

**SUPPLEMENTAL BOARD BOOK OF  
June 28, 2018**



**J. B. Goodwin, Chair**

**Leslie Bingham Escareño, Vice-Chair**

**Paul Braden, Member**

**Asusena Reséndiz, Member**

**Sharon Thomason, Member**

**Leo Vasquez, III, Member**

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

**A G E N D A  
8:00 AM  
July 12, 2018**

**JOHN H. REAGAN BUILDING  
JHR 140, 105 W 15<sup>TH</sup> STREET  
AUSTIN, TEXAS 78701**

**CALL TO ORDER**

**ROLL CALL**

**J.B. Goodwin, 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.*

**CONSENT AGENDA**

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

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

**MULTIFAMILY ASSET MANAGEMENT**

- a) Presentation, discussion, and possible action regarding a change in Ownership Structure prior to issuance of IRS Form(s) 8609 and amendment to Developer and Guarantor:  
17275 Aria Grand Austin

**Raquel Morales**  
Director of MF Asset  
Management

**COMMUNITY AFFAIRS**

- b) Presentation, discussion, and possible action on approval of the Federal Fiscal Year 2019 Low Income Home Energy Assistance Program Application and State Plan for submission to the U.S. Department of Health and Human Services and approval of the associated 2019 LIHEAP awards

**Michael DeYoung**  
Director of Community  
Affairs

**HOME AND HOMELESSNESS PROGRAMS**

- c) Presentation, discussion, and possible action on awards for the 2017 HOME Investment Partnerships Program Single Family Programs Homebuyer Assistance and Tenant-Based Rental Assistance Notice of Funding Availability

**Abigail Versyp**  
Director of HOME and  
Homelessness Program

**MULTIFAMILY FINANCE**

- d) Presentation, discussion, and possible action on the Second Amendment to the 2018-1 Multifamily Direct Loan Notice of Funding Availability

**Marni Holloway**  
Director of MF Finance

**HOUSING RESOURCE CENTER**

- e) Presentation, discussion, and possible action on the 2019 Regional Allocation Formula Methodology

**Elizabeth Yevich**  
Director of Housing  
Resource Center

**ACTION ITEMS**

**ITEM 2: REPORTS**

- a) Report on the meeting of the Audit and Finance Committee and action on recommendations of that committee:  
i. Approval of the items for inclusion in the Legislative Appropriations Request for fiscal years 2020-21

**Sharon Thomason**  
Chair of Audit and  
Finance Committee

- b) Report regarding schedule and proposed changes for 2019 QAP and Multifamily Rules submission

Marni Holloway  
Director of MF Finance

**ITEM 3: MULTIFAMILY FINANCE**

- a) Presentation, discussion, and possible action on timely filed scoring and other appeals under 10 TAC §10.902 of the Department's Multifamily Program Rules relating to the Appeals Process:

Marni Holloway  
Director of MF Finance

18020	St. Elizabeth Place	Houston
18086	The Village at Overlook Parkway	San Antonio
18157	Bamboo Estates	Lyford
18221	Cypress Creek Apartment Homes at Hazelwood Street	Princeton

- b) Presentation, discussion, and possible action on a remanded Request for Administrative Deficiency regarding site eligibility under 10 TAC §11.3(g) related to Proximity of Development Sites:

18033	The Miramonte	Fifth Street CDP
18043	Huntington at Miramonte	Fifth Street CDP
18047	Miramonte Single Living	Fifth Street CDP

- c) Presentation, discussion, and possible action on staff determinations regarding Application disclosures under 10 TAC §10.101(a)(2) related to Applicant Disclosure of Undesirable Site Features:

18217	Cypress Creek at Santa Fe	Santa Fe
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**APPENDIX**

Multifamily Application Logs

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

**EXECUTIVE SESSION**

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

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

J.B. Goodwin  
Chair

**OPEN SESSION**

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

**ADJOURN**

To access this agenda and details on each agenda item in the board book, please visit our website at [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us) or contact Michael Lyttle, 512-475-4542, TDHCA, 221 East 11<sup>th</sup> Street, Austin, Texas 78701, and request the information. If you would like to follow actions taken by the Governing Board during this meeting, please follow TDHCA account (@tdhca) on Twitter.

Individuals who require auxiliary aids, services or sign language interpreters for this meeting should contact Terri Roeber, ADA Responsible Employee, at 512-475-3959 or Relay Texas at 1-800-735-2989, at least five (5) days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for this meeting should contact Elena Peinado, 512-475-3814, at least five (5) days before the meeting so that appropriate arrangements can be made.

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

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

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

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

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

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

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

3a

**BOARD ACTION ITEM**  
**MULTIFAMILY FINANCE DIVISION**  
**JULY 12, 2018**

Presentation, discussion, and possible action on timely filed scoring and other appeals under 10 TAC §10.902 of the Department's Multifamily Program Rules relating to the Appeals Process.

**RECOMMENDED ACTION**

**WHEREAS**, a 9% Housing Tax Credit Application #18020 St. Elizabeth Place was submitted to the Department by the Full Application Delivery Date;

**WHEREAS**, staff was advised that the Applicant did not provide a pre-application notification to a Neighborhood Organization as required by Tex. Gov't Code §2306.6705(9) and 10 TAC §11.8(b)(2)(B) and (C);

**WHEREAS**, staff issued an Administrative Deficiency to the Applicant requesting evidence of notification and the Applicant did not provide such evidence;

**WHEREAS**, because notification prior to Pre-application was not timely accomplished as required by statute (Tex. Gov't Code §2306.6704(b-1)(1)) and the QAP (10 TAC §11.8(b)(2)(B)(i)), the Pre-application was rejected and the Application score reduced by six points;

**WHEREAS**, because notification prior to full Application was not timely accomplished as required by statute (Tex. Gov't Code §2306.6705(9)(A) and by rule (10 TAC §11.8(b)(2)(A)), the Application has not established that it met a threshold requirement specified in statute and rule and the Application was terminated, pending the Applicant's ability to appeal;

**WHEREAS**, the Applicant timely filed an appeal; and

**WHEREAS**, the Executive Director denied the appeal;

**NOW, therefore, it is hereby**

**RESOLVED**, that the appeal for the award of six pre-application points and for Application #18020 St. Elizabeth Place is denied; and,

**FURTHER RESOLVED**, that Application #18020 St. Elizabeth Place is terminated.

**BACKGROUND**

Per 10 TAC §11.8(b)(2)(A) an Applicant must certify that all of the notifications required by that paragraph have been made. It goes on to require that the Applicant must list all "Neighborhood Organizations **on record with the county or state** (*emphasis supplied*) whose boundaries included the proposed Development Site as of the beginning of the Application Acceptance Period." 10 TAC §11.8(b) provides that if an application does not meet threshold criteria (including the criteria in 10 TAC 11.8(b)(2)(A)) it will be terminated. This rule effectuates a statutory requirement set forth in Tex. Gov't Code §2306.6704(b-1) and (c), regarding the Pre-application process.

Staff received a letter from the Progressive Fifth Ward Community Association (“PFWCA”), attached as Exhibit A, which stated that the organization had not been notified by the Applicant as required by the rules. Staff confirmed that PFWCA is a neighborhood organization that was on record with the Texas Secretary of State’s Office as of the beginning of the Application Acceptance Period, and that the organization’s boundaries included the entire Development Site (see Exhibit B). Staff also reviewed the Pre-application and Application to determine whether the organization was identified and found that it was not (see Exhibit C), and issued an Administrative Deficiency to the Applicant. The response to the deficiency notice is included as Exhibit D. In the response, the Applicant stated that a database of organizations maintained by the City of Houston was searched to identify organizations on record, but no county or state database is mentioned as having been searched by the Applicant. It is noted that the express statutory language creating this requirement makes no reference to city records but refers to “any neighborhood organizations on record with the **state or county** (*emphasis supplied*) in which the development is to be located and whose boundaries contain the proposed development site.” A search of the records of the Secretary of State performed by staff in researching this request for administrative deficiency yielded the fact that PFWCA was on record with the state, was identified as a neighborhood organization with the stated purpose of “promot[ing] the public interest of the residents in the area of the Fifth Ward of Houston, Texas,” and had recited boundaries that encompassed the proposed development site at the beginning of the Application Acceptance Period.

The Pre-application submitted for 18020 St. Elizabeth Place listed those Neighborhood Organizations that had been notified, and that list did not include PFWCA. The full Application, as submitted, did not include the PFWCA as a Neighborhood Organization that had been notified as required by Tex. Gov’t Code §2306.6705(9) and 10 TAC §11.8(b)(2)(B) and (C).

The Applicant has acknowledged that it was aware of PFWCA and that the Applicant “did not provide a formal notification letter to Progressive” because the organization was not listed in the city database. It appears that the Applicant was unaware that PFWCA was incorporated, and was viewed as being part of the team working to revitalize the St. Elizabeth’s hospital. Further, the Applicant contends that a number of written communications were made to Erica Hubbard, listed as a Director of PFWCA, regarding the proposed development, but the response by the Applicant to the Administrative Deficiency indicates that those communications occurred after the Pre-application deadline. Applicant contends that the entirety of these communications which it represents that it had with Ms. Hubbard during the conceptualizing of the development amounted to a practical satisfaction of the notification requirement. Staff is unable to conclude that those communications satisfy the requirements of Tex. Gov’t Code §2306.6704(b-1) and (c) or the rule-based criteria required by the board in its rules at 10 TAC §11.8(b)(2)(B) and (C).

The Application failed to include the PFWCA as a neighborhood organization requiring notification. The full Application included a signed and notarized certification that the pre-application “met all threshold requirements, and no additional notifications were required.” Information provided in the deficiency response indicated that this certification is not accurate and that the Application failed to meet the notification requirements in Tex. Gov’t Code §2306.6704(b-1) and §2306.6705(9) as effectuated by 10 TAC §11.8(b)(2)(A). In accordance with Tex. Gov’t Code §2306.6704(c) and 10 TAC §11.8(b), the score for this Application was reduced by six (6) points for the statutorily required rejection of its Pre-application for failure to meet all of the specified threshold requirements recited in the rule. Furthermore, the failure to provide evidence of the statutorily required notification of required entities at the time of full application presents grounds for termination of this Application, subject to the Applicant’s ability to appeal.

In its appeal, the Applicant states that that PFWCA “received notification of the details of the Application via correspondence from State Senator Boris L. Miles,” and that “[t]echnically, the QAP and rules do not specify that Notification must come directly from the Applicant.”

Tex. Gov’t Code §2306.6704(b-1)(regarding Pre-application) requires “. . . **the applicant** to provide the department with evidence that **the applicant** has notified . . . any neighborhood organization [with the appropriate notifications]”; and Tex. Gov’t Code §2306.6705(9)(regarding the full application) states that “an application must contain at a minimum . . . evidence that **the applicant** has notified . . . any neighborhood organization [with the appropriate notifications].” (emphasis added). Further, per 10 TAC §10.203, related to Public Notifications:

“A certification, as provided in the Application, that **the Applicant** met the requirements and deadlines identified in paragraphs (1) - (3) of this section must be submitted with the Application.” (emphasis added)

Per 10 TAC §10.203(1), related to Neighborhood Organization Notifications:

(A) **The Applicant** must identify and notify all Neighborhood Organizations on record with the county or the state as of 30 days prior to the Full Application Delivery Date and whose boundaries include the entire proposed Development Site. (emphasis added)

It is clear that the statute and rules require that notification must be made by the Applicant. That the organization may have received information from another source does not relieve the Applicant of its duty in this regard. In its Pre-application, PFWCA was not listed as a neighborhood organization that was notified. Similarly, in its full application, no evidence was provided that PFWCA had been notified.

The appeal discusses that PFWCA provided a notification letter from State Senator Boris Miles that included all aspects of the notice required by rule to be provided to Neighborhood Organizations. This letter, with the addressee redacted, is dated January 31, 2018, and states that a pre-application for St. Elizabeth Place had been filed, and is either silent or misstates two of the required elements of notification listed in 10 TAC §11.8(b)(2)(C)(i)(namely IV and V). While there may be an argument that most of the basic elements of notice are contained in this letter and its presumptive attachment, what it does not illustrate is that the Applicant provided notice to PFWCA, or that the Application contained evidence of the notification, as is required by statute and rule.

The appeal asserts that good faith effort was made to identify Neighborhood Organizations of record and that changes to the rules have made this task more difficult. Staff reviewed the last five years of the rule to be clear of revisions made. The rule at 10 TAC §10.203(1)(A) read in 2013:

(A) In accordance with the requirements of this subparagraph, the Applicant must request from local elected officials a list of Neighborhood Organizations on record with the county and state whose boundaries include the proposed Development Site. No later than the Full Application Neighborhood Organization Request Date as identified in 11.2 of this title (relating to Program Calendar for Competitive Housing Tax Credits) or 10.4 of this chapter (relating to Program Dates), as applicable, the Applicant must email, fax, or mail with return receipt requested a completed Neighborhood Organization Request letter as provided in the Application to the



local elected official, as applicable, based on where the Development is proposed to be located.

In 2014, the rule read:

“(A) The Applicant must identify and notify all Neighborhood Organizations on record with the county or the state whose boundaries include the proposed Development Site.”

From 2015 through 2016, the rule read:

“(A) The Applicant must identify and notify all Neighborhood Organizations on record with the county or the state as of 30 days prior to the Full Application Delivery Date and whose boundaries include the proposed Development Site.”

And in 2017, the rule was revised to read:

(A) The Applicant must identify and notify all Neighborhood Organizations on record with the county or the state as of 30 days prior to the Full Application Delivery Date and whose boundaries include the proposed Development Site. As used in this section, “on record with the state” means on record with the Secretary of State.

Indeed, the 2017 revision identified the Secretary of State as the cognizant agency for this purpose as that agency maintains a public file of recorded agencies. However, the rule, as it has existed since 2014, required checking with the County and the State as to the existence of Neighborhood Organizations. The 2017 rule made it very clear that checking with the Secretary of State was a critical component in satisfying this rule. In the response to the Administrative Deficiency, as well as the Appeal, it is clearly indicated that the Applicant only checked with a City of Houston resource and not, as provided for in the statute and is required in the rule, with the County and Secretary of State.

