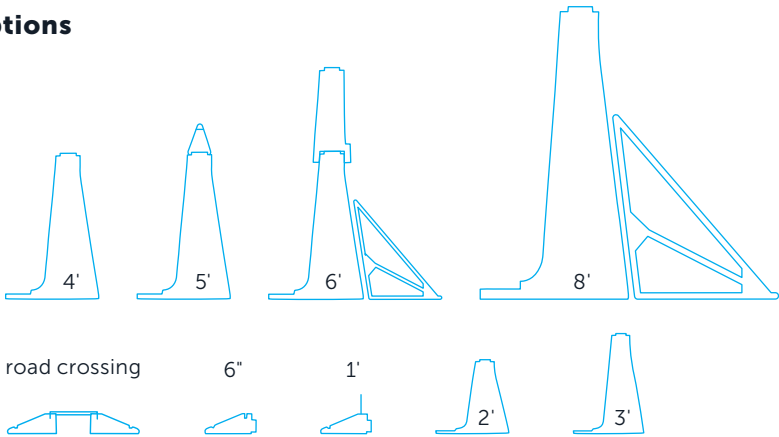


Muscle Wall Protecting Battery Park in New York City

**STRONGER THAN STRONG**

Water pressure forces the toe downward anchoring the wall to the ground while containing + diverting water. Unlike sandbags, it is rapidly deployed, portable, + easily disassembled. Once sections + liner are in place, fill with water.

**Sizing Options**



Muscle Wall Protecting Battery Park in New York City (Using Wrap Liner Option)

**Applications**

Flood Control | Containment | Stormwater Management | Road Crossings

**FEATURES**



**Standard Sizes**

Ready to Ship +  
Deploys With Ease



**Interlocking**

Tongue + Groove  
Allows 15° Max Bend



**Flexibility**

Corner Provides  
90° Turns



**Stackable**

Easily Stacked  
for Storage



**Liner Options**

Versatile Wraps For  
Multiple Surfaces





## Sandpiper Cove Apartment Renovations

The ITEX Group LLC | 9 Greenway Plaza, Suite 1250 | Houston, Texas 77046

166,694 sf	482 Bedrooms
192 units ea parks	192 Bathrooms
7.8 acres	181 Regular Units
	11 ADA Units

DIVISION 2		DIRECT LABOR & DEMO COSTS	
01 7423	Final Cleaning	\$	58,343
02 4200	Removal & Recycling of Materials	\$	150,000
02 4119	Selective Demolition & Make Ready	\$	161,185
02 8213	Mold-Lead-Asbestos Removal	\$	1,280,870

DIVISION 31 0000 EARTHWORK			
31 3116	Termite Control	\$	17,560
	Polution Prevention Plan	\$	12,000

DIVISION 32 0000 EXTERIOR IMPROVEMENTS			
32 3300	Site Furnishings - Rec Equipment	\$	48,420
32 1219	Asphalt Overlay	\$	173,049
32 1723	Paving Markings	\$	15,333
32 9000	Landscape & Irrigation	\$	279,760
32 3000	Site Fencing & Gates	\$	105,986
32 3200	Flood Wall	\$	1,330,120
	Grass Turf	\$	50,000

DIVISION 33 0000 UTILITIES			
33 1100	Site Utilities	\$	610,260

DIVISION 03 3000 CONCRETE			
03 3000	Cast-in-Place Concrete	\$	269,000

DIVISION 4 MASONRY			
04 2000	Unit Masonry	\$	102,220

DIVISION 5 STRUCTURAL & MISC METALS			
05 1200	Structural Steel	\$	53,800

## DIVISION 6 - WOOD & PLASTIC

06 1000	Rough Carpentry, Framing Materials	\$	26,900
06 1001	Rough Carpentry, Framing Labor	\$	56,490
06 2200	Trim Carpentry & Archt Woodwork	\$	237,581

#### **DIVISION 7 MOISTURE PROTECTION**

07 1300	Waterproofing	\$	16,140
07 9000	Flood Proofing	\$	150,000
07 2100	Building Insulation	\$	76,934
07 3100	Roofing - TPO	\$	730,496
07 4243	Cementitious Flat Panels System	\$	161,400
07 1230	Gutters & Downspouts	\$	58,642

#### **DIVISION 8 DOORS, WINDOWS AND GLASS**

08 1410	Doors & Frames	\$	408,880
08 7100	Hardware	\$	269,000
08 5000	Vinyl Windows	\$	16,140
08 4110	Glass Storefront & Glazing	\$	38,195
08 8300	Mirrors w/glass storefront above	\$	23,001
	Knox Box Allowance - \$500/ea installed		

#### **DIVISION 9 FINISHES**

09 2000	Drywall - Gypsum Board	\$	800,544
09 3000	Ceramic Tiling	\$	101,338
09 6000	Resilient Flooring	\$	573,508
09 9000	Painting	\$	516,480

#### **DIVISION 10 SPECIALITIES**

10 2000	Toilet Partitions/ Toilet Accessories	\$	15,064
10 1400	Signage	\$	7,855
10 5220	Fire protection Specials	\$	538

#### **DIVISION 11 EQUIPMENT**

11 4510	Residential Appliances	\$	376,600
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#### **DIVISION 12 FURNISHINGS**

12 3560	Residential Casework	\$	290,520
12 3640	Stone Countertops	\$	155,571
12 4910	Window Treatments	\$	37,660

#### **DIVISION 13 Special Construction**

13 0000

#### **DIVISION 21 Fire Suppression**

21 1000	Fire Sprinkler System	\$	993,751
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**DIVISION 22 PLUMBING**

22 0000	Plumbing	\$	987,230
	Cast Iron	\$	450,000
	Clay Pipe	\$	72,000
	Scoping of Pipe	\$	20,000

**DIVISION 23 HVAC & HEATING**

23 0000	HVAC	\$	820,342
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**DIVISION 26 ELECTRICAL**

26 0000	Electrical	\$	1,436,460
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**DIVISION 27 COMMUNICATIONS**

with electrical

**DIVISION 28 ELECTRONIC SAFETY & SECURITY**

28 2000	Electronic Surveillance - Cameras/Recorder	\$	75,000
28 3100	Fire Alarm System	\$	269,000

<b>RAW SUBTOTAL - COST</b>	\$	14,987,166
----------------------------	----	------------

6% Profit	\$	899,230
-----------	----	---------

2% Overhead	\$	299,743
-------------	----	---------

6% General Conditions	\$	899,230
-----------------------	----	---------

<b>SUBTOTAL</b>	\$	17,085,369
-----------------	----	------------



Miranda Sprague <miranda.sprague@itexgrp.com>

## EARAC RESULTS\_RE: Previous Participation Review of HTC Application 20705

1 message

Jo En Taylor <joen.taylor@tdhca.state.tx.us>

Tue, Mar 2, 2021 at 8:58 AM

To: "miranda.sprague@itexgrp.com" <miranda.sprague@itexgrp.com>, "audrey@purplemartinre.com" <audrey@purplemartinre.com>, Michelle Harder <apps@itexgrp.com>, Chris Akbari <chris.akbari@itexgrp.com>  
Cc: Shannon Roth <shannon.roth@tdhca.state.tx.us>, Liz Cline <liz.cline@tdhca.state.tx.us>, Wendy Quackenbush <wendy.quackenbush@tdhca.state.tx.us>, Bobken Simonians <bobken.simonians@itexgrp.com>, Paula Watts <paula.watts@itexgrp.com>, Brooke Boston <brooke.boston@tdhca.state.tx.us>

The Executive Award Review Advisory Committee (EARAC) met on March 1, 2021 and the compliance history associated with application 20705 (Sandpiper Cove) was reviewed. The previous participation review (PPR) identified the application as a Category 3 and you were given an opportunity to provide additional information and propose terms and conditions for EARAC's consideration.

EARAC has approved the compliance history with the following agreed upon conditions:

1. *ITEX agrees to replace the existing management company, consultant, or management personnel with another of its choosing, for any of their properties identified with new Events of Noncompliance on any Audits notified from **March 1, 2021** through **December 31, 2022**.*
2. *ITEX will hire a third party compliance auditor to review their existing portfolio on a quarterly basis and have them provide reports and guidance to ITEX and independent reports to TDHCA upon request, through **December 31, 2022**.*
3. *ITEX will hire a Director of Compliance and Asset Management at the corporate and development level by **July 1, 2021** to oversee the existing Affordable Housing Compliance Department to ensure they continue to move forward on resolving compliance issues.*
4. *ITEX will actively engage with TDHCA compliance staff to use better processes and best practices to reduce compliance issues through **December 31, 2022**.*
5. *Owner has designated the Senior Vice President of Property Management (until a new Director of Compliance and Asset Management is hired) to receive Compliance correspondence and provide timely responses to the Department on behalf of the proposed Development and all other Developments subject to a TDHCA LURAs over which the Owner has the power to exercise Control.*
6. *ITEX will require that at least on the of the following employees: VP of Operations, Compliance Director, Compliance Auditor(s), Regional Manager(s), or Site Staff annually attend the trainings listed and provide certifications to TDHCA upon request through **December 31, 2022**.*
  - a. *Housing Tax Credit Trainings sponsored by the Texas Apartment Association;*
  - b. *1st Thursday Income Eligibility Training conducted by TDHCA;*
  - c. *Review one or more of the TDHCA Compliance Training Webinars:*
    - i. *2012 Income and Rent Limits Webinar Video;*
    - ii. *2012 Supportive Services Webinar Video;*
    - iii. *Income Eligibility Presentation Video;*

- iv. *2013 Annual Owner's Compliance Report (AOCR) Webinar*
- Video;
- v. *Most current Tenant Selection Criteria Presentation;*
- vi. *Most current Affirmative Marketing Requirements Presentation;*
- vii. *Fair Housing Webinars (including but not limited to the 2017 FH Webinars)*

This is not a final approval of award. Any award may also be subject to conditions recommended by the program area, underwriting, or other conditions subsequently approved by the Board. Please feel free to contact me directly, or Wendy Quackenbush at [wendy.quackenbush@tdhca.state.tx.us](mailto:wendy.quackenbush@tdhca.state.tx.us), if you have any questions regarding this matter.

Thank you,

Jo En Taylor

Senior Compliance Administrator, Compliance

Texas Department of Housing and Community Affairs

[221 E. 11th Street | Austin, TX 78701](#)

Office: [512.475.0250](tel:512.475.0250)

Fax: [512.475.3359](tel:512.475.3359)

---

**From:** Jo En Taylor

**Sent:** Monday, January 4, 2021 4:15 PM

**To:** 'miranda.sprague@itexgrp.com' <[miranda.sprague@itexgrp.com](mailto:miranda.sprague@itexgrp.com)>; 'audrey@purplemartinre.com' <[audrey@purplemartinre.com](mailto:audrey@purplemartinre.com)>; 'Michelle Harder' <[apps@itexgrp.com](mailto:apps@itexgrp.com)>

**Cc:** Shannon Roth <[shannon.roth@tdhca.state.tx.us](mailto:shannon.roth@tdhca.state.tx.us)>; Liz Cline <[liz.cline@tdhca.state.tx.us](mailto:liz.cline@tdhca.state.tx.us)>; Wendy Quackenbush <[wendy.quackenbush@tdhca.state.tx.us](mailto:wendy.quackenbush@tdhca.state.tx.us)>

**Subject:** Previous Participation Review of HTC Application 20705

A previous participation review (PPR) is being conducted in connection with a request for approval for HTC application **20705 (Sandpiper Cove)**. Under the Department's previous participation rule the PPR is considered a **Category 3**, following is a link to the rule: [Texas Administrative Code §1.301](#). Any written comment for consideration prior to the Compliance Division making its recommendation to the Executive Award Review Advisory Committee ("EARAC") is due no later than **January 11, 2021**.

The application is comprised of ITEX Partners (The ITEX Group/Christopher A. Akbari) + Jeshurun Development (Raynold Richardson). The portfolio is comprised of thirty-three (33) actively monitored developments with a total of thirteen (13) Events of Noncompliance (6 of which had no response submitted to the Department during the designated corrective action period). It was also noted, that EARAC conditions were placed on previous awards to address the compliance history and the portfolio had six (6) new Events of Noncompliance identified since that were not resolved during the corrective action period. The PPR is considered a Category 3 in accordance with §1.301(e)(3)(J):

<sup>106</sup>(3) *Category 3. An Application will be considered a Category 3 if any one or more of the following criteria are met:*

*(J) Despite past condition(s) agreed upon by any Person subject to previous participation review to improve their compliance operations, three or more new Events of Noncompliance have since been identified by the Department, and have not been resolved during the corrective action period;*

A copy of the summary is attached for your reference. All monitoring/inspection reports, follow-up letters, and associated closeout letters have previously been provided at the time of the action and through prior previous participation reviews. However, if you would like those reports sent another time, please let me know.

Do not hesitate to contact me directly if you have any questions during this process.

## **Jo En Taylor**

Senior Compliance Administrator

Texas Department of Housing and Community Affairs

[221 E. 11th Street | Austin, TX 78701](#)

Office: [512.475.0250](tel:512.475.0250)

Fax: [512.475.3359](tel:512.475.3359)

## **About TDHCA**

The Texas Department of Housing and Community Affairs is committed to expanding fair housing choice and opportunities for Texans through the administration and funding of affordable housing and homeownership opportunities, weatherization, and community-based services with the help of for-profits, nonprofits, and local governments. For more information about fair housing, funding opportunities, or services in your area, please visit [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us) or the [Learn about Fair Housing in Texas](#) page.

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February 25, 2021

Texas Department of Housing &amp; Community Affairs

Attn: Bobby Wilkinson, Executive Director

Via email: [Bobby.Wilkinson@tdhca.state.tx.us](mailto:Bobby.Wilkinson@tdhca.state.tx.us)221 E. 11<sup>th</sup> Street

Austin, Texas 78701

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

Dear Mr. Wilkinson,

This letter is to confirm the U.S. Department of Housing and Urban Development's (HUD) support for rehabilitation of Compass Pointe Apartments (the "Development"). 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 Development 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 Development is the only Project Based Section 8 housing on the Island. Therefore, it is vital and HUD is committed to, retaining and preserving this affordable housing on Galveston Island. HUD has no intention of terminating the affordable housing assistance to this Development, given the confidence HUD has in the Proposed Owner, who has 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 has had serious concerns with the physical issues at the Development. Due to the multiple violations at the Development, HUD required the current owner, Compass Pointe Apartments Texas, LLC, to contract with a third-party property management company. This 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 manager upon the Proposed Owner's purchase of the Development.

HUD is aware of the concerns related to the potential of flooding at the Development. 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 Development, with water pumps that will remove the water from the interior of the wall so that within the walls it does not flood.

*Fort Worth Regional Office  
 307 W. 7<sup>th</sup> St. Suite 1000  
 Fort Worth, Texas 76102*

*Kansas City Satellite Office  
 400 State Avenue, Suite 300  
 Kansas City, Kansas 66101*

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 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 from the Texas Department of Housing and Community Affairs (TDHCA) for funding of Low Income Housing Tax Credits (LIHTC) is necessary to complete the preservation of the Development to ensure better living conditions for the residents.

Thank you for your consideration of the submitted proposal. Should you have any questions or would like to discuss HUD's support further, please feel free to reach to me or Christie Newhouse, Division Director of Asset Management at [Christie.M.Newhouse@hud.gov](mailto:Christie.M.Newhouse@hud.gov) or 817-978-5972.

Sincerely,

**MARY WALSH**

Mary V. Walsh

Director

Multifamily Housing Southwest Region

Digitally signed by: MARY WALSH  
DN: CN = MARY WALSH C = US O = U.S.  
Government OU = Department of Housing and  
Urban Development, Office of Administration  
Date: 2021.02.24 17:50:21 -06'00'





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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](mailto: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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*Fort Worth Regional Office  
307 W. 7<sup>th</sup> St. Suite 1000  
Fort Worth, Texas 76102*

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*Kansas City Satellite Office  
400 State Avenue, Suite 300  
Kansas City, Kansas 66101*

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](mailto:Christie.M.Newhouse@hud.gov) or 817-978-5972.

Sincerely,

Mary V. Walsh  
Director  
Multifamily Housing Southwest Region



3700 Buffalo Speedway, Suite 1010  
Houston, TX 77098  
P: 713.963.8660 F: 713.963.8164

May 20, 2021

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

Texas Department of Housing and Community Affairs  
Attn: Teresa Morales, Director of Multifamily Bonds and Administrator of 4% Housing Tax Credit  
Via email: [Teresa.Morales@tdhca.state.tx.us](mailto:Teresa.Morales@tdhca.state.tx.us)  
PO Box 13941  
Austin, Texas 78711

Re: Compass Pointe Apartments (AKA Sandpiper Cove) Rehabilitation

Dear Mr. Danenfelzer and Ms. Morales,

ITEX is submitting this letter in response to Lone Star Legal Aid's March 19, 2021 letter addressed to Texas State Affordable Housing Corporation ("TSAHC") and Texas Department of Housing and Community Affairs ("TDHCA"). ITEX does not own Compass Pointe (AKA Sandpiper Cove) (the "Development"), but does currently has site control through a purchase and sale agreement with the current owner Millennia Companies (the "Owner"). ITEX has been and continues to work diligently to secure the financing and approvals necessary to complete a financial closing to begin rehabilitation of the Development to provide a better living environmental for the residents. The Development is the sole Project-Based Voucher development on Galveston Island, and our goal is to preserve this housing for low-income families.

### **Development Costs**

The Millennia Companies is the current owner of the Development, and is the sole entity that has the control to sell the Development, and the Owner is only willing to sell at the price agreeable to them. ITEX has negotiated with the Owner for the best purchase price for the Development. Since originally signing the purchase and sale agreement, there are have been amendments to extend the closing date which has increased the sale price to \$16,627,000. ITEX's main goal is to obtain purchase the Development in order to rehabilitate and preserve this necessary low-income housing Development.

The Development's application to TDHCA had a total cost of \$13,074,164 for the site work and building cost of the rehabilitation, additionally there is a \$1,308,416 hard cost contingency that is

built-in for unforeseeable costs during the course of rehabilitation. That brings the total of actual hard costs of rehabilitation to \$14,382,580. Due to not closing in April 2021 as previously planned, ITEX has utilized this extra time to continue to investigate the property in order to further fine-tune the scope of work and construction budget. Some additional items that have been added include incorporating AstroTurf in areas of the development that currently have asphalt to allow for more green areas, ensuring stair safety by providing proper handrails and enclosing the stair treads, scoping the underground utility lines which confirmed the need to replace the clay pipes, and currently awaiting a report of scoping the cast iron lines under the buildings to confirm how much will need to be replaced. The additions to the scope of work has increased the site work and buildings costs to approximately \$15,280,000.

There are a number of other fees associated with a rehabilitation, aside from hard costs of the site work and building. A substantial amount of money goes into the soft costs portion of the budget, especially in a rehabilitation, such as this one, to ensure that the scope of work is complete and thorough. Soft costs include the cost of the architectural, civil, mechanical, electrical, plumbing, and structural engineering plans. For the TDHCA application there are several reports needed in order to secure approval of an award which include an appraisal, market study, Phase I ESA, and in this case a Phase II ESA also, as well as a Scope and Cost Review. In addition, ITEX had further reports and investigations done to ensure we were aware of as many unforeseeable issues, such as, lead in water testing, utility line scoping, investigation inside wall cavities to view the plumbing and electrical, mold study, lead based paint study as well as asbestos study. For an example, the lead in water study confirmed that replacing the pipes within the buildings is necessary, but our investigation went further to ensure there were no issues with underground pipes as it relates to this and we were able to confirm that they were not. Another aspect of the soft costs is the relocation budget. Most residents at the Development will need to temporarily relocate which results in a cost to move them off-site and then back on-site, including movers, moving supplies, utility set up fees, and any difference in rent. Some resident may only need to be moved once into a newly rehabilitated unit, but that would still result in moving fees.

Furthermore, the budget is also made up of developer fee, financing fees, and reserves. Financing fees are dictated by our lenders, investors, and bond issuer as well as each respective party's legal counsel. The development fee is within the parameters allowed by TDHCA.

### **Remedy of Issues**

Since taking over management in April 2020, J. Allen Management Company has worked closely with the U.S. Department of Housing and Urban Development ("HUD") to correct many items to the extent they can, and it continues to be an ongoing process. To date J. Allen has spent over \$300,000 on make ready of units, improvements to plumbing and air conditioning, as well as repairs to electrical, erosion, fence and welding. A breakdown can be found as **Exhibit A**. However, in order to completely resolve all issues at the Development the need for substantial capital is dire.

Additionally, the Owner secured a letter from TDHCA On August 6, 2020 with J. Allen's help, confirming that the repairs and corrections required at the Development had all been made. Please see **Exhibit B** for this letter.

### **Relocation**

Most residents at the Development will need to temporarily relocate off-site, whereas some residents may only need to be moved once into a newly rehabilitated unit. The amount of residents that may only need to be moved into a newly rehabilitated unit will depend on how many vacant units construction will begin with. J. Allen has gained several units through attrition, which is why the occupancy at this time is 86.5% because they've refrained from leasing units that have become vacant in hopes of accelerating construction's rehabilitation of the units, which in turn will help with relocation efforts for the residents.

For the residents that will need to temporary relocate off-site, ITEX and our partners continue to review temporary relocation options within the vicinity of the Development. The goal is to have residents remain as close as possible to the Development to ensure their lives are disrupted as little as possible. To secure specific locations, a closing date is needed to confirm availability within the surrounding areas and secure them for the residents.

The temporary relocation of the residents will be in accordance with URA federal rules and regulations, as well as following all CDC, state and local prescribed rules and guidelines as they pertain to the COVID-19 Pandemic.

### **Flood Wall**

All of Galveston Island is in the floodplain. The Development's flood mitigation options are restricted due to the Development being Historic. After a lot of consultation with our architect and engineers as well as our historic consultant, who communicated with the State Historic Commission, it was determined a flood wall was the best approach in mitigating against flooding at the Development. The approximately 2,700 linear foot wall will be used in replace of the current wrought iron fence. The wall will have several pedestrian gates for everyday use which will all be handicap accessible. However, when a significant storm is approaching, appropriate notice will be given to the residents to vacate and proper assistance will be given to any residents needing additional help. Once notice has been given the Development will install the flood gates at all pedestrian and vehicle openings to ensure the flood wall is sealed and being utilized properly. Attached as **Exhibit C** is a letter from the architect, Diamond Development Group, describing the flood mitigation along with their architectural drawing of the flood wall.

### **Litigation**

HUD on numerous and separate occasions has addressed the litigation and demonstrated that the lawsuit is not considered to have a negative impact on the financing of the Development or reason

for court determination. Furthermore, HUD plans to respond in an additional letter that is forthcoming.

Thank you for continue to discuss Sandpiper Cove's rehabilitation with us. If you have any further questions or concerns, please do not hesitate to reach me at [chris.akbari@itexgrp.com](mailto:chris.akbari@itexgrp.com) or at (409) 543-4465.

Sincerely,



Christopher A. Akbari  
CEO/President

cc: Craig Brown, Mayor, City of Galveston, via email: [craigbrown@galvestontx.gov](mailto:craigbrown@galvestontx.gov)  
Brian Maxwell, City Manager, City of Galveston, via email:  
[CityManager@GalvestonTX.Gov](mailto:CityManager@GalvestonTX.Gov)  
Dan Buckley, Deputy City Manager, City of Galveston, via email:  
[dbuckley@galvestontx.gov](mailto:dbuckley@galvestontx.gov)

## Exhibit A

J. Allen Management  
Compass Pointe/Sandpiper Cove  
2020 & 2021 Improvements

### Improvements to Property Since April 1, 2020 Takeover

### Plumbing Improvements (Busted Waterlines, Underground Water leaks, Sewer Backups, Etc.)

AAA Plumbers	\$ 75,045.88 est.
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### Air Conditioning Improvements (Inoperable AC's & Heating)

Gessner Heating & Air	\$ 71,172.57 est.	129 out of 192 AC/Heater Repaired
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**Electrical Issues** (Building Lights & Interior Electrical Issues) 13 Bldg. Lights Repaired

McDonald Electric	\$ 22,895.00
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### Asphalt & Concrete Repair (Pot Holes & Tripping Hazards) Parking and Walkways

M&G	\$ 33,280.00
-----	--------------

### Make Ready Repair & Painting – 26 Move ins' since 4/01/2020

A&K	\$ 34,680.00
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Mercal Refinishing	\$ 28,250.00
--------------------	--------------

## Erosion Repairs

TexPhalt	\$ 9,500.00
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## Welding Repair to Bannisters

Mercal Refinishing	\$ 22,500.00
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### Fence Repair (Leaning Fence and Broke Fence Material)

G&S	\$ 10,500.00
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This does not include the landscaping and the everyday supplies needed for repairs



**Exhibit B**



## TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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

Greg Abbott  
GOVERNOR

**BOARD MEMBERS**  
Vacant, *Chair*  
Leslie Bingham, *Vice Chair*  
Paul A. Braden, Member  
Sharon Thomason, Member  
Leo Vasquez, Member

August 6, 2020

*Writer's direct phone # (512) 475-0207*  
*Email: [manuel.pena@tdhca.state.tx.us](mailto:manuel.pena@tdhca.state.tx.us)*

Frank Sinito  
Compass Pointe Apartments Texas, LLC  
Cleveland, OH  
[fsinito@mhmltd.com](mailto:fsinito@mhmltd.com)

RE: Sandpiper Cove

CMTS ID: 930

Dear Mr. Sinito:

The Texas Department of Housing and Community Affairs (Department) has received and reviewed the corrective action submitted in response to the physical inspection of Sandpiper Cove conducted on October 11, 2019.

Sandpiper Cove has made all repairs and corrections required. **Please note that while the documentation submitted was sufficient to close the issues identified at inspection, the information was received after the corrective action deadline. This will be taken into consideration prior to any future funding or awards from the Department.** Please note that although the identified deficiencies have been mitigated, only a sample of units was inspected for the purposes of the report. It is the owner's responsibility to maintain compliance property wide. The Department may select a sample of units to re-inspect in order to verify that corrective actions have been completed.

This letter addresses only deficiencies noted during the physical inspection. Other findings may have resulted from other reviews. Please contact the appropriate lead monitor for additional information concerning other reviews.

The development's Compliance period has ended and notice of violations is no longer supplied to the IRS. The extended use period for the development remains in effect for an additional 15 years after expiration of the compliance period. The Department will continue to monitor for compliance with all restrictions in the LURA as required in §10TAC 10.623.

If you have any questions regarding the inspection or the UPCS, please contact me at (512) 475-0207, toll-free in Texas at (800) 643-8204, or email: [manuel.pena@tdhca.state.tx.us](mailto:manuel.pena@tdhca.state.tx.us).

Sincerely,

Manuel Pena, Jr.  
Senior Inspection Specialist



Site	Area	Bldg Name	Bldg Unit Name	Inspectable Item	Bldg Common Item	Deficiency	Level	Note	Date completed
Sandpiper Cove	Site			Grounds		Overgrown/Penetrating Vegetation	L2	Bldg	10/12/2019
Sandpiper Cove	Site			Health & Safety		Hazards - Sharp Edges	L3	Glass by 113, bldg W, A	10/12/2019
Sandpiper Cove	Site			Health & Safety		Hazards - Tripping	L3	Paving by Q, V by units	10/12/2019
Sandpiper Cove	Site			Market Appeal		Graffiti	L2	Window on unit 181 graffiti	10/12/2019
Sandpiper Cove	Site			Walkways/Steps		Spalling	L2	Bldg Q,	10/12/2019
Sandpiper Cove	Building Exterior	Bldg A		Health & Safety		Electrical Hazards - Exposed Wires/Open Panels	L3	Gap house pan	10/12/2019
Sandpiper Cove	Unit	Bldg A	139	Health & Safety		Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable	L3	Bdr 1	10/17/2019
Sandpiper Cove	Unit	Bldg A	139	Kitchen		Range/Stove - Missing/Damaged/Inoperable	L3	Igniter	10/16/2019
Sandpiper Cove	Unit	Bldg A	141	Bathroom		Shower/Tub - Damaged/Missing	L2	Surface	1/14/2020
Sandpiper Cove	Unit	Bldg A	141	Kitchen		Plumbing - Leaking Faucet/Pipes	L1	Base of faucet	1/14/2020
Sandpiper Cove	Unit	Bldg A	144	Health & Safety		Infestation - Insects	L3	Kitchen	1/14/2020
Sandpiper Cove	Unit	Bldg A	144	Walls		Mold/Mildew/Water Stains/Water Damage	L1	Bath	1/14/2020
Sandpiper Cove	Building Exterior	Bldg B		Roofs		Damaged/Clogged Drains	L3	gutter not working properly	10/23/2019
Sandpiper Cove	Unit	Bldg B	148	Health & Safety		Infestation - Insects	L3	Kitchen	1/14/2020
Sandpiper Cove	Unit	Bldg B	148	Walls		Damaged	L1	Bath tiles	1/14/2020
Sandpiper Cove	Unit	Bldg B	150	Health & Safety		Hazards - Tripping	L3	Cable cord LR	1/14/2020
Sandpiper Cove	Unit	Bldg B	155	Bathroom		Plumbing - Leaking Faucet/Pipes	L1	Bath shower dripping	1/14/2020
Sandpiper Cove	Unit	Bldg B	156	Doors		Damaged Surface (Holes/Paint/Rusting)	L3	Front dr in seam	2/12/2020
Sandpiper Cove	Unit	Bldg B	156	Health & Safety		Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable	L3	Egress wind bdr 1	2/12/2020
Sandpiper Cove	Building Exterior	Bldg C		Foundations		Spalling/Exposed Rebar	L2	Under landing by 127	1/14/2020
Sandpiper Cove	Building Exterior	Bldg C		Health & Safety		Electrical Hazards - Exposed Wires/Open Panels	L3	Gap house panel	10/16/2019
Sandpiper Cove	Common Areas	Bldg C		Health & Safety	Health & Safety	Hazards - Tripping	L3	Stairs	10/16/2019
Sandpiper Cove	Unit	Bldg C	121	Floors		Hard Floor Covering Missing/Damaged Flooring/Tiles	L1	Discolored LR and kitchen	10/16/2019
Sandpiper Cove	Unit	Bldg C	121	Health & Safety		Infestation - Insects	L3	Infestation	1/8/2020
Sandpiper Cove	Unit	Bldg C	126 sub ten locked 125	Doors		Damaged Surface (Holes/Paint/Rusting)	L3	Bdr 1	2/12/2020
Sandpiper Cove	Unit	Bldg C	126 sub ten locked 125	Walls		Damaged	L3	Hall	12/26/2019
Sandpiper Cove	Unit	Bldg C	128	Bathroom		Shower/Tub - Damaged/Missing	L1	Stopper	10/16/2019
Sandpiper Cove	Unit	Bldg D	81	Bathroom		Shower/Tub - Damaged/Missing	L3	Missing shower head (RDI)	10/11/2019
Sandpiper Cove	Unit	Bldg D	81	Doors		Damaged Frames/Threshold/Lintels/Trim	L3	Front dr	10/16/2019
Sandpiper Cove	Unit	Bldg D	82	Bathroom		Cabinets - Damaged/Missing	L1	Missing	10/17/2019
Sandpiper Cove	Unit	Bldg D	82	Bathroom		Lavatory Sink - Damaged/Missing	L3	Missing	10/17/2019
Sandpiper Cove	Unit	Bldg D	82	Doors		Damaged Surface (Holes/Paint/Rusting)	L3	Living room closet	10/17/2019
Sandpiper Cove	Unit	Bldg D	82	Kitchen		Refrigerator-Missing/Damaged/Inoperable	L1	Gasket	10/17/2019
Sandpiper Cove	Unit	Bldg D	82	Outlets/Switches		Missing/Broken Cover Plates	L3	Bdr	10/17/2019
Sandpiper Cove	Unit	Bldg D	83	Health & Safety		Infestation - Insects	L3	Infestation	1/8/2020
Sandpiper Cove	Unit	Bldg D	83	Walls		Mold/Mildew/Water Stains/Water Damage	L1	Bath	10/18/2019
Sandpiper Cove	Unit	Bldg D	89	Doors		Damaged Surface (Holes/Paint/Rusting)	L3	Bdr 1	10/17/2019
Sandpiper Cove	Unit	Bldg D	89	Health & Safety		Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable	L3	Bdr 3 window	10/17/2019
Sandpiper Cove	Unit	Bldg D	89	Windows		Inoperable/Not Lockable	L3	Bdr 3 window	10/17/2019
Sandpiper Cove	Unit	Bldg E	67	Bathroom		Cabinets - Damaged/Missing	L1	Missing	10/18/2019
Sandpiper Cove	Unit	Bldg E	67	Bathroom		Lavatory Sink - Damaged/Missing	L3	Missing	10/18/2019
Sandpiper Cove	Unit	Bldg E	67	Health & Safety		Electrical Hazards - Exposed Wires/Open Panels	L3	Kitchen light cover	10/18/2019
Sandpiper Cove	Unit	Bldg E	67	Kitchen		Refrigerator-Missing/Damaged/Inoperable	L3	Missing	10/18/2019
Sandpiper Cove	Unit	Bldg E	67	Outlets/Switches		Missing/Broken Cover Plates	L3	All covers	10/18/2019
Sandpiper Cove	Unit	Bldg E	68	Outlets/Switches		Missing/Broken Cover Plates	L3	All covers off due to painting	1/14/2020
Sandpiper Cove	Unit	Bldg E	73	Doors		Damaged Hardware/Locks	L3	Front dr strike pl	10/17/2019
Sandpiper Cove	Unit	Bldg E	77	Ceiling		Mold/Mildew/Water Stains/Water Damage	L1	Bath	10/18/2019
Sandpiper Cove	Unit	Bldg E	77	Health & Safety		Hazards - Tripping	L3	Cable cord hall	10/18/2019
Sandpiper Cove	Unit	Bldg E	77	Walls		Mold/Mildew/Water Stains/Water Damage	L1	Bath	10/18/2019
Sandpiper Cove	Unit	Bldg F	55	Doors		Damaged Surface (Holes/Paint/Rusting)	L3	Bdr 2	12/8/2019
Sandpiper Cove	Unit	Bldg F	55	Health & Safety		Infestation - Insects	L3	Infestation	12/8/2019
Sandpiper Cove	Unit	Bldg F	55	Kitchen		Sink - Damaged/Missing	L3	Hot water faucet not working	10/23/2019
Sandpiper Cove	Unit	Bldg F	56	Bathroom		Cabinets - Damaged/Missing	L1	Bath	10/17/2019
Sandpiper Cove	Unit	Bldg F	56	Health & Safety		Infestation - Insects	L3	Kitchen	12/18/2019
Sandpiper Cove	Unit	Bldg G	43	Doors		Damaged Frames/Threshold/Lintels/Trim	L3	Front dr	10/19/2019
Sandpiper Cove	Unit	Bldg G	43	Health & Safety		Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable	L3	Bdr 3	10/19/2019
Sandpiper Cove	Unit	Bldg G	44	Health & Safety		Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable	L3	Bdr 3	10/18/2019
Sandpiper Cove	Unit	Bldg G	44	Walls		Mold/Mildew/Water Stains/Water Damage	L1		10/18/2019
Sandpiper Cove	Unit	Bldg G	53	Doors		Damaged Surface (Holes/Paint/Rusting)	L3	Bdr 2 and front dr paint	10/23/2019
Sandpiper Cove	Unit	Bldg G	53	Health & Safety		Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable	L3	Bdr 1	10/23/2019
Sandpiper Cove	Unit	Bldg G	54	Health & Safety		Electrical Hazards - Exposed Wires/Open Panels	L3	Bath light fixture	10/17/2019