The appeal questions whether staff was able to produce evidence of PFWCA’s registration with the Secretary of State’s office through a general search of the records. Staff searched the records for the term “Progressive Fifth Ward” and found the organization to be registered since June 22, 2017. In response to an Administrative Deficiency from staff, the Applicant stated that “[i]n February 2017, Ms. Hubbard and other officers of Fifth Ward Neighborhood Civic Club resigned en masse, and formed a splinter group which became known as Progressive. Progressive initially operated as an unincorporated association. Staff at FWCRC were not aware that Progressive had incorporated.” A search of the Secretary of State’s records would have yielded this information. In that same response, the Applicant stated that “[o]n February 27, 2018, [FWCRC], acting on behalf of the Development Team, emailed Ms. Hubbard regarding the Project and the hope that Progressive would provide Quantifiable Community Participation supporting the project. A 2018 QCP Neighborhood Information Packet was attached to the email. [FWCRC] followed up that email with another on February 27, 2018, clarifying that two points of contact for Progressive would be needed for the form.” This appears to indicate that the Applicant was aware that PFWCA existed as Neighborhood Organization prior to the Full Application Delivery Date of March 1, 2018.

In summary:

- The notification prior to Pre-application was not timely accomplished as required by statute (Tex. Gov’t Code §2306.6704(b-1)(1)) and the QAP (10 TAC §11.8(b)(2)(B)(i)). As a result the Pre-application is rejected (Tex. Gov’t Code §2306.6704(c)). This renders the Application ineligible for pre-application points.

- The notification prior to full Application was not timely accomplished as required by statute (Tex. Gov't Code §2306.6705(9)(A) and by rule (10 TAC §11.8(b)(2)(A)). As a result, the Application has not established that it met a threshold requirement specified in statute and rule, which presents grounds for termination that cannot be cured by giving the required notification later.

Staff recommends the Board deny the appeal.

Exhibit A  
Letter from Progressive Fifth Ward  
Community Association

Progressive Fifth Ward Community Association  
PO Box 88305  
Houston, TX 77288

June 11, 2018

Texas Department of Housing and Community Affairs  
Multifamily Finance Division  
P.O. Box 13941,  
Austin, TX 78711-3941  
Fax: 512-475-0764  
Email: htc.public-comment@tdhca.state.tx.us

Dear TDHCA Staff,

Re: TDHCA application# 18020

We would like to state our strongest objection to the above, Texas Department of Housing and Community Affairs, application identified as project # 18020 which refers to the proposed St. Elizabeth Place located at 4514 Lyons Ave., Houston, TX 77020, as a development site applicant for low-income housing tax credits.

According to TDHCA Uniform Multifamily Rules, **10.101.Site and Development Requirements and Restrictions, section 3, Undesirable Neighborhood Characteristics**, the development site applicant has listed 4 or more characteristics which per your guidelines, must include satisfactory mitigation. The application requirements go on to state the applicant must demonstrate actions are being taken that would lead a reader to conclude that there is a high probability and reasonable expectation that undesirable characteristic will be sufficiently mitigated or significantly improved within a reasonable time, typically prior to placement in service and that the undesirable characteristic demonstrates a positive trend and continued improvement. **The development site applicant has listed 4 Undesirable Neighborhood Characteristics mitigations that fail to show the probability of improvement before the site is completed. Here are the items we are objecting to.**

1. Schools
2. Crime
3. Blight
4. Poverty

**Our first objection to the applicant's Undesirable Neighborhood Characteristic mitigation is directly related to subsection B, clause IV which refers to the proposed site location existing within an attendance zone of a school which does not have a Met Standard rating by the Texas Education Agency.** Phyllis Wheatley High School, identified by the applicant as the nearest high school within the attendance zone, did not receive a 2017 Met Standard rating (subsequent years, 2015 & 2016 did not receive a Met Standard rating) and is currently on a list of Houston Independent School Districts ten worst performing schools. Despite the applicant including a letter from the area superintendent dated February 27, 2018 and the 51 pages in the application dedicated for evidentiary purposes for proving a clear trend for imminent compliance, this school is on the brink of closure. Wheatley High School is within HISD, a school district with a \$115 million budget deficit for the upcoming 2018-2019 school year and the school district does not have permanent leadership because the former superintendent resigned in March 2018. On April 12, 2018 at a press conference, the Mayor of the City of Houston, Sylvester Turner publicly declined to get involved with the embattled 10, lowest-performing schools, Wheatley included, slated for closure. A few weeks later, on April 25, 2018, Sylvester Turner, tweeted "no city resources would be used in partnering with HISD". At an HISD Board of Trustee's meeting on May 10, 2018, the Interim Superintendent refused to enter into a partnership with charter school company to salvage Wheatley High School and the other 9, low performing schools, a decision Houston Mayor Sylvester Turner supports. With no local support from the City of Houston, if Wheatley High School closes, an action threatened already by the Texas Education Agency, the neighborhood for this proposed low-income housing site will not have a high school for children to attend which will threaten high school completion levels for the entire community. No points should be awarded since the development site applicant failed to provide mitigation regarding the failing high school.

**Our second objection to the applicant's Undesirable Neighborhood Characteristics mitigation is directly related to subsection B, clause II which refers to crime rate and the evidence of a decrease in crime.** According to the development site applicant information gathered from [neighborhoodscout.com](http://neighborhoodscout.com), within the census tract the violent crime rate in the development site is 40.5 per 1,000 persons. According to TDHCA criteria, the threshold is 18 per 1,000 persons in an urban area annually, which translates to the development site is 125% well above TDHCA requirements. The applicant is required to describe mitigation and did not provide any evidence that the crime is decreasing nor did they submit a map plotting all instances of violent crime within a one mile radius of the development site. Instead, the development site applicant submitted information about the local civic club participating occasionally in National Night Out as a means to counter violent crime at 125% above the TDHCA requirement and they also included a brochure for Crime Prevention Through Environmental Design (CPTED). Progressive Fifth Ward Community Association attended a meeting on May 18, 2018 to inquire about these mitigation strategies from the site developer with the North East Division for

Houston Police Department and met with Acting Captain, Lt. Rodriguez, who stated CPTED is a methodology Houston Police Department recommends as standards for ALL developers (luxury, market-rate and low-income) who are seeking to design or remodel an apartment complex. CPTED standards has no mechanism to measure effectiveness or collect data. Furthermore on page 24 of the applicant information packet, the development site applicant states Houston Police Department coordinates a Citizen Patrol Program in the neighborhood. We have verified with the Houston Police Department Internal Affairs division that no such citizen patrol program exists in the immediate vicinity of the development site. There also appears to be no support from local law enforcement whether in the form of statistics or a letter to support the claim crime is decreasing through the specific measures the development site applicant is alleging. Lastly, the census tract for the designated development also has 74 registered sex offenders with 9 living 1,000 feet of the proposed site. The crime levels in the location for the propose site development warrants ongoing concern and the mitigation the site development applicant included in their application is insufficient therefore no points should be awarded.

**Our third objection to the applicant's Undesirable Neighborhood Characteristics is directly related to subsection B, clause III which refers to blight being within 1,000 feet of the development site.** The applicant stated on page 82 that there is only one instance of blight within 1,000 feet of the site located at 4419 Hershe St. They suggest that blight is decreasing with an increase in new housing stock development. We do not dispute the fact that blight is being gradually being reduced but we definitely counter the number of instances of blight the development site applicant has stated which appears to minimize the extent of the issue. The following addresses represent widespread blight that continues to plague the community within a 1,000 feet of the proposed development. The development site applicant should not be awarded any points since they failed to convey the current extent of blight.

- 4701 Farmer, vacant lot, overgrown, 388 feet away
- 4704 Hershe, abandon, boarded up, 991 feet away
- 4601 Hershe, abandon & overgrown 693 feet away
- 4209 New Orleans, vacant lot, overgrown, 987 feet away
- 4210 New Orleans, vacant lot, overgrown, 848 feet away
- 4500 Chisum, vacant lot, overgrown, 58 feet away
- 1512 Waco, vacant lot, overgrown, 473 feet away

**Our fourth objection to the applicant's Undesirable Neighborhood Characteristics mitigation is directly related to subsection B which refers to poverty.** The census tract for the proposed development has a poverty rate of 51%, 11% above TDHCA guideline.

Low-income/public housing projects are disproportionately erected in Fifth Ward with currently over 1,020 units in a 4.99 square mile radius. On January 11, 2017 the Director of the Fort Worth Regional Office of Fair Housing & Equal Opportunity, Region VI for HUD after an extensive

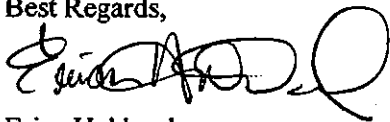
investigation, sent a letter to the Mayor of Houston, Sylvester Turner, and stated the City of Houston was in violation of Title VI of the Civil Rights Act of 1964, based on the city disproportionately placing low income housing in low income areas. The finding was also based on the city refusing to take a vote on a low-income housing project slated for a white majority, high opportunity neighborhood. That finding was released to the public on January 13, 2017. Several community members of Fifth Ward along with myself attended public comments on May 30, 2018 to ask the mayor to withdraw his support for this site development. The mayor along with city councilman assigned to this site development, Jerry Davis, stated they refuse to withdraw support and admitted their decision was based on race. See the link to the public comments here, <http://houstontx.swagit.com/play/05302018-727/67>. Members of the community went back on June 5, 2018 to ask the mayor to withdraw his support but the mayor made no comments. See the link to the public comments here, <http://houstontx.swagit.com/play/06052018-1918> (video: 10:50, 20:51, and 1:35:01)

**Our last objection refers to the Uniform Multifamily Rules §10.201.Procedural Requirements for Application Submission. The applicant failed to identify and notify all Neighborhood Organizations on record with the state as of 30 days prior to the Full Application Delivery Date.** Our neighborhood organization, recognized as a State of Texas organization, Progressive Fifth Ward Community Association, whose boundaries also include the entire proposed development Site was notified about the site through a request from the developer for a signature on a prepared support letter on Feb. 28, 2018. We declined to sign the prepared support letter because we had not received any information outside of rumors about the development. We invited the development site applicant to attend our next community association meeting which was scheduled for April 5, 2018. At that meeting, the development site applicant explained their project incompletely and with mischaracterizations. Because of the meeting taking place on April 5, 2018 and the lack of notification before the application was due, we were unable to conduct our research, poll community stakeholders and communicate our objection to our elected local and state officials before they provided support letters to the development site applicant. The Progressive Fifth Ward Community Association has a membership that comprises of 80% residents who live within 0.5 mile radius of the site development. The registered agent and president of Progressive Fifth Ward Community Association lives 345 feet away from the proposed site and was never officially notified according to TDHCA guidelines. Texas House Bill 1792 requires LIHTC applicants to file a detailed brief to every relevant stakeholder within the development's boundaries. This bill was passed in 2017. The development site applicant is a LIHTC (Low-income Housing Tax Credit) applicant and we believe violated H.B. 1792 by failing to follow the law with regards to neighborhood association official notification therefore points should not be awarded any points.

Progressive Fifth Ward Community Association is not against low-income housing, we are

however against developers who disregard community input and disregard the Fair Housing Act by segregating all low-income housing in low-income neighborhoods, ignoring high opportunity neighborhoods of Houston. **The development site applicant failed in 4 areas to show sufficient mitigation and points should not be awarded in those areas to the development site application TDHCA, 18020.** Fifth Ward, the community in which the site development is proposed is a historical African American community in Houston has a 51% poverty level, a median income of 18K and crime statistics that state 1 out every 25 residents will likely be the victim of violent crime. This development could destabilize the economic seedlings of growth currently taking place in this low advantage community. It is our opinion that is the development site's application for low-income tax credits is approve, this future low-income housing site will perpetuate racial and economic segregation in Houston, TX. We strongly recommend that this development site application, #18020, be declined.

Best Regards,

A handwritten signature in black ink, appearing to read "Erica Hubbard", written over a horizontal line.

Erica Hubbard

President, Progressive Fifth Ward Community Association





## Office of the Secretary of State

### Certificate of Fact

The undersigned, as Secretary of State of Texas, does hereby certify that the document, Certificate of Formation for Progressive Fifth Ward Community Association (file number 802752306), a Domestic Nonprofit Corporation, was filed in this office on June 22, 2017.

It is further certified that the entity status in Texas is in existence.

It is further certified that our records indicate ERICA HUBBARD as the designated registered agent for the above named entity and the designated registered office for said entity is as follows:

1705 YATES STREET

HOUSTON, TX - 77020 USA

In testimony whereof, I have hereunto signed my name officially and caused to be impressed hereon the Seal of State at my office in Austin, Texas on February 27, 2018.



A handwritten signature in black ink, appearing to read "Rolando B. Pablos".

Rolando B. Pablos  
Secretary of State

**Form 202**

Secretary of State  
 P.O. Box 13697  
 Austin, TX 78711-3697  
 FAX: 512/463-5709

Filing Fee: \$25



**Certificate of Formation  
 Nonprofit Corporation**

Filed in the Office of the  
 Secretary of State of Texas  
 Filing #: 802752306 06/22/2017  
 Document #: 746279650002  
 Image Generated Electronically  
 for Web Filing

**Article 1 - Corporate Name**

The filing entity formed is a nonprofit corporation. The name of the entity is :

**Progressive Fifth Ward Community Association**

**Article 2 - Registered Agent and Registered Office**

A. The initial registered agent is an organization (cannot be corporation named above) by the name of:

OR

B. The initial registered agent is an individual resident of the state whose name is set forth below:

Name:

**Erica Hubbard**

C. The business address of the registered agent and the registered office address is:

Street Address:

**1705 Yates Street Houston TX 77020**

**Consent of Registered Agent**

A. A copy of the consent of registered agent is attached.

OR

B. The consent of the registered agent is maintained by the entity.

**Article 3 - Management**

A. Management of the affairs of the corporation is to be vested solely in the members of the corporation.

OR

B. Management of the affairs of the corporation is to be vested in its board of directors. The number of directors, which must be a minimum of three, that constitutes the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting or until their successors are elected and qualified are set forth below.

Director 1: **Erica Hubbard**

Title: **Director**

Address: **1705 Yates Street Houston TX, USA 77020**

Director 2: **Vanessa Rodriguez**

Title: **Director**

Address: **1709 Yates Street Houston TX, USA 77020**

Director 3: **Selena Samuel**

Title: **Director**

Address: **4511 Hershe Street Houston TX, USA 77020**

**Article 4 - Organization Structure**

A. The corporation will have members.

or

B. The corporation will not have members.

**Article 5 - Purpose**

The corporation is organized for the following purpose or purposes:

**The purpose of the organization shall be to promote the public interest of the residents in the area of the Fifth Ward of Houston, Texas with the following borders: Liberty road on the North, I-10 Highway on the South, Sakowitz street**

on the East and Highway 59 on the West.

**Supplemental Provisions / Information**

[The attached addendum, if any, is incorporated herein by reference.]

**Effectiveness of Filing**

A. This document becomes effective when the document is filed by the secretary of state.

**OR**

B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of its signing. The delayed effective date is:

**Organizer**

The name and address of the organizer are set forth below.

**Erica Hubbard      1705 Yates Street, Houston , Texas 77020**

**Execution**

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

**Erica Hubbard**

Signature of organizer.

**FILING OFFICE COPY**

Exhibit B  
Documents Regarding  
Registration and Boundaries

**TEXAS SECRETARY of STATE**  
**ROLANDO B. PABLOS**

[UCC](#) | [Business Organizations](#) | [Trademarks](#) | [Notary](#) | [Account](#) | [Help/Fees](#) | [Briefcase](#) | [Logout](#)

**BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY**

<b>Filing Number:</b>	802752306	<b>Entity Type:</b>	Domestic Nonprofit Corporation
<b>Original Date of Filing:</b>	June 22, 2017	<b>Entity Status:</b>	In existence
<b>Formation Date:</b>	N/A	<b>Non-Profit Type:</b>	N/A
<b>Tax ID:</b>	32064135554	<b>FEIN:</b>	
<b>Duration:</b>	Perpetual		
<b>Name:</b>	Progressive Fifth Ward Community Association		
<b>Address:</b>	1705 YATES ST HOUSTON, TX 77020-4236 USA		

<a href="#">REGISTERED AGENT</a>	<a href="#">FILING HISTORY</a>	<a href="#">NAMES</a>	<a href="#">MANAGEMENT</a>	<a href="#">ASSUMED NAMES</a>	<a href="#">ASSOCIATED ENTITIES</a>
<b>Name</b>	<b>Address</b>		<b>Inactive Date</b>		
Erica Hubbard	1705 Yates Street Houston, TX 77020 USA				

Order

Return to Search

Instructions:

- To place an order for additional information about a filing press the 'Order' button.

**Form 202**

Secretary of State  
 P.O. Box 13697  
 Austin, TX 78711-3697  
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**Erica Hubbard**

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on the East and Highway 59 on the West.

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A. This document becomes effective when the document is filed by the secretary of state.

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The name and address of the organizer are set forth below.

**Erica Hubbard**      **1705 Yates Street, Houston , Texas 77020**

**Execution**

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

**Erica Hubbard**

Signature of organizer.

**FILING OFFICE COPY**

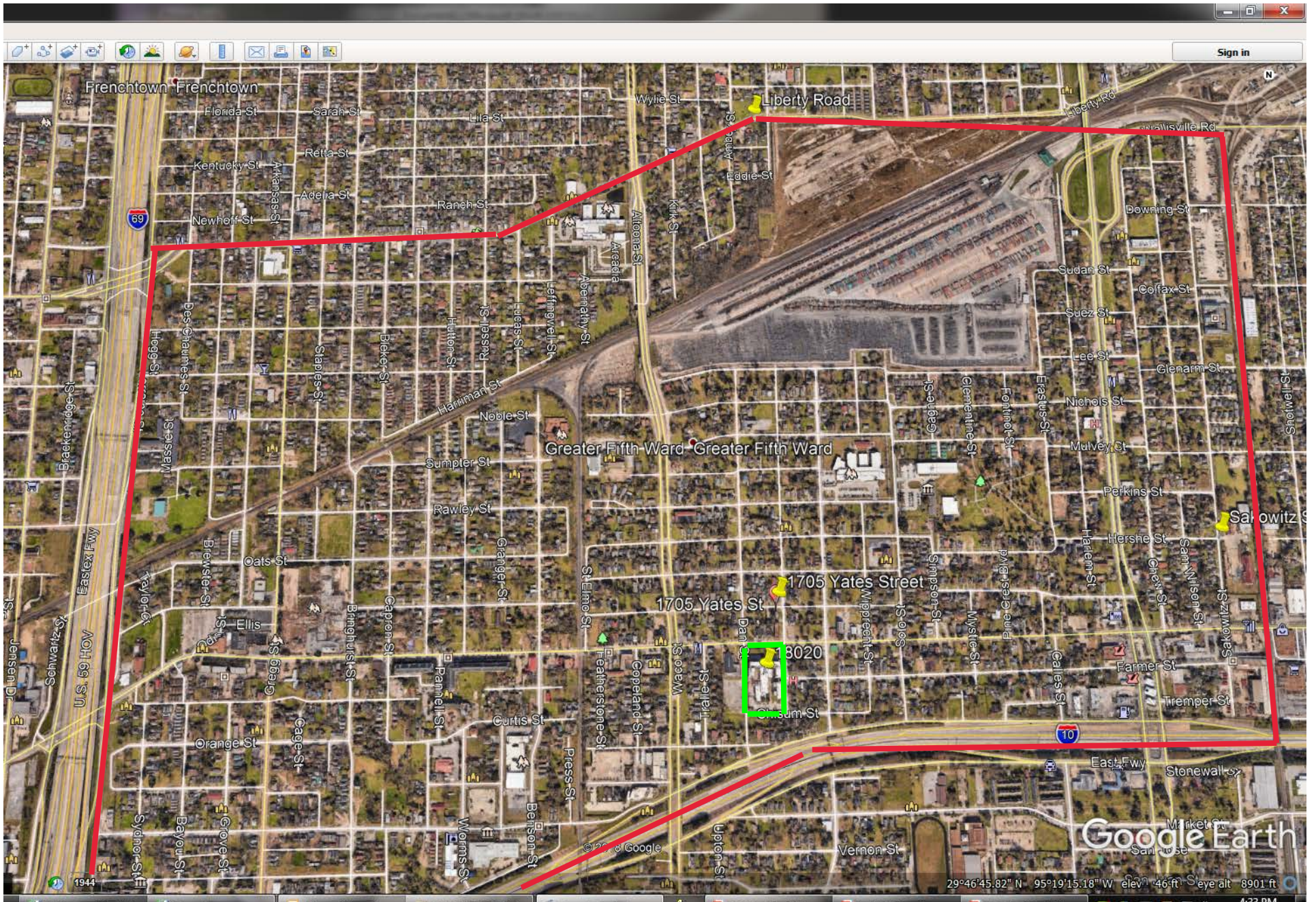




Exhibit C  
Pre-application and Application  
Documents Regarding Notification

<b>Name 16</b>	Amanda Edwards
<b>Office 16</b>	City Council Member
<b>Name 17</b>	Jack Christie
<b>Office 17</b>	City Council Member
<b>Name 18</b>	Ed Emmett
<b>Office 18</b>	County Judge
<b>Name 19</b>	Rodney Ellis
<b>Office 19</b>	County Commissioner
<b>Name 20</b>	Jack Morman
<b>Office 20</b>	County Commissioner
<b>Name 21</b>	Steve Radack
<b>Office 21</b>	County Commissioner
<b>Name 22</b>	R. Jack Cagle
<b>Office 22</b>	County Commissioner
<b>Are there Neighborhood Organizations whose boundaries contain the Development Site?</b>	Yes
<b>Neighborhood Organization</b>	Fifth Ward Redevelopment Authority
<b>Address</b>	4300 Lyons Avenue, Suite 300 Houston TX 77020
<b>Neighborhood Organization 2</b>	Fifth Ward Community Redevelopment Corporation
<b>Address 2</b>	4300 Lyons Avenue, Suite 300 Houston TX 77020
<b>Neighborhood Organization 3</b>	Fifth Ward Neighborhood Civic Club
<b>Address 3</b>	4300 Lyons Avenue, Suite 300 Houston TX 77020
<b>Neighborhood Organization 4</b>	Greater Fifth Ward Super Neighborhood 55

<b>Address 4</b>	4014 Market Street Houston TX 77020
<b>Unit Sizes</b>	8
<b>Unit Features</b>	7
<b>Sponsor Characteristics</b>	2
<b>High Quality Housing Total</b>	17
<b>Income Levels of Tenants</b>	16
<b>Rent Levels of Tenants</b>	11
<b>Tenant Services</b>	10
<b>Opportunity Index</b>	0
<b>Underserved Area</b>	1
<b>Tenant Populations with Special Housing Needs</b>	2
<b>Proximity to the Urban Core</b>	5
<b>Serve and Support Texans Most in Need Total</b>	45
<b>Commitment of Development Funding by Local Political Subdivision</b>	1
<b>Declared Disaster Area</b>	10
<b>Community Support and Engagement Total</b>	11
<b>Financial Feasibility</b>	18
<b>Cost of Development per Square Foot</b>	12
<b>Pre-Application Participation</b>	6
<b>Leveraging Private, State and Federal Resources</b>	3
<b>Extended Affordability</b>	2
<b>Historic Preservation</b>	5
<b>Right of First Refusal</b>	1

## Neighborhood Organizations

Identify all Neighborhood Organizations on record with the county or Texas Secretary of State as of the beginning of the Application Acceptance Period whose boundaries include the Development Site.

- Organizations were identified in the Pre-Application, and there have been no changes.  
(If above is checked, these forms may be left **BLANK** )

1.

<b>Name of Organization</b>		<b>Contact Name</b>	
<b>Address</b>		<b>City</b>	
<b>Zip</b>	<b>Phone</b>	<b>Fax or Email</b>	

2.

<b>Name of Organization</b>		<b>Contact Name</b>	
<b>Address</b>		<b>City</b>	
<b>Zip</b>	<b>Phone</b>	<b>Fax or Email</b>	

3.

<b>Name of Organization</b>		<b>Contact Name</b>	
<b>Address</b>		<b>City</b>	
<b>Zip</b>	<b>Phone</b>	<b>Fax or Email</b>	

4.

<b>Name of Organization</b>		<b>Contact Name</b>	
<b>Address</b>		<b>City</b>	
<b>Zip</b>	<b>Phone</b>	<b>Fax or Email</b>	

5.

<b>Name of Organization</b>		<b>Contact Name</b>	
<b>Address</b>		<b>City</b>	
<b>Zip</b>	<b>Phone</b>	<b>Fax or Email</b>	

Exhibit D  
Administrative Deficiency Documents

## Sharon Gamble

---

**From:** Sharon Gamble  
**Sent:** Thursday, June 14, 2018 9:39 AM  
**To:** Jessica Thompson  
**Cc:** Tim cantwell  
**Subject:** 18020 St. Elizabeth Pace - 9% HTC Application Deficiency Notice - TIME SENSITIVE - Please reply immediately acknowledging receipt.  
**Attachments:** TDHCAletter.pdf  
**Importance:** High

**\*\*All deficiencies must be corrected or clarified by 5 pm Austin local time on June 21, 2018.\*\***

**\*\*Please respond to this email as confirmation of receipt.\*\***

In the course of the Department's Housing Tax Credit **Eligibility/Selection/Threshold** and/or Direct Loan review of the above referenced application, a possible Administrative Deficiency as defined in §10.3(a)(2) and described in §10.201(7)(A) and/or §10.201(7)(B) of the 2018 Uniform Multifamily Rules was identified. By this notice, the Department is requesting documentation to correct the following deficiency or deficiencies. Any issue initially identified as an Administrative Deficiency may ultimately be determined to be beyond the scope of an Administrative Deficiency, and the distinction between material and non-material missing information is reserved for the Director of Multifamily Finance, Executive Director, and Board.

The Department has received public comment from the Progressive Fifth Ward Community Association (see attached). The letter states that the boundaries of the neighborhood organization include the entire proposed Development Site, and the letter includes evidence that the organization was on record with the state as of the beginning of the Application Acceptance Period. The organization was not listed as one requiring notification in the Pre-application submitted, and the Application does not indicate that any further notifications were made. The Application received eight points under 10 TAC §11.9(d)(4) related to Quantifiable Community Participation ("QCP") based on comment by the Fifth Ward Civic Club.

1. Provide evidence that the Progressive Fifth Ward Community Association was appropriately notified, or evidence that notification of the Progressive Fifth Ward Community Association was not required.
2. Provide evidence that the Fifth Ward Civic Club is the appropriate organization to provide comment for QCP points, or evidence that the Progressive Fifth Ward Community Association is not the appropriate organization to provide such comment.

This deficiency notice does not address the comments regarding undesirable neighborhood characteristics as that issue is being handled through the eligibility and RFAD processes.

**The above list may not include all Administrative Deficiencies such as those that may be identified upon a supervisory review of the application. Notice of additional Administrative Deficiencies may appear in a separate notification.**

All deficiencies must be corrected or otherwise resolved by 5 pm Austin local time on the fifth business day following the date of this deficiency notice. Deficiencies resolved after 5 pm Austin local time on the fifth business day will have 5 points deducted from the final score. For each additional day beyond the fifth day that any deficiency remains unresolved, the application will be treated in accordance with §10.201(7)(B) of the 2018 Uniform Multifamily Rules. Applications with unresolved deficiencies after 5pm Austin local time on the seventh business day may be terminated.

All deficiencies related to the Direct Loan portion of the Application must be resolved to the satisfaction of the Department by 5pm Austin local time on the fifth business day following the date of this deficiency notice. Applications with unresolved deficiencies after 5pm Austin local time on the seventh business day will be suspended from further processing, and the Applicant will be notified to that effect, until the deficiencies are resolved. If, during the period of time when the Application is suspended from review, Direct Loan funds become oversubscribed, the Applicant will be informed that unless the outstanding item(s) are resolved within one business day the Application will be terminated. For purposes of priority under the Direct Loan set-asides, if the outstanding item(s) are resolved within one business day, the date by which the item is submitted shall be the new received date pursuant to §13.5(c) of the 2018 Multifamily Direct Loan Rule. Applicants should be prepared for additional time needed for completion of staff reviews.

Unless the person that issued this deficiency notice, named below, specifies otherwise, submit all documentation at the same time and in only one file using the Department's Serv-U HTTPs System. Once the documents are submitted to the Serv-U HTTPs system, please email the staff member issuing this notice. If you have questions regarding the Serv-U HTTPs submission process, contact Liz Cline at [liz.cline@tdhca.state.tx.us](mailto:liz.cline@tdhca.state.tx.us) or by phone at (512)475-3227. You may also contact Jason Burr at [jason.burr@tdhca.state.tx.us](mailto:jason.burr@tdhca.state.tx.us) or by phone at (512)475-3986.