Sandpiper Cove	Unit	Bldg G	54	Kitchen		Range/Stove - Missing/Damaged/Inoperable	L3	Missing	10/17/2019
Sandpiper Cove	Building Exterior	Bldg H		Roofs		Missing/Damaged Shingles	L3	Leaking in unit 42	1/14/2020
Sandpiper Cove	Common Areas	Bldg H		Halls/Corridors/Stairs	Stairs	Broken/Missing Hand Railing	L3	Bottom of handrail by 31	1/14/2020
Sandpiper Cove	Unit	Bldg H	31	Doors		Damaged Frames/Threshold/Lintels/Trim	L3	Front dr	1/14/2020
Sandpiper Cove	Unit	Bldg H	31	Kitchen		Range/Stove - Missing/Damaged/Inoperable	L3	Missing	1/14/2020
Sandpiper Cove	Unit	Bldg H	31	Kitchen		Refrigerator-Missing/Damaged/Inoperable	L3	Missing	1/14/2020
Sandpiper Cove	Unit	Bldg H	31	Walls		Mold/Mildew/Water Stains/Water Damage	L1		1/14/2020
Sandpiper Cove	Unit	Bldg H	31	Walls		Peeling/Needs Paint	L2	Kitchen and bdr 1	10/30/2019
Sandpiper Cove	Unit	Bldg H	32	Ceiling		Mold/Mildew/Water Stains/Water Damage	L3	Living room	10/17/2019
Sandpiper Cove	Unit	Bldg H	32	Kitchen		Refrigerator-Missing/Damaged/Inoperable	L3	Missing	10/17/2019
Sandpiper Cove	Unit	Bldg H	34	Health & Safety		Infestation - Insects	L3	Kitchen	10/16/2019
Sandpiper Cove	Unit	Bldg H	35	Doors		Damaged Surface (Holes/Paint/Rusting)	L3	Front dr Inseam	10/16/2019
Sandpiper Cove	Unit	Bldg H	35	Walls		Mold/Mildew/Water Stains/Water Damage	L1	Bath	10/16/2019
Sandpiper Cove	Unit	Bldg H	38	Doors		Deteriorated/Missing Seals (Entry Only)	L3	Front dr	11/8/2019
Sandpiper Cove	Unit	Bldg H	38	Health & Safety		Infestation - Insects	L3	bath	11/8/2019
Sandpiper Cove	Unit	Bldg H	38	Kitchen		Cabinets - Missing/Damaged	L2	Drawer	11/8/2019
Sandpiper Cove	Unit	Bldg H	39	Bathroom		Shower/Tub - Damaged/Missing	L2	Surface	10/16/2019
Sandpiper Cove	Unit	Bldg H	39	Doors		Damaged Surface (Holes/Paint/Rusting)	L3	Front dr Inseam	10/16/2019
Sandpiper Cove	Unit	Bldg H	39	Walls		Mold/Mildew/Water Stains/Water Damage	L1		10/16/2019
Sandpiper Cove	Unit	Bldg H	41	Bathroom		Plumbing - Clogged Drains	L1	Bath slow	10/16/2019
Sandpiper Cove	Unit	Bldg H	41	Doors		Damaged Frames/Threshold/Lintels/Trim	L3	Front dr	10/16/2019
Sandpiper Cove	Unit	Bldg H	41	Kitchen		Refrigerator-Missing/Damaged/Inoperable	L1	Gasket	10/16/2019
Sandpiper Cove	Common Areas	Bldg I		Health & Safety	Health & Safety	Hazards - Sharp Edges	L3	Stairs rust	1/14/2019
Sandpiper Cove	Common Areas	Bldg I		Health & Safety	Health & Safety	Hazards - Tripping	L3	Stairs	10/18/2019
Sandpiper Cove	Unit	Bldg I	157	Health & Safety		Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable	L3	Bdr 1 window	10/17/2019
Sandpiper Cove	Unit	Bldg I	158	Doors		Damaged Surface (Holes/Paint/Rusting)	L3	Bdr 3 NIS and front dr Inseam	10/19/2019
Sandpiper Cove	Unit	Bldg I	158	Health & Safety		Infestation - Insects	L3	Kitchen	10/19/2019
Sandpiper Cove	Unit	Bldg I	161 sub no key 162	Doors		Damaged Frames/Threshold/Lintels/Trim	L3	Front door	10/16/2019
Sandpiper Cove	Unit	Bldg I	161 sub no key 162	Kitchen		Refrigerator-Missing/Damaged/Inoperable	L1	Gasket	10/16/2019
Sandpiper Cove	Unit	Bldg I	161 sub no key 162	Smoke Detector		Missing/Inoperable	L3	Bdr (RDI)	10/11/2019
Sandpiper Cove	Common Areas	Bldg J		Health & Safety	Health & Safety	Hazards - Sharp Edges	L3	Stairwell rusted creating sharp edge	1/14/2020
Sandpiper Cove	Unit	Bldg J	186	Floors		Hard Floor Covering Missing/Damaged Flooring/Tiles	L2	Kitchen and bath	11/13/2019
Sandpiper Cove	Unit	Bldg J	186	Health & Safety		Electrical Hazards - Exposed Wires/Open Panels	L3	Lights down wires exposed	11/13/2019
Sandpiper Cove	Unit	Bldg J	186	Kitchen		Cabinets - Missing/Damaged	L2	Drawer facing	11/13/2019
Sandpiper Cove	Unit	Bldg J	186	Lighting		Missing/Inoperable Fixture	L3	Bdr 1 and hall	11/13/2019
Sandpiper Cove	Unit	Bldg J	186	Outlets/Switches		Missing/Broken Cover Plates	L3	All	11/13/2019
Sandpiper Cove	Unit	Bldg J	186	Walls		Mold/Mildew/Water Stains/Water Damage	L1	Bath	11/13/2019
Sandpiper Cove	Unit	Bldg J	192	Bathroom		Plumbing - Clogged Drains	L3	Bath sink	10/15/2019
Sandpiper Cove	Unit	Bldg J	192	Bathroom		Shower/Tub - Damaged/Missing	L3	Diverter	10/15/2019
Sandpiper Cove	Unit	Bldg J	192	Doors		Damaged Surface (Holes/Paint/Rusting)	L1	Hamper facing	10/15/2019
Sandpiper Cove	Unit	Bldg J	192	Kitchen		Refrigerator-Missing/Damaged/Inoperable	L1	Gasket	10/15/2019
Sandpiper Cove	Unit	Bldg J	192	Walls		Damaged	L2	Bdr 3	10/15/2019
Sandpiper Cove	Unit	Bldg K	100	Bathroom		Plumbing - Clogged Drains	L3	Clogged bath sink	1/14/2020
Sandpiper Cove	Unit	Bldg K	100	Doors		Damaged Surface (Holes/Paint/Rusting)	L3	Bdr 3 closet NIS	1/14/2020
Sandpiper Cove	Unit	Bldg K	100	Health & Safety		Infestation - Insects	L3	Kitchen	1/14/2020
Sandpiper Cove	Unit	Bldg K	100	Kitchen		Refrigerator-Missing/Damaged/Inoperable	L1	Gasket	1/14/2020
Sandpiper Cove	Unit	Bldg K	102	Health & Safety		Infestation - Insects	L3	Kitchen	12/8/2019
Sandpiper Cove	Unit	Bldg K	102	Walls		Mold/Mildew/Water Stains/Water Damage	L1	Bath	12/8/2019
Sandpiper Cove	Unit	Bldg K	106	Outlets/Switches		Missing/Broken Cover Plates	L3	All off (RDI)	10/11/2019
Sandpiper Cove	Unit	Bldg K	106	Smoke Detector		Missing/Inoperable	L3	All (RDI)	10/11/2019
Sandpiper Cove	Unit	Bldg L	113	Kitchen		Refrigerator-Missing/Damaged/Inoperable	L1	Gasket	10/18/2019
Sandpiper Cove	Unit	Bldg M	92	Doors		Damaged Frames/Threshold/Lintels/Trim	L2	Bdr 3	10/8/2019
Sandpiper Cove	Unit	Bldg M	92	Doors		Deteriorated/Missing Seals (Entry Only)	L3	Front door	10/8/2019
Sandpiper Cove	Unit	Bldg M	92	Health & Safety		Infestation - Insects	L3	Infestation	10/8/2019
Sandpiper Cove	Unit	Bldg M	92	Kitchen		Range/Stove - Missing/Damaged/Inoperable	L3	Oven not working	10/8/2019
Sandpiper Cove	Unit	Bldg M	92	Kitchen		Refrigerator-Missing/Damaged/Inoperable	L1	Gasket	10/8/2019
Sandpiper Cove	Unit	Bldg M	92	Smoke Detector		Missing/Inoperable	L3	Hall	10/8/2019
Sandpiper Cove	Building Exterior	Bldg N		Health & Safety		Electrical Hazards - Exposed Wires/Open Panels	L3	Box above house panel	10/21/2019
Sandpiper Cove	Unit	Bldg N	23	Doors		Damaged Hardware/Locks	L3	Bath strike pl	10/23/2019
Sandpiper Cove	Unit	Bldg N	23	Doors		Damaged Surface (Holes/Paint/Rusting)	L3		10/23/2019
Sandpiper Cove	Unit	Bldg N	23	Health & Safety		Infestation - Insects	L3	Infestation	10/23/2019
Sandpiper Cove	Unit	Bldg N	23	Kitchen		Sink - Damaged/Missing	L3	Missing right handle	10/23/2019

Sandpiper Cove	Unit	Bldg N	26	Health & Safety		Hazards - Tripping	L3	Cable cord	1/14/2020
Sandpiper Cove	Unit	Bldg N	27	Walls		Mold/Mildew/Water Stains/Water Damage	L1	Bath	10/23/2019
Sandpiper Cove	Unit	Bldg O	5	Ceiling		Mold/Mildew/Water Stains/Water Damage	L3	Hall	10/23/2019
Sandpiper Cove	Unit	Bldg O	5	Doors		Damaged Surface (Holes/Paint/Rusting)	L3	Bdr 3 Inseam paint	10/23/2019
Sandpiper Cove	Unit	Bldg O	5	Smoke Detector		Missing/Inoperable	L3	Hall (RDI)	10/11/2019
Sandpiper Cove	Unit	Bldg O	9	Kitchen		Plumbing - Leaking Faucet/Pipes	L1	Kitchen fauc dripping	10/23/2019
Sandpiper Cove	Building Exterior	Bldg P		Foundations		Spalling/Exposed Rebar	L2	Landing above 3 under balcony rebar showin	1/14/2020
Sandpiper Cove	Building Exterior	Bldg P		Roofs		Missing/Damaged Shingles	L3	Roof leak bdr 1 unit 2	10/24/2019
Sandpiper Cove	Unit	Bldg P	2	Ceiling		Bulging/Buckling	L3	Bdr 1	10/24/2019
Sandpiper Cove	Unit	Bldg P	2	Ceiling		Mold/Mildew/Water Stains/Water Damage	L3		10/24/2019
Sandpiper Cove	Unit	Bldg P	3	Bathroom		Plumbing - Leaking Faucet/Pipes	L1	Shower dripping	10/20/2019
Sandpiper Cove	Unit	Bldg P	3	Health & Safety		Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable	L3	Bdr 1	10/20/2019
Sandpiper Cove	Unit	Bldg P	4	Walls		Peeling/Needs Paint	L1	Living room	10/20/2019
Sandpiper Cove	Building Exterior	Bldg Q		Roofs		Damaged Soffits/Fascia/Soffit Vents	L2	Fascia	10/29/2019
Sandpiper Cove	Building Exterior	Bldg Q		Roofs		Missing/Damaged Components from Downspout/Gutter	L3	Damaged	1/16/2020
Sandpiper Cove	Common Areas	Bldg Q		Health & Safety	Health & Safety	Hazards - Tripping	L3	Stairs	10/20/2019
Sandpiper Cove	Unit	Bldg Q	165 sub no key 168	Smoke Detector		Missing/Inoperable	L3		10/22/2019
Sandpiper Cove	Unit	Bldg Q	165 sub no key 168	Walls		Damaged	L2		10/22/2019
Sandpiper Cove	Unit	Bldg Q	165 sub no key 168	Walls		Mold/Mildew/Water Stains/Water Damage	L3	Bdr 3	10/22/2019
Sandpiper Cove	Unit	Bldg Q	165 sub no key 168	Walls		Peeling/Needs Paint	L2	Living room	10/22/2019
Sandpiper Cove	Unit	Bldg Q		166 Kitchen		Refrigerator-Missing/Damaged/Inoperable	L1	Gasket	1/14/2020
Sandpiper Cove	Unit	Bldg Q		166 Walls		Damaged	L2	Hall	1/14/2020
Sandpiper Cove	Unit	Bldg R	169	Ceiling		Mold/Mildew/Water Stains/Water Damage	L3	Bdr 2 ceiling	11/25/2019
Sandpiper Cove	Unit	Bldg R	169	Health & Safety		Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable	L3	Bdr 1 egress window	10/10/2019
Sandpiper Cove	Unit	Bldg R	169	Health & Safety		Hazards - Tripping	L3	Bdr 1 cable cord	10/26/2019
Sandpiper Cove	Unit	Bldg R	169	Health & Safety		Infestation - Insects	L3	Kitchen	1/15/2020
Sandpiper Cove	Unit	Bldg R	169	Windows		Inoperable/Not Lockable	L3	Bdr 1	10/10/2019
Sandpiper Cove	Unit	Bldg R	170	Ceiling		Mold/Mildew/Water Stains/Water Damage	L3	Bath	1/13/2020
Sandpiper Cove	Unit	Bldg R	170	Doors		Missing Door	L1	Hall	1/13/2020
Sandpiper Cove	Unit	Bldg R	170	Floors		Rot/Deteriorated Subfloor	L3	Kitchen	1/13/2020
Sandpiper Cove	Unit	Bldg R	170	Walls		Mold/Mildew/Water Stains/Water Damage	L1	Bath	1/13/2020
Sandpiper Cove	Building Exterior	Bldg S		Health & Safety		Electrical Hazards - Exposed Wires/Open Panels	L3	Gap house panel	11/25/2019
Sandpiper Cove	Unit	Bldg S	174	Floors		Hard Floor Covering Missing/Damaged Flooring/Tiles	L1	Bath floor	10/16/2019
Sandpiper Cove	Unit	Bldg S	174	Kitchen		Cabinets - Missing/Damaged	L2	Drawer facings	10/16/2019
Sandpiper Cove	Unit	Bldg S	174	Kitchen		Refrigerator-Missing/Damaged/Inoperable	L1	Gasket	10/16/2019
Sandpiper Cove	Unit	Bldg S	174	Walls		Damaged	L2	Vent cover bath	10/16/2019
Sandpiper Cove	Unit	Bldg S	175	Bathroom		Plumbing - Leaking Faucet/Pipes	L1	Flapper	10/16/2019
Sandpiper Cove	Unit	Bldg S	175	Doors		Damaged Surface (Holes/Paint/Rusting)	L3	Bdr 1 door	10/16/2019
Sandpiper Cove	Unit	Bldg S	175	Health & Safety		Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable	L3	Bdr 4 window	10/16/2019
Sandpiper Cove	Unit	Bldg S	175	Kitchen		Cabinets - Missing/Damaged	L2	Door hanging	10/16/2019
Sandpiper Cove	Unit	Bldg S	175	Outlets/Switches		Missing/Broken Cover Plates	L1	Kitchen	10/16/2019
Sandpiper Cove	Unit	Bldg S	175	Walls		Damaged	L3	Bdr 1	10/16/2019
Sandpiper Cove	Unit	Bldg T	177	Health & Safety		Infestation - Insects	L3	Infestation	10/16/2019
Sandpiper Cove	Unit	Bldg T	177	Walls		Mold/Mildew/Water Stains/Water Damage	L1	Bath	10/16/2019
Sandpiper Cove	Unit	Bldg T	178	Ceiling		Peeling/Needs Paint	L2	Bdr 2	10/16/2019
Sandpiper Cove	Unit	Bldg T	178	Doors		Damaged Frames/Threshold/Intels/Trim	L2	Trim and bdr 2	10/16/2019
Sandpiper Cove	Unit	Bldg T	178	Health & Safety		Infestation - Insects	L3	bbugs	10/16/2019
Sandpiper Cove	Unit	Bldg T	178	Walls		Damaged	L2	Bdr 4 behind dr	12/19/2019
Sandpiper Cove	Unit	Bldg T	178	Walls		Peeling/Needs Paint	L2	Living and bdr	10/16/2019
Sandpiper Cove	Unit	Bldg U	181	Doors		Damaged Frames/Threshold/Intels/Trim	L3	Front door	10/17/2019
Sandpiper Cove	Unit	Bldg U	181	Doors		Damaged Hardware/Locks	L3	Front dr strike plate	10/17/2019
Sandpiper Cove	Unit	Bldg U	181	Doors		Damaged Surface (Holes/Paint/Rusting)	L3	Bdr 1 and 3	10/17/2019
Sandpiper Cove	Unit	Bldg U	181	Health & Safety		Electrical Hazards - Exposed Wires/Open Panels	L3	Bath light missing	10/17/2019
Sandpiper Cove	Unit	Bldg U	181	Health & Safety		Hazards - Tripping	L3	Clothes debrees	10/17/2019
Sandpiper Cove	Unit	Bldg U	181	Health & Safety		Infestation - Insects	L3	Kitchen	1/15/2020
Sandpiper Cove	Unit	Bldg U	181	Lighting		Missing/Inoperable Fixture	L3	Bath light missing	10/17/2019
Sandpiper Cove	Unit	Bldg U	181	Walls		Damaged	L3	Graffiti	11/8/2019
Sandpiper Cove	Unit	Bldg V	2	Doors		Damaged Hardware/Locks	L1	Bdr 4 closet handle	10/18/2019
Sandpiper Cove	Unit	Bldg V	130	Doors		Damaged Surface (Holes/Paint/Rusting)	L3		10/18/2019
Sandpiper Cove	Unit	Bldg V	130	Health & Safety		Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable	L3	Bdr 1 and 3	10/18/2019
Sandpiper Cove	Unit	Bldg V	130	Kitchen		Cabinets - Missing/Damaged	L2	Drawer facing	10/18/2019
Sandpiper Cove	Unit	Bldg V	130	Kitchen		Refrigerator-Missing/Damaged/Inoperable	L1	Gasket	12/20/2019

Sandpiper Cove	Unit	Bldg V	130	Walls		Damaged	L2	Wall	12/10/2019
Sandpiper Cove	Unit	Bldg V	132	Doors		Damaged Frames/Threshold/Untels/Trim	L2	Bdr 3	10/20/2019
Sandpiper Cove	Unit	Bldg V	132	Doors		Damaged Hardware/Locks	L1	Living room closet handle	10/20/2019
Sandpiper Cove	Unit	Bldg V	132	Doors		Damaged Surface (Holes/Paint/Rusting)	L3	Bdr 3	10/20/2019
Sandpiper Cove	Unit	Bldg V	132	Outlets/Switches		Missing/Broken Cover Plates	L3	All missing due to painting	12/9/2019
Sandpiper Cove	Unit	Bldg V	132	Smoke Detector		Missing/Inoperable	L3	All missing due to painting	12/9/2019
Sandpiper Cove	Building Exterior	Bldg W		Health & Safety		Electrical Hazards - Exposed Wires/Open Panels	L3	Gap house pan	1/14/2020
Sandpiper Cove	Common Areas	Bldg W		Health & Safety	Health & Safety	Hazards - Tripping	L3	Stairs	1/14/2020
Sandpiper Cove	Unit	Bldg W	107	Kitchen		Refrigerator-Missing/Damaged/Inoperable	L3	Fridge missing	1/14/2020
Sandpiper Cove	Unit	Bldg W	108	Ceiling		Holes/Missing Tiles/Panels	L3	Hall	1/14/2020
Sandpiper Cove	Unit	Bldg W	108	Ceiling		Mold/Mildew/Water Stains/Water Damage	L3	Hall	1/14/2020
Sandpiper Cove	Unit	Bldg W	108	Health & Safety		Infestation - Insects	L3	Infestation	1/8/2020
Sandpiper Cove	Unit	Bldg X	13	Doors		Damaged Surface (Holes/Paint/Rusting)	L3	Front dr Inseam	1/14/2020
Sandpiper Cove	Unit	Bldg X	13	Health & Safety		Infestation - Insects	L3	Kitchen	1/15/2020
Sandpiper Cove	Unit	Bldg X	22	Health & Safety		Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable	L3	Bdr	1/14/2020



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March 4, 2021

**Via Email: [ddanenfelzer@tsahc.org](mailto:ddanenfelzer@tsahc.org)**

Texas State Affordable Housing Corporation

Attn: David Danenfelzer

6701 Shirley Avenue

Austin, Texas 78752

Re: Sandpiper Cove

Dear Mr. Danenfelzer,

Pursuant to our telephone conversation on February 25, 2021 we understand your three concerns for Sandpiper Cove (the "Development") are as follows: 1. The Lawsuit, with subsequent potential of the HAP cancellation; 2. Flood Mitigation Efforts; and 3. TEFRA Hearing Comments. We have taken your concerns seriously. Aside from several conference calls, we want to thoroughly address them for you in this letter.

### **The Lawsuit**

We understand your biggest concern is the lawsuit between Sandpiper Residents Association, Larry Bernard Brooks, Sr. and Betty Ann Dergin against The United States Department of Housing and Urban Development, and in particular if the outcome could result in the termination of the Sandpiper Cove HAP Contract.

The conference call on March 3, 2021 that included yourself, the ITEX team, as well as Harry Kelly, Partner, and Monica Sussman, Senior Counsel, at Nixon Peabody provided great value in explaining that courts have recognized that HUD possesses discretion in enforcing any owners' obligation under the HAP Contract. In the case of Sandpiper Cove, HUD has exercised its discretion in favor of preserving Sandpiper Cove.

Subsequently, there was a second conference call on March 3, 2021 that included yourself; the ITEX team; Raynold Richardson; Harry Kelly, Partner, and Monica Sussman, Senior Counsel, at Nixon Peabody; Michael Gamez, Resolution Specialist Branch Chief with HUD; Christie Newhouse, Director Asset Management with HUD Fort Worth; Mary Walsh, Regional Director with HUD Fort Worth; Batina Wills-Washington, Assistant General Counsel with HUD Washington; and Steven Barker, Attorney for HUD Washington. Nixon Peabody and HUD staff spent time explaining the two examples that had been provided as court ordered mandates for HUD to remove the HAP contracts on two deals were in-fact not court mandated but rather done at

HUD's discretion. Barbour Gardens in Connecticut had their HAP Contract removed by HUD and HUD issued Housing Choice Vouchers (HCV), once the HCVs were issued, the residents then filed a lawsuit against HUD because they felt they needed more time to find suitable replacement housing with their HCV. Additionally, the HAP Contract at Ralston Towers in Georgia was not removed due to litigation and court mandate but again due to HUD discretion based on complaints from the City. Furthermore, during the call each HUD representative took time to speak in favor of the rehabilitation proposed for Sandpiper Cove in part due to the current management team being able to positively turn the property around since taking over in April 2020, the significant low housing stock on Galveston Island, and how the rehabilitation would not only provide decent, safe and sanitary housing, but feels it would provide stability to the residents and longevity to the development. Also Steven Barker, HUD Attorney Washington, communicated that there were two in cases in Houston, Arbor Court Apartments and Coppertree Village Apartments that had similar allegations alleged as Sandpiper Cove and in both cases the courts ruled in HUD's favor due to the Section 8 HAP Contract obligations, Federal Statutes and Regulations.

In addition to the conference calls, we ask that you please review the letter from Nixon Peabody attached as **Exhibit A** to this letter in regards to Section 8 Contract Regulations and Law, as well as default and termination rights. Exhibit A includes Mary Walsh at HUD's support letter of Sandpiper Cove's rehabilitation. According to the above we believe that your concerns regarding HUD vacating the HAP Contract and possible cancellation of the HAP Contract due to lawsuit by court order should not be of any concern.

## **Flood Mitigation**

The proposed rehabilitation consists of over \$8 million of State and Federal Historic Tax Credits ("HTC") to make the deal financially feasible. With these funds comes added restrictions on what the rehabilitation can consist of due to the required approvals needed from the Texas Historic Commission ("THC") and National Park Service ("NPS"). Since we have extra parameters to abide by, we've taken a very close look at how to mitigate the flood issues at the Development. After extensive consultation and research with our Architect, Diamond Development Group, and their third party flood consultants, the City of Galveston, and our Historic Consultant, Heritage Consultant Group, we've come to the conclusion that the best plan to mitigate the Development is to construct a flood wall. This flood wall was described in detail by DDG on our March 1, 2021 conference call, and further detailed here.

Although this still needs to receive approval from THC and NPS, our proposal is to build a 2,700 linear foot wall around the perimeter of the Development. The flood wall will be approximately one foot underground, and approximately six feet above ground with approximately two feet of wrought iron fence to bring it to eight feet. Within the flood wall there will be approximately eight pedestrian gate openings and three vehicle gate openings, which would be closed off with flood gates ahead of a severe storm. Egress ladders will be installed to allow for evacuation out of the Development by the residents once the flood wall has been sealed shut. The location of the community building is at the boundary line of the Development's property, therefore the flood wall will terminate at each side of the community building and flood gates would be installed to



protect the building that is not within the flood wall. The examples of the flood gates we'll be using can be found in **Exhibit B** attached.

In addition to the perimeter flood wall and gates, there will be shut offs to the storm drains, manhole covers and drains on the Development ahead of the severe storms to ensure no back flow will occur. To ensure the property does not flood from excessive rain there will be approximately eight sump pumps with emergency generators to run them, allowing water to be relocated outside of the flood wall.

Furthermore, we will be creating an extensive and thorough Severe Storm Plan which will be provided to the residents and upon move-in of any new residents, and ahead of expected severe storms that will result in the enacting of the plan it will be communicated to the residents.

### **TEFRA Hearing Comments**

At the December 1, 2020 TEFRA Hearing we heard from two staff members from Texas Housers and eight residents that all had stated they were opposed to the rehabilitation of the Development. We took the residents' comments very seriously, and made necessary notes to follow up with the manager on-site to confirm if any of the comments made had been put into active work orders and confirm if anything was still outstanding. J. Allen Management confirmed all work orders had been completed prior to the TEFRA hearing.

Although there were several mentions of mold, there were not nearly as many work orders for mold as there were comments. We felt that further investigation, aside from our mold report done by a third party provided needed to be completed. In early January 2021 we had staff go to the Development to walk every unit and provide details of any mold, moisture and/or water intrusion issues. Although the goal was to see all 192 units, they were only able to enter 176 units, due to no keys, residents denying entry, or COVID quarantines. Of the 176 units, there was visible mold to 39 units or 22% of the units viewed. In addition to these 39 units there were several units that were determined to have high moisture readings. This investigation allow us to have a better understanding, and better plan for the rehabilitation.

Furthermore, we understand that no resident came to the TEFRA hearing to speak in support of the rehabilitation, however, there are a large group of residents that do support the rehabilitation. Please see **Exhibit C**, which is a document from John Matthews, resident of unit 26, stating his support, and the signatures of 60 other residents that make up 54 units at the Development.

We have appreciated you providing us the time needed to have several conference calls to allow our architect, legal counsels, and HUD to provide you information you needed to be well-informed about Sandpiper Cove's rehabilitation. We believe that all the due diligence provided ahead of this past week, along with the conference calls, letters including support letters, and information in this letter support a recommendation by TSAHC staff for approval by your board.

If you should have any further questions, please reach me at [chris.akbari@itexgrp.com](mailto:chris.akbari@itexgrp.com) or (409) 543-4465.

Sincerely,

DocuSigned by:  
  
CA72646D23AF4DF...  
Christopher A. Akbari  
President/CEO

## Attachment A



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@NIXONPEABODYLLP

March 2, 2021

*Via E-Mail*

Board of Directors  
Texas State Affordable Housing Corporation  
6701 Shirley Avenue  
Austin, TX 78752

**RE: Sandpiper Cove Apartments, 3916 Winnie Street, Galveston, Texas 77705 --  
Limitation on Courts' Ability To Override HUD Section 8 Management Decisions**

Dear Members of the Board of Directors:

This firm is counsel to Galveston 3916 Winnie Street, LP (the "Company") which proposes to purchase a 192-unit multifamily housing property known as Sandpiper Cove Apartments (the "Property"), located at 3916 Winnie Avenue in Galveston, Texas. The Property is a unique resource for lower-income families in Galveston, as it is the only project-based Section 8 assisted housing on the island. Without it, almost 200 families would have to find affordable housing in an area with limited affordable housing alternatives. The Company proposes to acquire the Property in part with bond financing provided by the Texas State Affordable Housing Corporation ("TSACH"), which will be used to rehabilitate the Property and restore it to applicable housing quality standards.

Last year, a lawsuit was filed by a group of residents of the Property, challenging HUD's oversight of the Property pursuant to its participation in the Section 8 program under the Administrative Procedures Act, 5 U.S.C. §§ 551 et seq. ("APA"). *Sandpiper Residents Ass'n v. U.S. Dept. of Housing and Urban Development*, No. 1:20-cv-01783 –RDM (D.D.C. 2020) (the "Litigation").<sup>1</sup> We understand that TSACH is concerned that a court may enter an order transferring the current Section 8 Housing Assistance Payments Contract ("HAP Contract") to another property, or converting assistance to vouchers that current residents can use at other properties. For the following reasons, we do not believe a Federal court has the power under the APA to enter such an order.

<sup>1</sup> The Litigation is subject to a pending motion to transfer the case from its current venue in the District of Columbia to the Southern District of Texas. Docket No. 13. No responsive pleading has been filed by the defendant.

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**A. The HAP Contract and HUD Implementing Regulations Confer Broad Discretion on HUD to Respond to Property Management Defaults and Noncompliance.**

The current HAP Contract (**Attachment A** hereto), subject to several renewals, establishes the rights and responsibilities of the owner of the Property and the U.S. Department of Housing and Urban Development, which oversees the implementation and operation of the Section 8 rental assistance program. Among other things, the HAP Contract commits HUD to make monthly rental assistance payments. HAP Contract, § 7(a) (“For each contract unit occupied by an eligible family in accordance with this Contract, HUD will pay the Owner the difference between the HUD approved gross rent and the Gross Family Contribution required by HUD regulations and administrative procedures.”). In exchange for these benefits, the Owner is subject to a number of express duties, including the obligation to “maintain and operate the contract units and related facilities so as to provide decent, safe and sanitary housing as defined by HUD,” among other tasks. *Id.*, § 14(a).

To ensure the Owner’s obligations, the HAP Contract confers extensive oversight and enforcement powers to HUD. Section 26 (entitled “Owner Default Under Contract”) identifies a broad array of tools available to HUD if the Owner does not comply with its obligations under the HAP Contract. After determining that a default has occurred, HUD is authorized to send a notice to the Owner of the default and the steps to be taken within a set time to cure the default. If the cure is not completed in a timely manner to HUD’s satisfaction, “HUD may terminate [the] Contract in whole or in part or may initiate any of the following actions.” § 26(b). The specified actions include a variety of measures by Court order, such as to “[t]ake possession of the project . . . [.]” “[c]ollect all rents and other receipts of the project and use the receipts to pay the Owner’s obligations . . . [.] [a]pply to any court, State or Federal, for specific performance of this Contract, for an injunction against any violation of this Contract, for the appointment of a receiver . . . or for such other relief as may be appropriate . . . [and] [i]nitiate action to recover overpayments.” *Id.*, § 26(1)(a)-(d).

In addition to seeking judicial enforcement, the HAP Contract authorizes HUD to undertake a variety of administrative enforcement measures, including to “[p]ay housing assistance payments directly to the mortgagee . . . [.] [r]educe or suspend housing assistance payments until the default under this Contract has been cured . . . [.] [w]ithhold housing assistance payments until the default under this Contract has been cured . . . [.] reduce the number of contract units . . . [.] [s]uspend, debar or otherwise restrict participation in any HUD program . . . [.] or [i]nitiate action to recover any overpayments.” *Id.*, § 26(b)(2)(a)-(f).

In addition to all of these specified oversight and enforcement tools, the HAP Contract contains a final broad reservation of other remedies to HUD:

Remedies Not Exclusive and Non-Waiver of Remedies. The availability of any remedy under this Contract shall not preclude the exercise of any other remedy under this Contract or under any provisions of Law, nor shall any action taken in the exercise of any remedy be considered a waiver of any other rights or

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

Id., §26(c).