**All applicants should review §§11.1(b) and 10.2(b) of the 2018 QAP and Uniform Multifamily Rules as they apply to due diligence, applicant responsibility, and the competitive nature of the program for which they are applying.**

# COATS | ROSE

A PROFESSIONAL CORPORATION

TAMEA A. DULA  
OF COUNSEL

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

June 21, 2018

Sharon Gamble, Administrator  
9% Competitive Housing Tax Credit Program  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, Texas 78701-2401

RE: #18020 St. Elizabeth Place – Response to Administrative Deficiency Notice.

Dear Sharon:

This letter responds to your Administrative Deficiency Notice dated June 14, 2018.

**1. *Provide evidence that the Progressive Fifth Ward Community Association was appropriately notified, or evidence that notification of the Progressive Fifth Ward Community Association was not required.***

This request was prompted by a letter dated June 11, 2018, from Erica Hubbard, President of Progressive Fifth Ward Community Association (“Progressive”), in which she expressed opposition to the proposed St. Elizabeth Place project (the “Project”) because of acknowledged Undesirable Neighborhood Characteristics that she felt were not mitigated. She also indicated that Progressive should have received Notification regarding the Project, but did not.

**Method of seeking neighborhood organizations.**

The Fifth Ward Community Redevelopment Corporation (“FWCRC”) is a non-profit corporation based in the Fifth Ward of Houston, and serves as the initiator and co-developer of the Project. Staff at FWCRC compiled its listing of Neighborhood Organizations by referring to the City of Houston’s comprehensive listing of community organizations, which is available by address at: <http://www.houstontx.gov/cao/civicclubs.html>. Checking the map of community organization boundaries, only three entities are found which encompass the Project site: Fifth Ward Civic Club, North Park Community Civic Club and Pinecrest Neighborhood Civic Club. Of these three, only the Fifth Ward Civic Club was registered with the Secretary of State (“SOS”). In 1996, it was registered under the name “Fifth Ward Neighborhood Civic Club.” The name “Fifth Ward Civic Club” is used as an assumed or casual name.

9 Greenway Plaza, Suite 1000 Houston, Texas 77046  
Phone: 713-651-0111 Fax: 713-651-0220  
Web: [www.coatsrose.com](http://www.coatsrose.com)



FWCRC staff also consulted a 31-page listing of Houston Civic Clubs, last updated on February 21, 2018, which is available at: <https://www.houstontx.gov/cao/civicclubs.pdf>. The Fifth Ward is essentially entirely within the 77020 ZIP Code. A search of the listing of Houston Civic Clubs for that ZIP Code turns up only three entities (Fifth Ward Civic Club; Chew Area Comm Council; and East Bayou District Civic Association) but only the “Fifth Ward Civic Club” appears to be registered with the SOS (as discussed above). A search of the five surrounding ZIP Codes (77002, 77003, 77010, 77011 and 77026) only show two additional civic clubs, Eastwood Civic Association and Northeast Concerned Citizens Civic League, each of which is registered with the SOS, but neither of which includes the Project site within their area of interest.

Applicant provided Notification to Fifth Ward Neighborhood Civic Club. The Applicant additionally notified Fifth Ward Redevelopment Authority, which is actually a governmental entity; Greater Fifth Ward Super Neighborhood 55, which is not of record with the SOS and is also arguably a governmental entity; and FWCRC itself, which is of record with the SOS.

**Specific reference to Progressive.**

The revitalization of the St. Elizabeth Hospital complex as affordable housing is a community project headed up by the non-profit FWCRC. The FWCRC has an inclusive approach to its actions within the Fifth Ward community, and tries to involve multiple interest groups in order to achieve broad support for its revitalization projects. As part of its inclusion efforts, FWCRC contacted Erica Hubbard who, at the time, was an officer of the Fifth Ward Neighborhood Civic Club. Ms. Hubbard was invited to participate in the revitalization efforts spearheaded by FWCRC through involvement in evaluating and selecting a co-developer and the architect for the St. Elizabeth Place development. She accepted the invitation and was provided with a copy of the Request for Proposals (“RFP”) that had been issued. Ms. Hubbard contributed by reviewing the proposals presented, interviewing responders to the RFP and scoring the responders. Ms. Hubbard was instrumental in selecting Cloudbreak Development II, LLC as the co-developer, and choosing Van Meter Williams Pollack to be the architect for the Project.

Ms. Hubbard’s initial involvement with the Project was in her capacity as an officer of Fifth Ward Neighborhood Civic Club. In February 2017, Ms. Hubbard and other officers of Fifth Ward Neighborhood Civic Club resigned en masse, and formed a splinter group which became known as Progressive. Progressive initially operated as an unincorporated association. Staff at FWCRC were not aware that Progressive had incorporated.

The Applicant did not provide a formal notification letter to Progressive because (i) Progressive did not show up as having registered with the City of Houston to evidence its interest in the Fifth Ward neighborhood; (ii) Applicant’s staff were not aware that Progressive had incorporated, because initially it functioned as an unincorporated association; and most importantly, (iii) Progressive was viewed as being part of the team working to revitalize the St. Elizabeth Hospital complex. Of necessity, Ms. Hubbard, as a member of the selection committee, was aware of the redevelopment plan, and the intent to finance the redevelopment with 9% Housing Tax Credits and Federal and State Historic Tax Credits.

On January 17, 2018, approximately ten letters soliciting support for the Project were drafted by Jessica Thompson at FWCRC and sent out by Kathy Payton, the President and CEO of FWCRC.

One of these letters was to Erica Hubbard at Progressive advising that St. Elizabeth LP was applying for a Letter of Support from the City of Houston, and asking that Progressive provide a letter showing its support of the adaptive reuse of St. Elizabeth Hospital. A suggested template was provided as a starting point. The email also advised that St. Elizabeth Hospital recently had been recognized as a Historic Landmark of Houston. While Ms. Payton has not been able to locate a copy of the email that was sent to Progressive, there was no reason why she would not have forwarded the letter to Progressive, as she did the others, and Ms. Payton believes that the email was sent to Progressive. Ms. Hubbard appears not to have responded to this request.

On February 27, 2018, Zarana Sanghani, Program Officer at FWCRC, acting on behalf of the Development Team, emailed Ms. Hubbard regarding the Project and the hope that Progressive would provide Quantifiable Community Participation supporting the Project. A 2018 QCP Neighborhood Information Packet was attached to the email. Jessica Thompson of FWCRC followed up that email with another on February 27, 2018, clarifying that two points of contact for Progressive would be needed for the form. Ms. Hubbard appears not to have followed up on the email request.

By email on February 28, 2018 at 9:16 am, Kathy Payton of FWCRC contacted Erica Hubbard requesting support. Ms. Payton gave a synopsis of the Project, and provided answers to questions raised by other community organizations. A letter of support was requested from Progressive, and Ms. Payton offered to attend a meeting that night to answer questions concerning the Project. Later that day, in a telephone conversation between Ms. Hubbard and Kathy Payton, Ms. Hubbard indicated that she had received a letter from State Senator Borris L. Miles regarding the Project. At 5:21 pm, Ms. Hubbard emailed Kathy Payton, forwarding a letter dated January 31, 2018 sent by State Senator Borris L. Miles of District 13. Senator Miles advised that a preliminary application had been filed for Competitive Housing Tax Credits in the community. A copy of the Notification regarding St. Elizabeth Place that was sent to Senator Miles by the TDHCA was included, so Progressive clearly was in receipt of a Notification containing all of the required information. (See Attachment 1) Senator Miles indicated that in the Competitive Tax Credit Program an application can receive a higher score if it includes a support letter from the State Representative, but that State Senators are not directly involved in the scoring process. He did, however, urge the addressee to communicate with the State Representative to express an opinion on the Project. Ms. Payton acknowledged receipt of the copy of Senator Miles' letter and again offered to chat with the Progressive group that night or to present at their next board meeting, continuing to solicit their support and comments.

We point out that the TDHCA requires that certain information concerning the proposed application for Competitive Housing Tax Credits be provided in the Notification, but it does not require that a particular form of written Notification be used. One of the approved ways to deliver written Notification to a recipient is by email. The email correspondence with Progressive concerning the Project, taken as a whole, demonstrates that Progressive had notice of the requisite details of the Application.

It is clear from Ms. Hubbard's email that the FWCRC staff were using her proper email address in their efforts to request community support for the Project. Ms. Hubbard's participation in the pre-development of the Project through reviewing qualifications, interviewing, evaluating,

scoring and selecting a co-developer and architect indicates that Ms. Hubbard was working as a member of the development team and had actual knowledge regarding the Project prior to the Pre-Application submission. Numerous email requests to her describing the Project and requesting Progressive's support evidence that Progressive, through Ms. Hubbard as its President and Registered Agent, had clear and correct notice of the Project prior to the submission of the Application. Additionally, Bridgette Steele is a FWCRC Board Member and has also been an active member of Progressive since it split off from Fifth Ward Neighborhood Civic Club in February 2017. Ms. Steele's knowledge of the Project can be attributed to Progressive.

Ms. Hubbard's forwarding to Kathy Payton of the Notification sent out by Senator Borris L. Miles proves that she was in possession of the formal Notification that the TDHCA sends out to State Senators and State Representatives. Finally, beyond the email trail, Kathy Payton estimates that she has probably spoken with Ms. Hubbard on an average of twice a week during 2018, and that every conversation has included information concerning the status of the Project. Based upon all of the contacts, information and conversations described above, we believe that Progressive had all the information available to it that would ordinarily be available pursuant to the Notification Template provided by the TDHCA. For this reason, we submit that the Notification requirement was fulfilled with regard to Progressive.

***2. Provide evidence that the Fifth Ward Civic Club is the appropriate organization to provide comment for QCP points, or evidence that the Progressive Fifth Ward Community Association is not the appropriate organization to provide such comment.***

Fifth Ward Neighborhood Civic Club has been formally incorporated in Texas since 1996, and its published boundaries include the Project site. The required QCP support material was provided by the Fifth Ward Neighborhood Civic Club and was timely submitted via fax. The two contacts provided are the President and Chairman of the Board, who are the officers most likely to have authority to sign on behalf of any organization, and their residential addresses established that the organization consists of two or more separate residential households within the boundaries of the organization. Subsequently, upon contact by Nicole Fisher requesting further information, such information appears to have been timely provided. Review of the QCP materials resulted in an award of 8 points for support, which scoring was confirmed as "final" on the June 15, 2018 Application Submission Log.

Multiple efforts were made to have Progressive provide comment concerning the Project to the TDHCA. A 2018 QCP Neighborhood Information Packet was sent to Ms. Hubbard with the invitation to provide comment, and information concerning the deadline for such comment and how it needed to be provided. Ms. Hubbard declined to provide comment by the deadline for QCP points. A letter dated June 11, 2018 was sent by her on behalf of Progressive to the TDHCA providing comment in opposition to the Application. The letter is over three months late and did not include the evidence, multiple contacts, boundaries, map or certifications required in order to qualify for QCP points. As a result, the Progressive letter is, in our opinion, not eligible to be considered as a QCP submission. As an opposition letter, it is not able to reduce the Project's score under §11.9(d)(6) of the QAP because the Project scored zero points there, due to the existence of a Neighborhood Organization. The Progressive letter should be

considered an expression of opinion regarding the Application, along with the letters of support which have been provided by the following persons and organizations:

- Support - Houston Habitat for Humanity (Application)
- Support – Buffalo Bayou Partnership (Application)
- Support – Amanda K. Edwards, Houston City Council Member, At-Large 4 (Application)
- Support – Jerry Davis, Vice Mayor Pro-Tem, City of Houston, District B (Application)
- Support - Greater Fifth Ward Super Neighborhood #55 (Application)
- Support – State Representative Harold V. Dutton, Jr., District 142 (Attachment 2)
- Support – State Senator Borris L. Miles, District 13 (Attachment 3)
- Support – Harris County Commissioner Rodney Ellis, Precinct One (Attachment 4)

We hope that this letter is considered responsive to the Deficiency Notice. Certifications from Kathy Payton and Bridgette Steele as to the facts set forth are attached (Attachments 5 & 6). If, however, additional information is needed or if any point requires clarification, please feel free to call me to discuss.

Very truly yours,



Tamea A. Dula

Attachments

cc: Kathy Payton  
Jessica Thompson

ATTACHMENT 1

January 31, 2018 letter from State Senator Borris L. Miles, with TDHCA Notification  
attached



# BORRIS L. MILES

STATE SENATOR • DISTRICT 13

COMMITTEES: AGRICULTURAL, WATER, & RURAL AFFAIRS • HEALTH & HUMAN SERVICES • NATURAL RESOURCES & ECONOMIC DEVELOPMENT • NOMINATIONS

January 31, 2018

[REDACTED]

[REDACTED]

Houston, TX 77020

Dear [REDACTED]:

I am writing you to let you know that a preliminary application for a Competitive Housing Tax Credit in your community has been submitted by a developer to the Texas Department of Housing and Community Affairs (TDHCA). The developer has until March 1st to submit a final application. I have attached a copy of the notification with this letter.

This tax credit program is one of the state's primary means of directing private capital toward the development and preservation of affordable rental housing for low-income households. However, there have been instances where the affordable housing is built and then it quickly goes into disrepair and becomes a problem in the community.

These credits are awarded on the basis of scores for each project based on their application and other factors. An application can receive a higher score if it includes a support letter from their state representative. State senators, like myself, are not directly involved in the scoring process. If you or your community has an opinion on this project, I encourage you to communicate with your state representative. Below is the contact information for the state representative who has jurisdiction over this project:

Representative Harold Dutton  
Harold.Dutton@house.texas.gov, 713-692-9192

Later in the spring, hearings will be held by TDHCA to gather input on the application. Information on these hearings will be available at <http://www.tdhca.state.tx.us/public-comment.htm>. Thank you for your involvement in our community and please do not hesitate to contact my office if you have any questions.

Keep the Faith, Keep the Fight,

Borris L. Miles  
Senator, District 13

CAPITOL OFFICE:  
P.O. Box 12068  
AUSTIN, TEXAS 78711  
(512) 463-0113  
FAX: (512) 463-0006  
DIAL 711 FOR RELAY CALLS

CENTRAL HOUSTON OFFICE:  
5102 ALMEIDA ROAD, SUITE A  
HOUSTON, TEXAS 77004  
(713) 665-8322  
FAX: (713) 665-0009

FIFTH WARD OFFICE:  
3300 LYONS AVENUE, SUITE 301  
HOUSTON, TEXAS 77020  
(713) 223-0387  
FAX: (713) 223-0524

FORT BEND OFFICE:  
1600 TEXAS PARKWAY, SUITE 209  
MISSOURI CITY, TEXAS 77489  
(281) 261-2360  
FAX: (281) 261-4726

borris.miles@senate.texas.gov

**Relevant Development Information as Presented by the Applicant:**

Project Number: 18020  
Development Name: St Elizabeth Place  
Development Address: 4514 Lyons Avenue  
Development City: Houston ; Development Zip: 77020 ; Region: 6;  
Regional Allocation: Urban ; Target Population: General  
Set Aside:  Nonprofit  USDA  At-Risk  
Construction Type: New Construction  
Credit/ Funding Request: \$1,500,000  
Total Low Income Units: 120 ; Total Market Rate Units: 40 ; Total Units: 160

**Applicant Information:**

Owner Contact: Jessica Thompson  
Owner Address: 4300 Lyons Ave, Suite 300  
Owner City: Houston ; Owner State: Texas ; Owner Zip: 77020  
Owner Phone: (713) 674-0175  
Owner Email: [jthompson@fifthwardcra.org](mailto:jthompson@fifthwardcra.org)



**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

221 East 11th Street, Austin, TX 78701  
PO Box 1394 |, Austin, TX 78711

Main Number 512-475-3800  
Toll Free: 1-800-525-0857

Email [info@tdhca.state.tx.us](mailto:info@tdhca.state.tx.us)  
Web: [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)

Equal Opportunity Employer/Program. Auxiliary aids and services are available upon request to individuals with disabilities.  
Relay Texas: 800-735-2988 (TTY) and 711 (Voice)

ATTACHMENT 2

Letter of Support from State Representative Harold V. Dutton, Jr., District 142





STATE of TEXAS  
HOUSE of REPRESENTATIVES

**Harold V. Dutton, Jr.**  
District 142

Committees:  
Juvenile Justice and Family Issues, Chair  
Public Education

June 19, 2018

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

RE: St. Elizabeth Place, TDHCA #18020

Dear Mr. Irvine:

I am pleased to reaffirm my unconditional support to the Fifth Ward Community Redevelopment Corporation's application to the redevelopment of St. Elizabeth Hospital into St. Elizabeth Place. I previously provided a letter in support on February 26, 2018. The St. Elizabeth Place proposed development will bring much needed affordable housing to an area with the most need and revitalize an architectural, cultural and historic gem in the Fifth Ward, Houston area.

Again, I commend the Fifth Ward Community Redevelopment Corporation on their application to increase safe, quality affordable housing in an area so desperately in need..

I may be contacted at (713) 692-9192, if there are any further questions.

Best regards,

A handwritten signature in black ink, appearing to read "Harold V. Dutton, Jr.", written in a cursive style.

HAROLD V. DUTTON, JR.

/me

cc: Fifth Ward Redevelopment Corporation

ATTACHMENT 3

Letter of Support from State Senator Borris L. Miles, District 13



## BORRIS L. MILES

STATE SENATOR • DISTRICT 13

COMMITTEES: AGRICULTURAL, WATER, & RURAL AFFAIRS • HEALTH & HUMAN SERVICES • NATURAL RESOURCES & ECONOMIC DEVELOPMENT • NOMINATIONS

June 20, 2018

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

RE: St. Elizabeth Place, TDHCA #18020


Dear Mr. Irvine:

I am pleased to lend my support to St. Elizabeth Place located in my district, within the Fifth Ward in Houston. St. Elizabeth Place has a rich and significant cultural history. Before St. Elizabeth's Hospital was built in the 1940's to expand medical care to Houston's African-American community, there were only 175 hospital beds for Houston's entire black population. We are fortunate that the Fifth Ward Community Redevelopment Corporation has been working tirelessly for the past several years to transform the vacant underutilized piece of history into affordable residences in our community. I have championed this effort and personally shared the news of the proposed development with neighborhood groups this past winter in January.

Thank you for providing me the opportunity to provide my support to the Fifth Ward Community Redevelopment Corporation's effort to revitalize the neighborhood by transforming St. Elizabeth Place into quality housing for its community members.

Please feel free to contact me at (713) 665-8322 if you have any questions.

Sincerely,

  
Borris L. Miles  
State Senator District 13

**CAPITOL OFFICE:**  
P.O. Box 12068  
Austin, Texas 78711  
(512) 463-0113 • FAX: (512) 463-0006  
Dial 711 for Relay Calls

**HOUSTON OFFICE:**  
5302 Alameda Road, Suite A  
Houston, Texas 77004  
(713) 665-8322 • FAX: (713) 665-0009

**FORT BEND OFFICE:**  
2440 Texas Parkway, Suite 110  
Missouri City, Texas 77489  
(281) 261-2360 • FAX: (281) 261-4726

[borris.miles@senate.texas.gov](mailto:borris.miles@senate.texas.gov)

ATTACHMENT 4

Letter of Support from Harris County Commissioner Rodney Ellis, Precinct One

# Harris County



# Precinct One

**RODNEY ELLIS**  
COMMISSIONER

January 19, 2018

Juanita Moore  
City of Houston, Housing and Community Development Department  
601 Sawyer, 4<sup>th</sup> Floor  
Houston, TX 77007

Dear Ms. Moore,

I am writing on behalf of the developers of St. Elizabeth Place, LP to extend my support for their development to be located at 4514 Lyons Avenue in the Greater Fifth Ward TIRZ and Community Revitalization Area. St. Elizabeth Place is a comprehensive adaptive reuse of the historic St. Elizabeth Hospital, which represents an opportunity to reestablish the Lyons corridor and serve as a vital resource to help meet the need for quality housing in the Greater Fifth Ward area.

As you know, the City of Houston recognized St. Elizabeth Hospital as a historic landmark on October 6, 2016. Redeveloping and adapting St. Elizabeth Hospital into housing and a cultural meeting place will preserve its historic significance, provide needed housing, and establish opportunities for business, arts and culture on Lyons Avenue.

As County Commissioner of Precinct 1, I recognize the long-lasting benefits of the housing stability and services that St. Elizabeth Place will help provide to its future residents and to the community as a whole. It is my belief that this development exceeds the criteria for multifamily development put forth by the City of Houston Housing and Community Development Department.

Thank you for your consideration and for your efforts to provide Houstonians with high quality housing. Should you need further information or have any questions, please do not hesitate to contact my office.

Sincerely,

A handwritten signature in black ink that reads "Rodney Ellis". The signature is written in a cursive style.

Rodney Ellis

1001 Preston Street, Suite 950 ■ Houston, Texas 77002 ■ (713) 274-1000  
7901 El Rio Street ■ Houston, Texas 77054 ■ (713) 991-6881

ATTACHMENT 5

Certification of Kathy Flanagan Payton

CERTIFICATION

I am the President and CEO of Fifth Ward Community Redevelopment Corporation. I hereby certify that the facts stated in the above letter to Sharon Gamble, Administrator of the 9% Competitive Housing Tax Credit Program at the Texas Department of Housing and Community Affairs dated June 21, 2018, from Tamea A. Dula of Coats Rose, P.C. are true and correct to the best of my knowledge and belief.

Dated: June 21, 2018



---

KATHY FLANAGAN PAYTON

ATTACHMENT 6

Certification of Bridgette Steele



CERTIFICATION

I am a member of the Board of Directors of Fifth Ward Community Redevelopment Corporation and am also a founder and member of Progressive Fifth Ward Community Association. I hereby certify that the facts stated in the above letter to Sharon Gamble, Administrator of the 9% Competitive Housing Tax Credit Program at the Texas Department of Housing and Community Affairs dated June 21, 2018, from Tamea A. Dula of Coats Rose, P.C. are true and correct to the best of my knowledge and belief.

Dated: June 21, 2018

A handwritten signature in cursive script, appearing to read "B Steele", is written above a horizontal line.

**BRIDGETTE STEELE**

18020

Notification of Termination



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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

Greg Abbott  
GOVERNOR

BOARD MEMBERS

J.B. Goodwin, *Chair*  
Leslie Bingham-Escareño, *Vice Chair*  
Paul A. Braden, Member  
Asusena Reséndiz, Member  
Sharon Thomason, Member  
Leo Vasquez, Member

July 3, 2018

*Writer's direct phone # (512) 475-1676*  
*Email: [marni.bolloway@tdhca.state.tx.us](mailto:marni.bolloway@tdhca.state.tx.us)*

Ms. Jessica Thompson  
St. Elizabeth Place, LP  
4300 Lyons Avenue, Suite 300  
Houston, TX 77027

RE: TERMINATION OF 2018 COMPETITIVE HOUSING TAX CREDIT APPLICATIONS 18020 ST. ELIZABETH PLACE

Dear Ms. Thompson:

The Texas Department of Housing and Community Affairs ("the Department") is in receipt of the application submission indicated above. Per 10 TAC §11.8(b)(2)(A) an Applicant must certify that all of the notifications required by that paragraph have been made. It goes on to require that the Applicant must list all "Neighborhood Organizations on record with the county or state (*emphasis supplied*) whose boundaries included the proposed Development Site as of the beginning of the Application Acceptance Period." 10 TAC §11.8(b) provides that if an application does not meet threshold criteria (including the criteria in 10 TAC 11.8(b)(2)(A)) it will be terminated. This rule effectuates a statutory requirement set forth in Tex. Gov't Code §2306.6704(b-1) and (c), regarding the Pre-application process. The Pre-application submitted listed those Neighborhood Organizations that had been notified, and that list did not include the Progressive Fifth Ward Community Association ("PFWCA"), which the Department has since confirmed (see Attachments A and B) is a neighborhood organization that was on record with the Texas Secretary of State's Office as of the beginning of the Application Acceptance Period and whose boundaries included the entire Development Site. The full Application as submitted did not include the PFWCA as a Neighborhood Organization that had been notified as required by Tex. Gov't Code §2306.6705(9) and 10 TAC §11.8(b)(2)(B) and (C).

Staff received the attached letter from PFWCA and issued an Administrative Deficiency to the Applicant. In response to the notice of Administrative Deficiency, the Applicant stated that a database of organizations maintained by the City of Houston was searched to identify organizations on record, but no county or state database is mentioned as having been searched by the Applicant. It is noted that the express statutory language creating this requirement makes no reference to city records but refers to "any neighborhood organizations on record with the state or county (*emphasis supplied*) in which the development is to be located and whose boundaries contain the proposed development site." A search of the records of the Secretary of State performed by staff in researching this request for administrative deficiency yielded the



fact that PFWCA was on record with the state, was identified as a neighborhood organization with the stated purpose of “promot[ing] the public interest of the residents in the area of the Fifth Ward of Houston, Texas,” and had recited boundaries that encompassed the proposed development site at the beginning of the Application Acceptance Period.

The Applicant has acknowledged that it was aware of PFWCA and that the Applicant “did not provide a formal notification letter to Progressive” because the organization was not listed in the city database. It appears that the Applicant was unaware that PFWCA was incorporated, and was viewed as being part of the team working to revitalize the St. Elizabeth’s hospital. Further, the Applicant contends that a number of written communications were made to Erica Hubbard, listed as a Director of PFWCA, regarding the proposed development, but the response by the Applicant to the Administrative Deficiency indicates that those communications occurred after the Pre-application deadline. Applicant contends that the entirety of these communications which it represents that it had with Ms. Hubbard during the conceptualizing of the development amounted to a practical satisfaction of the notification requirement. Staff is unable to conclude that those communications satisfy the requirements of Tex. Gov’t Code §2306.6704(b-1) and (c) or the rule-based criteria required by the board in its rules at 10 TAC §11.8(b)(2)(B) and (C).

The Application failed to include the PFWCA as a neighborhood organization requiring notification. The full Application included a signed and notarized certification that the pre-application “met all threshold requirements, and no additional notifications were required.” Information in the deficiency response indicates that this certification is not accurate and that the Application failed to meet the notification requirements in Tex. Gov’t Code §2306.6704(b-1) and §2306.6705(9) as effectuated by 10 TAC §11.8(b)(2)(A). In accordance with Tex. Gov’t Code §2306.6704(c) and 10 TAC §11.8(b), the score for this Application is reduced by six (6) points for the statutorily required rejection of its Pre-application for failure to meet all of the specified threshold requirements recited in the rule. Furthermore, the inaccuracy of evidence of statutorily required notification of required entities at the time of full application presents grounds for termination of this Application, subject to your ability to appeal this decision as described, below.

In summary:

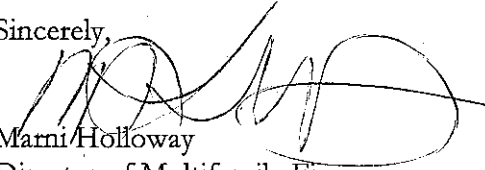
- The notification prior to Pre-application was not timely accomplished as required by statute (Tex. Gov’t Code §2306.6704(b-1)(1)) and the QAP (10 TAC §11.8(b)(2)(B)(i)). As a result the Pre-application is rejected (Tex. Gov’t Code §2306.6704(c)). This renders the Application ineligible for pre-application points.
- The notification prior to full Application was not timely accomplished as required by statute (Tex. Gov’t Code §2306.6705(9)(A) and by rule (10 TAC §11.8(b)(2)(A)). As a result, the Application has not established that it met a threshold requirement specified in statute and rule, which presents grounds for termination that cannot be cured by giving the required notification later.

An appeal process exists for the Housing Tax Credit Program. The restrictions and requirements related to the filing of an appeal can be found in 10 TAC §902 of the 2018 Uniform Multifamily Rules, Subchapter G. Should you choose to appeal this decision to the Executive Director, you must file your appeal, in writing, with the Department not later than seven (7) calendar days after the date of this letter. If you are not satisfied with the decision of the Executive Director or if the Executive Director does not respond, you may file a further appeal with the Board of Directors of the Texas Department of Housing and Community Affairs.

**If you would prefer to expedite this process to appear on the July 12, 2018, Board meeting agenda, we will need to know by 4:00 p.m. today in order to properly post the agenda.**

If you have any questions or concerns, please contact me at 512-475-1676 or by email at [marni.holloway@tdhca.state.tx.us](mailto:marni.holloway@tdhca.state.tx.us).