The oversight and enforcement powers contained in the Contract derive from and are codified in HUD's Section 8 regulations. See generally 24 CFR Part 886. For example, HUD's regulations make clear that it will take appropriate steps generally to oversee the Owner's compliance with the HAP Contract:

HUD will review project operation at such intervals as it deems necessary to ensure that the Owner is in full compliance with the terms and conditions of the Contract.

24 CFR §886.130. The regulations impose a broad series of obligations on the Owner, including "[p]erformance of all ordinary and extraordinary maintenance." Id., §886.119(a)(2). As in the HAP Contract, the regulations expressly authorize HUD to pay Section 8 payments to the mortgagee in the event of a financial default:

In the event of a financial default under the project mortgage, HUD shall have the right to make subsequent Housing Assistance Payments to the mortgagee until such time as the default is cured, or, at the option of the mortgagee and subject to HUD approval, until some other agreed-upon time.

Id., §886.119(b). The HUD regulations provide additional rules concerning maintenance of the property:

***Maintenance and operation.*** The Owner shall maintain and operate the project so as to provide Decent, Safe, and Sanitary housing and he shall provide all the services, maintenance and utilities which he agrees to provide under the Contract, subject to abatement of housing assistance payments or other applicable remedies if he fails to meet these obligations.

Id., §886.123(a). If those obligations are not met, the regulations direct HUD to take action as outlined in the HAP Contract:

***Units not Decent, Safe, and Sanitary.*** If HUD notifies the Owner that he has failed to maintain a dwelling unit in Decent, Safe, and Sanitary condition and the Owner fails to take corrective action within the time prescribed in the notice, HUD may exercise any of its rights or remedies under the Contract, including abatement of housing assistance payments, even if the Family continues to occupy the unit.

Id., §886.123(d).

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Taken together, the oversight and enforcement provisions of the HAP Contract establish a broad and flexible grant of authority to HUD to oversee the operations of a property that receives Section 8 rental assistance and to take a variety of measures to respond if it determines that the Owner is not meeting its contractual obligations. Neither the Contract nor the Regulations, however, specify a single response to a specific default or management failure. Rather, they commit to HUD the decision about what sort of response to make to specific defects in property management and operations. In other words, both the Contract and HUD's regulations recognize that one size does not fit all, that any number of issues may arise in the operation of a property, and that HUD needs the discretion to decide what sort of response to make to rectify any deficiencies it identifies. Clearly, the HAP Contract and HUD's regulations commit to HUD alone the power to decide what response is appropriate.

**B. Courts Have Recognized That HUD Possesses Discretion in Enforcing Owners' Obligations Under the HAP Contract.**

The Complaint is long and makes many allegations concerning oversight of the Property and its operation by HUD, contending that HUD's conduct violated its duties and seeking relief under the APA. It is outside the scope of this letter to respond individually to the claims asserted in the Complaint and, as noted above, the Government itself has not yet filed a responsive pleading, so we are not aware of what the Government's position is on the matters contained in the Complaint. Nevertheless, to the extent that the plaintiffs in the Litigation invoke the APA to force HUD or the Court to take specific enforcement action, their claims appear to misunderstand the reach of the APA and fundamental distinctions it makes between the powers of HUD and a reviewing court here, including the powers of an agency to decide what actions to take to enforce legal obligations by regulated parties.

The basis asserted by the Plaintiffs for judicial review here is §702 of the APA, which states in part that "[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof." 5 U.S.C. §702. Under the APA, a court may, among other things, "(1) compel agency action unlawfully withheld or unreasonably delayed; [and] (2) hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law . . . ." Id., §706(1) and (2)(a). However, that power is not unfettered. According to §701, courts do not have power to overturn an action properly committed to the discretion of the overseeing agency:

This chapter applies, according to the provisions thereof, except to the extent that . . . agency action is committed to agency discretion by law. . . .

Id., §701(a)(2).

Courts have repeatedly made clear that decisions with respect to enforcement matters are properly committed to the HUD's discretion and not subject to judicial review, relying on the standard set by the U.S. Supreme Court in *Heckler v. Chaney*, 470 U.S. 821 (1985). For

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example, according to the court in *Hawkins v. U.S. Dep't. of Hous. & Urban Dev.*, the Heckler court explained that the limitations imposed by §701(a) reflect “an agency’s need to balance a number of factors which were peculiarly within the agency’s expertise, including whether agency resources were best spent on the alleged violation, whether the agency was likely to succeed if it acted and whether the enforcement action best reflected the agency’s overall policies.” *Hawkins*, No. CV H-18-3052, 2020 WL 1480012, at \*6 (S.D. Tex. Feb. 21, 2020), *report and recommendation adopted sub. nom. Hawkins v. U.S. Dep't. of Hous. & Urban Dev.*, No. CV H-18-3052, 2020 WL 1469793 (S.D. Tex. Mar. 26, 2020).

*Hawkins* involved claims similar to those asserted in the litigation, in which the plaintiffs alleged weak oversight by HUD over maintenance activities by an owner and sought to compel HUD to issue portable vouchers that would allow the residents to leave the subject property. In analyzing HUD’s discretion to select enforcement tools, the court explained the history of past efforts to subject HUD’s regulatory and enforcement powers to judicial review under the APA:

Courts have determined that many of HUD’s final agency decisions are committed to agency discretion by law. *See Westchester v. U.S. Dep't of Hous. & Urban Dev.*, 778 F.3d 412 (2nd Cir. 2015)(finding that the rejection of a grant application was not reviewable); *Inclusive Cmty. Project, Inc. v. U.S. Dep't of Hous. & Urban Dev.*, No. 3:07cv945, 2009 WL 3122610, at \*7 (N.D. Tex. Sept. 29, 2009)(unpublished)(finding that the setting of market rent for Section 8 housing was not reviewable); *Am. Disabled for Attendant Programs Today (“ADAPT”) v. U.S. Dep't of Hous. & Urban Dev.*, 170 F.3d 381, 387 (3rd Cir. 1999)(finding that the failure to carry out enforcement duties under FHA was not reviewable); *Hill v. Group Three Hous. Dev. Corp.*, 799 F.2d 385, 396 (8th Cir. 1986)(holding that HUD’s failure to take enforcement action against a Section 8 landlord was not reviewable under Sec. 701(a)(2) of the APA).

*Id.* at \*6. The *Hawkins* court rejected plaintiffs’ claims, concluding that “the decision to pursue compliance with the regulations with the existing management was committed to HUD’s discretion and is not reviewable under Section 701(a)(2).” *Id.* at \*7. <sup>2</sup>

Significantly, the party that submitted comments to TSACH opposing the issuance of bonds here, Texas Low Income Housing Information Service (a/k/a “Texas Housers”), unsuccessfully sued HUD recently, asserting similar claims with respect to HUD’s alleged failure to enforce federal civil rights laws against the City of Houston. *Tex. Low Income Hous. Information Serv. v. Carson*, 427 F. Supp. 3d 43 (D.D.C. 2019). Although the court in that case held that Texas

<sup>2</sup> The *Hawkins* court also rejected the plaintiffs’ claims that HUD’s withholding of portable vouchers was racially discriminatory in violation of the Fair Housing Act, 42 U.S.C. §3601 et seq., on the grounds, among others, that examining those claims “would require the court to review a discrete decision not to take enforcement action against the [subject property], a decision committed to agency discretion by law.” *Id.* at \*10.



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Housers did not have standing to pursue its claims, the court also pointed out that judicial review of agency enforcement actions is generally precluded by the APA:

Indeed, it is not even clear what Texas Housers would like the Court to do other than to order HUD to more effectively enforce certain laws against Houston. See generally Compl., Prayer for Relief at 36; Opp'n at 35 (asking the Court “to order HUD to end its policy of overlooking Houston's proven failures and to do something in accordance with the agency's own findings”). *And as Defendants correctly point out, the Supreme Court's decision in Heckler v. Chaney generally precludes judicial review of an agency's discrete enforcement decisions.* *Heckler v. Chaney*, 470 U.S. 821, 831, 105 S.Ct. 1649, 84 L.Ed.2d 714 (1985) (“[A]n agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion.”)(internal citations omitted; emphasis added).

427 F. Supp. 3d at 59, fn. 6 (emphasis added).

In this case, it is clear that HUD has exercised its discretion in favor of preserving the Property as a source of affordable housing in Galveston, TX. In a letter to Bobby Wilkinson, Executive Director of the Texas Dept. of Housing and Community Affairs dated February 25, 2021 (“Walsh Letter,” **Attachment B** hereto), Mary Walsh, HUD’s Director for Multifamily Housing Southwest Region, confirmed HUD’s “support for rehabilitation” of the Property, noting that “the market for affordable housing is very limited on Galveston Island and that [the Property] is the only Project Based Section 8 housing on the Island.” Walsh Letter at 1. Therefore, she concluded, “HUD is committed to, retaining and preserving this affordable housing on Galveston Island.” *Id.* Fully aware of the history of this property, its present condition, and the steps needed to rehabilitate it, HUD has properly exercised its discretion to pursue preservation and rehabilitation of the Property and a court should not second-guess that decision.

## **Conclusion**

As noted above, the Complaint is long and make a number of allegations that are outside the scope of this letter. But it is premised on the idea that that a court has the power to second-guess HUD’s enforcement decisions with respect to the Property. The HAP Contract and HUD’s Section 8 regulations establish a comprehensive regime to enforce an owner’s obligations under the HAP Contract. When called upon to do so, courts have consistently held

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that such enforcement decisions are properly committed to HUD's enforcement powers under §701(a)(2) of the APA and are not reviewable by the courts, including with respect to issuing portable vouchers as a remedy for an alleged failure to maintain a property pursuant to a HAP Contract or for alleged violations of the Fair Housing Act.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Harry J. Kelly", written in a cursive style.

Harry J. Kelly  
Partner

HJK  
Attachment

135



U.S. Department of Housing and Urban Development  
Houston Multifamily Service Office, Region VI  
Two Greenway Plaza East, Suite 200  
Houston, Texas 77046

APR 19 1984

Mr. Harris L. Kempner  
Parkland Apartments of Galveston  
PO Box 119  
Galveston, TX 77553

Dear Mr. Kempner:

SUBJECT: FHA Project No. 114-35033-NP (TX24-M000-018)  
Parkland Apartments  
Galveston, Texas

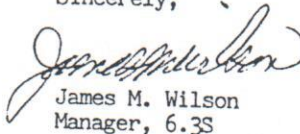
Enclosed is an executed copy of the Housing Assistance Payments (HAP) Contract for the subject project. This contract is effective May 1, 1984, and is for 192 units.

The HAP Contract and your Regulatory Agreement outline your responsibilities in regard to this project. Detailed guidance on how to administer this subsidy contract is provided in HUD Handbook 4350.3 and Philip Abrams' memorandum dated April 21, 1983, which is a guide to subsidy administration in multifamily subsidized projects.

Also, enclosed is a copy of the executed Amendatory Contract to the Rent Supplement Contract which is effective June 1, 1984.

If you have any questions, please call Paula Pollard at (713) 954-6869.

Sincerely,

  
James M. Wilson  
Manager, 6.3S

Enclosures

cc:  
Aubry Pruitt  
I. L. Sanchez-Davis  
Robert M. Ratcliffe, Jr.  
Franklin D. Smeltzer  
Ralph Iozzo  
Conrad Egan  
E. R. Thompson



## U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## AMENDATORY CONTRACT

Project Number 114-35033-NPProject Name Parkland Apartments

WHEREAS, pursuant to Section 215 of the National Housing Act ("ACT"), a certain Rent Supplement Contract ("Contract") was entered into on the day of April 25, 19 69, by and between the Secretary of Housing and Urban Development ("Government") and Parkland Apartments of Galveston. ("Owner").

WHEREAS, in order to assure the accomplishment of the purposes of the Act, it is the desire of all parties to cancel and nullify all aspects of said Contract.

NOW, THEREFORE, in consideration of the promises of the mutual covenants in said Contract and this Amendatory Contract, all parties do hereby agree that the Contract shall be and the same hereby is CANCELLED, NULLIFIED AND VOID.

No further rental assistance payments shall be made under said Contract after 1 day of June, 19 84.

This Amendatory Contract shall not be deemed to affect any proceedings taken or any act or thing done by the Owner pursuant to the Contract prior to the effective date of this Amendatory Contract, and all such proceedings properly taken, and all such acts or things properly done pursuant to and in compliance with the provisions of said Contract shall be deemed to have been properly taken, done and performed under the Contract.

IN WITNESS WHEREOF, all parties have caused this Amendatory Contract to be executed in their respective names.

PARKLAND APARTMENTS OF GALVESTON SECRETARY OF HOUSING AND URBAN DEVELOPMENT  
(Housing Owner)

By: Theresa K. Thompson By: Rogelio R. Santos

Date: 4/03/84 Date: 4-19-84



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM  
ADDITIONAL ASSISTANCE PROGRAM FOR PROJECTS WITH HUD-INSURED  
AND HUD-HELD MORTGAGES,  
24 C.F.R. PART 886, SUBPART A

**HOUSING ASSISTANCE PAYMENTS (HAP) CONTRACT**

Term No. 1

This Contract is between the United States of America, acting through the Department of Housing and Urban Development (called "HUD"), and Parkland Apartments of Galveston (called "Owner"). This Contract is executed pursuant to the United States Housing Act of 1937 (called the "Act"), 42 U.S.C. 1437, et seq., and the Department of Housing and Urban Development Act, 42 U.S.C. 3531, et seq. The housing project covered by this Contract is identified as follows:

Project Name: Parkland Apartments City: Galveston  
Street Address: 3916 Winnie  
Section 8 No.: TX24-M000-018 County: Galveston  
FHA Project No.: 114-35033-NP State: TX

**Section 1. Definitions**

- a. Family -- one or more persons eligible for and receiving Section 8 housing assistance payments in accordance with HUD regulations and administrative procedures.
- b. Contract Rent -- the rent HUD authorizes the Owner to collect for the contract unit.
- c. Utility Allowance -- an amount determined or approved by HUD as an allowance for the cost of utilities (except telephone).
- d. Gross Rent -- the sum of the contract rent and any utility allowance. If there is no utility allowance, gross rent equals contract rent.
- e. Gross Family Contribution -- the amount HUD regulations require the family to pay monthly towards the gross rent.
- f. Net Family Contribution -- the Gross Family Contribution less any utility allowance. If this amount is positive, it represents the amount HUD regulations require the family to pay monthly to the Owner. If this amount is negative, the family makes no payment to the Owner. Instead, the Owner pays this amount monthly to the family.

**Section 2. Content of Contract.** This Contract includes the exhibits listed below and the Affirmative Fair Housing Marketing Plan approved by HUD on \_\_\_\_\_ which is incorporated by reference.

- o Exhibit A: Equal Opportunity Requirements
- o Exhibit B: Schedule of Units, Rents, Equipment, Utilities and Services
- o Additional Exhibits:

**Section 3. Scope of Contract.** This Contract and its exhibits comprise the entire agreement between the parties to this Contract with respect to the matters contained in it. Neither party is bound by any representations or agreements of any kind except as contained in this Contract, in any applicable regulations, in HUD's administrative procedures, or in agreements entered into in writing (e.g., the project Regulatory Agreement).

**Section 4. Housing Owner's Certification of Authority.** The Owner certifies that the Owner has the legal authority to enter into this Contract and to lease the dwelling units covered by this Contract.

**Section 5. Term of Contract.** This Contract shall run for a period of five years, beginning May 1, 19 84, and continuing through April 30, 19 89. This Contract may be renewed for two additional five-year periods at the option of the Owner and HUD.

**Section 6. Maximum Amount of Housing Assistance Payments.**

- a. Maximum Annual Contract Commitment. Notwithstanding any other provision of this Contract (other than paragraph b) or any other contract between HUD and the Owner, HUD shall not be obligated to make assistance payments and pay PHA fees, if any, in excess of \$ 829,080 under this Contract during any contract year. In addition, HUD shall not be obligated to pay assistance for more than the total number of contract units shown in Exhibit B.
- b. HAP Reserve (Formerly Project Account). In order to ensure that housing assistance payments will be increased on a timely basis to cover increases in contract rents or decreases in family incomes, HUD shall establish and maintain a HAP Reserve out of amounts by which the maximum annual contract commitment exceeds amounts paid under the Contract for any contract year. This Reserve shall be maintained in the name of the project. The amount of housing assistance paid for any contract year may exceed the maximum annual contract commitment specified in paragraph 6a to the extent unused contract authority is available in the HAP Reserve.



- (1) The HAP Reserve may be used only for payment of housing assistance payments or other costs specifically authorized by HUD.
- (2) If HUD at any time determines that the HAP Reserve has accumulated unused contract authority in excess of the amount the project will need through the current contract year, HUD may reduce the HAP Reserve by the amount that HUD determines to be excessive.
- (3) Any amount remaining in the HAP Reserve at the end of the term of this Contract shall be applied as directed by HUD in accordance with applicable law.

**Section 7. Housing Assistance Payments and PHA Fees.** HUD shall make payments for the purposes identified in this section. Eligibility for, and the amount of, any housing assistance payments will be determined in accordance with HUD's regulations and administrative procedures.

a. **Monthly Rental Assistance.** For each contract unit occupied by an eligible family in accordance with this Contract, HUD will pay the Owner the difference between the HUD approved gross rent and the Gross Family Contribution required by HUD regulations and administrative procedures. From this amount, the Owner will pay families any amounts due them pursuant to HUD regulations and administrative procedures and Section 15c of this Contract.

b. **Compensation for Vacancy Loss.** If an occupied contract unit becomes vacant, HUD will pay the Owner 80 percent of the contract rent for up to the lesser of 60 calendar days following the date the unit became vacant or the actual number of days the unit remained vacant. Such payments will be made only in accordance with the following conditions and limitations.

- (1) The Owner shall be entitled to vacancy payments under this paragraph b only if the Owner:
  - (a) immediately upon learning of the vacancy or prospective vacancy: (1) notified HUD of the vacancy and the reasons for the vacancy; and (2) took and continued to take all feasible actions to fill the vacancy including, but not limited to, contacting applicants on the waiting list and advising them of the availability of the unit;
  - (b) has not rejected any eligible applicant except for good cause acceptable to HUD;
  - (c) when the vacancy was created by the Owner's action, administered the termination of tenancy, eviction and all related notices in accordance with State and local law, the lease and HUD regulations and administrative procedures.
- (2) HUD will pay vacancy payments only for those days on which the unit was in decent, safe and sanitary condition and available for occupancy.
- (3) If the Owner collects other payments toward the rent due for the period HUD pays vacancy payments, the Owner shall pay to HUD, or pay as HUD directs, any amount by which the sum of the HUD vacancy payments and these other payments exceeds the contract rent. "Other payments" will include rent collected from or on behalf of the former tenant, security deposits applied toward the rent, and payments from any other source.

c. **Compensation for Damages, Unpaid Rent and Other Amounts Due Under the Lease.** If a family vacates a contract unit and owes rent, other amounts due under the lease, or has left damages in excess of normal wear and tear, the Owner may request reimbursement from HUD for such items so long as the Owner: (1) has collected a security deposit in an amount permitted by HUD, and (2) has completed the move-in and move-out unit inspections required by HUD. The amount of the reimbursement will be calculated in accordance with HUD regulations and administrative procedures.

d. **PHA Fee.** Where appropriate, HUD will make payments to the Owner to be used solely to compensate PHAs for services provided in accordance with Exhibit C. The PHA fee, if any, will be the amount specified in Exhibit C.

**Section 8. HUD Not Obligated for Family's Rent.** HUD does not assume any obligation for the amount of rent payable by any family or for the satisfaction of any claim by the Owner against any family other than in accordance with Section 7.

**Section 9. Owner's Request for Housing Assistance Payments.** The Owner must prepare and submit requests for housing assistance payments in accordance with the administrative procedures established by HUD. All requests for assistance payments must be submitted on the forms prescribed by HUD and be properly executed by the Owner or the Owner's authorized agent. The Owner agrees not to request assistance payments under this Contract for families who are assisted under the Section 8 Existing Housing Program ("Finders Keepers," 24 CFR 882, Subparts A and B), the Rent Supplement Program, the Rental Assistance Program or any other similar program. The Owner understands that submission of such duplicate bills is a default under the Contract and HUD may pursue any remedies available including those outlined in Section 26 of this Contract.

**Section 10. Adjustment for Incorrect Payments.** If HUD at any time determines that the Owner has received improper or excessive housing assistance payments, HUD shall have the right to deduct the amount of such overpayments from any payments otherwise due the Owner under this Contract. The Owner agrees to promptly correct monthly requisitions for assistance payments and to promptly submit revised requisitions as directed by HUD. If HUD determines that the Owner has not received the full amount of assistance to which the project is entitled, HUD shall promptly make a corresponding adjustment in the amount of housing assistance payments.

**Section 11. Marketing of Contract Units.** In conducting marketing activities, the Owner shall comply with the project's Affirmative Fair Housing Marketing Plan and the regulations relating to fair housing advertising. The Owner shall make a good faith effort to ensure that all contract units are promptly leased to eligible lower income families to be used only as private dwellings and as the family's sole place of residence.



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Section 12. Determining Applicants' Eligibility for Assistance. The Owner agrees to promptly carry out the following actions in accordance with HUD regulations and administrative procedures:

- a. require each applicant to complete an application in a form developed by the Owner and containing the information needed to effectively screen applicants and to carry out HUD's requirements;
- b. verify all information on which the determination of the applicant's eligibility, gross family contribution, and housing assistance payment will be based;
- c. determine eligibility for assistance;
- d. notify applicants of decisions taken on their applications;
- e. execute a certification of tenant eligibility before billing HUD for assistance payments on behalf of the family; and
- f. process complaints received from applicants at any stage of the application procedure.

Section 13. Selection and Admission of Applicants. The Owner agrees to:

- a. establish only preferences and priorities approved by HUD;
- b. select families so that the Owner achieves the economic mix required by HUD's regulations and administrative procedures;
- c. offer any available contract units to eligible applicants who meet the Owner's tenant selection standards provided that sufficient contract authority is available pursuant to Section 6a of this Contract;
- d. offer any available contract unit to over-income applicants only when no eligible and otherwise qualified applicant is on the project's waiting list and only after complying with HUD's administrative procedures related to admission of over-income applicants;
- e. execute leases in the form prescribed or approved by HUD and do so before billing HUD for assistance payments;
- f. assign bedroom size in accordance with HUD's administrative requirements;
- g. inspect the unit with the family before the family moves in, document the condition of the unit on a written inspection report signed by both the Owner and the family, and certify that the unit is decent, safe and sanitary;
- h. collect and maintain security deposits only in accordance with HUD regulations and administrative procedures; and
- i. not collect any other amounts as a condition for admission to the project, unless HUD gives the Owner specific written authorization to do so.

Section 14. Maintenance. The Owner agrees to:

- a. maintain and operate the contract units and related facilities so as to provide decent, safe and sanitary housing as defined by HUD;
- b. regularly clean and maintain all common areas, equipment and grounds, and make repairs with reasonable promptness; and
- c. respond promptly to HUD's Physical Inspection Reports and to implement corrective actions within a reasonable time.

Section 15. General Management. The Owner agrees to:

- a. provide the utilities, services, and equipment specified in Exhibit B;
- b. not charge any family an amount in excess of the Net Family Contribution unless HUD gives the Owner specific written authorization to do so;
- c. pay monthly to the family the amount of the Net Family Contribution when the Net Family Contribution is negative;
- d. evaluate the accuracy of any utility allowance at least annually and submit to HUD documentation of the analysis and, if needed, recommendation for changes in the amount of any utility allowance;
- e. complete recertifications of each family's income and allowances in accordance with HUD regulations and administrative procedures;
- f. promptly follow-up with any family which does not provide the required recertification data within the established time schedules and initiate HUD-prescribed enforcement actions;
- g. adjust families' gross contributions in accordance with HUD regulations and administrative procedures;
- h. request a family to move to an appropriately-sized unit when the size or composition of the family has changed and HUD procedures require the Owner to request such unit transfers;
- i. change, suspend or terminate a family's housing assistance payments only in accordance with HUD regulations and administrative procedures. The Owner agrees that suspension or termination of a family's housing assistance payments shall not affect the family's rights otherwise available under the lease, including the right to remain in the contract unit;



- j. terminate tenancies of families in accordance with applicable State and Federal law, the lease and HUD regulations and administrative procedures; and
- k. inspect a unit with the family when the family moves out and document the condition of the unit on a written inspection report signed by both the Owner and the family.

Section 16. Discriminatory Practices Prohibited. The Owner agrees not to discriminate based upon race, color, creed, religion, sex, age, national origin or handicap. The Owner also agrees not to discriminate against families with children unless the project is specifically designed for elderly families. The Owner agrees to comply with the Equal Opportunity Requirements attached as Exhibit A to this Contract.

Section 17. Reduction in Number of Contract Units.

- a. If the Owner fails, for a continuous period of six months, to have at least 80 percent of the contract units leased or available for leasing to income-eligible families, HUD may, on 30 days notice to the Owner, reduce the number of contract units to not less than the number of units under lease or available for leasing by eligible families, plus 10 percent of such number.
- b. At the end of the term of this Contract, HUD may, upon notice to the Owner, reduce the number of contract units to the greater of: (1) the number of units under lease or available for leasing by eligible families at that time; or (2) the average number of units so leased or available for leasing during the prior 12 month period, plus 10 percent of such number.
- c. HUD will agree to an amendment of the Contract to provide for subsequent restoration of any reduction made pursuant to paragraph a or b if contract and budget authority and units are available and HUD determines that the restoration is justified as a result of changes in demand and in light of the Owner's record of compliance with his/her obligations under the Contract.

Section 18. Rent Adjustments. Contract rents and utility allowances shall be adjusted by HUD in accordance with HUD regulations and administrative procedures. The new contract rents, utility allowances and gross rents will be incorporated into this Contract as a revision to Exhibit B. HUD will make housing assistance payments commensurately with the HUD-approved changes in rents and utility allowances, up to the maximum amount of assistance authorized by Section 6 of this Contract. The Owner agrees that rents charged for other comparable units in the project will not be less than the contract rents, except when authorized in writing by HUD.

Section 19. Changes in Contract Amount.

- a. HUD will increase the maximum annual contract commitment as necessary to provide assistance payments for: (1) any additional contract units authorized by HUD; (2) HUD-approved rent increases; (3) decreases in family contribution for units currently authorized to receive assistance under this Contract; and (4) PHA fees.
- b. HUD may reduce the maximum annual contract commitment commensurately with any reduction in the number of contract units made pursuant to this Contract.

Section 20. Recordkeeping Requirements. The Owner agrees to retain, for at least three years, all correspondence, materials, and documentation related to processing of: applications for admissions and notices of decisions made on those applications; certifications and recertifications of tenant eligibility; HUD-required move-in and move-out unit inspections; special claims and regular monthly vouchers; evictions; suspension and termination of assistance; and other actions which the Owner is required to perform in carrying out this Contract. The Owner shall maintain as confidential all information which, if disclosed, would constitute an unwarranted invasion of a family's privacy.

Section 21. Reports and Access to Premises and Records. The Owner shall supply HUD with any information and reports pertinent to the Contract as reasonably may be required from time to time by HUD. The Owner shall permit HUD or any of its duly authorized representatives to have access to the premises and, for the purpose of audit and examination, to have access to any books, documents, papers and records of the Owner and his/her Management Agent that are pertinent to compliance with this Contract, including the verification of information pertinent to the housing assistance payments.

Section 22. Flood Insurance. If the project is in a special flood hazard area, the Owner agrees that the project will be covered, during its anticipated economic or useful life, by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less.

Section 23. Clean Air Act and Federal Water Pollution Control Act. This Section does not apply if five times the dollar amount in Section 6a of this Contract, as of the first day of this term, is \$100,000 or less. In compliance with regulations issued by the Environmental Protection Agency ("EPA"), 40 C.F.R. Part 15, pursuant to the Clean Air Act, as amended ("Air Act"), 42 U.S.C. 7401, et seq., the Federal Water Pollution Control Act, as amended ("Water Act"), 33 U.S.C. 1251, et seq., and Executive Order 11738, the Owner agrees to:

- a. not utilize any facility in the performance of this Contract or any nonexempt subcontract which is listed on the EPA List of Violating Facilities pursuant to section 15.20 of the regulations;
- b. promptly notify HUD of the receipt of any communication from the EPA indicating that a facility to be utilized for the Contract is under consideration to be listed on the EPA List of Violating Facilities;
- c. comply with all the requirements of section 114 of the Air Act and section 308 of the Water Act relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in section 114 of the Air Act and section 308 of the Water Act, and all regulations and guidelines issued thereunder; and



- d. include or cause to be included the provisions of this Section in every nonexempt contract and take such action as HUD may direct as a means of enforcing such provisions.

Section 24. Interest of Members, Officers, or Employees of PHA, Members of Local Governing Body or Other Public Officials. No member, officer, or employee of the PHA, if any, which is a party to the Contract, no member of the governing body of the locality (city and county) in which the project is situated, no member of the governing body of the locality in which the PHA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in this Contract or in any proceeds or benefits arising from it. However, a member or officer of the PHA may be a tenant in the project.

Section 25. Interest of Member of or Delegate to Congress. No member of or delegate to the Congress of the United States of America or resident commissioner shall be admitted to any share or part of this Contract or to any benefits which may arise from it.

Section 26. Owner Default Under Contract.

- a. Events of Default. HUD may consider the Owner to be in default under this Contract when the Owner has:
- (1) violated or failed to comply with any provision or obligation of this Contract, including correction of any deficiency identified by HUD in its reviews of the Owner's administration of this Contract;
  - (2) asserted or demonstrated an intention not to perform some or all of his/her obligations under this Contract or any lease;
  - (3) violated or failed to comply with any applicable HUD regulation or with any term of the HUD-held or insured mortgage or regulatory agreement or any lease; or
  - (4) furnished any false statements or misrepresentations to HUD in connection with HUD mortgage insurance, loan processing, or administration of this Contract.
- b. Corrective Actions. Upon determining that a default has occurred, HUD will notify the Owner, by certified mail, of the nature of the default, the actions the Owner must take to cure the default, and the time within which the Owner must complete the corrective actions. If the Owner does not implement the requested actions, or other corrective action acceptable to HUD, within the prescribed time or does not do so to the satisfaction of HUD, HUD may terminate this Contract in whole or in part or may initiate any of the following actions.
- (1) Actions by Court Order.
    - (a) Take possession of the project, bring any action necessary to enforce any rights of the Owner related to operation of the project, and operate the project in accordance with the terms of this Contract until such time as HUD determines that the Owner is again in a position to operate the project in accordance with the terms of this Contract and in compliance with the requirements of any note, mortgage, or regulatory agreement.
    - (b) Collect all rents and other receipts of the project and use such receipts to pay the Owner's obligations under this Contract and under the note and mortgage and the necessary expenses of maintaining and operating the project.
    - (c) Apply to any court, State or Federal, for specific performance of this Contract, for an injunction against any violations of this Contract, for the appointment of a receiver to take over and operate the project in accordance with the terms of the Contract, or for such other relief as may be appropriate. These remedies are appropriate since the injury to HUD arising from a default under any of the terms of this Contract could be irreparable and the amount of damage would be difficult to ascertain.
    - (d) Initiate action to recover any overpayments.
  - (2) HUD Administrative Actions.
    - (a) Pay housing assistance payments directly to the mortgagee in the event of default under the mortgage.
    - (b) Reduce or suspend housing assistance payments until the default under this Contract has been cured to the satisfaction of HUD.
    - (c) Withhold housing assistance payments until the default under this Contract has been cured to the satisfaction of HUD.
    - (d) Reduce the number of contract units when the Owner has failed to make a good faith effort to lease all contract units to eligible families.
    - (e) Suspend, debar or otherwise restrict participation in any HUD program.
    - (f) Initiate action to recover any overpayments.
- c. Remedies Not Exclusive and Non-Waiver of Remedies. The availability of any remedy under this Contract shall not preclude the exercise of any other remedy under this Contract or under any provisions of law, nor shall any action taken in the exercise of any remedy be considered a waiver of any other rights or remedies. Failure to exercise any right or remedy shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

Section 27. Impact of Other Servicing Agreements on this Contract.

- a. Assignment of Contract or Change of Ownership. HUD will approve a change of ownership during the term of this Contract only if the purchaser demonstrates, to HUD's satisfaction, an ability to administer this Contract and agree to carry out all terms of this Contract.
- b. Assignment of Mortgage. In the event the mortgage is assigned to HUD, HUD may terminate this Contract, temporarily reduce or suspend payment of amounts due under this Contract, or take any other action available under Section 26 of this Contract.
- c. Prepayment of Mortgage. Prepayment of the mortgage shall not, by itself, affect any rights of the Owner or HUD under this Contract.

Section 28. Effect on Other Agreements. To the extent that this Contract conflicts with any agreement(s) between the Owner and HUD, the provisions of this Contract shall be controlling. The provision(s) of the other agreement(s) shall be considered to be amended by the terms of this Contract. Such amendments shall be valid as if such amendment had been made directly to such agreement(s). These amendments shall be effective only during the term of this Contract.

WARNING: 18 U.S.C. 1001 provides, among other things, that whoever knowingly and willingly makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

Section 29. Signatures.

Owner PARKLAND APARTMENTS OF GAI VESTON

By Harris L. Kempner  
HARRIS L. KEMPNER  
 (Name)

TRUSTEE  
 (Official Title)

Date 7/23/84, 1984

HUD Samuel R. Pierce, Jr.