Sincerely,



Marni Holloway  
Director of Multifamily Finance

Attachments:

- A (Secretary of State Database Inquiry)
- B (Certificate of Formation of Nonprofit Corp. for PFWCA)
- C (Letter to TDHCA from PFWCA)

Copy: Tamea Dula

**TEXAS SECRETARY of STATE**  
**ROLANDO B. PABLOS**

[UCC](#) | [Business Organizations](#) | [Trademarks](#) | [Notary](#) | [Account](#) | [Help/Fees](#) | [Briefcase](#) | [Logout](#)

**BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY**

<b>Filing Number:</b>	802752306	<b>Entity Type:</b>	Domestic Nonprofit Corporation
<b>Original Date of Filing:</b>	June 22, 2017	<b>Entity Status:</b>	In existence
<b>Formation Date:</b>	N/A	<b>Non-Profit</b>	N/A
		<b>Type:</b>	
<b>Tax ID:</b>	32064135554	<b>FEIN:</b>	
<b>Duration:</b>	Perpetual		
<b>Name:</b>	Progressive Fifth Ward Community Association		
<b>Address:</b>	1705 YATES ST HOUSTON, TX 77020-4236 USA		

<a href="#">REGISTERED AGENT</a>	<a href="#">FILING HISTORY</a>	<a href="#">NAMES</a>	<a href="#">MANAGEMENT</a>	<a href="#">ASSUMED NAMES</a>	<a href="#">ASSOCIATED ENTITIES</a>
<b>Name</b>	<b>Address</b>		<b>Inactive Date</b>		
Erica Hubbard	1705 Yates Street Houston, TX 77020 USA				

Order

Return to Search

Instructions:

- To place an order for additional information about a filing press the 'Order' button.

**Form 202**

Secretary of State  
 P.O. Box 13697  
 Austin, TX 78711-3697  
 FAX: 512/463-5709

Filing Fee: \$25



**Certificate of Formation  
 Nonprofit Corporation**

Filed in the Office of the  
 Secretary of State of Texas  
 Filing #: 802752306 06/22/2017  
 Document #: 746279650002  
 Image Generated Electronically  
 for Web Filing

**Article 1 - Corporate Name**

The filing entity formed is a nonprofit corporation. The name of the entity is :

**Progressive Fifth Ward Community Association**

**Article 2 – Registered Agent and Registered Office**

A. The initial registered agent is an organization (cannot be corporation named above) by the name of:

**OR**

B. The initial registered agent is an individual resident of the state whose name is set forth below:

**Name:**

**Erica Hubbard**

C. The business address of the registered agent and the registered office address is:

**Street Address:**

**1705 Yates Street Houston TX 77020**

**Consent of Registered Agent**

A. A copy of the consent of registered agent is attached.

**OR**

B. The consent of the registered agent is maintained by the entity.

**Article 3 - Management**

A. Management of the affairs of the corporation is to be vested solely in the members of the corporation.

**OR**

B. Management of the affairs of the corporation is to be vested in its board of directors. The number of directors, which must be a minimum of three, that constitutes the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting or until their successors are elected and qualified are set forth below.

Director 1: **Erica Hubbard**

Title: **Director**

Address: **1705 Yates Street Houston TX, USA 77020**

Director 2: **Vanessa Rodriguez**

Title: **Director**

Address: **1709 Yates Street Houston TX, USA 77020**

Director 3: **Selena Samuel**

Title: **Director**

Address: **4511 Hershe Street Houston TX, USA 77020**

**Article 4 - Organization Structure**

A. The corporation will have members.

or

B. The corporation will not have members.

**Article 5 - Purpose**

The corporation is organized for the following purpose or purposes:

**The purpose of the organization shall be to promote the public interest of the residents in the area of the Fifth Ward of Houston, Texas with the following borders: Liberty road on the North, I-10 Highway on the South, Sakowitz street**

on the East and Highway 59 on the West.

**Supplemental Provisions / Information**

[The attached addendum, if any, is incorporated herein by reference.]

**Effectiveness of Filing**

A. This document becomes effective when the document is filed by the secretary of state.

**OR**

B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of its signing. The delayed effective date is:

**Organizer**

The name and address of the organizer are set forth below.

**Erica Hubbard**      **1705 Yates Street, Houston , Texas 77020**

**Execution**

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

**Erica Hubbard**

Signature of organizer.

**FILING OFFICE COPY**



Progressive Fifth Ward Community Association  
PO Box 88305  
Houston, TX 77288

June 11, 2018

Texas Department of Housing and Community Affairs  
Multifamily Finance Division  
P.O. Box 13941,  
Austin, TX 78711-3941  
Fax: 512-475-0764  
Email: htc.public-comment@tdhca.state.tx.us

Dear TDHCA Staff,

Re: TDHCA application# 18020

We would like to state our strongest objection to the above, Texas Department of Housing and Community Affairs, application identified as project # 18020 which refers to the proposed St. Elizabeth Place located at 4514 Lyons Ave., Houston, TX 77020, as a development site applicant for low-income housing tax credits.

According to TDHCA Uniform Multifamily Rules, **10.101.Site and Development Requirements and Restrictions, section 3, Undesirable Neighborhood Characteristics**, the development site applicant has listed 4 or more characteristics which per your guidelines, must include satisfactory mitigation. The application requirements go on to state the applicant must demonstrate actions are being taken that would lead a reader to conclude that there is a high probability and reasonable expectation that undesirable characteristic will be sufficiently mitigated or significantly improved within a reasonable time, typically prior to placement in service and that the undesirable characteristic demonstrates a positive trend and continued improvement. **The development site applicant has listed 4 Undesirable Neighborhood Characteristics mitigations that fail to show the probability of improvement before the site is completed. Here are the items we are objecting to.**

1. Schools
2. Crime
3. Blight
4. Poverty

**Our first objection to the applicant's Undesirable Neighborhood Characteristic mitigation is directly related to subsection B, clause IV which refers to the proposed site location existing within an attendance zone of a school which does not have a Met Standard rating by the Texas Education Agency.** Phyllis Wheatley High School, identified by the applicant as the nearest high school within the attendance zone, did not receive a 2017 Met Standard rating (subsequent years, 2015 & 2016 did not receive a Met Standard rating) and is currently on a list of Houston Independent School Districts ten worst performing schools. Despite the applicant including a letter from the area superintendent dated February 27, 2018 and the 51 pages in the application dedicated for evidentiary purposes for proving a clear trend for imminent compliance, this school is on the brink of closure. Wheatley High School is within HISD, a school district with a \$115 million budget deficit for the upcoming 2018-2019 school year and the school district does not have permanent leadership because the former superintendent resigned in March 2018. On April 12, 2018 at a press conference, the Mayor of the City of Houston, Sylvester Turner publicly declined to get involved with the embattled 10, lowest-performing schools, Wheatley included, slated for closure. A few weeks later, on April 25, 2018, Sylvester Turner, tweeted "no city resources would be used in partnering with HISD". At an HISD Board of Trustee's meeting on May 10, 2018, the Interim Superintendent refused to enter into a partnership with charter school company to salvage Wheatley High School and the other 9, low performing schools, a decision Houston Mayor Sylvester Turner supports. With no local support from the City of Houston, if Wheatley High School closes, an action threatened already by the Texas Education Agency, the neighborhood for this proposed low-income housing site will not have a high school for children to attend which will threaten high school completion levels for the entire community. No points should be awarded since the development site applicant failed to provide mitigation regarding the failing high school.

**Our second objection to the applicant's Undesirable Neighborhood Characteristics mitigation is directly related to subsection B, clause II which refers to crime rate and the evidence of a decrease in crime.** According to the development site applicant information gathered from [neighborhoodscout.com](http://neighborhoodscout.com), within the census tract the violent crime rate in the development site is 40.5 per 1,000 persons. According to TDHCA criteria, the threshold is 18 per 1,000 persons in an urban area annually, which translates to the development site is 125% well above TDHCA requirements. The applicant is required to describe mitigation and did not provide any evidence that the crime is decreasing nor did they submit a map plotting all instances of violent crime within a one mile radius of the development site. Instead, the development site applicant submitted information about the local civic club participating occasionally in National Night Out as a means to counter violent crime at 125% above the TDHCA requirement and they also included a brochure for Crime Prevention Through Environmental Design (CPTED). Progressive Fifth Ward Community Association attended a meeting on May 18, 2018 to inquire about these mitigation strategies from the site developer with the North East Division for

Houston Police Department and met with Acting Captain, Lt. Rodriguez, who stated CPTED is a methodology Houston Police Department recommends as standards for ALL developers (luxury, market-rate and low-income) who are seeking to design or remodel an apartment complex. CPTED standards has no mechanism to measure effectiveness or collect data. Furthermore on page 24 of the applicant information packet, the development site applicant states Houston Police Department coordinates a Citizen Patrol Program in the neighborhood. We have verified with the Houston Police Department Internal Affairs division that no such citizen patrol program exists in the immediate vicinity of the development site. There also appears to be no support from local law enforcement whether in the form of statistics or a letter to support the claim crime is decreasing through the specific measures the development site applicant is alleging. Lastly, the census tract for the designated development also has 74 registered sex offenders with 9 living 1,000 feet of the proposed site. The crime levels in the location for the propose site development warrants ongoing concern and the mitigation the site development applicant included in their application is insufficient therefore no points should be awarded.

**Our third objection to the applicant's Undesirable Neighborhood Characteristics is directly related to subsection B, clause III which refers to blight being within 1,000 feet of the development site.** The applicant stated on page 82 that there is only one instance of blight within 1,000 feet of the site located at 4419 Hershe St. They suggest that blight is decreasing with an increase in new housing stock development. We do not dispute the fact that blight is being gradually being reduced but we definitely counter the number of instances of blight the development site applicant has stated which appears to minimize the extent of the issue. The following addresses represent widespread blight that continues to plague the community within a 1,000 feet of the proposed development. The development site applicant should not be awarded any points since they failed to convey the current extent of blight.

- 4701 Farmer, vacant lot, overgrown, 388 feet away
- 4704 Hershe, abandon, boarded up, 991 feet away
- 4601 Hershe, abandon & overgrown 693 feet away
- 4209 New Orleans, vacant lot, overgrown, 987 feet away
- 4210 New Orleans, vacant lot, overgrown, 848 feet away
- 4500 Chisum, vacant lot, overgrown, 58 feet away
- 1512 Waco, vacant lot, overgrown, 473 feet away

**Our fourth objection to the applicant's Undesirable Neighborhood Characteristics mitigation is directly related to subsection B which refers to poverty.** The census tract for the proposed development has a poverty rate of 51%, 11% above TDHCA guideline.

Low-income/public housing projects are disproportionately erected in Fifth Ward with currently over 1,020 units in a 4.99 square mile radius. On January 11, 2017 the Director of the Fort Worth Regional Office of Fair Housing & Equal Opportunity, Region VI for HUD after an extensive

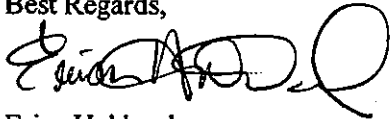
investigation, sent a letter to the Mayor of Houston, Sylvester Turner, and stated the City of Houston was in violation of Title VI of the Civil Rights Act of 1964, based on the city disproportionately placing low income housing in low income areas. The finding was also based on the city refusing to take a vote on a low-income housing project slated for a white majority, high opportunity neighborhood. That finding was released to the public on January 13, 2017. Several community members of Fifth Ward along with myself attended public comments on May 30, 2018 to ask the mayor to withdraw his support for this site development. The mayor along with city councilman assigned to this site development, Jerry Davis, stated they refuse to withdraw support and admitted their decision was based on race. See the link to the public comments here, <http://houstontx.swagit.com/play/05302018-727/67>. Members of the community went back on June 5, 2018 to ask the mayor to withdraw his support but the mayor made no comments. See the link to the public comments here, <http://houstontx.swagit.com/play/06052018-1918> (video: 10:50, 20:51, and 1:35:01)

**Our last objection refers to the Uniform Multifamily Rules §10.201.Procedural Requirements for Application Submission. The applicant failed to identify and notify all Neighborhood Organizations on record with the state as of 30 days prior to the Full Application Delivery Date.** Our neighborhood organization, recognized as a State of Texas organization, Progressive Fifth Ward Community Association, whose boundaries also include the entire proposed development Site was notified about the site through a request from the developer for a signature on a prepared support letter on Feb. 28, 2018. We declined to sign the prepared support letter because we had not received any information outside of rumors about the development. We invited the development site applicant to attend our next community association meeting which was scheduled for April 5, 2018. At that meeting, the development site applicant explained their project incompletely and with mischaracterizations. Because of the meeting taking place on April 5, 2018 and the lack of notification before the application was due, we were unable to conduct our research, poll community stakeholders and communicate our objection to our elected local and state officials before they provided support letters to the development site applicant. The Progressive Fifth Ward Community Association has a membership that comprises of 80% residents who live within 0.5 mile radius of the site development. The registered agent and president of Progressive Fifth Ward Community Association lives 345 feet away from the proposed site and was never officially notified according to TDHCA guidelines. Texas House Bill 1792 requires LIHTC applicants to file a detailed brief to every relevant stakeholder within the development's boundaries. This bill was passed in 2017. The development site applicant is a LIHTC (Low-income Housing Tax Credit) applicant and we believe violated H.B. 1792 by failing to follow the law with regards to neighborhood association official notification therefore points should not be awarded any points.

Progressive Fifth Ward Community Association is not against low-income housing, we are

however against developers who disregard community input and disregard the Fair Housing Act by segregating all low-income housing in low-income neighborhoods, ignoring high opportunity neighborhoods of Houston. **The development site applicant failed in 4 areas to show sufficient mitigation and points should not be awarded in those areas to the development site application TDHCA, 18020.** Fifth Ward, the community in which the site development is proposed is a historical African American community in Houston has a 51% poverty level, a median income of 18K and crime statistics that state 1 out every 25 residents will likely be the victim of violent crime. This development could destabilize the economic seedlings of growth currently taking place in this low advantage community. It is our opinion that is the development site's application for low-income tax credits is approve, this future low-income housing site will perpetuate racial and economic segregation in Houston, TX. We strongly recommend that this development site application, #18020, be declined.

Best Regards,

A handwritten signature in black ink, appearing to read "Erica Hubbard", written over a horizontal line.

Erica Hubbard

President, Progressive Fifth Ward Community Association



## Office of the Secretary of State

### Certificate of Fact

The undersigned, as Secretary of State of Texas, does hereby certify that the document, Certificate of Formation for Progressive Fifth Ward Community Association (file number 802752306), a Domestic Nonprofit Corporation, was filed in this office on June 22, 2017.

It is further certified that the entity status in Texas is in existence.

It is further certified that our records indicate ERICA HUBBARD as the designated registered agent for the above named entity and the designated registered office for said entity is as follows:

1705 YATES STREET

HOUSTON, TX - 77020 USA

In testimony whereof, I have hereunto signed my name officially and caused to be impressed hereon the Seal of State at my office in Austin, Texas on February 27, 2018.



A handwritten signature in black ink, appearing to read "Rolando B. Pablos".

Rolando B. Pablos  
Secretary of State

**Form 202**

Secretary of State  
 P.O. Box 13697  
 Austin, TX 78711-3697  
 FAX: 512/463-5709

Filing Fee: \$25



**Certificate of Formation  
 Nonprofit Corporation**

Filed in the Office of the  
 Secretary of State of Texas  
 Filing #: 802752306 06/22/2017  
 Document #: 746279650002  
 Image Generated Electronically  
 for Web Filing

**Article 1 - Corporate Name**

The filing entity formed is a nonprofit corporation. The name of the entity is :

**Progressive Fifth Ward Community Association**

**Article 2 - Registered Agent and Registered Office**

A. The initial registered agent is an organization (cannot be corporation named above) by the name of:

OR

B. The initial registered agent is an individual resident of the state whose name is set forth below:

Name:

**Erica Hubbard**

C. The business address of the registered agent and the registered office address is:

Street Address:

**1705 Yates Street Houston TX 77020**

**Consent of Registered Agent**

A. A copy of the consent of registered agent is attached.

OR

B. The consent of the registered agent is maintained by the entity.

**Article 3 - Management**

A. Management of the affairs of the corporation is to be vested solely in the members of the corporation.

OR

B. Management of the affairs of the corporation is to be vested in its board of directors. The number of directors, which must be a minimum of three, that constitutes the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting or until their successors are elected and qualified are set forth below.

Director 1: **Erica Hubbard**

Title: **Director**

Address: **1705 Yates Street Houston TX, USA 77020**

Director 2: **Vanessa Rodriguez**

Title: **Director**

Address: **1709 Yates Street Houston TX, USA 77020**

Director 3: **Selena Samuel**

Title: **Director**

Address: **4511 Hershe Street Houston TX, USA 77020**

**Article 4 - Organization Structure**

A. The corporation will have members.

or

B. The corporation will not have members.

**Article 5 - Purpose**

The corporation is organized for the following purpose or purposes:

**The purpose of the organization shall be to promote the public interest of the residents in the area of the Fifth Ward of Houston, Texas with the following borders: Liberty road on the North, I-10 Highway on the South, Sakowitz street**

on the East and Highway 59 on the West.

**Supplemental Provisions / Information**

[The attached addendum, if any, is incorporated herein by reference.]

**Effectiveness of Filing**

A. This document becomes effective when the document is filed by the secretary of state.

**OR**

B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of its signing. The delayed effective date is:

**Organizer**

The name and address of the organizer are set forth below.

**Erica Hubbard      1705 Yates Street, Houston , Texas 77020**

**Execution**

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

**Erica Hubbard**

Signature of organizer.

**FILING OFFICE COPY**



18020

Appeal to Executive Director

# COATS | ROSE

A PROFESSIONAL CORPORATION

TAMEA A. DULA  
OF COUNSEL

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

July 9, 2018

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

Tim Irvine, Executive Director  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, Texas 78701-2401

RE: #18020 St. Elizabeth Place – Response to Administrative Deficiency Notice.

Dear Mr. Irvine:

This is an appeal of the termination of the 2018 Competitive Housing Tax Credit Application for #18020 St. Elizabeth Place (“Application”), by Termination Notice dated July 3, 2018, issued by Marni Holloway, Director of Multifamily Finance. St. Elizabeth Place, LP (the “Applicant”) was advised that failure to provide Notification to Progressive Fifth Ward Community Association (“PFWCA”) by January 9, 2018 was grounds for denying six (6) Pre-Application points, and failure to provide Notification to PFWCA by March 1, 2018 was grounds for terminating the Application. Erica Hubbard, President of PFWCA, sent the Department a letter on June 11, 2018, opposing the proposed St. Elizabeth Place development and indicating that PFWCA had not received Notification of the Application. PFWCA is an association of residents and organizations who pay annual membership fees of \$50 per resident and \$100 per entity, making it an association with a high barrier to entry for many neighborhoods and an exclusive one for a neighborhood with a median income of \$18,570.

We ask that you, as Executive Director, reconsider this determination and rescind the Termination Notice and reinstate the requested six (6) points on the following grounds:

**A. PFWCA Received Notification Prior to March 1, 2018.**

1. No termination of this Application is required because Erica Hubbard and PFWCA received Notification of the details of the Application via correspondence from State Senator Borris L. Miles. Senator Miles sent a letter dated January 31, 2018 to multiple recipients advising them that the Applicant had filed a Pre-Application with the TDHCA. His letter provided the details of the proposed development, told the letter recipients how

9 Greenway Plaza, Suite 1000 Houston, Texas 77046  
Phone: 713-651-0111 Fax: 713-651-0220  
Web: [www.coatsrose.com](http://www.coatsrose.com)

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to contact their State Representative to provide input, and advised that the TDHCA would hold public hearings later in the Spring to obtain community comments regarding the Application. Ms. Hubbard acknowledged her receipt of the Senator's letter prior to the Full Application Deadline by forwarding it to Kathy Payton at FWCRC by email on February 28, 2018. Please see Exhibit A attached.

2. Technically, the QAP and Rules do not specify that Notification must come directly from the Applicant, and frequently we see that it is sent out by another person, such as a consultant. Senator Miles sent a letter to his constituents advising them about the potential development and providing a copy of the TDHCA's Notification which was sent to him. Anyone who obtained a copy of his correspondence with its attachment had effective Notification of the Application. For this reason, we respectfully request that the termination of the St. Elizabeth Place Application be rescinded.

**B. Good Faith Effort Was Made to Identify Neighborhood Organizations of Record.**

1. Historically, the Uniform Multifamily Rules and the Qualified Allocation Plan provided safe harbors for identifying Neighborhood Organizations, but these have been eliminated, and there is no clear means of truly identifying all potential neighborhood organizations that claim boundaries of interest that would include a proposed project. Safe harbors originally included sending inquiries to the county clerk and specified local elected officials to request their listings of registered entities that might qualify as Neighborhood Organizations on record with the county or state. For several years (2015 and 2016) they also included checking the TDHCA's registration of entities that were potential Neighborhood Organizations, which constituted being "on record" with the state. These are no longer recognized listings to rely upon, although they can provide initial information which can be confirmed through the Secretary of State or the County Clerk. There are no longer any safe harbors that can provide assurance that all necessary neighborhood organizations have been notified.
2. Neither the Secretary of State of Texas nor the Harris County Clerk maintains a listing of civic organizations that might qualify as Neighborhood Organizations in connection with St. Elizabeth Place. While the Harris County Clerk has records concerning Property Owners' Associations and Homeowners' Associations, these are not maintained in a listing and can only be found by conducting a title search of the property in question. The title search for the Application did not reveal any Property Owners' Association or Homeowners' Association relevant to the project site. In a recent call to the Harris County Clerk's Office, Ms. Doris Ashby, Director of the Information Department, confirmed that the County Clerk does not maintain any such listing, and provided a referral to the City of Houston.

3. Prior to 2014, an inquiry to the city in which the proposed project was located could provide a listing of Neighborhood Organizations “on record with the state” because the city was considered the local outlet of the State. This changed in the 2017 Uniform Multifamily Rules, however, when §10.203(1)(A) was revised to specify that “*As used in this section, ‘on record with the state’ means on record with the Secretary of State.*” The same language appears in the 2018 Rules.
4. The Applicant made a good faith effort to locate Neighborhood Organizations and provided Notification to four (4) entities believed to be qualified Neighborhood Organizations. Applicant’s good faith effort included checking with the City of Houston’s interactive map of community organizations at <http://www.houstontx.gov/cao/civicclubs.html> to see which community organizations had declared boundaries of interest that included 4514 Lyons Avenue, the address of the project site. They also obtained a City of Houston Civic Club List which was updated through February 21, 2018, and is available at: <http://www.houstontx.gov/cao/civicclubs.pdf>. Cross-checking the entities found via the map of community organization boundaries, and the Civic Club List with the Secretary of State, only one entity was found to be of record with the Secretary of State. A search of the five surrounding ZIP Codes (77002, 77003, 77010, 77011 and 77026) revealed two additional civic clubs. Each was registered with the Secretary of State, but neither includes the Project site within its area of interest. Neither of the listings made any reference to PFWCA.
5. In an effort to be extremely thorough, the Applicant ultimately sent four (4) entities Notifications prior to Pre-Application submission: (i) Fifth Ward Redevelopment Authority; (ii) Fifth Ward Community Redevelopment Corporation; (iii) Fifth Ward Neighborhood Civic Club; and (iv) Greater Fifth Ward Super Neighborhood 55. The inclusion of Greater Fifth Ward Super Neighborhood 55 (which is not registered with the Secretary of State) provided a means of reaching additional organizations that did not come up in the search, since in Houston, Super Neighborhoods are amalgamations of residents and stakeholders, including groups like civic clubs, non-profit associations, community development corporations, business associations, the faith community, school districts, institutions, etc. By including the Greater Fifth Ward Super Neighborhood 55, the Applicant made the Notification available to more interested parties than showed up in a search of organizations of record with the Secretary of State or the Harris County Clerk. We note that Erica Hubbard, as a resident, and PFWCA, as an organization, are both members of the Greater Fifth Ward Super Neighborhood 55.
6. The Termination Notice indicated that PFWCA was obtainable through a search of the Secretary of State’s records, and attached a copy of the search results as evidence. It appears, however, that the search was conducted to see if a known entity with a specific Filing Number was “of record.” This entry does not appear to have been obtained through a generalized search of entities with either the words “Fifth Ward”

in their names, or with an interest in the Fifth Ward. Indeed, had the entity not included the reference to “Fifth Ward” there is no way that it could have been located through a search of Secretary of State records. A telephone inquiry with Ms. Victoria Torres of the Secretary of State’s Customer Service Department confirmed that the Secretary of State does not maintain any kind of listing of local organizations that might qualify as Neighborhood Organizations, nor even a separate listing of nonprofit organizations. Basically, unless you already know that the entity exists, information is very difficult, if not impossible to obtain from the Secretary of State.

7. In 2017 the Rules changed so that the TDHCA no longer publishes a listing of registered Neighborhood Organizations. There is no longer any safe harbor for applicants in their efforts to locate with a degree of certainty the entities that must receive Notification. While we believe that St. Elizabeth Place is the first situation where this kind of failure to notify has been pursued, we recognize that it is unlikely to be the last. Maintaining the Notification requirements as they currently stand leaves open the opportunity to an unscrupulous developer to register an entity with the Secretary of State and keep it undercover until it is needed to torpedo a competitor’s application. Then, like in this situation, the pre-existing organization can complain that it has not received appropriate Notification per the Rules. If such a revelation is not made until after the Application deadline, then there is no way under the Rules to cure the Notification failure. It is bad public policy to create such an opportunity for misuse, and the TDHCA needs to resolve this issue so that it does not constitute an open invitation to manipulate the Rules. In consideration of the good faith effort to locate and notify qualified Neighborhood Organizations, we request that the Notification provided at Pre-Application be deemed sufficient and that the six (6) Pre-Application points be reinstated.

**C. Erica Hubbard and PFWCA Were Informed About the Project Prior to March 1st.**

1. The revitalization of the St. Elizabeth Hospital complex as affordable housing is a community project headed up by the non-profit Fifth Ward Community Redevelopment Corporation (“FWCRC”). The FWCRC has an inclusive approach to its actions within the Fifth Ward community, and tries to involve multiple interest groups in order to achieve broad support for its revitalization program. Between November 2016 and the Application Deadline, Ms. Hubbard participated as a member of the selection committee for the St. Elizabeth Place architect and co-developer. In testimony before Houston City Council on May 30, 2018, Ms. Hubbard advised of her opposition to the Application primarily due to its supposed preference for Veterans (which is not actually an element of the Application) and on questioning by Council Member Davis, she confirmed her involvement in the proposal that culminated in the Application. As a member of the selection committee that interviewed potential co-developers and architects, Ms. Hubbard had possession of the redevelopment plan presented by Cloudbreak Development II, LLC. The only

change in that plan has been to finalize the number of units in the project, which increased from 100 to 110 units.

2. Ms. Hubbard's initial involvement with the Project was in her capacity as a resident of the area and as an officer of Fifth Ward Neighborhood Civic Club. In February 2017, Ms. Hubbard and other officers of Fifth Ward Neighborhood Civic Club resigned en masse, and formed an unincorporated splinter group which operated under several different names (Fifth Ward Solidarity; North Park; Solidarity5Ward; Progressive) and ultimately became known as PFWCA. Staff at FWCRC were not aware that PFWCA had incorporated.
3. On February 27, 2018, Zarana Sanghani, Program Officer at FWCRC, acting on behalf of the Development Team, emailed Ms. Hubbard regarding the Project and the hope that PFWCA would provide a letter of support for the Project. Jessica Thompson of FWCRC sent another email regarding a support letter on February 27, 2018. Ms. Hubbard appears not to have followed up on the email request.
4. On February 28, 2018 Kathy Payton of FWCRC contacted Erica Hubbard requesting support for St. Elizabeth Place. Ms. Payton gave an updated synopsis of the Project since Ms. Hubbard's involvement, and provided answers to recent questions raised by other community organizations. A letter of support was requested from PFWCA, and Ms. Payton offered to attend a meeting that night to answer questions concerning the Project. Later that day, in a telephone conversation between Ms. Hubbard and Kathy Payton, Ms. Hubbard indicated that she had received a letter dated January 31, 2018 from State Senator Borris L. Miles regarding the Application, and Ms. Hubbard forwarded that correspondence to Ms. Payton. A copy of the Notification regarding St. Elizabeth Place that was sent to Senator Miles by the TDHCA was included in his correspondence, so PFWCA clearly was in receipt of a Notification containing all of the required information. Neither the QAP nor the Rules requires that the Notification be sent out by the Applicant – only that it be sent to the requisite Neighborhood Organizations. Here Senator Miles provided PDWCA with the same Notification he had received directly from the TDHCA. If the correspondence was sufficient to put a State Senator on notice regarding the proposed application, then it surely was sufficient to provide notice to an organization where the President and CEO had personal involvement in the Application and was in regular communications with FWCRC, the co-developer.
5. The TDHCA requires that certain information concerning the proposed application for Competitive Housing Tax Credits be provided in the Notification, but it does not require that a particular form of written Notification be used. One of the approved ways to deliver written Notification to a recipient is by email. The email correspondence with PFWCA concerning the Application, taken as a whole, and in particular, the correspondence that PFWCA acknowledges receiving from State Senator Borris L. Miles, constitutes Notification to PFWCA prior to March 1, 2018.