By James M. Wilson  
JAMES M. WILSON  
 (Name)

Manager  
 (Official Title)

Date 7/23/84, 1984



## EXHIBIT B

## SCHEDULE OF UNITS, RENTS, EQUIPMENT, UTILITIES AND SERVICES

Project Name: Parkland ApartmentsNo. of Units: 192HAP Contract 4-30Section 8 No.: TX24-M000-018Section 8: 192Year Ends 4-30Total 192

Unit Size (1)	No. of Section 8 Contract Units (2)	Contract Rent (\$) (3)	Utility Allowance (PBE) \$ (4)	Gross Rent (3 + 4)
<u>1</u> Bdm	<u>10</u>	\$ <u>261</u>	\$ <u>--</u>	\$ <u>261</u>
<u>2</u> Bdm	<u>92</u>	\$ <u>291</u>	\$ <u>--</u>	\$ <u>291</u>
<u>3</u> Bdm	<u>64</u>	\$ <u>337</u>	\$ <u>--</u>	\$ <u>337</u>
<u>4</u> Bdm	<u>24</u>	\$ <u>372</u>	\$ <u>--</u>	\$ <u>372</u>
<u>5</u> Bdm	<u>2</u>	\$ <u>387</u>	\$ <u>--</u>	\$ <u>387</u>
<u>  </u> Bdm	<u>  </u>	\$ <u>  </u>	\$ <u>  </u>	\$ <u>  </u>
<u>  </u> Bdm	<u>  </u>	\$ <u>  </u>	\$ <u>  </u>	\$ <u>  </u>
<u>  </u> Bdm	<u>  </u>	\$ <u>  </u>	\$ <u>  </u>	\$ <u>  </u>

## EQUIPMENT, UTILITIES AND SERVICES INCLUDED IN RENT:

EQUIPMENT	UTILITIES	SERVICES
<input checked="" type="checkbox"/> Range	<input checked="" type="checkbox"/> Heat	<input type="checkbox"/> Parking
<input checked="" type="checkbox"/> Refrigerator	<input checked="" type="checkbox"/> Cooking	<input checked="" type="checkbox"/> Laundry Facilities
<input type="checkbox"/> Air Conditioner	<input checked="" type="checkbox"/> Hot Water	<input checked="" type="checkbox"/> Other (Specify) <u>Grounds maintenance</u>
<input checked="" type="checkbox"/> Kitchen Exhaust Fan	<input checked="" type="checkbox"/> Air Conditioning	<u>Garbage pick-up</u>
<input type="checkbox"/> Disposal	<input checked="" type="checkbox"/> Lights, etc.	
<input type="checkbox"/> Dishwasher	<input type="checkbox"/> Other (Specify) _____	
<input type="checkbox"/> Carpet	_____	
<input type="checkbox"/> Drapes		
<input checked="" type="checkbox"/> Other (Specify) <u>venetian blinds</u>		

The Owner hereby acknowledges receipt of this Exhibit B and agrees that the above rents will supersede all previous Exhibits B and become effective on May 1, 1984.

[Signature]  
(Owner's Signature)

TRUSTEE  
(Title)

APRIL 11, 1984  
(Date)

## Attachment C

## **Poll for Rehab or Remolded Sandpiper Cove Apartments**

**What do you think about the rehabilitation of Sandpiper Cove /  
Compass pointe Apartments? This is what I think:**

**"I am also a resident living in #25 and I am all for rehabbing Sandpiper Cove apartments for the safety of our children, seniors, and families. I have been living here through three different names of this property, so that tells you that I have been here for at least 25 years. It matters to me that we have a decent place to live. Companies like restaurants who deliver and even some family members is scared to come here because of our past way of living and the way it has been here. I believe that the new management company should have the opportunity to change this apartment complex for the better. I know that I am not the only one who see new lights put on the buildings so that we could see at night. I have also noticed that there are companies like the a/c company, the electric company, and plumbing company here all of the time steadily working on stuff.**

**Please read this...if we all corporate together, we could get this community back together and feel safe. Please sign this if you agree with me. I have signed first just to let you know that I am serious."**

**Thanks,**

**John Matthews**

## Poll for Rehab or Remolded Sandpiper Cove Apartments

Name	<u>Charlotte R. Tillis</u>	Apt. #	<u>23</u>
Name	<u>Dominique Johnson</u>	Apt. #	<u>46</u>
Name	<u>Jasna R. Brown</u>	Apt. #	<u>44</u>
Name	<u>Mariana Dominguez</u>	Apt. #	<u>42</u>
Name	<u>Esmeralda Dominguez</u>	Apt. #	<u>51</u>
Name	<u>Jenni Fontana</u>	Apt. #	<u>45</u>
Name	<u>Barnae McGaskey</u>	Apt. #	<u>    </u>
Name	<u>LIEA TURNER</u>	Apt. #	<u>40</u>
Name	<u>Hattie Whitley</u>	Apt. #	<u>49</u>
Name	<u>Joni Hiley</u>	Apt. #	<u>161</u>
Name	<u>Baven Hughes</u>	Apt. #	<u>39</u>
Name	<u>Jester Earls</u>	Apt. #	<u>39</u>
Name	<u>Rhea Regan</u>	Apt. #	<u>51</u>
Name	<u>Roy</u>	Apt. #	<u>31</u>
Name	<u>Mr. Men</u>	Apt. #	<u>1</u>
Name	<u>Phyllis P. Panno</u>	Apt. #	<u>3</u>
Name	<u>Jamona Walker</u>	Apt. #	<u>8</u>
Name	<u>Floyd Moore</u>	Apt. #	<u>10</u>



## Poll for Rehab or Remolded Sandpiper Cove Apartments

Name	<del>3000</del> Cammer Han	Apt. #	9
Name	Tralisha Haywood	Apt. #	41
Name	Jacqueline Scurry	Apt. #	56
Name	<del>By B. J. J.</del>	Apt. #	60
Name	Tonya Williams	Apt. #	50
Name	Christina Barrientos	Apt. #	142
Name	Tonya Lerner	Apt. #	148
Name	Jaceli Fieds	Apt. #	98
Name	Antiquan Wiley	Apt. #	95
Name	Paul Chapman	Apt. #	33
Name	<del>Chapman</del>	Apt. #	54
Name	Ki Kamman	Apt. #	26
Name	Ally L	Apt. #	24
Name	Rogell Alex	Apt. #	99
Name	LaBattin	Apt. #	1
Name	Mangumier	Apt. #	29
Name	Adria-Lynn Lavine	Apt. #	28
Name	Allyz ay	Apt. #	32

## Poll for Rehab or Remolded Sandpiper Cove Apartments

Name	<u>Carolyn</u>	Apt. #	<u>61</u>
Name	<u>Shirley Dean</u>	Apt. #	<u>59</u>
Name	<u>Addie Henderson</u>	Apt. #	<u>82</u>
Name	<u>Janet</u>	Apt. #	<u>88</u>
Name	<u>Wilfred Lewis</u>	Apt. #	<u>71</u>
Name	<u>Nakia Battiste</u>	Apt. #	<u>119</u>
Name	<u>Monica Vahle</u>	Apt. #	<u>117</u>
Name	<u>Joan</u>	Apt. #	<u>157</u>
Name	<u>W. G. D.</u>	Apt. #	<u>187</u>
Name	<u>W. H.</u>	Apt. #	<u>93</u>
Name	<u>Harold Sellers</u>	Apt. #	<u>13</u>
Name	<u>Larry Brooks</u>	Apt. #	<u>26</u>
Name	<u>Linnie Sadler</u>	Apt. #	<u>21</u>
Name	<u>Margaret O'Neal</u>	Apt. #	<u>16</u>
Name	<u>Lyndean Saylor</u>	Apt. #	<u>18</u>
Name	<u>Chas McCar</u>	Apt. #	<u>22</u>
Name	<u>John Mathews</u>	Apt. #	<u>25</u>
Name	<u>Black Richardson</u>	Apt. #	<u>84</u>



## Poll for Rehab or Remolded Sandpiper Cove Apartments

Name	<u>Khalon Home &amp; Sharon Home</u>	Apt. #	<u>62<sup>#</sup></u>
Name	<u>Robinson, Chekeva</u>	Apt. #	<u>78</u>
Name	<u>Daron Bolden</u>	Apt. #	<u>101</u>
Name	<u>Jonnyell Annin</u>	Apt. #	<u>99</u>
Name	<u>Patricia Phil Lips</u>	Apt. #	<u>102</u>
Name	<u>Angela</u>	Apt. #	<u>106</u>
Name	_____	Apt. #	_____
Name	_____	Apt. #	_____
Name	_____	Apt. #	_____
Name	_____	Apt. #	_____
Name	_____	Apt. #	_____
Name	_____	Apt. #	_____
Name	_____	Apt. #	_____
Name	_____	Apt. #	_____
Name	_____	Apt. #	_____
Name	_____	Apt. #	_____
Name	_____	Apt. #	_____

## Poll for Rehab or Remolded Sandpiper Cove Apartments

Name _____	Apt. # _____
Name _____	Apt. # _____
Name _____	Apt. # _____
Name _____	Apt. # _____
Name _____	Apt. # _____
Name _____	Apt. # _____
Name _____	Apt. # _____
Name _____	Apt. # _____
Name _____	Apt. # _____
Name _____	Apt. # _____
Name _____	Apt. # _____
Name _____	Apt. # _____
Name _____	Apt. # _____
Name _____	Apt. # _____
Name _____	Apt. # _____
Name _____	Apt. # _____
Name _____	Apt. # _____

Sandpiper Cove Tenant Council  
3916 Winnie Street  
Galveston, TX 77550

June 19, 2020

J.Allen Management Co., Inc. at Sandpiper Cove  
3916 Winnie Street  
Galveston, Texas 77550  
*Sent via email to: [sandpiper.manager@jallenmgmt.com](mailto:sandpiper.manager@jallenmgmt.com)*

Tammy Fotinos  
Director of Contract Renewal and Rent Adjustments  
Attention: Contracts Department, Re: Project Number TX24M000018 and Sandpiper Cove  
Southwest Housing Compliance Corporation  
1124 South IH 35, Austin, TX 78704  
*Sent via email to: [tammyf@shccnet.org](mailto:tammyf@shccnet.org), [contracts@shccnet.org](mailto:contracts@shccnet.org)*

Christopher Akbari and Miranda Sprague  
The ITEX Group LLC and Galveston 3916 Winnie Street, LP  
9 Greenway Plaza, Suite 1250  
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**CC:** Raynold Richardson, Senior VP, J. Allen Management Co., Inc., [ray@jallenmgmt.com](mailto:ray@jallenmgmt.com)  
**CC:** Michael Cummings, VP, Southwest Housing, [michaelc@shccnet.org](mailto:michaelc@shccnet.org)  
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**CC:** Galveston Housing Authority, [dhasst@ghatx.org](mailto:dhasst@ghatx.org)

RE: Sandpiper Cove – Tenant Comments on Request for HUD Rent Increase (Mark Up To Market Contract Renewal)

Dear Sandpiper Cove Owners, Managers, and HUD:

We are residents representing the Tenant Council of Sandpiper Cove apartments, located at 3916 Winnie Street, Galveston, Texas. We have received notice that our homes are being sold to new owners this year and that the proposed new owner, ITEX, is asking HUD to pay more for rent at Sandpiper Cove. The May 22, 2020 “Notice to Residents of Intention to Submit a Request to HUD for Approval of an Increase in Maximum Permissible Rents” sets a 30-day period for the residents to comment on the proposed rent increases. Here we submit our comments.

We know that HUD requires the owner to certify that they complied with tenant comment procedures, including that the owner must evaluate all of our concerns listed in this letter. We expect for HUD and the owners and management to respond to our demands, questions, and concerns before any actions are taken. We as tenants need to be consulted, and our concerns need to be taken seriously, while any actions regarding Sandpiper Cove move forward.

## **IMMEDIATE DEMANDS**

- 1. Guarantee healthy and safe conditions immediately. We do not consent to a waiver of any health and safety concerns.**

We ask that HUD first and foremost consider the lives of tenants currently residing in Sandpiper Cove in responding to ITEX’s request. As tenants at Sandpiper Cove, we have lived through years of serious problems, with continuation of issues such as open sewage leaks endangering our family members to this day. The most recent REAC inspection score that we know of at Sandpiper Cove was a 33 out of 100, which is unacceptable. J.Allen VP Raynold Richardson told us verbally that they did an internal inspection and thought the REAC score should really be an 18, showing even worse conditions exist than that last

inspection found. Scores like these require HUD to take immediate actions to protect our lives by providing vouchers and mobility assistance so we can move to a safe location *now*.

In ITEX's rent increase request documents, ITEX requests a waiver of exigent health & safety risks. Such a waiver seems to allow these deplorable conditions to endure for the remainder of 2020 and until the rehab occurs. Owners should not be able to waive a requirement to keep current residents healthy and safe just because many months in the future they plan to remove us and renovate. We are people living our lives and raising our children, day in and day out, in these conditions, and we do not consent to waiver of any health and safety concerns. A waiver would only be appropriate if no one were living at the property. A waiver should not be necessary because these concerns need to be addressed immediately, or people need to be moved off the premises.

**2. Fully explain the proposed plan for what will and won't be repaired and deadlines for the repairs.**

ITEX acknowledges the recent failing REAC inspection score and states, "we are purchasing the property to rehabilitate and *make it* safe and sanitary." This demonstrates knowledge of the unacceptable conditions that we residents are currently forced to live in. In the appraisal, on the other hand, ITEX's Ms. Sprague states to the appraiser that ITEX plans to "complete any and all immediate and necessary repairs," which seems inconsistent with the request for a waiver of health and safety concerns.

We need a full detailed listing of what specific repairs we can expect and the deadline for their completion. We need vouchers and mobility assistance immediately while these repairs take place.

**3. Offer housing vouchers to all current Sandpiper residents, using enhanced Small Area Fair Market Rents, to allow the opportunity to leave Sandpiper with sufficient rent to remain in Galveston if we choose.**

ITEX's request to raise rent amounts to HUD are based on their intention to relocate all tenants out of the complex to unknown locations, and then to rehab the buildings to market rate conditions. The deal appears to require that tenants leave the premises and live elsewhere for the time that the rehab takes place. After years of inadequate conditions we have suffered, and considering the lack of safe and decent conditions currently at Sandpiper, we demand that HUD provide either Housing Choice Vouchers or Tenant Protection Vouchers to all residents immediately. These vouchers must come with payment standards based on enhanced Small Area Fair Market Rents to give us a reasonable choice to find a new place to live, and we demand relocation assistance and mobility counseling to make this transition. The vouchers should provide the option to all tenants to permanently relocate elsewhere, or to choose to return to Sandpiper. Our children should not have their schooling interrupted; vouchers must be provided now before the school year starts.

Of course, in the meantime and for any tenants who do remain for any reason, HUD should refuse to waive exigent health and safety concerns, and instead require owners and management to ameliorate problems to the greatest extent possible immediately.

**4. Test for lead, asbestos, and other toxins in water and surfaces at Sandpiper immediately.**

Regarding water quality, the appraisal in ITEX's rent increase documents states, "All water supply will be checked to ensure no lead contamination and if necessary, water supply lines will be replaced." This is insufficient, and a full evaluation must be conducted for lead and other contaminants throughout the

property. Testing of water and surfaces must include lead, asbestos, and other contaminants. At least one child living at Sandpiper has tested for high levels of lead in their blood. The water in some units is brownish in the morning, and we have to let it run to see it become clear. We have experienced foul taste, discoloration, and other problems resulting from the water. Clean, safe water must be available at all times. All areas of the property must be confirmed safe from toxins in order for our children to play safely.

All testing, remediating or encapsulating, and inspection should be performed by people licensed in this type of work. Assure that there is adequate funding to cover treatment of any item with lead, asbestos, or other contaminants. Inspections should be performed by a licensed, independent third party inspector. Annual re-inspections and remediation of any encapsulated areas and a system of notifying residents of any findings should be agreed upon by the Tenant Council prior to proceeding with the work.

**5. Ensure meetings for Tenant Council with responsible HUD officials with power to take action, including the Regional Director, Multifamily Director, and Fair Housing and Equity Office.**

After we received ITEX's May 22 letter, we requested meetings with management and potential owners. We met on June 12, 2020 with Mr. Raynold Richardson, representing the buyer's group. He answered questions but was not able to commit to necessary repairs such as AC units, and he could not speak on behalf of HUD, which apparently is responsible for many of these matters of concern. As a part of our comments on ITEX's rent increase request to HUD, we reiterate our request to meet with HUD officials with power to take action, including the Regional Director, Multifamily Director, and Fair Housing and Equity Office, including having the opportunity to get answers in detail, to voice our concerns, and to establish a relationship moving forward. HUD officials have refused to meet with us as tenants to discuss our concerns and contemplate plans. This is unacceptable. HUD has clearly met with proposed buyers. HUD owes tenants the same consideration.

**6. Answer our outstanding questions.**

The rent increase documents from ITEX to HUD raised a number of related questions for us that we need to be answered:

- What is the detailed timeline of the proposed renovations? If HUD allows this requested rent increase, what are the full plans for tenants during the renovation?
- What will relocation assistance and counseling look like for tenants?
- How can we ensure that we have access to housing vouchers that allow us to move rather than endure the remainder of 2020 in bad conditions and the long-term relocation?
- What will be done to afford tenants relocation choice rather than being compelled to move wherever the new owner wants?
- How will tenants who wish to return after renovations be assured of the right to do so?
- How has HUD explored options to transfer Sandpiper Cove to another, better, safer location and allow tenants to move to a better location on Galveston Island?
- What are the chances of this planned renovation by ITEX happening if HUD does not approve the rent increase? Do tenants' rights change depending on whether HUD approves it?
- If the rent increase is approved but the property is not properly renovated or not renovated at all, what would be the impact on tenants? What would be the repercussions for ITEX?

## FOR THE PERMANENT SOLUTION

### **7. Rebuild Sandpiper in a different location on Galveston Island, near amenities and away from industrial zones, pollution from the port, concentrated poverty, and repeated flooding.**

Beyond the problems with the buildings themselves are life-threatening problems with the location of the property. We have been talking to Texas Housers, and they have written up a Fair Housing and site analysis that is attached as an addendum to this letter, with maps and information about some of these issues described below.

Flooding: The appraisal reports Sandpiper is in the high risk AE flood zone. Sandpiper has flooded repeatedly and will continue to do so. Many of us have experienced those floods and do not want to go through it again. The floodplain information in the appraisal says that “Any new construction or major redevelopment would have to have its ground floor lines above this known elevation. The digital map references 11’ while the older source displayed 11’ to 13” [sic] near Sandpiper’s location.” (We believe this is meant to say *11 feet to 13 feet*.) FEMA flood maps indicate that Sandpiper Cove is in Special Flood Hazard Areas classified as AE (12) and AE (13). This means that the area around Sandpiper has a 1% chance of flooding between 12 and 13 feet above the ground surface; any construction must be 12 and 13 feet off the ground where appropriate. Recent nearby development by HUD of public housing at Cedar Terrace site elevated those units 11 feet above ground. How will we be adequately protected by only elevating Sandpiper 11 inches?

Even elevating the buildings is not a solution for repeated flooding of the grounds of the property and the surrounding streets, which leave us, and our children who play outside, exposed to raw sewage from infrastructure overflows both on the property and from the surrounding areas (including potentially to toxins from the adjacent industrial sites). According to a study by Texas A&M University Planning Department, the Sandpiper site has an extremely high social vulnerability rating. Repeated street and ground flooding isolates us, because many of us do not have cars and need to be able to walk or bike to work, to the store, to school, and other places.

Industrial Area: Sandpiper Cove is currently located on the edge of a large industrial area that includes a port and is zoned for Heavy Industry. This is not a healthy area for people to live, with air pollutants and other hazards so close by. The industrial zone includes environmental hazards site within 1 mile of the property and several others just outside that 1 mile radius.

Railroad and High Voltage Lines: Sandpiper is within 1000 feet of a large network of active railroad lines serving in the nearby industrial area and Port of Galveston. A high voltage transmission line runs along the entire south side of the property. These nearby hazards are unacceptable risks to our health.

Racial Segregation: Sandpiper Cove is located in a census tract with a population that is 53% Black (compared to 18% of overall Galveson population is Black).

Poverty Rate: Sandpiper Cove is located in a census tract with a 58.2% poverty rate, and 71% of children under age 18 living in poverty (compared to 20.8% poverty rate and 30% for children in the city overall). HUD has classified this tract and an adjacent tract as “racially and ethnically concentrated areas of poverty.”

As residents of Sandpiper Cove where much of our resident population is Black, we see the exposure of Black people at Sandpiper to flooding, industrial risks, concentrated poverty, and racial segregation as an ongoing legacy of the racism that exists in Galveston. Sandpiper is on the north side of the island, north of Broadway, which is the area of historical Black settlement and concentrated poverty in Galveston, the area that has not been elevated or protected by the seawall in the wake of the hurricanes of the last century. White neighborhoods were protected by the seawall; the Black northside neighborhoods were not. It is unacceptable to continue to expose Black residents to these dangers through HUD-subsidized housing, in the long tradition of racist housing practices. We understand that HUD plans to build other replacement housing on the north side of the island, north of Broadway, in these racially segregated areas, rather than in safer, higher opportunity areas of the island. Under Civil Rights and Fair Housing laws, HUD is legally prohibited from ignoring this racism.

We are concerned that rebuilding Sandpiper in this same problematic location will cause a repeat of previous unsuccessful attempts to deal with issues here. After Hurricane Ike in 2008, the first floor of the property was rehabbed. Unfortunately, the fact that the property is located in a flood prone area with inadequate public infrastructure resulted in the property quickly returning to a substandard state following the rehabilitation after Hurricane Ike, including the quick reemergence of mold. The ITEX proposal does not even propose this previous failed degree of repairs in that the current proposal calls for existing sheetrock to be retained. We don't want to repeat that again; we are tired of these failed attempts to remedy the problems, and we think it can only be truly resolved by rebuilding in a different, less segregated, higher opportunity area of the island. Galveston is our home and we want to stay, but we cannot be subject to these conditions.

Given all of these problems that make Sandpiper an unacceptable place to live, HUD should require relocating Sandpiper to higher, safer ground, and giving residents input and choice to relocate to somewhere healthier, safer, and where we would have a better chance for success.

ITEX's proposed plan includes moving people twice, finding temporary housing somewhere, the possibility of people who call the island home being forced to move off the island, and paying for lead and asbestos inspections plus remediation. These expenses for ITEX and the hardships for tenants of moving twice could all be avoided if funds were devoted to developing a new property on higher ground near amenities with vouchers for housing choice. This would lead to a better result for the people involved, the very people who are supposed to benefit from this housing assistance.

**8. Respond thoroughly to our detailed questions about the rent increase and proposed rehabilitation. If Sandpiper is to be rebuilt in its current location, the rehabilitation must be sufficient to address all of the systemic problems in the facilities, including HVAC, plumbing, mold, electrical, and flood mitigation.**

While we demand a systemic solution involving housing vouchers and relocation of Sandpiper, we also want to state some of the many problems with the proposal used to justify the proposed rent increase. HUD must not consider any rent increase until each of these issues is addressed.

Previous insufficient efforts to refurbish Sandpiper convince us that this property can never sustainably house our residents in decent, safe, sanitary condition. At its core, the factor that has produced the disastrous living conditions here and that have produced this poorly conceived plan is one inescapable fact: We believe that the reason these conditions at Sandpiper Cove have been allowed by HUD, the property owners, and other parties is because a high proportion of the tenant population is Black. The



situation here represents ongoing racism and violation of the civil rights of tenants, as we are being pushed into racially segregated areas and substandard conditions. By virtue of our incomes and discrimination, we have no other options to live elsewhere, and we are trapped by this cycle of racism. We depend on HUD assistance to have a roof over our heads during this pandemic, but that should not remove from us the options for choice and respect for our civil and human rights. Just as racism in policing functions to take Black lives, the ongoing and unabated conditions in our HUD-assisted housing that we depend upon, and the inadequate proposed “solutions,” also constitute an attack on our Black lives.

If Sandpiper is to be rebuilt in its current location, the rehabilitation must be sufficient to address all of the systemic problems in the facilities, including HVAC, plumbing, mold, electrical, and flood mitigation. The May 22, 2020 notice from J. Allen Management to residents generally describes repairs they plan for Sandpiper Cove. We have a number of questions and concerns about the information provided.

STATEMENTS IN NOTICE FROM J. ALLEN ARE HIGHLIGHTED IN GREY:

The proposed increase is needed for the following reason(s):

1. To meet all operational costs.
2. To provide social services for residents.
3. To rehabilitate the development. Site Work-replace ADA Ramps, Sidewalks, Paving, Striping, provide erosion control, grading, landscaping; install new mailbox center, replace all gutters and roofs on all 24 buildings, exterior brick repair, replace siding, replace doors and broken windows, repair stairs, landings, and railings, perimeter fence, install additional lighting; Interiors-renovate existing community building, demo all units down to sheetrock and rehab, add ADA compliant units; HVAC, Electrical, Plumbing, Hazardous Removal-replace with energy star appliances, install new service panel boxes, replace hot water boiler, lead based paint & asbestos remediation (as needed), all interior plumbing.

“1. To meet all operational costs.”

Has J. Allen properly budgeted to meet the real costs of repairing and operating this property? For years, this property has operated in substandard, life-threatening condition. The description of the property in the appraisal does not begin to capture the reality of our living conditions. The appraisal says that after visiting a random sampling of 10% of the units, “All of the habitations were found to be rentable and in average condition. This includes any that were in make-ready and/or under rehab.” How could “under rehab” units be deemed rentable? The appraiser reports that management makes repairs as needed and “the facility appears to have received adequate upkeep since the current ownership acquired it during 2015.” We do not believe these statements reflect substandard conditions all over the Sandpiper property.

Nowhere does the appraisal describe how the sewers back up, how the electrical system has failed leaving the property without electric service for days in a row, how mold from plumbing leaks in the walls probably causes asthma and other respiratory ailments throughout the property. Photos of a bathroom in the appraisal show gleaming tile and floor as if the bathroom had been re-tiled for the camera. A trip inside Sandpiper we know would reveal the real bathrooms look nothing like these photos. Roach infestations abound throughout the property. Rats enter the apartment complex regularly, likely from the field to the north of the property by the industrial area. The area where community dumpsters are located

is too close to people's front doors, causing a strong odor and close proximity of pests to people's front doors. Stairs in several areas of Sandpiper shake and do not feel safe, with uneven step spacing, and some lack railings or have loose railings.

In HUD's most recent REAC inspection the property scored 33 out of 100 points. The appraiser does not assess or account for this fact, nor does he reconcile how a property in "average condition" can fail a REAC inspection and stand only four points away from HUD enforcement action. Members of the buyer's team told representatives of the Tenant Council, they would have given the property a REAC score of 18. We are concerned that not recognizing the extent of poor conditions here could cause important repairs to be omitted or the property to be purchased at too high a price, not leaving adequate funding for repairs.

"3. To rehabilitate the development. Site Work-replace ADA Ramps, Sidewalks, Paving, Striping, provide erosion control, grading, landscaping; install new mailbox center, replace all gutters and roofs on all 24 buildings, exterior brick repair, replace siding, replace doors and broken windows, repair stairs, landings, and railings, perimeter fence, install additional lighting; Interiors-renovate existing community building, demo all units down to sheetrock and rehab, add ADA compliant units; HVAC, Electrical, Plumbing, Hazardous Removal-replace with energy star appliances, install new service panel boxes, replace hot water boiler, lead based paint & asbestos remediation (as needed), all interior plumbing."

We have heard that this would be a down-to-the-studs rehab. But in the written material available to us, demolition is only down to the sheetrock. This is concerning because major issues like mold, flooding, and electrical systems would not necessarily be addressed. We want to understand that scope of work as it applies to the areas we are most concerned about.

We want more detail about what will be done to the property's major systems. Given that the electrical system has gone down for days in a row, we would like to see this problem acknowledged in the report to HUD and a commitment that panel boxes, rewiring and other repairs will be made to bring the electrical system to like new condition and to comply with current code.

HVAC is not included in the repairs listed above. At our June 12 meeting, where Mr. Richardson represented the buyer's team, a tenant brought up the issue of the AC not working in some apartments. He responded that management could not necessarily repair the broken ACs now and that that would have to wait. As we approach another summer at Sandpiper, the failure to include heating and AC in current and future work plans deeply concerns us.

Sewage and mold are major issues at Sandpiper Cove. Where are these in the appraisal and inspection? How will mold and sewage spills be addressed immediately and in the renovation? Mold throughout the property indicates roof leaks, plumbing leaks, or both. The appraisal simply states, "they were not having any problems with the roofs." Yet mold in the walls is an ongoing problem for residents, so a thorough roof inspection would be important to determine if roof problems are at fault for any of this. Sewer backups at multiple locations on the property indicate damaged sewer lines. Replacing the boiler will not address these problems. What is meant by "all interior plumbing" is not clear since the level of rehab only goes down to the sheetrock. Even if the rehab goes down the studs, that does not necessarily mean the hot, cold, and waste lines nor the outside sewer lines will be replaced. Again, we recommend that the remedy should be acknowledgement of the problem, replacement to like new condition, and compliance with current code.

**9. Elevate Sandpiper Cove above the FEMA 12 to 13 foot flood zone if it remains in the current location.**

As mentioned above, flooding has occurred in the past at Sandpiper and is a high risk for the future. FEMA flood maps show a chance of flooding between 12 and 13 feet above the ground surface and any construction must be 12 and 13 feet off the ground where appropriate. How will the renovation address this need, to ensure that flooding and mold are not problems here in the future? Would achieving the necessary height require a full demolition and rebuilding from the ground up, or is the height adjustment being addressed somewhere in the current plans? The plan to rehab Sandpiper to the sheetrock does not seem to address the stated need to raise the base height of living spaces. This must be addressed or future flooding is assured. A renovation that does not address this issue is completely unacceptable. Many of us have experienced past floods at Sandpiper and insist that this known risk be prevented.

**10. Ensure that all current residents can return after the property is rebuilt, either in new or current location.**

With vouchers available before and during any renovation, we want the opportunity to return to Sandpiper Cove if owners do improve conditions sufficiently that residents would like to move back. Our housing vouchers should be able to be used at Sandpiper Cove if desired.

**11. Provide responsive management and tenant services, accountable to residents' needs and desires on an ongoing basis.**

TEX's rent increase documents describe several attractive social services that would be provided by a nonprofit called Rainbow Housing Assistance Corporation. We note the proposal to regularly survey residents regarding needs and preferences for services to be provided. We would like more detail about the intended services, budget, and track record of Rainbow Housing. Would the services be provided directly by Rainbow and paid for by management, or would Rainbow/management invite others to directly provide the services? What is the budget for services and service coordinator? What is the service coordinator's job description, and what accountability will they have to residents? What control will residents have to request or choose a different provider if our needs are not met by those initially selected? Will there be a limited menu of services, or can we come up with other services that fit within the budget that best meet our needs, such as rides to the grocery store if needed?

For example, one proposed service is homework "power hour" for children. Would this be a space provided with tutoring staff to help children complete homework? What is the budget and what are qualifications or job description for staff of the power hour? What grades would be covered, K-12? This level of detail for each service would help us understand whether ITEX's proposal meets our needs.

Regarding Rainbow Housing Assistance Corporation, we'd like more information about their track record and success metrics, such as satisfaction of previous clients receiving their services. We'd like more information about how they will work with residents to ensure that their services in practice match our needs.

We believe that Mr. Raynold Richardson, a Senior VP of J.Allen Management and potentially new owner as part of Jeshurun Development, LLC, is involved in Rainbow. We'd like a full accounting of how that might affect services and whether a conflict of interest might exist, for example if we would like to see

changes in services or service provider. Depending on what services residents need, we might want to have input on choosing a service provider most aligned with what residents need.

If service provision is a part of ITEX's application and promise to HUD and other funders, then we want to ensure that these services actually help us achieve our goals and are responsive to our needs and desires in an ongoing, transparent manner.

#### **12. Employ different on-site personnel as management staff.**

Though a new management company, J.Allen, took charge of Sandpiper earlier this year, some of the on-site staff with a history of retaliation against tenants for pointing out health and safety concerns has remained without change. Due to the negative history with some on-site staff personnel, we need to see different people representing the new J.Allen management company for that change in management to be meaningful to us.

#### **13. Provide resources and support to Tenant Council from property owners and managers.**

An active and independent Tenant Council is necessary to organize tenants and ensure that conditions do not again devolve as they have in the past and present. Resources such as free meeting space and printing capability should be provided by property management to support such a group to do meaningful work and engage all residents. Owners and managers should enforce policies that prohibit retaliation against tenants for organizing, making requests, or filing complaints. Our Tenant Council allows us to speak as a group about what we need.

We demand a just and permanent solution to the tragedy at Sandpiper Cove that takes into account the interests of the tenants for a change. We demand for HUD and Sandpiper owners to provide safe, comfortable, decent housing.

Thank you in advance for addressing the concerns and questions above and for beginning a conversation about how we can, at long last, find an end to the ongoing cycle of racism that has plagued the Black residents of Sandpiper Cove for half a century. Also thank you in advance to HUD for reconsidering your earlier refusal to meet with us to hear our concerns and work together for a solution.

Please contact us with your response through our representative Ericka Bowman, Community Outreach Coordinator at Texas Housers, at [ericka@texashousing.org](mailto:ericka@texashousing.org) or (713) 931-7044.

Sincerely,

Jessica Blank  
Larry Brooks  
Tina Harris  
Cynthia Minix  
Carr Lynn Smith

Members of Sandpiper Cove Tenant Council

*Attachment: Sandpiper Cove Site Standards Analysis PDF*

**PAUL FURRH, JR.**  
Attorney at Law  
Chief Executive Officer

**ROSLYN O. JACKSON**  
Directing Attorney

**MARTHA OROZCO**  
Project Director  
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**Lone Star Legal Aid**  
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March 19, 2021

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

Texas Department of Housing and Community Affairs via e-mail  
Attn: Teresa Morales, Director of Multifamily Bonds and Administrator of 4% Housing Tax Credit  
Via email: [Teresa.Morales@tdhca.state.tx.us](mailto:Teresa.Morales@tdhca.state.tx.us)  
PO Box 13941  
Austin, TX 78711

**RE: Compass Pointe Apartments aka Sandpiper Cove / TX24M000018**  
**3916 Winnie Street, Galveston, Texas 77550**

**Introduction**

Lone Star Legal Aid is submitting this letter in response to HUD's March 8, 2021 correspondence in support of the bond issuance from Texas State Affordable Housing Corporation to fund the rehabilitation of Compass Pointe Apartments aka Sandpiper Cove. Lone Star Legal Aid and Daniel and Beshara, P.C. is representing a group of tenants at Sandpiper Cove in the matter of *Sandpiper Residents Association, et. al. v. United States Department of Housing and Urban Development*, Cause No. 1:20-cv-01783 –RDM (D.D.C. 2020).

162 Lone Star Legal Aid is a non-profit legal services law firm that offers civil legal aid to eligible, low-income Texans. Lone Star Legal Aid serves 72 counties in Texas and four in Arkansas. Our service area has nearly 1.5 million income-eligible Texas residents. For the reasons below, we are requesting that the Board closely review the pending litigation while considering the issuance of the bonds for the project's rehabilitation.

**Property acquisition costs, developer fees and interest substantially exceeds investment in rehabilitation**

The proposed sale of Compass Pointe Apartments aka Sandpiper Cove from Compass Pointe Apartments LLC to Galveston 3916 Winnie Street, GLP, LLC shows that the current owner of Sandpiper Cove, The Millennia Companies, will substantially profit by leaving behind a complex with a myriad of hazardous health conditions that presently affect tenants. Comparatively, the rehabilitation costs are significantly lower than the property acquisition costs, developer fees and interest. The documents in the TDHCA 2020 Uniform Multifamily Application provide that the total acquisition costs of the property will be \$16,627,000. The developer fees, soft costs and interest total an additional \$12,364,721. Yet, only \$9,714,252 will be invested for rehabilitation of the units.<sup>1</sup> The units have been occupied by tenants in disrepair for several years.

These exorbitant costs will enrich an owner that HUD admits defaulted on their obligation to maintain the property in decent, safe and sanitary conditions.<sup>2</sup> The property became so dilapidated that HUD ordered a new management company be assigned.<sup>3</sup> J. Allen Management Company began managing the complex in April 2020. However, the new management company has still failed to remedy the extensive mold, lead paint, plumbing issues

<sup>1</sup> TDHCA 2020 Multifamily Uniform Application, Developer Cost Schedule

<sup>2</sup> HUD letter dated March 8, 2021 to TSAHC

<sup>3</sup> HUD letter dated February 21, 2021 to TDCHA

crime and other hazardous conditions that continue to affect tenants.<sup>4</sup> The developer leading the rehabilitation efforts is ITEX Group and Jeshurun Development LLC., an affiliated company of J. Allen Management (JAMC). This company, who is already involved in the day to day management of the property, will also profit in spite of the fact that it has failed to resolve the existing habitability issues.

The habitability issues at Sandpiper Cove and other private multi-family complexes owned by The Millennia Companies, but subsidized by HUD, are so pervasive that the Houston Chronicle has recently published a series of articles indicating the severity of health hazards present at the complexes.<sup>5</sup>

### **The relocation plan is vague and dangerous in the midst of the current pandemic**

The developer has acknowledged that rehabilitation of the complex will require relocation of tenants in the middle of the coronavirus pandemic. The relocation plan submitted with the TDHCA application package is vague regarding where tenants will be located. The developer explains that they are “currently in the process of identifying and securing the temporary off-site units needed to carry out the project and based on the units identified to date, we do not anticipate a problem in securing enough units to accommodate each phase of relocations.”<sup>6</sup> To date, the developer has not indicated where Sandpiper tenants will be temporarily located in the middle of a pandemic. Under the Uniform Relocation Act, the developer and HUD must ensure that tenants are provided decent, safe and sanitary units and relocation assistance to move.<sup>7</sup> However, it is not explicitly clear how or when these benefits

<sup>4</sup> *Sandpiper Residents Association, et. al. v. United States Department of Housing and Urban Development*, Cause No. 1:20-cv-01783 –RDM (D.D.C. 2020), Doc. 1

<sup>5</sup> Sarah Smith, *Living Hell 'We need out of here,'* Houston Chronicle, <https://www.houstonchronicle.com/news/investigations/article/Living-Hell-housing-tenants-hud-properties-problem-16000650.php>, (March 11, 2021)

<sup>6</sup> TDHCA 2020 Uniform Multifamily Application

<sup>7</sup> 49 C.F.R. § 24.4(a)(2)

will be provided to residents. Tenants may be subject to relocating with relatives, friends or potentially inexpensive temporary lodging which will endanger tenants in the middle of this pandemic where social distancing is essential to preventing COVID-19 infection.<sup>8</sup> Tenants that are already enduring health hazards due to the conditions present at the complex may be placed into an even more threatening situation.

### **Flood Mitigation is not Feasible**

TSACH is aware of the complex's location within a 100 year flood plain as identified by the Federal Emergency Management Agency (FEMA). As such, "the Site must be developed so that all finished ground floor elevations are at least one foot above the floodplain and parking and drive areas are no lower than six inches below the floodplain. 10 TAC §11.101(a)(1). ITEX does not plan to raise the complex but rather intends "build a 2,700 linear foot wall around the perimeter of the Development. The flood wall will be approximately one foot underground, and approximately six feet above ground with approximately two feet of wrought iron fence to bring it to eight feet."<sup>9</sup> The proposed wall essentially enclose the complex off from the outside world like a prison. The developer also fails to state how the wall will be constructed in accordance with American Disability Act requirements so that disabled residents can navigate around the complex.

### **Current Litigation related to Sandpiper Cove**

We understand that TSACH is most concerned about the pending litigation (*Sandpiper Residents Association, et. al. v. United States Department of Housing and Urban Development*, Cause No. 1:20-cv-01783 –RDM (D.D.C. 2020) involving the complex and its affect upon the viability of a potential rehabilitation of Sandpiper Cove. HUD's letter to TSACH in response to

<sup>8</sup> *How to Protect Yourself and Others*, Centers for Disease Control and Prevention (<https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>) (last visited March 19, 2021).

<sup>9</sup> ITEX letter dated March 4, 2021 to TSACH



the pending litigation misstates and/or ignores the Plaintiffs' causes of actions under the Administrative Procedure Act, Fair Housing Act and the Fifth Amendment.

Plaintiffs' suit does not ask the court to terminate the housing assistance payment contract or to take any other enforcement action against the owner. Rather, Plaintiffs are asking the court to review HUD's failure to issue tenant protection vouchers as provided under the 2020 Consolidated Appropriations Act. Plaintiffs are alleging that HUD's failure to issue relocation assistance to the tenants is arbitrary, capricious and an abuse of discretion. 5 U.S.C. § 706(2).

The owner of Sandpiper Cove receives a project based rental assistance subsidy from HUD and is obligated to maintain the property in decent, safe and sanitary conditions. 5 U.S.C. § 5.703. The owner failed to do so. HUD issued a Notice of Default to the owner on May 19, 2019.

<sup>10</sup> The Notice of Default was based on a failing Real Estate Assessment Center inspection conducted on May 8, 2019. The property had a score of 33c\* out of a possible 100 points. "The lower-case letter "c" is given if one or more exigent/fire safety (calling for immediate attention or remedy) H&S deficiencies were observed."<sup>11</sup> The deficiencies included: missing and/or inoperable smoke detectors, inoperable appliances, damaged walls, doors and plumbing issues. The owner was provided 60 days from the date in the letter to rectify the issues in the Notice of Default. To date, the owner has failed to do so.

As a result of the owner's failure to take corrective actions within the time prescribed in the Notice of Default, tenants are entitled to relocation assistance if they wish to move. 24 CFR § 886.323(e). The 2018, 2019 and 2020 Consolidated Appropriations Act provides funding for tenants to receive tenant protective vouchers (TPVs) for these very circumstances. The Act states that HUD may provide TPVs to residents where the owner has received Notice of Default and

<sup>10</sup> HUD's Notice of Default to Compass Pointe Apartments (see attached)

<sup>11</sup> *Physical Inspection Report*, United States Department of Housing and Urban Development, [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/reac/products/pass/pass\\_isrpt](https://www.hud.gov/program_offices/public_indian_housing/reac/products/pass/pass_isrpt) (Date Visited: March 19, 2021)

the units continue to pose an imminent health and safety risk to residents.<sup>12</sup> Here, the prerequisites of the Act have been met. The owner has received a Notice of Default and there are imminent health and safety risks present at the complex. HUD Notice 2018-09 provides further guidance for the agency related to issuing TPVs. This guidance makes it clear that the issuance of the relocation assistance is not contingent upon HUD's abatement of the contract or any other enforcement action determined to be appropriate by HUD.

HUD's failure to provide relocation assistance to tenants is final agency action under the Administrative Procedure Act. 5 U.S.C. §551. Plaintiffs are seeking review of HUD's denial pursuant to 5 U.S.C. § 702. The APA provides a "basic presumption of judicial review" for anyone suffering a legal wrong because of an agency action. *Weyerhaeuser Co. v. U.S. Fish & Wildlife Serv.*, 139 S. Ct. 361, 370 (2018). HUD's denial of relocation assistance to tenants is contrary to its own regulation 24 CFR § 886.323. HUD's denial of TPVs under the 2020 Consolidated Appropriations Act is an abuse of HUD's discretion. Plaintiffs are asking the court to set aside HUD's decision to deny relocation assistance under 5 U.S.C. §706 (2).

Plaintiffs' claims are not barred under 5 U.S.C. § 701. Plaintiffs are not asking the court to terminate the HAP contract or to review any other enforcement action that HUD has taken against the owner. Plaintiffs are not requesting review of HUD's enforcement actions against the owner because further actions are not needed under the Act or HUD's own regulation and Notice 2018-09.

Plaintiffs are also asking for APA review of HUD's actions that violate the Fair Housing Act. HUD's withholding of relocation assistance violate 42 U.S.C. §3604 and is subject to APA review. HUD knows Sandpiper Cove's units are not decent, safe and sanitary. The conditions have been met by HUD regulation and Consolidated Appropriations Act for HUD to pay for

<sup>12</sup> FURTHER CONSOLIDATED APPROPRIATIONS ACT, 2020, PL 116-94, December 20, 2019, 133 Stat 2534

tenant protection vouchers. HUD provides decent, safe and sanitary housing to white tenants and is not providing it to Black tenants. HUD's refusal shows discriminatory purpose. The final agency action of withholding relocation assistance is making decent, safe and sanitary housing unavailable because of race.

HUD's final agency action of withholding relocation assistance to the plaintiffs is reviewable for abuse of discretion to determine HUD's compliance with its statutory mandate to affirmatively further fair housing under 42 U.S.C. § 3608(e). HUD's payment for housing at Sandpiper Cove subjects the Black tenants to uninhabitable living conditions. This is part of HUD's pattern of paying for substandard housing for Black tenants in Black neighborhoods while providing habitable housing for White tenants in White neighborhoods. HUD has a duty under §3608(e) to evaluate its denial of relocation assistance to these Black tenants living in uninhabitable conditions and its effect of that decision on the lack of housing opportunities that are not in unequal conditions. *N.A.A.C.P. v. HUD* held that HUD's discretionary administration of its grant programs can be reviewed for abuse of discretion under § 706(2). *N.A.A.C.P. v. Sec. of Hous. & Urban Dev.*, 817 F.2d 149, 151, 157-158 (1st Cir. 1987).

Lastly, HUD's letter ignores the Fifth Amendment claim in Plaintiffs' litigation. This claim will not be jurisdictionally barred under the APA. *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682 (1949). Plaintiffs' claim is based on HUD's provision of decent, safe and sanitary housing to White tenants in White neighborhoods but is not paying for decent, safe and sanitary housing for predominately Black tenants in minority neighborhoods. The similarly situated characteristic is tenancy in a HUD funded PBRA project. HUD has not stated a legitimate reason for this difference in treatment. *Body by Cook, Inc. v. State Farm Mut. Auto. Ins.*, 869 F.3d 381 (5th Cir. 2017). HUD issuance of vouchers to these Plaintiffs would end this difference in treatment.

### Ongoing PBRA Litigation against HUD

HUD also cited two recent district court cases filed by Plaintiffs' counsel in the Southern District of Texas as rationale to support that there is no legal authority for a court to review HUD's enforcement actions against PBRA owners under the APA. HUD cited *Kenneth Hawkins et al. v. HUD*, 4:18-cv-03052 (S.D. Tex.) and *Daija Jackson, et al. v. HUD*, 4:18-cv-02468 (S.D. Tex.).

In *Hawkins*, the District Court erroneously dismissed Plaintiffs' claims based on the rationale that Plaintiffs were seeking review of HUD's enforcement action against the owner of Coppertree Village Apartments. Plaintiffs appealed the matter to the Fifth Circuit Court of Appeals (Case No. 20-20281). Plaintiffs again argued that they were not seeking review of HUD's enforcement actions but were seeking review of HUD's final agency action denying Plaintiffs relocation assistance. The case was heard for oral argument on March 2, 2021 and the parties are awaiting the court's decision.

In *Jackson*, Plaintiffs filed an amended complaint requesting that the court review HUD's decision to withhold relocation assistance from tenants related to the HUD approved Section 8(bb) transfer of the HAP contract from Arbor Court Apartments to Cullen Park Apartments. The District Court's order found that "Plaintiffs' Complaint identifies an agency action that HUD is required to take. Section 886.323(e) requires HUD to provide relocation assistance to families who wish to be rehoused in another dwelling unit after an owner fails to conform to the requirements imposed in a Notice of Default." However, the District Court explained that Plaintiffs didn't identify the specific assistance that HUD was to provide to Plaintiffs. The Court dismissed the Complaint without prejudice on May 19, 2020. Plaintiffs' filed a second amended complaint on June 1, 2020 which specified that HUD failed to issue Plaintiffs relocation

assistance in accordance with the Uniform Relocation Act. HUD filed a Motion to Dismiss  
Plaintiffs' second amended complaint and Plaintiffs' filed its response on August 5, 2020. The  
parties are awaiting the Court's decision on HUD's motion.

To date, there is no precedent that bars Plaintiffs' suit against HUD regarding its failure  
to issue relocation assistance so they can obtain decent, safe and sanitary housing. Lone Star  
Legal Aid requests that TSACH consider these litigation factors with respect to issuance of a  
bond related to Sandpiper's rehabilitation efforts.

Respectfully Submitted,

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**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA**

**SANDPIPER RESIDENTS  
ASSOCIATION,  
3916 Winnie St.,  
Galveston, TX 77550,**

**LARRY BERNARD BROOKS, SR.,  
3916 Winnie St., Apt.  
Galveston, TX 77550,**

**NO.** \_\_\_\_\_

**AND**

**BETTY ANN DERGIN  
3916 Winnie St., Apt.  
Galveston, TX 77550,**

*Plaintiffs,*

**v.**

**THE UNITED STATES  
DEPARTMENT OF HOUSING  
AND URBAN DEVELOPMENT,  
451 7th Street S.W.,  
Washington, DC 20410,**

*Defendant.*

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## COMPLAINT

### I. Introduction

1. Plaintiffs are current residents of Compass Pointe Apartments (a/k/a Sandpiper Cove Apartments), located at 3916 Winnie St, Galveston, TX 77550. This privately owned apartment complex is subsidized through a contract between the owner and the U.S. Department of Housing and Urban Development (HUD) under HUD's Project Based Rental Assistance (PBRA) program. HUD provides approximately two million dollars (\$2,000,000.00) in annual rent subsidies to the owner for the 192 PBRA units at the complex. The PBRA tenants further pay approximately \$319,000 in annual rent for the 192 PBRA units.

2. Despite the federal investment in and subsidies for the owners of the apartment, the unit, project, site, and neighborhood conditions at Sandpiper Cove Apartments are dangerous and unfit for family life and the presence of children. HUD's contract with the property owner provides that HUD will only pay the subsidy for units that are decent, safe and sanitary as required by law and applicable regulations. HUD has violated the law by withholding the relief necessary to assist the Plaintiffs with moving to decent, safe and sanitary housing. This complaint requests judicial relief requiring HUD to provide each plaintiff with the assistance needed to obtain housing in better condition, including a Tenant Protection Voucher. The law does not require that HUD terminate the owner's Housing Assistance Payment (HAP) contract with HUD before or as a result of providing the relocation assistance. HUD has the legal authority to continue the HAP contract in effect and provide the relocation assistance<sup>1</sup> which can include the issuance of Tenant Protection

<sup>1</sup> FURTHER CONSOLIDATED APPROPRIATIONS ACT, 2020, PL 116-94, December 20, 2019, 133 Stat 2534; CONSOLIDATED APPROPRIATIONS ACT, 2019, PL 116-6, February 15, 2019, 133 Stat 13, Public and Indian

Vouchers.<sup>2</sup> Alternatively, and without waiving the foregoing, Plaintiffs request that court order HUD to transfer the PBRA contract to decent, safe and sanitary housing units within the City of Galveston or Galveston County.

3. HUD conducted a physical inspection and issued a summary report for Sandpiper Cove on or about May of 2019. This inspection was performed by a HUD-certified inspector habitability standards at the complex and was performed pursuant to HUD regulations at 24 CFR Part 5 and Part 200. The property obtained a failing score of 33c out of a possible 100 points. HUD issued a Notice of Default on May 15, 2019 to the owner of Sandpiper Cove. HUD informed the owner that the owner was in default of the statutory and contractual obligation to maintain the project in a decent, safe, and sanitary condition. Over a year later, the owner has so far failed to make repairs necessary to obtain a passing grade on required physical inspections and make the property habitable. Plaintiffs and Sandpiper Cove tenants continue to live in conditions of known imminent health and safety risks. Since the inspection, there have been electric outages at the property, overflowing sewage and other electrical failures associated with lack of or deferred maintenance. Physical conditions that have contributed to a high crime rate at the project include a lack of security cameras, inoperable or broken gates and fences. A significant percentage of individual units remain without doors and windows with locks, lack basic sanitary equipment including sinks, toilets, showers, heaters, operable air conditioning units and refrigerators that work. There is widespread mold and other microorganism growth inside the apartments, on both exterior and interior surfaces. Some roofs leak and moisture seeps into inhabited areas.

Housing Tenant-Based Rental Assistance (2)

<sup>2</sup> FURTHER CONSOLIDATED APPROPRIATIONS ACT, 2020, PL 116-94, December 20, 2019, 133 Stat 2534; CONSOLIDATED APPROPRIATIONS ACT, 2019, PL 116-6, February 15, 2019, 133 Stat 13, Public and Indian Housing Tenant-Based Rental Assistance (2)

4. On September 5, 2019, Plaintiffs specifically asked HUD that they wished to be rehoused and transferred out of the horrible conditions at Sandpiper and asked for HUD assistance finding another unit. HUD refused to provide plaintiffs and the tenants with another unit or with a voucher. Instead of providing the requisite assistance to tenants, HUD continues to keep the assistance contract in effect and subsidizes substandard, dangerous apartment units. It has been over a year since HUD found the owner in default of the obligation to provide decent, safe, and sanitary housing at Sandpiper Cover, and the tenants continue to remain in horrific conditions that pose imminent health and safety risks to them. HUD has not provided Plaintiffs with the relief they requested, which is voucher assistance necessary to obtain housing in decent, safe and sanitary conditions or transfer of the PBRA subsidy to a decent, safe and sanitary location.

5. HUD's withholding the assistance to help Plaintiffs relocate is final agency action in violation of the relevant law. Agency action is defined to include an agency "sanction." 5 U.S.C. §551(13). The Administrative Procedures Act (APA) defines "sanction" as including an agency's "withholding of relief." 5 U.S.C.A. § 551(10)(B). "Relief is defined as the "grant of... assistance... or remedy." 5 U.S.C.A. §551(13)(A). The relevant law and regulations require HUD to provide the relief of assistance for relocation once HUD has determined that property owner is in violation of the HAP contract and the owner has not corrected the deficiencies set out in the notice, and HUD continues to keep the contract in effect and is paying rent to the owner under the contract.<sup>3</sup> Each of requirements for the provision of relocation assistance is met, yet HUD continues to withhold the assistance, which is the relief provided by law under these conditions. HUD's withholding the relocation assistance and the relief provided by law is final agency action

<sup>3</sup> CONSOLIDATED APPROPRIATIONS ACT, 2019, PL 116-6, February 15, 2019, 133 Stat 13, Public and Indian Housing Tenant-Based Rental Assistance (2); 24 C.F.R. § 886.323(e ).

and judicially reviewable. 5 U.S.C. § 551(13); 5 U.S.C. § 551 (10)(B), 5 U.S.C. 13(A).

6. The project is located in a predominantly minority census tract. The tract is 16% White non-Hispanic, 59% Black or African-American and 24% Hispanic. The project is located in a census tract in which 57.4% of people are below poverty as reported by the 2016 U.S. Census American Community Survey data. 71.4% of the children under 6 years of age are below poverty and 74.9% of all children under 18 years of age are below poverty according to the same report.

7. HUD's refusal to provide the relocation assistance perpetuates racial segregation and imposes severe injuries on the predominantly Black or African-American and a completely minority population, the tenants at the complex. HUD pays for decent, safe and sanitary PBRA housing at predominantly White non-Hispanic locations near Galveston County while refusing to require decent, safe, and sanitary housing at Sandpiper Cove. HUD's actions violate the discriminatory intent standard of the Fair Housing Act and the 5<sup>th</sup> Amendment of the U.S. Constitution. HUD's actions violate its obligation under 42 U.S.C. § 3608(e)(5) to prevent federal funding of low income housing in units, projects, and conditions that perpetuate racial segregation and that are not part of an ongoing and effective housing and community revitalization effort. There is no such effort underway for these units.

8. Plaintiffs seek injunctive relief requiring HUD to provide Plaintiffs with the assistance necessary to obtain housing in decent, safe and sanitary conditions or in the alternative, that the court order HUD to transfer the PBRA subsidy to decent, safe and sanitary housing within the City of Galveston or Galveston County.

## **II. Jurisdiction and Venue**

9. This court has jurisdiction under 42 U.S.C. §1331 and 42 U.S.C. § 3613(a)(1)(A). The right to judicial review of the claim for HUD's violation of 42 U.S.C. § 3608(e)(5) and of the claim

that HUD's withholding relief is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law and the waiver of sovereign immunity for these claims is pursuant to 5 U.S.C. §§ 702, 706. The waiver of sovereign immunity for the claim that HUD's withholding relief violates 42 U.S.C. § 3604(a) is pursuant to 5 U.S.C. § 702. The right to judicial review and the absence of sovereign immunity for the claim that HUD officials are violating the equal protection principle included in the Fifth Amendment to the United States Constitution is constitutional. Sovereign immunity does not bar a suit to enjoin unconstitutional actions by a federal officer. *Larson v. Domestic and Foreign Commerce Corp.*, 337 U.S. 682, 690-91 (1948); *Pollack v. Hogan*, 703 F.3d 117, 120 (D.C. Cir. 2012).

10. The venue is appropriate pursuant to 28 U.S.C. § 1391(b)(1).

### **III. Parties**

#### **A. Plaintiffs**

11. The Plaintiffs are the Sandpiper Residents Association, Larry Bernard Brooks, Sr. and Betty Ann Dergin.

12. Plaintiffs are current residents of Sandpiper Cove Apartments for whom the Defendant United States Department of Housing and Urban Development (HUD) pays a subsidy to the owners of the apartments under the Project Based Rental Assistance (PBRA) program. Each Plaintiff except the Sandpiper Residents Association also pays 30% of their adjusted household income as tenant's share of the rent, in accordance with regulations. Sandpiper Residents Association is a tenant association established in accordance with federal regulations to protect the rights of Sandpiper Cove residents. 24 C.F.R. § 245.110 *et. seq.*

#### **B. Defendant**

13. The Defendant United States Department of Housing and Urban Development (HUD) is an executive agency of the United States government. HUD's withholding of the required relocation assistance is a final agency action for which there is no other adequate remedy in a court. Only HUD is obligated under the law to provide the assistance. A lawsuit against the owner cannot provide this relief. HUD's withholding the relief in the form of the assistance to obtain decent, safe and sanitary housing is final agency action.

**IV. HUD's final agency action is demonstrated by HUD's withholding the required assistance and relief to Plaintiffs and the other tenants who wish to relocate**

14. HUD issued a Notice of Default to the owner of Sandpiper Cove based on the owner's violations of the obligation to provide decent, safe and sanitary housing in May 2019. This occurred after the 2019 HUD REAC inspection, which showed serious issues at the property and indicated that Sandpiper Cove Apartments fell far below the minimum acceptable standard of habitability. The failing inspection itself triggered a necessity to issue a Notice of Default and obligates HUD to enforce its own regulations. The Notice of Default, constituting a formal notice by the Secretary of the United States Department of Housing & Urban Development was issued on May 15, 2019 and notified the property owners of their HAP contract default. The Sandpiper Cove Apartments owner has so far not undertaken necessary steps to cure violations identified in the 2019 HUD REAC inspection. HUD continues to leave the project-based contract, the Housing Assistance Payment contract, in place. HUD continues to pay for housing that HUD has determined is not decent, safe, and sanitary. The conditions at Sandpiper Cove in the units and at the site pose serious imminent health and safety risks to the tenants on a daily basis. HUD continues to withhold the relief for assistance to Plaintiffs and the other tenants who wish to relocate. HUD's withholding the relief for or assistance to Plaintiffs and the other tenants who wish to relocate is

final agency action.

**A. Chronology showing HUD final agency action withholding assistance and relief to Plaintiffs**

15. The contract between HUD and Sandpiper Cove Apartments owner for the payment of the federal subsidy funds is the Housing Assistance Payment contract (HAP). The most recent HAP basic renewal contract was signed in February 2012 for a period of 20 years. The owner is Compass Pointe Apartments Texas Ltd. The current owner was assigned that contract from the previous owner Sandpiper Cove Apartments, LLC in March 2015. The assignment incorporates all of the obligations of the original HAP contract.

16. The HAP contract provides that HUD will only make payments to the owner for units occupied by eligible families leasing, decent, safe, and sanitary units from the owner. HAP contract, Section 14(a), April 19, 1984. If the Contract Administrator (HUD or a third party acting for HUD) determines that the owner has failed to maintain units in decent, safe, and sanitary condition, HUD may abate the housing assistance payments and use the amounts for the purpose of relocating or rehousing assisted residents in other housing. The original HAP contract requires the owner to maintain and operate the contract units, unassisted units if any, and related facilities to provide decent, safe and sanitary housing and provides for tenant relocation if the units are not maintained in decent, safe and sanitary condition. HAP contract, Section 26(b)(2)(b).

17. HUD approved the renewal of the HAP contract for a twenty-year term in 2012. The Renewal Contract is a HAP contract. HAP Renewal, Section 4(a)(1). Except as specifically modified by the Renewal Contract, all provisions of the expiring HAP contract are renewed. HAP Renewal, Section 5a. The owner warrants that the units to be leased by the owner under the Renewal Contract are in decent, safe and sanitary condition (as defined and determined in

accordance with HUD regulations and procedures), and shall be maintained in such condition during the term of the Renewal Contract. HAP Renewal, Section 7b. The renewal states:

Housing assistance payments shall only be paid to the Owner for contract units occupied by eligible families leasing decent, safe and sanitary units from the Owner in accordance with statutory requirements, and with all HUD regulations and other requirements. If the Contract Administrator determines that the Owner has failed to maintain one or more contract units in decent, safe and sanitary condition, and has abated housing assistance payments to the Owner for such units, the Contract Administrator may use amounts otherwise payable to the Owner pursuant to the Renewal Contract for the purpose of relocating or rehousing assisted residents in other housing. 4.d.(2).

18. HUD appointed Southwest Housing Compliance Corporation (SHCC) to be the Project Based Contract Administrator (PBCA) acting on HUD's behalf under the terms of the HAP contract.

**B. The 2019 REAC inspection report found that units and conditions that constitute imminent health and safety risks to residents**

19. A HUD Real Estate Assessment Center (REAC) physical inspection of Sandpiper Cove was completed on or about May 8, 2019. The final report was issued on May 9, 2019.

20. The report included results of inspections of the physical conditions, appearance and security at Sandpiper Cove Apartments.

21. The final inspection score was Unsatisfactory, with a score of 33c out of a possible 100. According to HUD regulations, a Physical Inspection score below 60 is failing and indicates that the owner may not be fulfilling his/her contractual obligations to HUD and that the residents may not be receiving the quality of housing to which they are entitled.

22. The failing inspection score was based on numerous shortcomings, including the site, building exteriors, building systems, common areas and unit evaluations. HUD's Inspector observed a total of 122 health and safety deficiencies in 24 buildings and 24 actually inspected units. The report estimates that an inspection of all units and all buildings would have resulted in



a total of 878 health and safety deficiencies on the property. The inspection also found a total of 73 non-life threatening deficiencies on the property (535 projected). 31 deficiencies were deemed life-threatening (199 projected). Finally, 18 deficiencies involved smoke extinguishers on the property (144 projected). Identified systemic deficiencies are varied, and involve everything from exposed foundations, missing/inoperable smoke detectors, damaged/missing roof components, leaky plumbing, insect/roach infestations and mold/mildew observed. Other deficiencies include missing/damaged stoves, inoperable/not lockable windows, missing/broken outlets and obstructed accessibility/escape routes.

23. HUD's REAC Inspection found missing or inoperable window locks that present safety concerns. Kitchen appliances were found to be deteriorated to the point of replacement, some entry doors have damaged frames and will not lock, presenting an obvious safety hazard. Multiple dead and live roaches were observed across the property and in inspected units. The inspector also found evidence of water infiltration leading to mold and mildew infestation, by itself a violation of HUD regulations and a threat to tenant health and safety.

24. The Compass Pointe/Sandpiper Cove management company responded to the failing REAC score primarily with cosmetic changes, announcing a change in on-site management and a new vice-president of operations for the property. While the property owner announced renovations in the future, those repairs are stated to be contingent upon funding that has not been secured. The Owner recognized approximately 2000 work orders have been made by tenants for conditions that currently exist on the property and inside all units. As a token concession and incentive to not cancel the HAP contract, property owner temporarily suspended management fees on the property, a provision covered by the contract in situations where a property does not satisfy HUD's habitability standards.

25. The failing REAC score of 33c was based on the extensive list of irregularities and shortcomings uncovered during the Sandpiper Cove inspection. The lower-case letter "c" is given if one or more exigent/fire safety violations are found, as these call for immediate attention or remedy. Deficiencies found on the property were serious enough to warrant large cash outlays to address and are categorized as capital improvements, not merely repairs. These health and safety violations include exposed electrical wires, missing smoke detectors, roach infestations and inoperable electrical systems.

26. These health and safety violations remain in effect today over one year after HUD notified the owner of the violations.

**C. HUD has known of the imminent health and safety risks at Sandpiper Cove since at least 2016 when a HUD contractor found conditions that were imminent health and safety risks to residents**

27. HUD has known that the units pose an imminent health and safety risks to tenants at Sandpiper Cove since at least 2016. HUD knew that the project, units, and neighborhood were not decent, safe, or sanitary from the 2016 Management and Occupancy Review of Sandpiper.

28. HUD's contractor SHCC conducted a Management and Occupancy Review of Sandpiper Cove beginning on September 15, 2016. The report was issued on October 14, 2016.

29. The Management Review included inspections of the physical conditions, appearance and security at Sandpiper Cove Apartments.

30. The Review found General Appearance and Security Unsatisfactory. Follow-up and monitoring of Project Inspections was also rated Unsatisfactory. Leasing and Occupancy as well as General Management Practices were found to be Unsatisfactory. Maintenance and Standard Operating Procedures fared a little better, being rated Below Average. In all instances, SHCC required corrective action to be taken within 30 days.

31. The finding of Unsatisfactory Appearance was based on graffiti, deep cracks in buildings and parking lot as well as corroded exterior stairwells. The Security rating was based on criminal activity that had occurred at the property within the previous twelve months. The calls for police assistance included 910 calls for service within this time period, including 41 calls for Personal Assaults, 36 calls for Weapons Offenses, 29 for Auto Theft, 3 for Sexual Assault, 3 for Structure Fire, 21 for Break-Ins and 14 for Criminal Mischief. The report found that the property owner contracts for off-duty police personnel patrol four days a week for four to five hours per day; however these patrols typically end on or before 11pm. The Report found these current efforts not to be sufficient to deter significant criminal activity at the property.

32. The review rated Project Inspections Unsatisfactory because of a blocked egress to only windows in bedrooms, outlets missing covers, holes in walls, damaged entry door frames and damaged frames inside apartments.

33. The review found insufficient oversight of the property staff by the management agent to ensure the property is maintained in decent, safe and sanitary condition and HUD's leasing and occupancy requirements were properly implemented.

34. In the 2016 Management Occupancy Review inspection, SHCC required a number of crime/safety corrective actions to be taken. Owner/Agent was to perform an assessment of the safety program at the property to include, but not be limited to, reviewing the concerns outlined in the findings, implement an action plan to improve the safety program at the property and decrease the level and severity of criminal activity occurring on-site. A copy of the plan must be forwarded to SHCC. The plan was to address key participants, including the owner/agent, Galveston Police Department, residents, local agencies and resources. The Owner/Agent was to provide a signed certification that the action plan would be implemented throughout the coming year and

periodically reviewed and adjusted for effectiveness. The 2019 MOR asserts that insufficient actions had been taken to address the crime and safety issues at the complex. The 2019 MOR notes that this issue is a “repeat finding from the 2016 report.”

35. HUD did not require the owner to provide decent, safe, and sanitary housing for the tenants at Sandpiper Cove after this 2016 report. HUD did not eliminate the imminent health and safety risks to tenants that were present at this time and that continue to be present.

36. HUD’s contractor conducted another Management and Occupancy Review of Sandpiper in 2019. HUD knows the 2019 Review resulted in another Unsatisfactory rating and the projects were not decent, safe or sanitary. The 2019 Review continued to show that units and conditions at Sandpiper present imminent health and safety risks to the tenants.

**D. May 15, 2019 HUD Notice of Default to owner of Sandpiper Cove/Compass Pointe**

37. HUD sent a Notice of Default to the owner of Sandpiper Cove Apartments on May 15, 2019. The Notice of Default stated:

This letter constitutes formal notice by the Secretary of the U.S. Department of Housing and Urban Development that Compass Pointe Texas Ltd. (“Owner”), owner of Compass Pointe Apartments Texas (“Project”), is in default of the above-referenced project-based housing assistance payments (“HAP”) Contract, as authorized under section 8 of the United States Housing Act of 1937 (“Act”). 42 U.S.C. § 1437f.

On May 8, 2019, HUD’s Real Estate Assessment Center (“REAC”) inspected the Project, which resulted in a score of 33c. The inspection report, which HUD has made available to the Owner, identified serious deficiencies that demonstrate that the Owner is in default of its statutory, contractual, and/or regulatory duties to maintain the Project in decent, safe and sanitary condition.

HUD based this Notice of Default on the May 8, 2019 Real Estate Assessment Center inspection. Deficiencies found in the report include missing/inoperable smoke detectors, insect/roach infestations, leaky plumbing, including faucet and pipes, clogged drains, missing, damaged or inoperable range and stove holes in ceiling/walls and damaged frames/threshold/lintels/trim. The

May 15, 2019 Notice of Default is addressed to Compass Pointe Texas Ltd. as the Owner.

Attention: Frank Sinito  
127 Public Square  
Cleveland, OH 44114

Project is referred to as Compass Pointe Apartments Texas and the HUD HAP Contract Number is listed as TX24M000018.

**E. The Notice of Default is final agency action from which legal consequences flow.**

38. The Notice of Default is the product of HUD's decision-making process, including the inspections. The Notice of Default is not merely tentative or interlocutory in nature. HUD states that issuing a Notice of Default is the prerequisite for HUD action to remedy the conditions constituting the default:

Notwithstanding the provisions of Section 222, NOVs/NODs are legal notices required under our business agreements, and they provide the basis for any enforcement action taken by HUD if the compliance requirements in the notices are not met. Therefore, the notices must be accurate and include all elements required under the business agreements, regardless of the minimum requirements stated in this Notice. HUD Notice: H 2018-08, Issued: October 29, 2018, page 4.

39. Even an administrative appeal that results in a higher score does not require HUD to withdraw the Notice of Default. *Id.*

40. The Notice is final on its face. The owner is in default and the time to cure has expired.

The Notice of Default sets out the legal consequences flowing from the Notice.

If the Owner fails to take the necessary corrective actions required by this Notice of Default of Housing Assistance Payments (HAP) Contract letter, the Secretary will, without further notice, declare the Owner in default of the HAP contract and will seek any and all available remedies, including but not limited to, acceleration of the outstanding principal indebtedness, foreclosure, abatement of the Housing Assistance Payments (HAP) Contract or any other appropriate remedies.

41. HUD has already entered an adverse finding with legal consequences against the owner and the manager of the project based on the findings in the Notice of Default.

42. HUD had already entered an adverse finding with legal consequences against the owner and the manager of the project, based on the findings in the Notice of Default. As a result of the unsatisfactory REAC score, Compass Pointe Apartments Texas Ltd. and its principals were flagged in HUD's Active Partners Performance System (APPS): Compass Pointe Apartments Texas LLC – Owner Entity. These flags may adversely affect the Owner's and Management Agent's eligibility for participation in HUD programs, under HUD's Previous Participation Certification procedure, by constituting a standard for disapproval.

43. HUD's regulation further sets out legal consequences flowing from the Notice of Default.

24 C.F.R. § 886.323(e) – Failure to maintain decent, safe and sanitary units. If HUD notifies the owner that he/she has failed to maintain a dwelling unit in decent, safe and sanitary condition, and the owner fails to take corrective action within the time prescribed in the notice, HUD may exercise any of its rights or remedies under the contract, or Regulatory Agreement, if any, including abatement of housing assistance payments (even if the family continues to occupy the unit) and rescission of the sale. If, however, the family wishes to be rehoused in another dwelling unit, HUD shall provide assistance in finding such a unit for the family. 24 C.F.R. § 886.323(e).

44. The owner has failed to take corrective action pursuant to the Notice of Default. Plaintiffs remain in conditions that pose imminent health and safety risks.

**F. The deficiencies identified in the May 15, 2019 Notice of Default have not been cured in the specified time period and the units pose an imminent and substantial risk to health and safety of the tenants**

45. The deficiencies set out in the May 15, 2019 Notice of Default have not been cured within the sixty-day period as required. These deficiencies remain in place. HUD refuses to require the owner to address the serious health and safety deficiencies at the property and continues to pay the owner for housing that is not decent, safe or sanitary and poses imminent health and safety risks to the tenants.

46. There have been no corrective measures implemented to remediate health and safety

hazards to tenants. Mold remains in the units. Insect infestations continue to plague the residents. Electrical problems persist months following the inspection and doors/windows are still damaged and are still in need of repair.

47. The lack of standard electrical equipment fails to meet HUD's definition of decent, safe, or sanitary housing. 24 C.F.R. § 5.703.

48. There has been no repair or remediation of mold in the units and on building exteriors.

49. Air conditioning units are not operational in certain units.

50. Since the May 15, 2019 Notice of Default, mold presence at the property has worsened. Tenants have filed repeated repair requests with property management and complained to the City of Galveston and HUD, however the mold has not been addressed. The mold is a result of frequent water leaks in residents' apartments and broken air conditioning units which cause moisture to accumulate in and around walls. Incessant exposure to mold causes residents to have trouble breathing, in addition to eye, throat and skin irritations. HUD received three mold-related complaints from Sandpiper Cove residents since October 2019 alone. Instead of removing the mold-infested sheetrock, property management paints over the mold, which invariably returns.

51. The property has continued deteriorating since the May 15, 2019 Notice of Default. There is a widespread pest problem, as cockroaches and other insects thrive in vacant and occupied apartments with little or no pest control to alleviate the conditions.

52. There are still no functioning smoke detectors in some units, a condition that presents a substantial hazard to tenant health and safety.

53. The leaks in some apartments are so severe tenants are forced to place towels on window sills when it rains in order to absorb incoming water. The leaky air conditioning units at the complex frequently fail, leaving tenants in hot and humid apartments.

54. In March 2019, 66 of the 192 units on the property lost power for nearly four days. Management did not provide an explanation for the extended outage. A generator allowed management to restore power, but not to all affected buildings. Out of six buildings, only five received power as the unit was not strong enough to provide electricity to all six. For the duration of the outage, tenants had no electricity, power to their refrigerators, wall outlets or ovens. Residents in the building that remained without power were forced to move out in order to have electricity.

55. The entire complex again suffered a power outage in the summer of 2019 lasting several days; residents escaped their unbearably hot homes by spending time in the public library and community center.

56. Complaints of unbearable conditions on the property continue without abatement. Reports of blocked and overflowing drains, tubs leaking black or discolored water and leaky ceilings with holes are a recurring feature as residents attend city council meetings seeking help. As the city council does not have oversight power over the HAP contract, Sandpiper Cove residents' efforts are fruitless.

57. The property crime rate consistently places Sandpiper Cove in the top five locations for police response on the island. This negative record has been persisting for years. Dissatisfied with crime conditions at the complex, Galveston's City Manager petitioned HUD to enforce housing standards at the property or force a sale to a new private owner.

**G. HUD is withholding the relief of assistance for plaintiffs and the Sandpiper Cove/Compass Pointe tenants to relocate to decent, safe, and sanitary housing**

58. HUD has continued to ensure that the project based contract, the Housing Assistance Payment contract, remains in effect and has continued to pay the owner for the units.



59. HUD has not provided any assistance for Plaintiffs or other Sandpiper Cove/Compass Pointe tenants to relocate from the property despite being requested to do so on September 5, 2019. The Plaintiffs requested that HUD rehoused them another location with a voucher or by transfer to another location that met decent, safe, and sanitary requirements. HUD refused to do so.

60. HUD's regulation requires that HUD shall provide this relocation assistance when there has been a notice of default and when the owner fails to take corrective action within the time specified by the notice. 24 C.F.R. § 886.323(e). The requirement for HUD to provide the assistance is mandatory.

61. HUD is continuing to make payments to the owner under the HAP contract for units and conditions that are not decent, safe, or sanitary. HUD continues to keep the project based contract for Sandpiper Cove in effect.

62. HUD is not going to provide relocation assistance to Plaintiffs.

63. HUD's withholding of relief for Plaintiffs by not providing any relocation assistance has legal consequences. The owner continues to be paid. The Plaintiffs do not receive relocation assistance.

64. Congress has provided the funding and authorization for HUD to provide relocation assistance to tenants such as Plaintiffs who are living in units that pose imminent health and safety risks. The Appropriations Acts of 2020 and of 2019 both state rental assistance is available to transfer the tenants where the owner has received a Notice of Default and the units pose an imminent health and safety risk.

That the Secretary may provide section 8 rental assistance from amounts made available under this paragraph for units assisted under a project-based subsidy contract funded under the "Project-Based Rental Assistance" heading under this title where the owner has received a Notice of Default and the units pose an imminent health and safety risk to

residents.<sup>4</sup>

In this case, the owner of Sandpiper has received a Notice of Default, the owner has not corrected the deficiencies, and the units continue to pose an imminent health and safety risk to Plaintiffs and the other residents. HUD is required to provide relocation assistance to tenants who wish to be rehoused after an owner has received a Notice of Default and not corrected the problems within time set out in the notice. HUD is withholding the relocation assistance relief to Plaintiffs.

**H. HUD's response to Plaintiffs' demand letter indicates it will continue funding the complex**

65. On September 5, 2019, Plaintiffs sent a letter to HUD, informing the agency of the conditions in the units and on the property that pose imminent health and safety risks to the tenants. Plaintiffs requested that HUD provide tenant protection vouchers for the tenants because of the imminent health and safety risks these conditions pose to the residents. On or about December 2, 2019, HUD responded to Plaintiffs' correspondence, confirming the failing REAC score the property obtained in the most recent HUD inspection.

66. HUD informed Plaintiffs that Compass Pointe Apartments Texas LLC, the owner of Sandpiper Cove, responded to HUD's Notice of Default by providing a plan to improve the property's physical condition. The owner plans to either pursue a sale of the property to a buyer who would rehabilitate it or to refinance the rehabilitation and preservation of Sandpiper Cove itself. HUD further informed Plaintiffs that either the sale or financing would be completed by the end of 2019. The only enforcement action HUD acknowledged undertaking so far is requiring the

<sup>4</sup> FURTHER CONSOLIDATED APPROPRIATIONS ACT, 2020, PL 116-94, December 20, 2019, 133 Stat 2534; CONSOLIDATED APPROPRIATIONS ACT, 2019, PL 116-6, February 15, 2019, 133 Stat 13, Public and Indian Housing Tenant-Based Rental Assistance (2)

owner to change on-site management.

67. HUD's letter makes it clear that HUD is not providing the tenants with tenant protection vouchers and relocation assistance. No actions have been taken by the owner to address the imminent health and safety risks the unequal and dangerous conditions pose to the residents. The owner has not addressed the physical conditions of the property or made any improvements to the property. The plaintiffs and tenants continue to be forced to live in units that HUD admits are not decent, safe, or sanitary while HUD lets the owner pursue a sale. Under the law, HUD can pursue its contractual remedies against the owner without forcing the tenants to reside in conditions that are imminent health and safety risks. HUD has chosen to withhold this relief from plaintiffs and the tenants.

**I. The Owner is attempting to sell the Sandpiper Cove Apartments and raise the Maximum Permissible Rents on the property in violation of HUD's civil rights laws or site selection standards**

68. On or about May 22, 2020, J. Allen Management, on behalf of the owner, issued a Notice to Residents of Intention to Submit to HUD for Approval of an Increase in Maximum Permissible Rents. The Notice also stated that the property was going to be purchased by Galveston 3916 Winnie Street, LP.

69. The Notice cites that the proposed increase in rent is needed from HUD to completely rehabilitate the units, including: repairs to the plumbing, electrical, HVAC and other integral systems. Additionally, the Notice admits that there are repairs needed to bring the property into compliance with the Americans with Disabilities Act.

70. The proposed increase in rents is insufficient to completely rehabilitate the complex "down to the sheetrock" as described in the Notice. Moreover, demolition of the units will not bring the

units into compliance with HUD's civil rights laws or site selection standards. These units will remain located in a densely minority, low income census tract. The units will continue to be subject to high crime and lack access to many basic amenities. The Notice does not indicate when the Owner will come into compliance with the imminent health and safety hazards cited in the Notice of Default and it is further evidence that tenants will remain subject to these dangerous conditions unless they are issued tenant protection vouchers.

**V. HUD's withholding any assistance to help Plaintiffs relocate is final agency action that is arbitrary, capricious, an abuse of discretion and is not in accordance with the relevant law**

71. Agency action is defined to include an agency sanction. 5 U.S.C. § 551(13).<sup>5</sup> The APA defines sanction as including an agency withholding of relief. 5 U.S.C. § 551 (10)(B). Relief is defined as the grant of . . . assistance . . . or remedy. 5 U.S.C. § 551 (13)(A). *Trudeau v. Fed. Trade Commission*, 384 F. Supp. 2d 281, 289 (D.D.C. 2005), *aff'd*, 456 F. 3d 178 (D.C. Cir 2006).).

72. Both the 2020 and the 2019 Appropriations Act and the HUD regulation 24 C.F.R. § 886.323(e) require HUD to provide the relief of assistance for relocation upon the occurrence of specified events. Both authorities include the same two events:

- the issuance of a Notice of Default, and
- the failure of the owner to cure the deficiencies set out in the notice,
- 2020 and 2019 Appropriations Act, 24 C.F.R. § 886.323(e).

<sup>5</sup> (13) "Agency action" includes the whole or a part of an agency rule, order, license, **sanction, relief**, or the equivalent **or denial thereof**, or failure to act; 5 U.S.C.A. ' 551 (13). (emphasis added.)

73. Both of these events have occurred. HUD has issued a Notice of Default. The owner did not remedy the deficiencies within the time specified. HUD continues to make payments under the HAP while the tenants continue to live in conditions of imminent health and safety risk. Even though the predicate for the relief is satisfied, HUD is withholding the relief of relocation assistance for the tenants.

74. The HUD regulation specifically requires HUD to provide relocation assistance to tenants who want to be rehoused after a notice of default and the failure of the owner to comply within the time specified in the notice:

If a family wishes to be rehoused in another dwelling unit, **HUD shall provide assistance in finding such a unit for the family.** 24 C.F.R. § 886.323(e).

This event has occurred. With the September 5, 2019 letter to HUD, Plaintiffs have clearly expressed their wish to be rehoused with a voucher as have other tenants. Despite the predicate being met, HUD has withheld the assistance. The Plaintiffs and other tenants also requested assistance to relocate including voucher assistance in the public comments provided to Galveston officials in 2018.

75. HUD's sanction, the withholding of relief, is final. HUD's sanction is stated to be the product of HUD's full consideration of the facts and it has legal consequences. *U.S. Army Corps of Engineers v. Hawkes Co., Inc.*, U.S. 136 S.Ct. 1807, 1813-1814 (2016) citing *Bennett v. Spear*, 520 U.S. 154, 177-178 (1997).

76. HUD is continuing to keep the project based contract at Sandpiper Cove Apartments in effect. HUD is not going to provide relocation assistance or enforce its own regulations to ensure necessary renovations and rehabilitation of the property take place.

77. HUD's action withholding a remedy that provides Tenant Protection Vouchers or

other assistance in finding another dwelling unit in decent, safe, and sanitary condition was outside the scope of HUD's discretion. HUD's withholding the remedy is arbitrary, capricious, an abuse of discretion and otherwise not in accordance with law. *Senate Manor Properties, LLC v. U.S. Dep't of Hous. & Urban Dev.*, 2008 WL 5062784, at \*1 (S.D. Ind. 2008) (HUD decision to abate PBRA subsidies was justified).

78. HUD's own regulation limits its discretion once an owner has been given a Notice of Default and has failed to cure the violations. HUD may exercise any of its contract or regulatory agreement rights. But whatever choice HUD exercises, if a family wishes to be rehoused in another dwelling unit, HUD shall provide assistance in finding such a unit for the family. 24 C.F.R. § 886.323(e) (Emphasis added). HUD's withholding any assistance to help Plaintiffs relocate is final agency action that is arbitrary, capricious, an abuse of discretion and is not in accordance with the relevant law

## **VI. The Sandpiper Cove residents live in dangerous and unfit conditions**

### **A. High number of crimes at the Apartment**

79. The high number of violent and serious crimes committed on the Sandpiper Cove Apartment premises victimizes the apartment residents. In 2016, HUD's agent, Southwest found that the failure to provide adequate security from criminal activity violated HUD's housing quality standards, the governing contract requiring the owner to provide decent, safe, and sanitary housing (Section 2.5), HUD Handbook 4350.3REV-1, CHG-4, 8-1, C, and HUD Handbook 7460.4-Security Planning for HUD-Assisted Multifamily Housing Handbook: Chapter2, (5)(c-e). SHCC found the level of criminal activity at the property was a condition in noncompliance with HUD guidelines. The review based its finding on service requests made to the Galveston Police

Department from 10/3/2015 through 10/3/2016. The review required corrective actions to "improve the safety program at the property and decrease the level and severity of criminal activity occurring on-site." The owner did not implement corrective actions and HUD continued to find high level of criminal activity.

80. Data obtained pursuant to an open records request from the Galveston Police Department indicates that crime statistics at or near the property have significantly worsened since 2016. From January 1, 2018 through December 31, 2019, the following serious offenses occurred at or in the immediate vicinity of Sandpiper Cove:

- **Weapon Offenses - 120**
- **Assault - 75**
- **Narcotics Violation - 53**
- **Robbery- 4**
- **Burglary- 76**
- **Terroristic Threats - 58**
- **Disturbance - 504**
- **Trespassing- 188**
- **Suspicious Activity/Person – 844**
- **Theft- 124**
- **Structural Fire - 12**
- **Criminal Mischief - 98**
- **Sexual Assault – 8**
- **Armed/Aggravated Robbery - 6**

81. The owner did not cure the condition of non-compliance. The 2019 MOR cites that the owner stated that they would implement an action plan to address safety issues and periodically assess its effectiveness. The SHCC did not receive the owner's action plan and has received no response from the owner regarding this condition of non-compliance since December of 2016.

82. The Plaintiffs continue to be subjected to this violation of the HUD requirement to provide decent, safe, and sanitary housing. The high number of serious crimes constitute a hazard to the tenants and their families.

83. HUD knows that Sandpiper Cove is a place where persons (who do not live at the complex) habitually go to commit crimes and has taken no action to remedy the unsafe conditions. These multiple incidents of high crime violate the State law common nuisance statute. Tex. Civ. Prac. & Rem. Code § 125.0015. The repeated criminal activity subjects tenants to unsafe living conditions. This repeated violation of state law by the owner is a reason alone for HUD to provide tenants with the relief of housing away from Sandpiper Cove.

84. The HUD Multifamily Security Manual finds that the fear of crime is exacerbated by the fear and insecurity caused by the often-justified fear of retaliation by criminals reported to the police or to management. Pages 51-52. Exposure to violence can harm a child's emotional, psychological and even physical development.

**B. Many of units cannot be made physically secure**

85. HUD requires the units receiving its rental subsidy to keep all doors and windows "functionally adequate, operable, and in good repair . . . ." 24 C.F.R. § 5.703(d)(1). The high crime activity at the apartments exacerbates the need for functionally adequate, operable, and in



good repair doors, windows, door locks, and window locks. The failure to provide operable locks on windows and doors is a consistent finding of non-compliance with the obligation to provide decent, safe, and sanitary housing.

**C. The units and other areas are not free from mold**

86. HUD requires the units and common areas to be free from mold in order to be decent, safe, and sanitary.

87. The dwelling units and common areas must have proper ventilation and be free of mold, odor (e.g., propane, natural gas, methane gas), or other observable deficiencies. 24 C.F.R. § 5.703(f).

88. The units and common areas at Sandpiper Cove Apartments have open and obvious colonies of mold with the resulting foul odor. The mold colonies were found to be an open violation of the decent, safe, and sanitary regulation in the 2019 REAC inspection.

89. HUD states that the presence of mold as a serious health and safety issue.

Even a small amount of mold or mildew can be potentially dangerous, especially if it is allowed to increase in size. The presence of mold or mildew should be identified, and the cause should be determined and corrected. Because mold/mildew has been recognized as a serious health and safety issue, it is also recorded as poor air quality. 77 FR 47708, 47713, 8/9/2012.

90. Mold and mildew continue to be present. The 2019 REAC inspection found:

Observed mold/mildew inside units.

Level 3 Health & Safety deficiency – mold/mildew observed in every building inspected. Evidence of water infiltration or other moisture producing condition that causes mold, or mildew greater than or equal to 1 square foot of mold/mildew.

Mold/mildew observed in bathrooms and living areas in every unit inspected.

91. HUD is paying the owner for units that are not decent, safe, and sanitary housing and that pose imminent health and safety risks to the tenants.

**D. The housing provided in return for the HUD and tenant rent payments is not decent, safe, and sanitary**

92. HUD and the tenants have been paying substantial amounts of rent to the owner of the Sandpiper Cove Apartments. Despite the rent payments, HUD has not assured that the owner provide decent, safe, and sanitary housing.

93. The HUD inspections consistently find the presence of unit, project and site conditions that violate the owner's obligation to provide decent, safe, and sanitary housing.

94. These and other conditions in noncompliance with HUD requirements for decent, safe, and sanitary housing affecting each Plaintiff are set out in this complaint.

**VII. Plaintiffs' facts**

95. Sandpiper Residents Association (SRA) is a tenant association established in accordance with federal regulations to protect the rights of Sandpiper Cove residents. 24 C.F.R. § 245.110 *et. seq.* It is comprised solely of current residents of Sandpiper Cove Apartments, all of whom receive a HUD housing subsidy. Sandpiper Residents Association has standing to bring suit on behalf of the tenants as its members would otherwise have standing to sue in their own right, the interests it seeks to protect are germane to the organization's purpose, and because neither the claim asserted nor the relief requested requires the participation in the lawsuit of each of the individual members. The injury to Sandpiper Residents Association members is directly related to the reason they joined the organization, namely to obtain decent, safe and sanitary housing. Sandpiper Residents Association members have standing to sue in their own right, as they are directly injured by defendant's acts and/or omissions.

96. Sandpiper Residents Association was formed to protect and promote Sandpiper Cove tenants' interest in obtaining and maintaining decent, safe and sanitary housing at the

property. Since its formation, SRA has been involved in several actions intended to publicize the habitability concerns on the property and obtain assistance with remediation of physical hazards. The Association contacted local media outlets to report poor physical conditions at the property and make the residents' plight public. The Houston Chronicle, a major Houston-area newspaper, published several articles focusing on dangerous conditions at Sandpiper Cove and residents' efforts to obtain assistance. The Association has also been involved in filing complaints with the Southwest Housing Compliance Corporation ("SHCC"), which is tasked with inspecting PBRA properties, including Sandpiper Cove and ensuring compliance with HUD habitability standards. SRA continues to monitor conditions at the property and contact elected officials, SHCC, HUD and local media as necessary to bring attention to issues affecting tenant health and safety on the property. The Association has meetings during which residents may bring up any complaints or requests for assistance. In its efforts to assist residents, SRA has previously addressed the Galveston City Council to bring habitability complaints at Sandpiper Cove to its attention. Yet despite SRA's efforts to alert relevant agencies, including HUD, Defendant has not responded to the Association's requests for providing decent, safe, and sanitary housing.

97. Furthermore, neither the claims asserted nor the relief requested requires the participation of Sandpiper Residents Association members in the lawsuit. Sandpiper Residents Association seeks injunctive relief, and it can reasonably be supposed that the remedy, if granted, will inure to the benefit of those members of the association actually injured.

98. Sandpiper Residents Association was formed to protect and promote Sandpiper Cove tenants' interest in obtaining and maintaining decent, safe and sanitary housing at the property. The members are majority Black tenants at Sandpiper. Since its formation, SRA has been involved in

several actions intended to publicize the habitability concerns on the property and obtain assistance with remediation of physical hazards. The Association contacted local media outlets to report poor physical conditions at the property and make the residents' plight public. The Houston Chronicle, a major Houston-area newspaper published several articles focusing on dangerous conditions at Sandpiper Cove and residents' efforts to obtain assistance. The Association has also been involved in filing complaints with the Southwest Housing Compliance Corporation ("SHCC"), which is tasked with inspecting PBRA properties, including Sandpiper Cove and ensuring compliance with HUD standards. The Association continues to monitor conditions at the property and contacts elected officials, SHCC, HUD and local media as necessary to bring attention to issues affecting tenant health and safety on the property. SRA has regular meetings during which residents may bring up any complaints or requests for assistance. In its efforts to assist residents, SRA has previously addressed the Galveston City Council to bring habitability complaints at Sandpiper Cove to its attention. Yet despite SRA's efforts to alert relevant agencies, including HUD, Defendant has not responded to the Association's requests for providing decent, safe, and sanitary housing.

99. Plaintiff Larry Bernard Brooks Sr. resides at Sandpiper Cove. Part of his rent is paid under HUD's Project-Based Section 8 Rental Assistance contract. Mr. Brooks is Black or African American. He moved to Sandpiper Cove in 2011. He lives alone in a two-bedroom unit. Mr. Brooks is disabled and supports himself through Supplemental Security Income ("SSI") of \$771/month. He has never been cited for any infractions at the complex. Mr. Brooks lost valuable possessions as a result of physical conditions at Sandpiper Cove. Recently, an electric transformer malfunctioned and Mr. Brooks' television set was damaged by the resulting power surge. There is mold in the apartment and a noticeable odor in the unit. He regularly cleans visible areas with

cleaning solutions to limit the spread of spores but the mold returns. Mr. Brooks is concerned about long-term health impacts of being exposed to mold in the apartment and is afraid for his safety as a result of electrical malfunctions. Mr. Brooks' limited income precludes him from moving elsewhere without the assistance of a tenant protection voucher.

100. Plaintiff Betty Ann Dergin has lived at Sandpiper Cove since the early 1980s. She lives in a 3-bedroom apartment with her adult son and minor grandson. Ms. Dergin is Black or African American. Ms. Dergin and her son are both disabled and disability benefits are their sole source of income. There are numerous habitability issues in their apartment, including water leaks, defective plumbing and roof problems. Slugs regularly enter the kitchen through the sink. Frequent power surges inside the living room have damaged electronic devices so family them to an outside plug to avoid additional losses. Ms. Dergin is tired of the poor conditions at Sandpiper Cove. She has mold in her apartment that cannot be removed regardless how often she cleans her home. Ms. Dergin seeks to move to a decent, safe and sanitary unit but cannot do so without the assistance of a tenant protection voucher.

**VIII. HUD's decision to withhold Tenant Protection Vouchers as a form of relocation assistance is final agency action that violates the Fair Housing Act and the Constitution**

101. HUD has the authority under the law to provide a specific remedy for Plaintiffs. Because HUD has issued the Notice of Default and the units continue to pose an imminent health and safety risk to residents, HUD can issue Tenant Protection Vouchers to Plaintiffs and the other tenants. FURTHER CONSOLIDATED APPROPRIATIONS ACT, 2020, PL 116-94, December 20, 2019, 133 Stat 2534; CONSOLIDATED APPROPRIATIONS ACT, 2019, PL 116-6, February 15, 2019, 133 Stat 13, Public and Indian Housing Tenant-Based Rental Assistance (2). The prerequisites are met. HUD issued the Notice of Default. The units pose an imminent health and safety risk to

residents. HUD does not have to terminate the HAP contract with the owner in order to provide these vouchers. HUD can pay for the vouchers from the funds already appropriated. *Id.* If the HAP is not terminated, the vouchers are relocation vouchers and sunset when the current participant leaves the voucher program. If the HAP is terminated, the vouchers are replacement vouchers and remain available for re-use in the community. HUD Notice PIH 2018-09.

102. HUD has made the final decision to withhold this relief from Plaintiffs. The decision has legal consequences. Plaintiffs do not receive the voucher assistance that could be used for relocation. The facts show that HUD's decision to withhold the relief is based on the discriminatory purpose to maintain racial segregation and to disadvantage a group of minority households. The use of discretion to accomplish intentional racial discrimination violates both the U.S. Constitution, 42 U.S.C. § 3604(a), and 42 U.S.C. § 3608(e)(5). *N.A.A.C.P. v. Sec'y of Hous. & Urban Dev.*, 817 F.2d 149, 157 (1st Cir. 1987); *Clients' Council v. Pierce*, 711 F.2d 1406, 1425 (8th Cir. 1983).

103. HUD's withholding the relief of Tenant Protection vouchers or the other assistance in finding another dwelling unit in decent, safe, and sanitary conditions is illegal final agency action based on the following facts:

A. It makes decent, safe, and sanitary housing unavailable because of race as shown by the facts shown in this complaint as summarized below and showing the circumstantial evidence of HUD's intent to discriminate on the basis of race and ethnicity.

1) The action disadvantages a predominantly minority group, the tenants at Sandpiper Cove Apartments, by causing them to live in units, a project, and a neighborhood that poses an imminent health and safety risk to them and to their families. HUD reports that over 88% of the

tenants at Sandpiper Cove are Black and Hispanic.

2) The action subjects the minority group to continued residence in units, a project, and a neighborhood that is substantially unequal to the unit, project, and neighborhood conditions for the majority White non-Hispanic Project Based Rental Assistance projects in nearby metropolitan areas. There are several comparable Project Based Rental Assistance properties in adjacent Brazoria County that are in substantially better physical condition and without the health and safety hazards present at Sandpiper Cove. They are majority White, non-Hispanic. These properties are habitable and do not present imminent health hazards to residents.

3) HUD's action is contrary to the substantive norm requiring it to assure that the tenants residing in Project Based Rental Assistance are receiving decent, safe, and sanitary housing. 24 C.F.R. §§ 886.323 (a), (d), (e).

4) HUD's action is contrary to the substantive norm that once HUD notifies the owner that he/she has failed to maintain a dwelling unit in decent, safe, and sanitary condition and the owner fails to take corrective action within the time prescribed in the notice, HUD shall provide assistance in finding a unit in decent, safe, and sanitary condition for each family that "wishes to be rehoused in another dwelling". . . . 24 C.F.R. § 886.323(e).

5) HUD's action is contrary to the procedural norm that once HUD notifies the owner that he/she has failed to maintain a dwelling unit in decent, safe, and sanitary condition, and the owner fails to take corrective action within the time prescribed in the notice, further payments for the units violate the Housing Assistance Payment Contract between HUD and the owner.

(2) Housing assistance payments shall only be paid to the Owner for contract units occupied by eligible families leasing decent, safe and sanitary units from the Owner in accordance with statutory requirements and with all HUD regulations and other requirements. Project-based Section 8 HOUSING ASSISTANCE PAYMENTS BASIC RENEWAL CONTRACT MULTI-YEAR TERM.

6) HUD's action is contrary to the procedural and substantive HUD obligation in the administration of the HAP contract with the owner of Sandpiper Cove, Compass Pointe, LLC to take and require meaningful actions that:

- address significant disparities in housing needs and in access to opportunity,
- replace segregated living patterns with truly integrated and balanced living patterns,
- transform racially and ethnically concentrated areas of poverty into areas

of opportunity,

and

- foster and maintain compliance with civil rights and fair housing laws.

42 U.S.C. §3608(e)(5); *N.A.A.C.P. v. Sec'y of Hous. & Urban Dev.*, 817 F.2d 149, 156 (1st Cir. 1987); *Shannon v. U.S. Dep't of Hous. & Urban Dev.*, 436 F.2d 809, 819, 821-822 (3d Cir. 1970). HUD's refusal to provide plaintiffs with the grant of assistance necessary to obtain decent, safe, and sanitary housing in site and neighborhood conditions substantially equivalent to the conditions in which majority White non-Hispanic occupied PBRA projects are located is the failure to provide the assistance that would address the significant disparities, segregated living patterns in racially concentrated areas of poverty, and comply with civil rights and fair housing laws.

**IX. HUD's breach of its obligation to pay the owner only for units that are decent, safe, and sanitary is based at least in part on the race of Plaintiffs and the other tenants**

102. Plaintiffs will show the following facts that give rise to an inference of discrimination by HUD.

103. HUD contracts with private landlords to provide affordable housing to low income tenants through the PBRA program. Pursuant to the contract, HUD makes payments to the



landlord to rent the units to eligible low income tenants. HUD has the contractual authority to require that the landlord comply with the HUD housing quality standards that govern this housing program.

104. Plaintiffs are Black or African American. Sandpiper Cove is located in a 16% White non-Hispanic census tract. Sandpiper Cove's units are 87% occupied by Black or African American households. HUD is paying for housing that is provided by the owner to Plaintiffs but which is not decent, safe, and sanitary housing.

105. Plaintiffs entered into a lease for the HUD subsidized PBRA housing at Sandpiper Cove that, had it met the HUD housing quality standards, would have provided them and their families with decent, safe, and sanitary housing. The Plaintiffs' lease for the HUD subsidized PBRA housing at Sandpiper Cove would have provided them and their families with equal neighborhood living conditions without conditions that adversely affect the health, safety, and general welfare of residents.

106. The unit, project, and site conditions that do not comply with minimum standards for decent, safe, and sanitary housing.

107. The living conditions that adversely affect the Plaintiffs and other Sandpiper Cove tenants are factors that adversely affect the health, safety, and general welfare of residents, and cannot be mitigated by HUD.

108. HUD pays for decent, safe, and sanitary housing for similarly situated, disproportionately White non-Hispanic low income PBRA tenants in majority White, non-Hispanic census tracts. These PBRA units include the PBRA projects in Brazoria County which the county adjacent to

Galveston County where Sandpiper Cove is located.

109. The rents for the assisted units at the projects in Brazoria County are comparable to the rents for the assisted units at Sandpiper Cove. The unit, site, and project conditions at other PBRA projects are decent, safe, and sanitary.

110. HUD does not make the disproportionately White tenants in the Brazoria County PBRA projects live in conditions that present imminent health and safety risks to the residents. HUD does not require those tenants to reside in conditions of imminent health and safety risks in order to “preserve” the affordable housing units.

111. When Plaintiffs and residents at Sandpiper Cove asked HUD to be rehoused after the Notice of Default and the owner’s non-compliance HUD refused to provide the relocation assistance. One reason given by HUD for the refusal to relocate the Sandpiper residents was that HUD wanted to preserve the affordable housing units at Sandpiper.

112. HUD’s payments to the owner of Sandpiper Cove for units that are not decent, safe, and sanitary is not based on any legitimate, non-discriminatory reason and is final agency action.

113. HUD has no statutory or regulatory authority for paying to provide Plaintiffs with housing that is not the decent, safe, and sanitary housing required by the relevant housing quality standards. HUD has no statutory or regulatory authority for paying to provide Plaintiffs with housing in locations with neighborhood living conditions that are free from high crime and other conditions that adversely affect the health, safety, and general welfare of the area residents.

**A. The additional evidence showing the existence of *Village of Arlington Heights* factors supports the finding of intentional discrimination**

114. The U.S. Supreme Court set out a list on non-exclusive factors that may provide

circumstantial evidence showing racial discrimination was a motivating factor in government decisions affecting the availability and location of housing. *Vill. of Arlington Heights v. Metro Hous. Dev. Corp.*, 429 U.S. 252, 265-268 (1977). The following evidence shows the existence of Arlington Heights factors that support the inference of intent. The facts show that HUD intentional support for racial segregation is longstanding in duration and pervades HUD's administration of the PBRA program in the City of Galveston.

115. Sandpiper Cove apartment complex in the City of Galveston is located in a predominantly minority census tract. It is further adversely affected by various unequal neighborhood living conditions. Sandpiper Cove is disproportionately occupied by Black or African American low-income tenants. Several similar PBRA projects in White, non-Hispanic Brazoria County and surrounding census tracts that would offer Plaintiffs a racially integrated housing opportunity in equal neighborhood conditions are restricted to elderly tenants only.

116. Brooks Manor is a similar PBRA complex located in Brazoria County. However, the tenant community is 79% White Non-Hispanic. The most recent REAC inspection score was 87c. Its buildings are in better physical condition, with well-maintained common areas, lawns and a children's playground in operable condition and located in a census tract with a lower crime rate.

117. Alvin Memorial is another comparable PBRA property located in adjacent Brazoria County. Its residents are 66% White Non-Hispanic. The most recent REAC inspection score was 92b. The property is in superior physical condition than Sandpiper Cove and units visibly appear to be decent, safe and sanitary. Property maintenance is conducted regularly and the crime rate in the census tract is lower than that Sandpiper Cove is located in.

118. Magnolia Acres is a comparable PBRA property in adjacent Brazoria County. The complex's tenant population is 69% White Non-Hispanic. The most recent REAC inspection score is 94b. The complex is decent, safe and sanitary. It is a gated, fenced in community with 66 units featuring a children's playground. The property is in better physical condition than Sandpiper Cove. The property is zoned to better-performing public schools than any that Sandpiper Cove residents may enroll in.

**B. The historical background of the racial segregation and unequal conditions affecting PBRA and other HUD assisted housing in Galveston reveals a series of actions taken for invidious purposes.**

119. HUD's administration of Galveston's public housing system and the PBRA program has perpetuated segregation in the city since the early 20<sup>th</sup> century. HUD's administration of the PBRA program at Sandpiper Cove continues the segregation of the low income Black and Hispanic tenants in Galveston today.

120. HUD's public housing was purposefully constructed and concentrated in an industrial area known as Galveston's Sixth Ward. According to census data, this area was historically black. Four public housing facilities were built in the area, including: Oleander Homes (1943), Palm Terrace (1943), Magnolia Homes (1953) and Cedar Terrace (1953).

121. In 1971, HUD approved the subsidy associated with Sandpiper Cove Apartments.

122. In 1997, residents and applicants for public housing administered by Galveston Housing Authority (GHA) filed suit against the agency for failing to remedy the segregation related to the administration of the City's Public Housing Program. Plaintiffs' claims alleged violations of the 5<sup>th</sup> and 14<sup>th</sup> Amendments and Title VI and Title VIII of the Civil Rights Act.

HUD knows of the racial segregation of GHA public housing. In 1997, HUD found GHA in violation of Title VI of the Civil Rights Act.

123. The parties entered into a consent decree to resolve Plaintiffs' claims.

124. As a result, the Galveston Housing Authority was ordered to deconcentrate the families living in GHA public housing. However, the properties were never properly desegregated.

125. In 2008, Hurricane Ike struck Galveston Island and significantly damaged all four of the Galveston Housing Authority properties. GHA demolished all 569 units. GHA promised to rebuild them each unit and add over 1500 units over the next 10 years. GHA abandoned that plan after significant public opposition.

126. In October 2009, Texas Low Income Housing Service and Texas Appleseed filed a Fair Housing complaint with HUD against the State of Texas' Amendment to its Action Plan for Hurricane Disaster Relief Block Grant Funds. The Complaint asserted that the State of Texas and the City of Galveston failed to adequately address the impediments to Fair Housing as required to receive Block Grant funds.

127. In May 2010, a Conciliation Agreement was executed between the parties. The Agreement advised that the recipients of the CDBG Disaster Relief funds must identify and address all impediments to Fair Housing. The City of Galveston received 20 million dollars of the funds to rebuild family and senior public housing.

128. Over ten years has elapsed since the dissemination of the funds to the City of Galveston to rebuild public housing and only half of the units have been constructed. The other half of the public housing units have been proposed to be rebuilt in the Sixth Ward area of Galveston that is

already densely concentrated with public housing.

129. The continued concentration of GHA public housing and PBRA housing in the Sixth Ward of Galveston violates Federal Civil Rights laws and HUD site selection regulations.

130. The unequal neighborhood conditions affecting HUD's PBRA housing in minority concentrated areas include high crime, high poverty including high childhood poverty, distressed neighborhoods, poor drainage, flooding, segregated and unequal schools, and lack of childhood opportunities.

131. The injuries particularly to children from these conditions of racial segregation are foreseeable and were foreseen by HUD.

Racially or ethnically concentrated areas of poverty merit special attention because the costs they impose extend far beyond their residents, who suffer due to their limited access to high-quality educational opportunities, stable employment, and other prospects for economic success. Because of their high levels of unemployment, capital disinvestment, and other stressors, these neighborhoods often experience a range of negative outcomes such as exposure to poverty, heightened levels of crime, negative environmental health hazards, low educational attainment, and other challenges that require extra attention and resources from the larger communities of which they are a part. Consequently, interventions that result in reducing racially and ethnically concentrated areas of poverty hold the promise of providing benefits that assist both residents and their communities. Affirmatively Furthering Fair Housing; Proposed Rule, 78 Fed Reg 43710, 43714, July 19, 2013.

132. HUD's site selection regulations prohibiting the concentration of HUD assisted housing in minority concentrated, low income areas with unequal living conditions were first enacted in 1972. 37 Fed. Reg. 203 (1972). The existing racial segregation in HUD assisted housing in the City of Galveston was funded and approved by HUD decisions in violation of HUD's site selection regulations. HUD provided the Sandpiper Cove with the original HUD assistance and

continued to renew the Housing Assistance Payments contract despite HUD's site selection regulations prohibiting housing in minority concentrated and low-income areas.

**C. HUD's decisions to renew the PBRA contracts for Sandpiper Cove Apartments were made in violation of HUD substantive standards are consistent with and show the existence of discriminatory intent**

133. HUD has made several decisions to enter into, and continue renewing PBRA contracts with Sandpiper Cove Apartments since 1984. These decisions were made in violation of the HUD regulatory standards for acceptable housing. 24 C.F.R. § 5.703. These decisions are consistent with and supportive of the racially segregative purpose to segregate Black or African American families and provide them with unequal facilities. HUD's failure to affirmatively further fair housing with regard to the PBRA program and Sandpiper Cove Apartments is the violation of a substantive standard that is consistent with discriminatory intent.

134. HUD has the legal obligation under 42 U.S.C. § 3608(e)(5) to affirmatively further fair housing:

- address significant disparities in housing needs and in access to opportunity,
- replace segregated living patterns with truly integrated and balanced living patterns,
- transform racially and ethnically concentrated areas of poverty into areas of opportunity, and
- foster and maintain compliance with civil rights and fair housing laws. *N.A.A.C.P. v. Sec'y of Hous. & Urban Dev.*, 817 F.2d 149, 156 (1st Cir. 1987); *Shannon v. U.S. Dep't of Hous. & Urban Dev.*, 436 F.2d 809, 819, 821-822 (3d Cir. 1970); 24 C.F.R. § 5.150, § 5.152; HUD, Affirmatively Further Fair Housing, Final Rule, 80 Fed. Reg. 42272, July 16 2015.

135. HUD is aware of the racially segregated and unequal conditions in the living patterns provided by the PBRA projects located in the City of Galveston, in Galveston County, and in the adjoining county, Brazoria County. HUD obtains detailed Management and Occupancy Review reports as well as REAC reports on each PBRA project. These reports include the facts showing failure of units in these projects to provide decent, safe, and sanitary housing. HUD's Picture of Subsidized Households database contains the census tract information showing the minority composition of each PBRA project and of the census tract in which each PBRA is located.

136. Despite this knowledge, HUD has not taken meaningful action to affirmatively further fair housing in the PBRA program as administered at the Sandpiper Cove Apartments project. HUD's implementation of its legal obligation to provide for fair housing is violated by HUD's breach of its obligation to pay only for Sandpiper Cove units that are decent, safe, and sanitary housing. HUD's breach leaves in place a pattern of racially segregated and unequal living conditions at Sandpiper Cove Apartments.

## **X. Claims for relief**

### **A. APA claim for relief based on the final agency action withholding the assistance required by the 2019 Consolidated Appropriations Act and 24 C.F.R. § 886.323(e)**

137. The legal and factual prerequisites for HUD's provision of relocation assistance to Plaintiffs are met. HUD has issued a Notice of Default for the owner's failure to maintain the units and the projects in decent, safe, and sanitary condition. The time for the owner to cure the deficiencies has passed without the deficiencies being cured. Plaintiffs have requested the assistance to relocate to decent, safe and sanitary housing elsewhere. HUD's obligation to provide the assistance and the relief from the owner's breach of its obligation to provide decent, safe, and



sanitary housing is an obligation to provide assistance and relief and its withholding the assistance and relief is final agency action under the Administrative Procedure Act, 5 U.S.C. § 551(13); 5 U.S.C.A. § 551 (10)(B); 5 U.S.C.A. § 551 (13)(A). The relevant law and regulation require HUD to provide the relief of assistance for relocation once HUD has given a Notice of Default, the owner has not corrected the deficiencies set out in the notice, and HUD continues the contract in effect and pay for units that are not decent, safe, and sanitary.<sup>6</sup> Each of these requirements is met yet HUD continues to withhold the assistance which is the relief provided by law. HUD's withholding the assistance and the relief is final agency action. 5 U.S.C. § 551(13); 5 U.S.C. § 551 (10)(B), 5 U.S.C. § 13(A). HUD's action is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the Appropriations Acts and 24 C.F.R. § 886.323(e). The scope of review for this claim is set by 5 U.S.C. § 706 (2).

**B. APA claim for relief based on the final agency action unlawfully withholding the relocation assistance required by 24 C.F.R. § 886.323(e)**

138. The legal and factual prerequisites for HUD's provision of relocation assistance to Plaintiffs are met. HUD has issued a Notice of Default for the owner's failure to maintain the units and the projects in decent, safe, and sanitary condition. The time for the owner to cure the deficiencies has passed without the deficiencies being cured. Plaintiffs have requested the assistance to relocate to decent, safe and sanitary housing elsewhere and HUD has refused.

139. HUD has the legal obligation to provide the tenants with relocation assistance pursuant to 24 C.F.R. § 886.323(e) and is refusing to do so. Plaintiffs bring this action to compel agency action unlawfully withheld or unreasonably delayed. The scope of review for this claim is set by

<sup>6</sup> FURTHER CONSOLIDATED APPROPRIATIONS ACT, 2020, PL 116-94, December 20, 2019, 133 Stat 2534; CONSOLIDATED APPROPRIATIONS ACT, 2019, PL 116-6, February 15, 2019, 133 Stat 13, Public and Indian Housing Tenant-Based Rental Assistance (2); 24 C.F.R. § 886.323(e).

5 U.S.C. § 706 (1).

**C. APA claim for relief based on the final agency action withholding the Tenant Protection Vouchers assistance authorized by the 2020 and the 2019 Consolidated Appropriations Acts<sup>7</sup>**

140. The 2020 and the 2019 Consolidated Appropriations Acts authorize HUD to issue Tenant Protection Vouchers to tenants in PBRA projects for which HUD has issued a Notice of Default and in which the conditions constitute imminent health and safety risks to the residents. *See* note 6.

141. HUD's final decision to withhold the assistance and relief of Tenant Protection Vouchers given the owner's refusal to provide decent, safe, and sanitary units, the Notices of Default, the failure to cure the deficiencies, and the imminent health and safety risks to Plaintiffs and the other tenants is final agency action. 5 U.S.C. § 551(13); 5 U.S.C.A. § 551 (10)(B); 5 U.S.C.A. § 551 (13)(A).

142. HUD's final decision to withhold the assistance and relief of Tenant Protection Vouchers is arbitrary, capricious, and an abuse of discretion.

143. The scope of review for this claim is set by 5 U.S.C. § 706(2).

**D. APA claim for relief based on the final agency action withholding the Tenant Protection Vouchers and the other relocation assistance authorized by the 2020 and the 2019 Appropriations Acts and 24 C.F.R. § 886.323(e) that violates HUD's obligations to provide, within constitutional limitations, for fair housing in all of its housing programs as required by 42 U.S.C. § 3608(e)(5)**

144. HUD's final decision to withhold the assistance and relief necessary for Plaintiffs to

<sup>7</sup> FURTHER CONSOLIDATED APPROPRIATIONS ACT, 2020, PL 116-94, December 20, 2019, 133 Stat 2534; CONSOLIDATED APPROPRIATIONS ACT, 2019, PL 116-6, February 15, 2019, 133 Stat 13, Public and Indian Housing Tenant-Based Rental Assistance (2)

obtain decent, safe, and sanitary housing elsewhere including the use of Tenant Protection Vouchers continues to subject Plaintiffs to racial segregation and unequal conditions in HUD's Project Based Rental Assistance program. As shown in this Complaint, HUD is funding and administering a racially separate and unequal PBRA system that denies Plaintiffs racially integrated and equal housing. HUD's decision to deny the assistance and relief for Plaintiffs to use the federal assistance to obtain racially integrated and equal housing violates HUD's duty to affirmatively further fair housing under 42 U.S.C. § 3608(e)(5).

145. The scope of review for this claim is set by 5 U.S.C. § 706.

**E. Claim for intentional discrimination in violation of 42 U.S.C. § 3604(a)**

146. For units in PBRA projects in majority White non-Hispanic census tracts, HUD complies with its obligation to pay only for units that are decent, safe, and sanitary. HUD is breaching this obligation by knowingly and voluntarily paying the owner of Sandpiper Cove Apartments for units that are not decent, safe and sanitary. HUD's breach of this obligation at Sandpiper Cove is based at least in part on the race of Plaintiffs and the other tenants. The evidence for this claim is shown above. HUD's discriminatory purpose subjects Plaintiffs to the injuries caused by the breach of HUD's obligation to pay only for decent, safe and sanitary housing.

147. HUD's final decision to withhold the relocation assistance and relief necessary for Plaintiffs to obtain decent, safe, and sanitary housing elsewhere including Tenant Protection Vouchers makes the decent, safe, and sanitary housing that would be available with that assistance unavailable to a group that is predominantly Black or African American and completely minority. This is the group of tenants at Sandpiper Cove Apartments. This decision

continues to subject Plaintiffs to HUD's discriminatory purpose and the resulting effects.

148. The evidence set out in this Complaint shows that HUD's final decision to withhold the assistance and the Tenant Protection Vouchers is intentional discrimination on the basis of race and ethnicity in violation of 42 U.S.C. § 3604(a).

**F. Claim for intentional discrimination in violation of the Equal Protection component contained in the due process clause of the Fifth Amendment to the Constitution of the United States**

149. For units in PBRA projects in majority White non-Hispanic census tracts, HUD complies with its obligation to pay only for units that are decent, safe, and sanitary. HUD pays for units at Sandpiper Cove that are not decent, safe, and sanitary. HUD's payments for units at Sandpiper Cove that are not decent, safe, and sanitary is based at least in part on the race of Plaintiffs and the other tenants. The evidence for this claim is shown in this Complaint. HUD's discriminatory purpose subjects Plaintiffs to the injuries caused by the breach of HUD's obligation to pay only for decent, safe and sanitary housing.

150. HUD's final decision to withhold the assistance and relief of the assistance including Tenant Protection Vouchers as necessary for Plaintiffs to obtain decent, safe, and sanitary housing elsewhere makes the decent, safe, and sanitary housing that would be available with that assistance unavailable to a group that is predominantly Black or African American and almost exclusively minority. This is the group of tenants at Sandpiper Cove Apartments. This decision continues to subject Plaintiffs to HUD's discriminatory purpose and the resulting effects.

151. The evidence set out in this Complaint shows that HUD's final decision to withhold the assistance and the Tenant Protection Vouchers is intentional discrimination on the basis of race

and ethnicity in violation of the Equal Protection component contained in the due process clause of the Fifth Amendment to the Constitution of the United States.

**XI. Prayer for relief**

152. Plaintiffs request the following relief:

- A. an injunction ordering HUD to provide Plaintiffs with the assistance necessary to obtain affordable decent, safe, and sanitary housing in neighborhoods without substandard conditions for so long as Plaintiffs remain eligible for the assistance;
- B. an injunction ordering HUD to provide Plaintiffs with Tenant Protection Vouchers as part of the assistance necessary to obtain affordable decent, safe, and sanitary housing in neighborhoods without substandard conditions so long as Plaintiffs remain eligible for the Voucher; This relief includes relocation assistance to use the voucher to obtain decent, safe, and sanitary housing in neighborhoods without substandard conditions.
- C. In the alternative to the relief of a Tenant Protection Voucher, injunctive relief ordering HUD to transfer the PBRA subsidy to a decent, safe and sanitary within the City of Galveston or Galveston County. This relief includes relocation assistance for the Plaintiffs to transfer to the new housing for the PBRA contract that is decent, safe, and sanitary.
- D. injunctive relief that Plaintiffs' leases with Sandpiper Cove Apartments are terminated without any default by Plaintiffs and ordering a return of all funds paid by Plaintiffs as rent or deposits;
- E. any other appropriate injunctive relief; and
- F. an award of plaintiffs' attorney's fees, litigation expenses, and costs.

Respectfully Submitted,

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## Sandpiper Cove: Analysis of Neighborhood Risk Factors and Undesirable Site Features

### I. Background

Before the Texas Department of Housing and Community Affairs (“TDHCA”) awards tax credits to developers to build or reconstruct affordable housing, they must submit a [Neighborhoods Risk Factors Report](#) in accordance with regulations in Title 10 of the Texas Administration Code. Rule §11.101 lays out neighborhood risk factors and undesirable site features that developers must submit in their applications. If TDHCA staff finds that these factors are present and unable to be mitigated, it should find the site ineligible for TDHCA assistance.

The following is an analysis of the neighborhood characteristics and undesirable site features in the area around Sandpiper Cove in Galveston, Texas. Any census data cited is from the American Community Survey 2018 5-Year Data unless otherwise noted.

### II. Basic Information

Address: [3916 Winnie St, Galveston, TX 77550](#)

Census Tract (“CT”): [Census Tract 7246](#)

Poverty Rate of CT: 58.2% of persons are below the poverty line in this census tract  
71% of all children (under 18) are below the poverty line

Poverty Rate of Galveston: 20.8% for all persons  
30% of all children

Race/Ethnicity of CT: 53% Black, non-Hispanic  
25% Hispanic  
20% White, non-Hispanic

Race/Ethnicity of Galveston: 18% Black, non-Hispanic  
30% Hispanic  
46% White, non-Hispanic

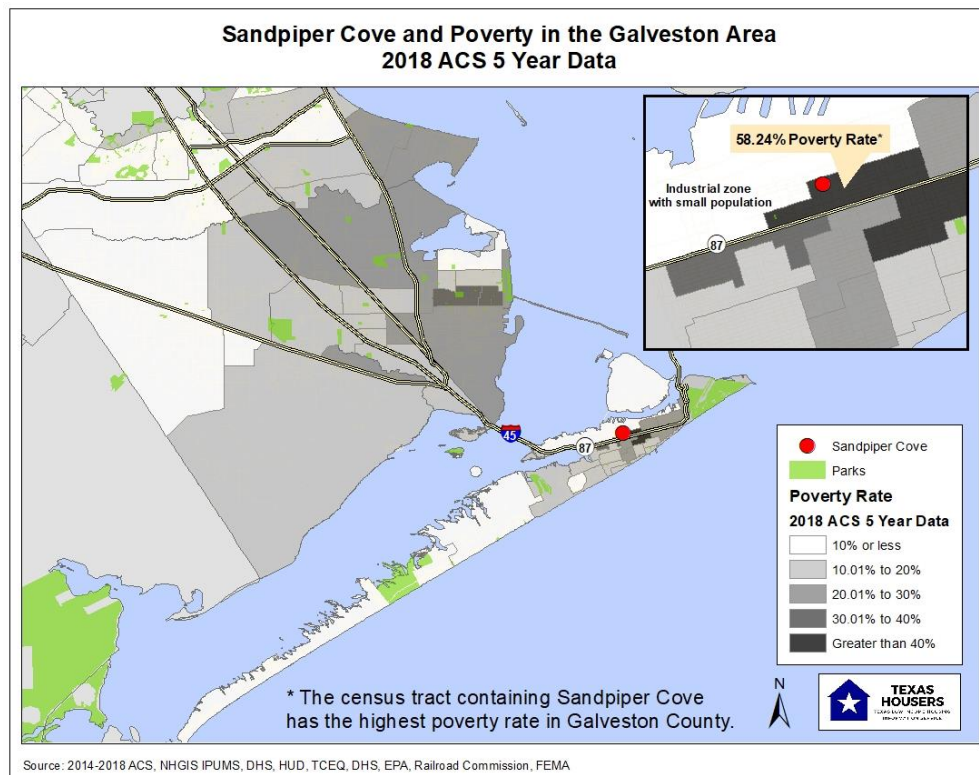
### III. Neighborhood Risk Factors: From [10 TAC §11.101\(a\)\(3\)](#)

**Summary:** The following table provides a breakdown of the neighborhood risk factors required to be reported by 10 TAC §11.101(a)(3). Two of four neighborhood risk factors are present for the area surrounding Sandpiper: a poverty rate above 40% and blight. In Sandpiper Cove’s census tract, 58.2% of persons are below the poverty line. The area within 1000 feet of the property can also be considered blighted. It contains abandoned or poorly maintained buildings and is next to a large industrial zone and an active railroad yard serving the Port of Galveston, a major source of pollution.

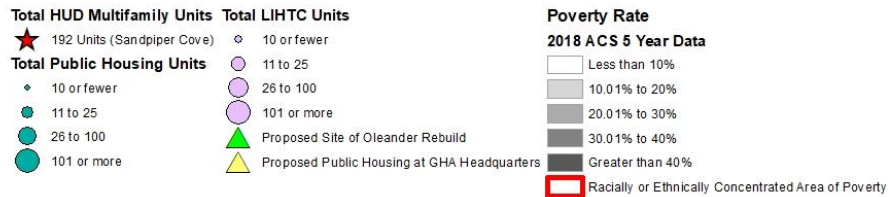
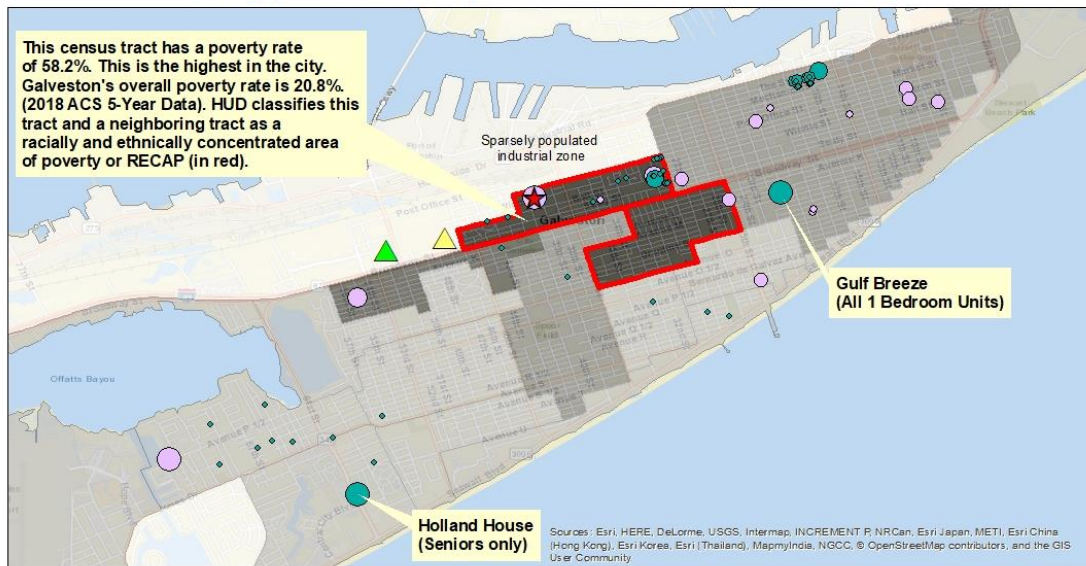
Although Rule §11.101(a)(3) does not require an analysis of racial segregation, Sandpiper Cove is in a racially segregated census tract. The tract is 53% Black, 25% Hispanic, and 20% White while the city of Galveston is 18% Black, 30% Hispanic, and 47% White. HUD classifies the tract as a racially and ethnically concentrated area of poverty or “RECAP”, meaning that its nonwhite population is greater than 50% and the poverty level exceeds 40%.



Risk Factor	Risk Factor Present? (Y/N)	Description
<b>High Poverty:</b> Development site is located in a census tract has poverty rate above 40% for individuals	<b>Yes, risk factor present</b>	58.2% of persons are below the poverty line in the tract; 71% of all children (under 18) are below the poverty line. This census tract has the highest level of poverty on the Island.
<b>High Crime:</b> Development site is in a census tract where violent crime is greater than 18 per 1,000 persons annually	<b>No, but crime still high</b>	In a Neighborhood Scout Report from October 2019, the neighborhood has a violent crime index of 13.39 per 1,000 residents. This rate is more than double Galveston's violent crime index of 5.11 per 1,000 persons.
<b>Blight:</b> Development site is located within 1,000 ft. (measured from nearest boundary of the Site to the nearest boundary of blighted structure) of multiple vacant structures that have fallen into such significant disrepair, overgrowth, and/or vandalism that they would commonly be regarded as blighted or abandoned.	<b>Yes, blight conditions exist. Further analysis is needed.</b>	There are abandoned and vacant structures within 1000 feet of complex. The complex is also nearby a large industrial zone and a railroad yard serving the Port of Galveston. The TDHCA must conduct further analysis of the surrounding area before making a ruling on this risk factor.
<b>Poor School Quality:</b> Development site is in the attendance zone of a poor performing school. TDHCA standards requiring reporting for schools that: 1) received a D in 2019 and an "Improvement Required Rating" in 2018; 2) receive an F in 2019; 3) received a F or D in 2019 and was not rated in 2018; or 4) were not rated in 2019 and received an "Improvement Required Rating" in 2018.	<b>Unclear, Galveston ISD has no attendance zones</b>	Galveston is a " <a href="#">district of choice</a> " allowing students to register to attend any campus and transportation is provided free of charge. Collegiate Academy, a middle school in Galveston, failed standards set by TDHCA and received an F from the TEA in 2019. The middle school closest to Sandpiper, Central Middle, received a C. Most schools received high ratings. Link: <a href="#">2019 Galveston ISD Campus Ratings</a> Link: <a href="#">2018 Galveston ISD Campus Ratings</a>

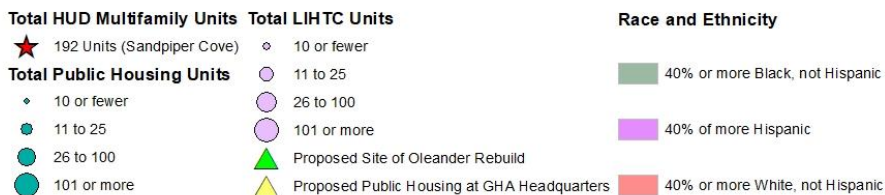
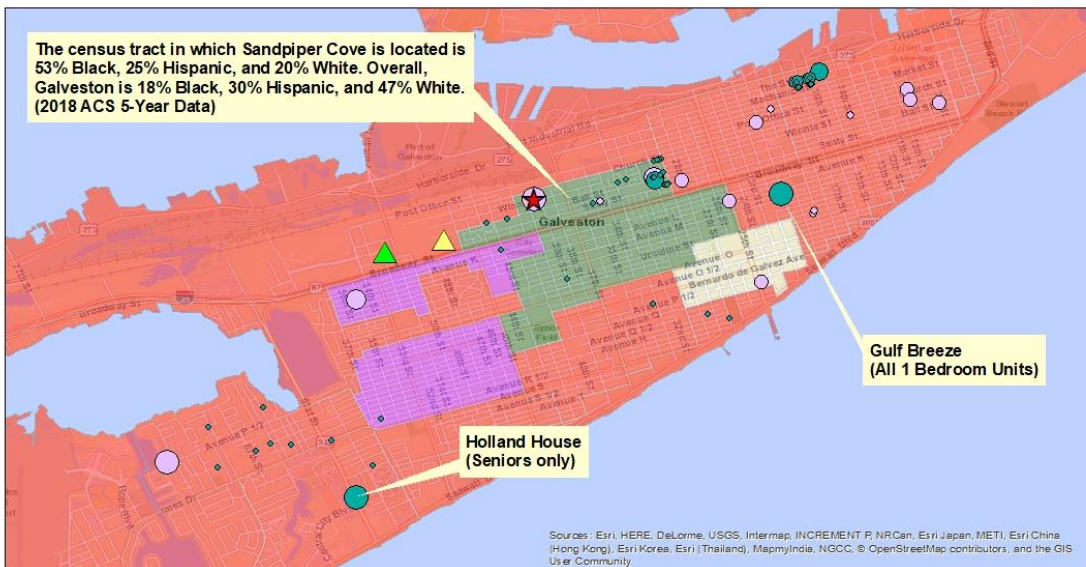


### Sandpiper Cove, Poverty, RECAPS, and Subsidized Housing



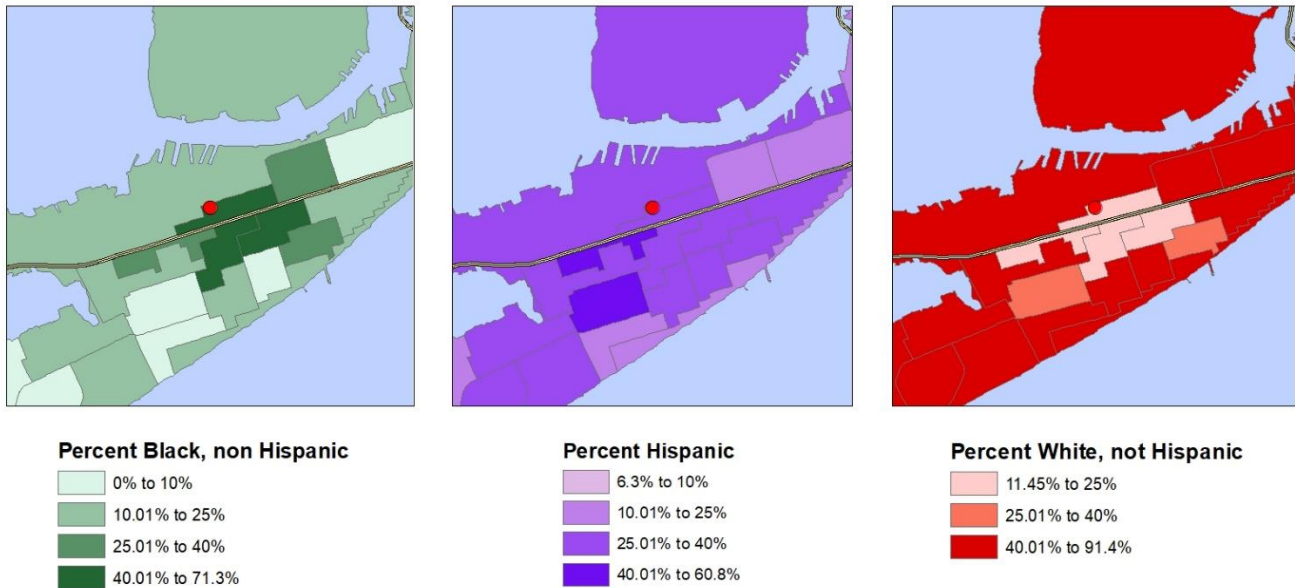
Source: 2014-2018 ACS; HUD (LIHTC from 7/2019); (Multifamily from 3/2019); (Public Housing from 7/2019); RECAPs from HUD; NHGIS and IPUMS

### Sandpiper Cove, Race and Ethnicity, and Subsidized Housing



Source: 2014-2018 ACS; HUD (LIHTC from 7/2019); (Multifamily from 3/2019); (Public Housing from 7/2019); NHGIS and IPUMS

## Sandpiper Cove: Race and Ethnicity by Census Tract



The census tract in which Sandpiper Cove is located is 53% Black, 25% Hispanic, and 20% White. Overall, Galveston is 18% Black, 30% Hispanic, and 47% White. (2018 ACS 5-Year Data)



Source: 2014-2018 ACS, NHGIS and IPUMS

### IV. **Undesirable Site Features:** From [10 TAC §11.101\(a\)\(2\)](#)

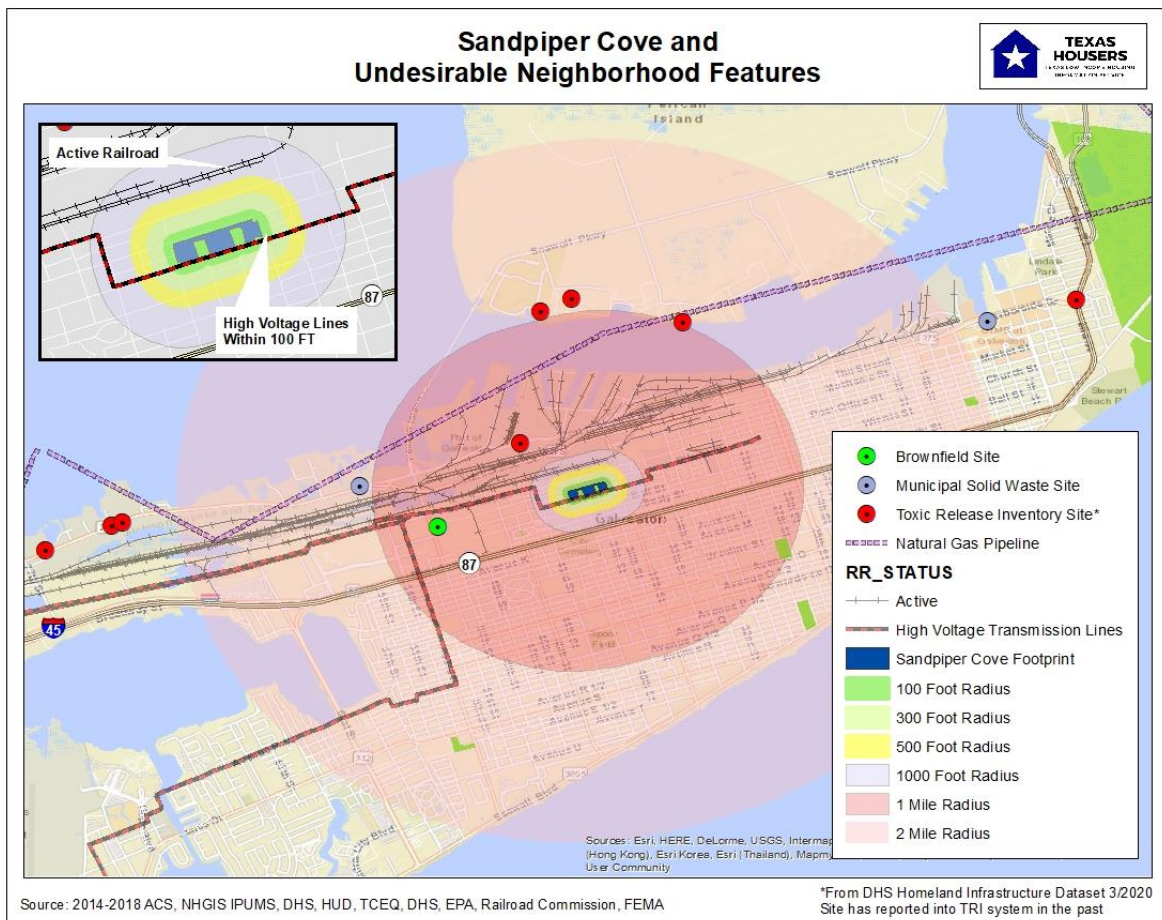
**Summary:** The table below shows the undesirable site features near Sandpiper Cove. The property is bordered by high voltage transmission lines (within 100 ft) and is within 1000 feet of a large railroad yard serving the Port of Galveston. The property borders a large industrial zone and the Port of Galveston. A map from “EJ Screen,” an environmental justice tool created by the EPA, indicates that Sandpiper Cove residents face increased exposure to particulate matter pollution caused by diesel combustion and exposure to cancer causing chemicals in the air, likely due to close proximity to industrial facilities. According to the EPA, port operations are a major source of air pollution. Mobile sources at ports release pollutants including particulate matter (PM), nitrogen oxides (NOx), sulfur oxides (SOx), volatile organic compounds (VOCs) and air toxics.”<sup>1</sup> Source of pollution include trucks, marine vessels, locomotives, and cargo handling equipment.

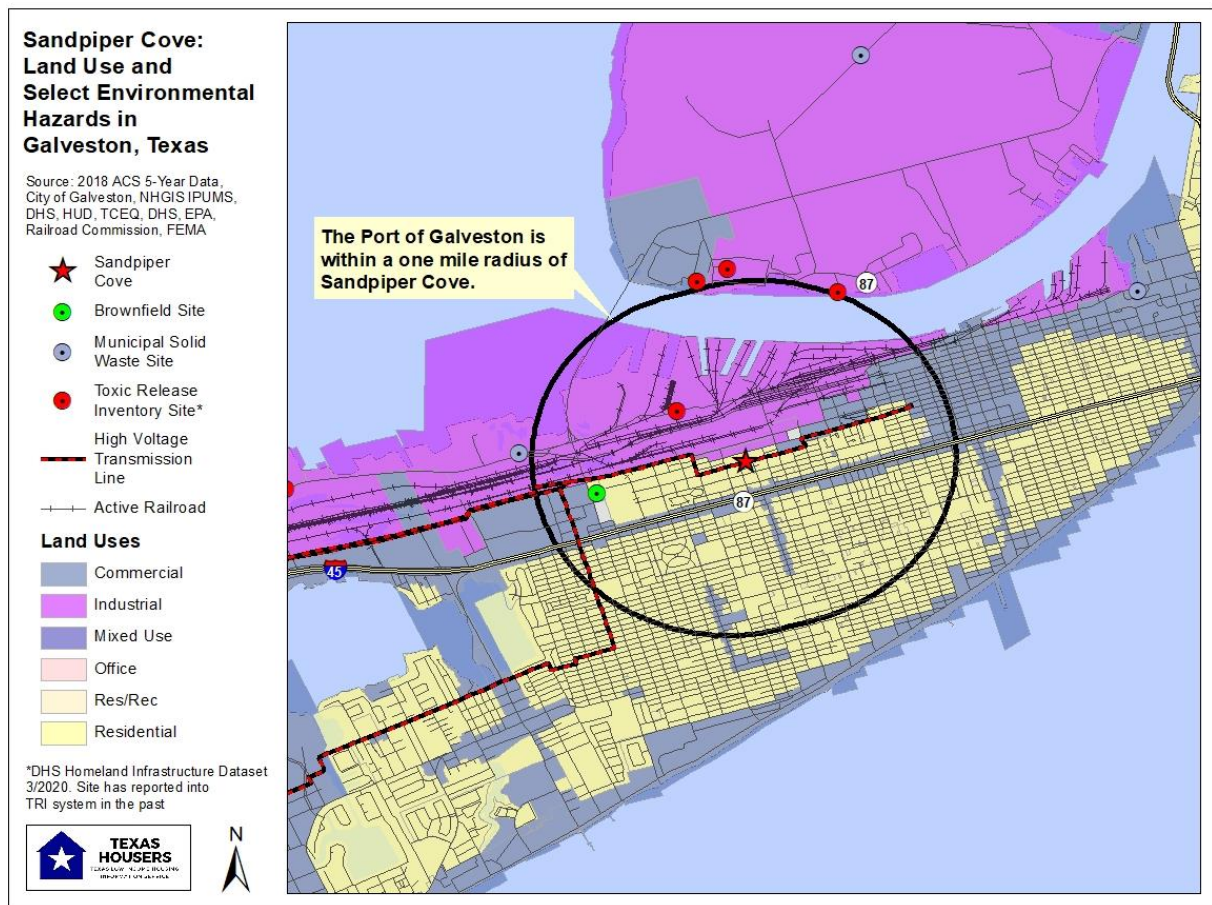
Undesirable Site Feature	Feature Present (Y/N)	Description
Within 300 ft of <a href="#">Junkyard</a>	No	No junkyard is within 300 ft
Within 300 ft of Landfill: Development Sites located within 300 feet of a solid waste facility or sanitary landfill facility or illegal dumping sites	No	No landfill is within 300 ft
Within 300 ft of Sexually-Oriented Business	No	No sexually-oriented businesses within 300 ft

<sup>1</sup> Environmental Protect Agency, “Ports Primer: Environmental Impacts,” Updated March 23, 2020. Retrieved from: <https://www.epa.gov/community-port-collaboration/ports-primer-71-environmental-impacts#:~:text=Exposure%20to%20air%20pollution%20associated,children%2C%20the%20elderly%2C%20outdoor%20workers>

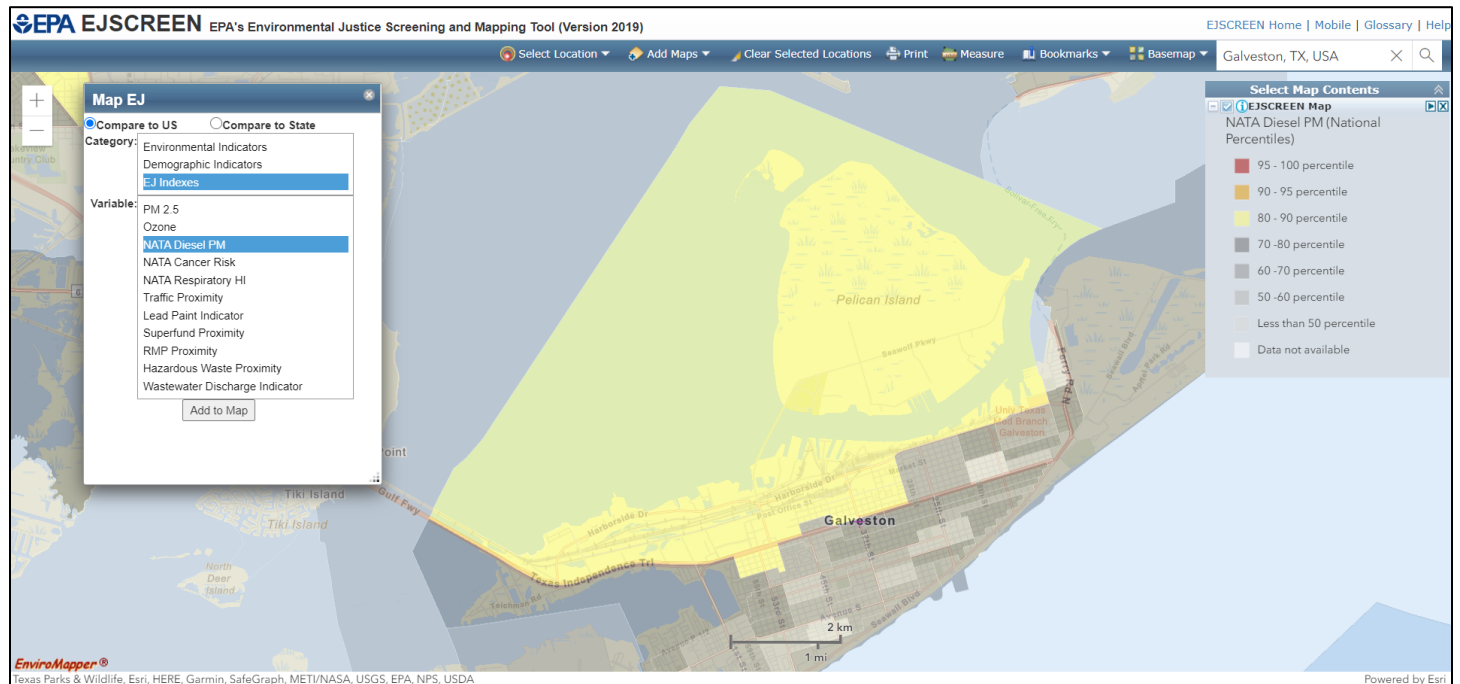


<b>Within 100 ft of High Voltage Transmission Lines or Infrastructure</b>	<b>Yes</b>	High voltage transmission lines run along Winnie Street to the south of the property
<b>500 ft of active railroad tracks</b> that are not light/commuter rail, mitigated in accordance with HUD standards, or part of Railroad Quiet Zone	<b>No</b>	Although there are no active tracks within 500 feet, a large railroad yard serving the port is within 1000 feet.
<b>Within 500 feet of heavy industry</b> (i.e. facilities that require extensive use of land and machinery, produce high levels of external noise such as manufacturing plants, or maintains fuel storage facilities)	<b>No</b>	No heavy industry is within 500 ft
<b>Within 10 miles of nuclear plant</b>	<b>No</b>	Closest nuclear power plant 95 miles away
<b>Within accident potential zones or runway clearance zones of airport</b>	<b>No</b>	Galveston Airport 4.5 miles away
<b>Sites contains a pipeline containing highly volatile liquid above or underground</b>	<b>No</b>	A natural gas pipeline is within 2 miles
<b>Within 2 miles of refineries capable of refining more than 100,000 barrels of oil daily</b>	<b>No</b>	No refineries are within 2 miles
<b>Close to other hazardous risk factors that could adversely affect the health and safety of residents</b>	<b>Yes</b>	The property is within two miles of toxic release inventory sites and other environmental hazards at the Port of Galveston. Residents face increased exposure to particulate matter pollution caused by diesel combustion. According to the EPA, the tract's "EJ Index" for Diesel PM in the air is 81%, meaning that levels are higher than 81% of all other areas. The EJ Index percentile of Air Toxics Cancer is 85%.





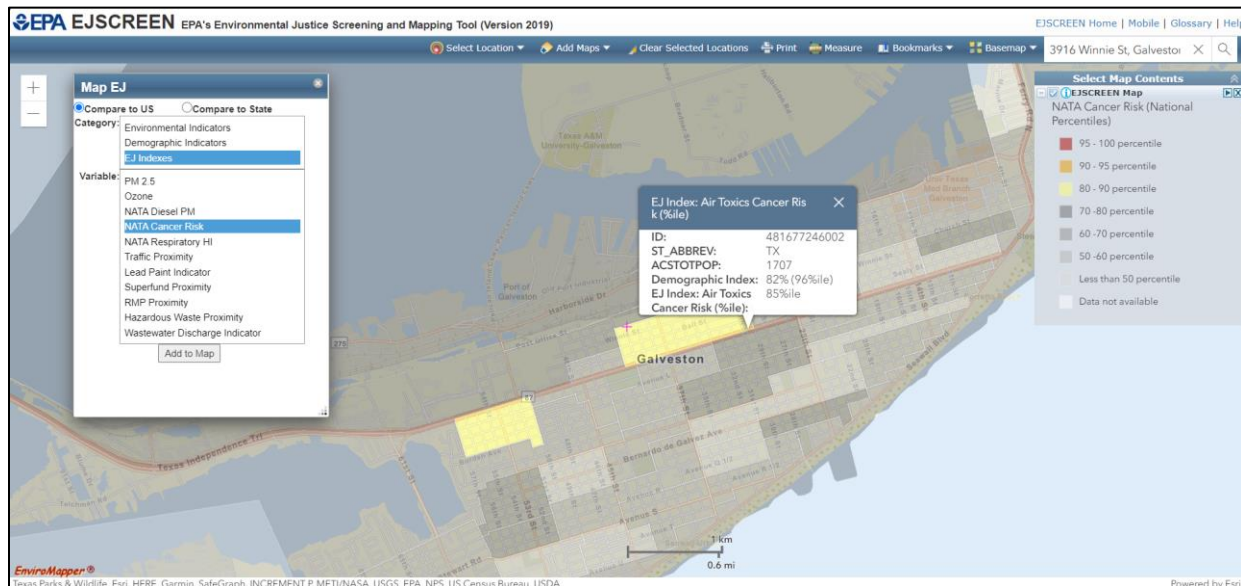
### EJ Screen: EJ Index Diesel PM (National Percentiles)



See: Environmental Protection Agency, "EJ Screen," 2019. Retrieved from: <https://ejscreen.epa.gov/mapper/>



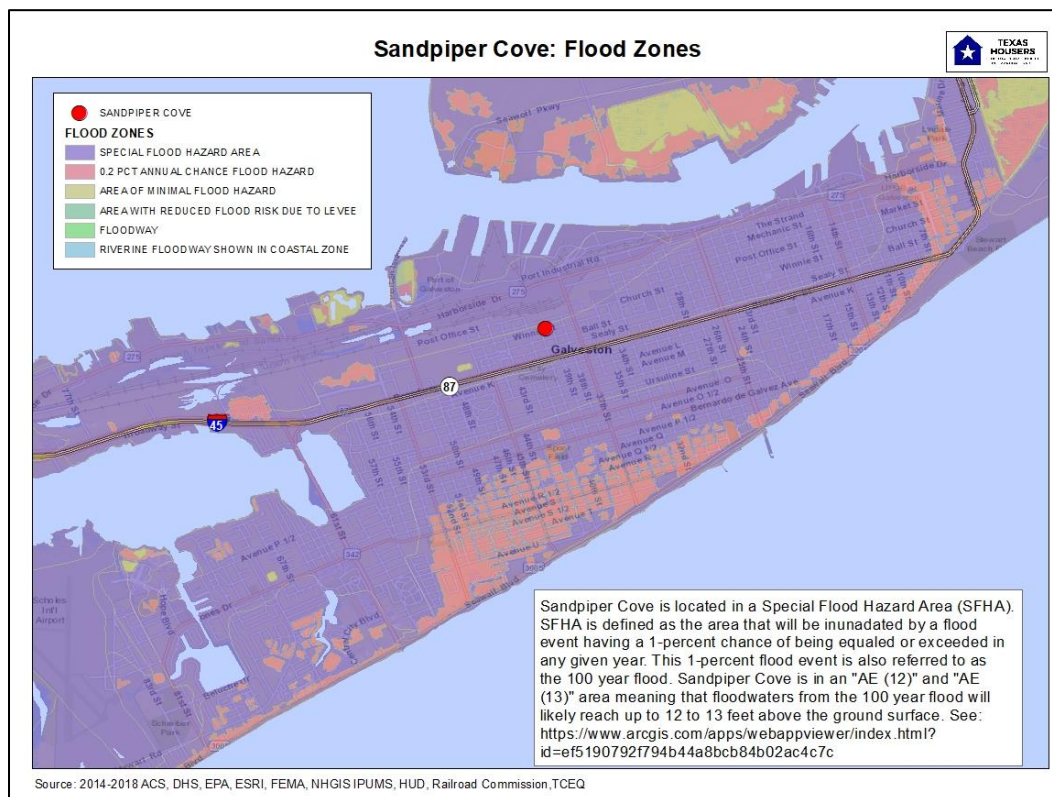
## EJ Screen: EJ Index Cancer Risk (National Percentiles)

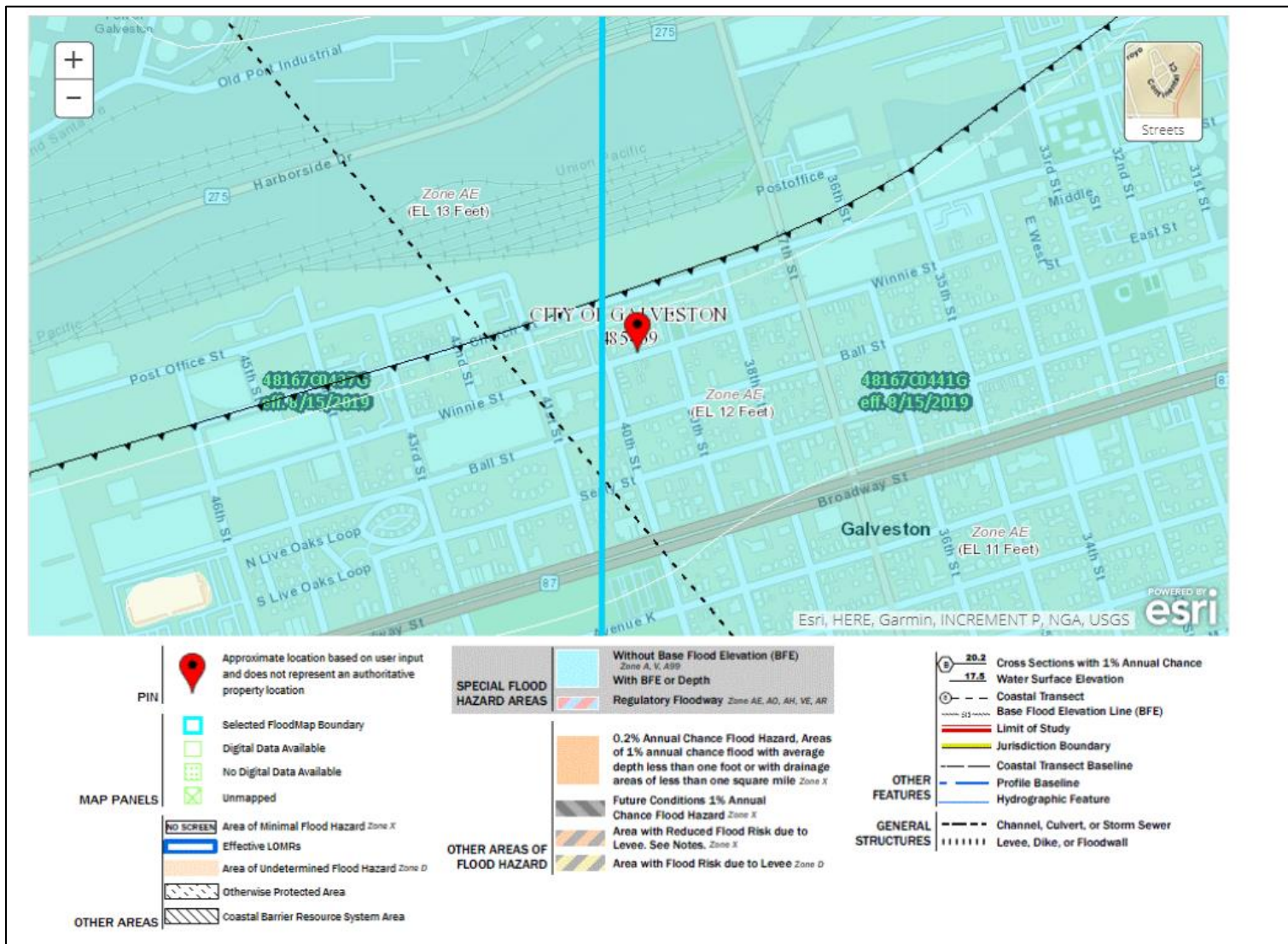


See: Environmental Protection Agency, "EJ Screen," 2019. Retrieved from: <https://ejscreen.epa.gov/mapper/>

### V. Site in 100-year floodplain and "Special Flood Hazard Area": From [10 TAC §11.101\(a\)\(1\)](#)

Because the site is in a floodplain, Rule §11.101(a)(1) states that "the Site must be developed so that all finished ground floor elevations are at least one foot above the floodplain and parking and drive areas are no lower than six inches below the floodplain." Sandpiper Cove is in a Special Flood Hazard Area (SFHA). A SFHA is the area has a 1% percent change of being inundated by a flood event in any given year. This area is also known as the 100-year floodplain. Homes located in the SFHA have a 26% chance of suffering flood damage during a standard 30-year mortgage. Sandpiper Cove is in an "AE (12)" and "AE (13)" area meaning that floodwaters from the 100-year flood will likely reach up to 12 to 13 feet above the ground surface.





See: <https://www.arcgis.com/apps/webappviewer/index.html?id=ef5190792f794b44a8bcb84b02ac4c7c>

## Tab 5

Presentation, Discussion, and Possible Approval of a Resolution approving a Texas Housing Impact Fund second lien bridge loan to Casa Cobe Holdings, LLC in an amount not to exceed \$1,000,000 for the Saison North Apartments Project.



# CERTIFICATION

THE STATE OF TEXAS                   §  
   §  
 TEXAS STATE AFFORDABLE           §  
 HOUSING CORPORATION           §

I, the undersigned officer of the Texas State Affordable Housing Corporation (the “Corporation”), do hereby certify as follows:

1. The Board of Directors of the Corporation (the “Board”) convened on June 9, 2021, at the Corporation’s offices in Austin, Texas, and the roll was called of the duly constituted members of said Board, who are as follows:

<u>Name</u>	<u>Office</u>
William H. Dietz	Chairperson
Valerie Cardenas	Vice Chairperson
Courtney Johnson-Rose	Director
Lemuel Williams	Director
Andy Williams	Director

2. The officers of the Corporation (who are not Board members) are as follows:

<u>Name</u>	<u>Office</u>
David Long	President
Janie Taylor	Executive Vice President
Melinda Smith	Chief Financial Officer and Treasurer
Rebecca DeLeon	Secretary
Cynthia Gonzales	Assistant Secretary

All Board members were present except \_\_\_\_\_, thus constituting a quorum. All of the officers of the Corporation were present at the meeting.

3. Whereupon, among other business, the following written resolution (the “Resolution”) bearing the following caption:

## **“RESOLUTION NO. 21-\_\_**

### **TEXAS STATE AFFORDABLE HOUSING CORPORATION**

RESOLUTION APPROVING A TEXAS HOUSING IMPACT FUND  
 SECOND LIEN BRIDGE LOAN TO CASA COBE HOLDINGS, LLC IN AN  
 AMOUNT NOT TO EXCEED \$1,000,000 FOR THE SAISON NORTH  
 APARTMENTS PROJECT

was duly introduced for the consideration of the Board and said caption was read in full. It was then duly moved and seconded that the Resolution be adopted; and, after due discussion and request for comments, said motion prevailed and was carried by the following vote:

\_\_\_\_ AYES

\_\_\_\_ NOS

\_\_\_\_ ABSTENTIONS

4. That a true, full and correct copy of the Resolution adopted at the meeting described in the above is attached to this certificate; that the adoption of the Resolution will be duly recorded in the Board's minutes of the meeting; that the persons named above are the duly chosen, qualified and acting members of the Board and the officers of the Corporation as indicated; that each member of the Board was duly and sufficiently notified officially and personally, in advance, of the time, place and purpose of the aforesaid meeting, and that the Resolution would be introduced and considered for adoption at said meeting.

SIGNED this 9th day of June, 2021.

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Rebecca DeLeon, Secretary  
Texas State Affordable Housing Corporation

**RESOLUTION NO. 21-\_\_****TEXAS STATE AFFORDABLE HOUSING CORPORATION****RESOLUTION APPROVING A TEXAS HOUSING IMPACT FUND SECOND LIEN BRIDGE LOAN TO CASA COBE HOLDINGS, LLC IN AN AMOUNT NOT TO EXCEED \$1,000,000 FOR THE SAISON NORTH APARTMENTS PROJECT**

WHEREAS, the Texas State Affordable Housing Corporation (the “Corporation”) has been duly created and organized pursuant to and in accordance with the provisions of Subchapter Y (Section 2306.551 et. seq.) of Chapter 2306, Texas Government Code, as amended, and other applicable provisions of Texas law (collectively, the “Act”); and

WHEREAS, under the Act, the Corporation is authorized to perform activities and services that the Corporation’s Board of Directors determines will promote the public health, safety, and welfare through the provision of adequate, safe, and sanitary housing primarily for individuals and families of low, very low, and extremely low income, and such activities and services shall include engaging in lending transactions; and

WHEREAS, said activities and services include those permitted to be funded by the Texas Housing Impact Fund (“THIF”), a fund established and maintained by the Corporation, which include the provision of bridge loans for affordable multifamily rental housing satisfying the requirements of the Corporation’s THIF Policy and Guidelines; and

WHEREAS, the Board of Directors has reviewed and discussed a staff proposal (approved by the Loan Committee of the Corporation) to make THIF funds available as a second lien bridge loan to Casa Cobe Holdings, LLC (“Casa Cobe”) in the maximum principal amount of \$1,000,000 (the “Bridge Loan”), with the loan proceeds to be used by Casa Cobe, together with other available funds, to finance the site acquisition and construction of a 116-unit mixed-income multifamily project in Austin, Texas as set forth in the project summary attached to the Board’s June agenda targeted as follows: 39 units will be set-aside for households earning 60% or less than the area median income (AMI), 34 units will be set-aside for households earning 50% or less than AMI, 9 units will be set-aside for households earning less than 30% AMI, and 34 units will be market rate; and

WHEREAS, after due discussion and consideration, the Board of Directors of the Corporation has determined to approve the Bridge Loan for the purposes described above.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE TEXAS STATE AFFORDABLE HOUSING CORPORATION AS FOLLOWS:

Section 1. Approval of Bridge Loan and Related Matters. The Board of Directors approves the Bridge Loan by the Corporation to Casa Cobe Holdings, LLC in the maximum principal amount of \$1,000,000, the proceeds of which are to be used by Casa Cobe, together with other available funds, to finance the site acquisition and construction of a 116-unit mixed-income multifamily project in Austin, Texas.

The Board has determined that a bridge loan for affordable multifamily rental housing is a suitable purpose under the THIF Policy and Guidelines and such purpose is approved by the Board of Directors.

The Board authorizes the President and the Executive Vice President to approve, in consultation with counsel, the form and substance of all necessary documents relating to the Bridge Loan, including but not limited to a promissory note, loan agreement, restrictive covenants, and related security documents (collectively, the “Transaction Documents”).

Section 2. Execution and Delivery of Transaction Documents. The President and the Executive Vice President are each, in the name and on behalf of the Corporation, authorized to execute and deliver the Transaction Documents to which the Corporation is a party.

Section 3. Execution and Delivery of Ancillary Documents; Taking of Ancillary Actions. The President and the Executive Vice President are each, in the name and on behalf of the Corporation, authorized by the Board of Directors, at any time before or after the execution and delivery of the Transaction Documents, in consultation with counsel, to (i) execute, acknowledge and deliver any and all such orders, directions, certificates, agreements, documents, instruments, amendments and other papers or items (collectively, “Ancillary Documents”), and (ii) do or cause to be done any and all such acts and things (collectively, “Ancillary Actions”), which such officer deems necessary or desirable in connection to consummate the transactions contemplated by the Transaction Documents, or to otherwise fulfill the purposes of this resolution.

Section 4. Ratification of Prior Actions. All actions taken prior to the date of this Resolution by any officer of the Corporation in the name and on behalf of the Corporation, with respect to any of the matters and transactions described above, are ratified, confirmed and approved by the Board of Directors.

Section 5. Conflicting Prior Actions. Any order, resolution, approval or any action of the Board of Directors in conflict with this Resolution is hereby repealed to the extent of any such conflict.

Section 6. Severability. Any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Resolution.

Section 7. Effective Date. This Resolution shall be in full force and effect from and upon its adoption.

*[Remainder of Page Intentionally Left Blank]*

APPROVED AND EFFECTIVE this 9th day of June, 2021.

TEXAS STATE AFFORDABLE HOUSING  
CORPORATION

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William H. Dietz, Chairperson

ATTEST:

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Rebecca DeLeon, Secretary  
Texas State Affordable Housing Corporation

**Agenda:**

Presentation, discussion, and possible approval of a resolution approving a Texas Housing Impact Fund second lien bridge loan to Casa Cobe Holdings, LLC in an amount not to exceed \$1,000,000 for the Saison North Apartments.

**Summary:**

Staff was approached by Casa Cobe Holdings, LLC (Borrower) in May of 2021 to discuss financing strategies to meet their August deadline to close on a property related to a 2021 9% Low Income Housing Tax Credit (LIHTC) application. The loan request is for \$1,000,000, to be used as bridge financing for the acquisition and construction of Saison North Apartments - a proposed 116-unit multifamily project in Austin.



10010 N. Capital Texas HWY Austin, TX

**Public Benefit:**

TSAHC's loan will help finance the site acquisition and construction of a 116-unit mixed-income multifamily property in Austin with primary financing through the 9% LIHTC program. The development will include one three-story community building as well as a connected five-story residential building, consisting of one, two, and three-bedroom units located on approximately 1.8 acres. Of the 116 units, 39 units will be set-aside for households earning 60% or less than the area median income (AMI), 34 units will be set-aside for households earning 50% or less than AMI, 9 units will be set-aside for households earning less than 30% AMI, and 34 units will be market rate. Additionally, six units will be designed for persons with mobility impairments.

The area is considered a high opportunity area as defined by TDHCA's Qualified Action Plan and the borrower's 9% LIHTC application has the highest score in the Austin region. The project benefits from the fact that no tax credit developments have been built in the census tract for the past 20 years, nor in any of the adjacent tracts.

**Financial Summary:**

The total projected development budget for Saison North is \$30.9 million, or approximately \$266,000, per unit. The project will be funded with layered financing including \$3.3 million from the City of Austin, \$13.6 million in equity from the sale of 9% housing tax credits, and \$13.2 million in permanent debt from a permanent mortgage from Community Bank of Texas. The borrower is deferring \$891,993 in developer fees to meet remaining development costs.

TSAHC's \$1 million loan, in combination with a \$6.48 million loan from Mercy Community Capital, will bridge the primary financing for the project after award of the housing tax credits to secure the site and allow for other sources to prepare for closing. TSAHC's loan will be in a second lien position. TSAHC and Mercy Community Capital will be repaid from proceeds at closing on the Community Bank of Texas loan. The borrower requests a one-year loan term with interest only payments. Repayment will occur when the remaining construction sources are prepared to close.

**Market Conditions:**

Saison North is located within the boundaries of the North/Burnet Gateway Master Plan, which was adopted as part of the Austin Tomorrow Comprehensive Plan in 2007. The master plan outlined forward-thinking strategies for preparing the planning area to accommodate Austin's growth through connectivity, dense housing types, mixed-use, and transit-oriented development. The plan describes a lack of balance between jobs and area housing as well as a need for more workforce housing.

The site is surrounded by a variety of amenities, several bus stops within ¼ mile radius of the site, as well as a high concentration of nearby jobs (18,291 within a mile radius of the site), making this an ideal location for families to live and work. Major employers within a ten-mile radius include the University of Texas at Austin, Dell Inc., Texas Department of Transportation, and Clinical Pathology Labs.

Ninety-eight percent of households located in the project census tract are renters. This varies significantly with City of Austin data that includes 55% renters. The addition of these 116 apartment units would greatly assist in reducing cost burdens and increase affordable housing options for area residents.

**Borrower Summary:**

The ownership entity is a partnership between O-SDA Industries (related to borrower entity) and Travis County Housing Finance Corporation (TCHFC). TCHFC will be the nonprofit General Partner.

In 2010 Megan Lasch formed O-SDA Industries, LLC to provide real estate development consulting services to clients in the affordable housing industry in Texas. Ms. Lasch has helped secure 19 allocations of 9% Housing Tax Credits in the last eight Texas application cycles and holds an experience certification for affordable housing from the Texas Department of Housing and Community Affairs. O-SDA is a City of Austin certified Minority Business Enterprise, Women Business Enterprise, and Historically Underutilized Business.

**Recommendation:**

Staff recommends that the Board approve the resolution authorizing a Texas Housing Impact Fund second lien bridge loan to Casa Cobe Holdings, LLC. in an amount not to exceed \$1,000,000 for the Saison North Apartments. Additional terms and conditions recommended by Loan Committee will be provided by staff during their verbal presentation.

## Tab 6

87th Texas Legislative Session Update.