Tim Irvine, Executive Director  
June 9, 2018  
Page 6

Ms. Hubbard was aware that the Application was being submitted and that demonstrates that PFWCA and Ms. Hubbard had adequate and compliant Notification of the Application prior to March 1, 2018.

Thank you for the opportunity to file this Appeal. We sincerely hope that you will find the argument compelling and will agree that a Project with immense support within the community, as was demonstrated at the June 28, 2018 TDHCA Board Meeting, should not be terminated because of the last-minute letter sent by Ms. Hubbard on behalf of PFWCA. If, however, you do not grant this Appeal, then we do wish to appear before the Board at its July 12, 2018 Board Meeting.

Very truly yours,



Tamea A. Dula

Exhibit A

cc: Kathy Payton  
Jessica Thompson

EXHIBIT A

January 31, 2018 letter from State Senator Borris L. Miles, with TDHCA Notification attached, forwarded to Kathy Payton by Erica Hubbard ON February 28, 2018.



**From:** Erica Hubbard [<mailto:elhseven@gmail.com>]  
**Sent:** Wednesday, February 28, 2018 5:21 PM  
**To:** Kathy Payton <[kpayton@fifthwardcrc.org](mailto:kpayton@fifthwardcrc.org)>  
**Subject:** St. Elizabeth Letter from Boris Miles



## BORRIS L. MILES

STATE SENATOR • DISTRICT 13

COMMITTEES: AGRICULTURAL, WATER, & RURAL AFFAIRS • HEALTH & HUMAN SERVICES • NATURAL RESOURCES & ECONOMIC DEVELOPMENT • NOMINATIONS

January 31, 2018

[REDACTED]  
[REDACTED]  
Houston, TX 77020

Dear [REDACTED]:

I am writing you to let you know that a preliminary application for a Competitive Housing Tax Credit in your community has been submitted by a developer to the Texas Department of Housing and Community Affairs (TDHCA). The developer has until March 1st to submit a final application. I have attached a copy of the notification with this letter.

This tax credit program is one of the state's primary means of directing private capital toward the development and preservation of affordable rental housing for low-income households. However, there have been instances where the affordable housing is built, and then it quickly goes into disrepair and becomes a problem in the community.

These credits are awarded on the basis of scores for each project based on their application and other factors. An application can receive a higher score if it includes a support letter from their state representative. State senators, like myself, are not directly involved in the scoring process. If you or your community has an opinion on this project, I encourage you to communicate with your state representative. Below is the contact information for the state representative who has jurisdiction over this project:

Representative Harold Dutton  
[Harold.Dutton@house.texas.gov](mailto:Harold.Dutton@house.texas.gov), 713-692-9192

Later in the spring, hearings will be held by TDHCA to gather input on the application. Information on these hearings will be available at <http://www.tdhca.state.tx.us/public-comment.htm>. Thank you for your involvement in our community and please do not hesitate to contact my office if you have any questions.

Keep the Faith, Keep the Fight,

Borris L. Miles  
Senator, District 13

CAPITOL OFFICE:  
P.O. BOX 12068  
AUSTIN, TEXAS 78711  
(512) 463-0113  
FAX: (512) 463-0006  
DIAL 711 FOR RELAY CALLS

CENTRAL HOUSTON OFFICE:  
5302 ALMEDA ROAD, SUITE A  
HOUSTON, TEXAS 77004  
(713) 665-8322  
FAX: (713) 665-0009

FIFTH WARD OFFICE:  
3300 LYONS AVENUE, SUITE 301  
HOUSTON, TEXAS 77020  
(713) 223-0387  
FAX: (713) 223-0524

FORT BEND OFFICE:  
1600 TEXAS PARKWAY, SUITE 209  
MISSOURI CITY, TEXAS 77489  
(281) 261-2360  
FAX: (281) 261-4726

[borris.milcs@senatc.texas.gov](mailto:borris.milcs@senatc.texas.gov)

**Relevant Development Information as Presented by the Applicant:**

Project Number: 18020  
Development Name: St. Elizabeth Place  
Development Address: 4514 Lyons Avenue  
Development City: Houston Development Zip: 77020 Region: 6  
Regional Allocation: Urban Target Population: General  
Set Aside:  Nonprofit  USDA  At-Risk  
Construction Type: New Construction  
Credit/ Funding Request: \$1,500,000  
Total Low Income Units: 120 Total Market Rate Units: 40 Total Units: 160

**Applicant Information:**

Owner Contact: Jessica Thompson  
Owner Address: 4300 Lyons Ave, Suite 300  
Owner City: Houston Owner State: Texas Owner Zip: 77020  
Owner Phone: (713) 674-0175  
Owner Email: [jthompson@fifthwardcrc.org](mailto:jthompson@fifthwardcrc.org)



**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

221 East 11th Street, Austin, TX 78701  
PO Box 13941, Austin, TX 78711

Main Number: 512-475-3800  
Toll Free: 1-800-525-0657

Email: [info@tdhca.state.tx.us](mailto:info@tdhca.state.tx.us)  
Web: [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)

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18020  
Executive Director's  
Response



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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

Greg Abbott  
GOVERNOR

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Sharon Thomason, Member  
Leo Vasquez, Member

July 9, 2018

*Writer's direct dial: 512.475.3296*  
*Email: [tim.irvine@tdhca.state.tx.us](mailto:tim.irvine@tdhca.state.tx.us)*

Ms. Tamea Dula  
Coats Rose  
9 Greenway Plaza, Ste 1000  
Houston, TX 77046

RE: APPEAL RESPONSE RE 2018 COMPETITIVE HOUSING TAX CREDIT APPLICATION 18020 ST.  
ELIZABETH PLACE

Dear Ms. Dula:

The Texas Department of Housing and Community Affairs ("the Department") is in receipt of your appeal letter dated July 9, 2018, regarding the application submission indicated above. Because notification of the Progressive Fifth Ward Community Association ("PFWCA") was not timely accomplished prior to Pre-application, the Pre-application was rejected and the Application rendered ineligible for pre-application points, subject to your ability to appeal. Further, because the notification prior to full Application was not accomplished, the Application was recommended for termination, subject to your ability to appeal.

The appeal states that PFWCA "received notification of the details of the Application via correspondence from State Senator Boris L. Miles," and that "[t]echnically, the QAP and RULES do not specify that Notification must come directly from the Applicant." Respectfully, Tex. Gov't Code §2306.6704(b-1)(regarding Pre-application) requires ". . . **the applicant** to provide the department with evidence that **the applicant** has notified . . . any neighborhood organization [with the appropriate notifications]"; and Tex. Gov't Code §2306.6705(9)(regarding the full application) states that "an application must contain at a minimum . . . evidence that **the applicant** has notified . . . any neighborhood organization [with the appropriate notifications]." (emphasis added). Further, per 10 TAC §10.203, related to Public Notifications:

"A certification, as provided in the Application, that **the Applicant** met the requirements and deadlines identified in paragraphs (1) - (3) of this section must be submitted with the Application." (emphasis added)

Per 10 TAC §10.203(1), related to Neighborhood Organization Notifications:



(A) **The Applicant** must identify and notify all Neighborhood Organizations on record with the county or the state as of 30 days prior to the Full Application Delivery Date and whose boundaries include the entire proposed Development Site.

It is clear that the statute and rules require that notification must be made by the Applicant. That the organization may have received information from another source does not relieve the Applicant of its duty in this regard. In its Pre-application, PFWCA was not listed as a neighborhood organization that was notified. Similarly, in its full application, no evidence was provided that PFWCA had been notified.

The appeal discusses that PFWCA provided a notification letter from State Senator Boris Miles that included all aspects of the notice required by rule to be provided to Neighborhood Organizations. This letter, with the addressee redacted, is dated January 31, 2018, and states that a pre-application for St. Elizabeth Place had been filed, and is either silent or misstates two of the required elements of notification listed in 10 TAC §11.8(b)(2)(C)(i)(namely IV and V). While there may be an argument that most of the basic elements of notice are contained in this letter and its presumptive attachment, what it does not illustrate is that the **Applicant** provided notice to PFWCA, or that the Application contained evidence of the notification, as is required by statute and rule

The appeal asserts that good faith effort was made to identify Neighborhood Organizations of record and that changes to the rules have made this task more difficult. Staff reviewed the last five years of the rule to be clear of revisions made. The rule at 10 TAC §10.203(1)(A) read in 2013:

(A) In accordance with the requirements of this subparagraph, the Applicant must request from local elected officials a list of Neighborhood Organizations on record with the county and state whose boundaries include the proposed Development Site. No later than the Full Application Neighborhood Organization Request Date as identified in 11.2 of this title (relating to Program Calendar for Competitive Housing Tax Credits) or 10.4 of this chapter (relating to Program Dates), as applicable, the Applicant must email, fax, or mail with return receipt requested a completed Neighborhood Organization Request letter as provided in the Application to the local elected official, as applicable, based on where the Development is proposed to be located.

In 2014, the rule read:

“(A) The Applicant must identify and notify all Neighborhood Organizations on record with the county or the state whose boundaries include the proposed Development Site.”

From 2015 through 2016, the rule read:

“(A) The Applicant must identify and notify all Neighborhood Organizations on record with the county or the state as of 30 days prior to the Full Application Delivery Date and whose boundaries include the proposed Development Site.”

And in 2017, the rule was revised to read:

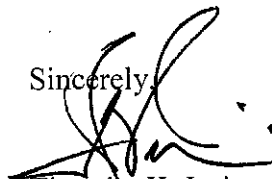
(A) The Applicant must identify and notify all Neighborhood Organizations on record with the county or the state as of 30 days prior to the Full Application Delivery Date and whose boundaries include the proposed Development Site. As used in this section, “on record with the state” means on record with the Secretary of State.

Indeed, the 2017 revision identified the Secretary of State as the cognizant agency for this purpose as that agency maintains a public file of recorded agencies. However, the rule, as it has existed since 2014, required checking with the **County and the State** as to the existence of Neighborhood Organizations. The 2017 rule made it very clear that checking with the Secretary of State was a critical component in satisfying this rule. In the response to the Administrative Deficiency, as well as the Appeal, it is clearly indicated that the Applicant only checked with a City of Houston resource and not, as provided for in the statute and as required in the rule, , the County and Secretary of State.

The appeal questions whether staff was able to produce evidence of PFWCA's registration with the Secretary of State's office through a general search of the records. Staff searched the records for the term "Progressive Fifth Ward" and found the organization to be registered since June 22, 2017. In response to an Administrative Deficiency from staff, the Applicant stated that "[i]n February 2017, Ms. Hubbard and other officers of Fifth Ward Neighborhood Civic Club resigned en masse, and formed a splinter group which became known as Progressive. Progressive initially operated as an unincorporated association. Staff at FWCRC were not aware that Progressive had incorporated." A search of the Secretary of State's records would have yielded this information. In that same response, the Applicant stated that "[o]n February 27, 2018, [FWCRC], acting on behalf of the Development Team, emailed Ms. Hubbard regarding the Project and the hope that Progressive would provide Quantifiable Community Participation supporting the project. A 2018 QCP Neighborhood Information Packet was attached to the email. [FWCRC] followed up that email with another on February 27, 2018, clarifying that two points of contact for Progressive would be needed for the form." This appears to indicate that the Applicant was aware that PFWCA existed as Neighborhood Organization prior to the Full Application Delivery Date of March 1, 2018.

I am unable to conclude that the points raised in your appeal satisfy the statutory and rule requirements as to notifications to Neighborhood Organizations, and, accordingly, I must deny the appeal. As you have requested, the appeal has been included on the agenda for the July 12, 2018, meeting of the Department's Governing Board. Should you have any questions, please contact Sharon Gamble, Competitive Tax Credit Program Administrator, at [sharon.gamble@tdhca.state.tx.us](mailto:sharon.gamble@tdhca.state.tx.us) or by phone at 512-936-7834.

Sincerely,



Timothy K. Irvine  
Executive Director

# **PULLED FROM THE AGENDA**



**BOARD ACTION ITEM**  
**MULTIFAMILY FINANCE DIVISION**  
**JULY 12, 2018**

Presentation, discussion, and possible action on timely filed scoring and other appeals under 10 TAC §10.902 of the Department's Multifamily Program Rules relating to the Appeals Process.

**RECOMMENDED ACTION**

**WHEREAS**, a 9% Housing Tax Credit Application #18157 Bamboo Estates was submitted to the Department by the Full Application Delivery Date;

**WHEREAS**, staff issued a notice of Administrative Deficiency to the Applicant pursuant to 10 TAC §10.201(7)(B) of the 2018 Uniform Multifamily Rules, related to Administrative Deficiencies, and the Applicant failed to resolve the Administrative Deficiencies by 5:00 p.m. on the seventh business day following the date of the deficiency notice;

**WHEREAS**, the Application was terminated, pending the Applicant's ability to appeal;

**WHEREAS**, the Applicant timely filed an appeal; and

**WHEREAS**, the Executive Director denied the appeal;

**NOW, therefore, it is hereby**

**RESOLVED**, that the appeal for Application #18157 Bamboo Estates is hereby denied.

**BACKGROUND**

Per 10 TAC §10.201(7), related to Administrative Deficiencies for Competitive HTC Applications:

The purpose of the Administrative Deficiency process is to allow an Applicant to provide clarification, explanation, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application. ...Any Application that staff identifies as having insufficient support information will be directed to cure the matter via the Administrative Deficiency process. ...Staff will request such information via a deficiency notice. ...Staff will send the deficiency notice via an e-mail to the Applicant and one other contact party if identified by the Applicant in the Application. The time period for responding to a deficiency notice commences on the first business day following the deficiency notice date.

Per 10 TAC §10.201(7)(A):

It is the responsibility of a person who receives an Administrative Deficiency to address the matter fully by the close of business on the date by which resolution must be complete and the Administrative

Deficiency fully resolved. Merely submitting materials prior to that time places the responsibility on the responding party that if the materials do not fully resolve the matter there may be adverse consequences such as point deductions or termination.

Per 10 TAC §10.201(7)(B):

Unless an extension has been timely requested and granted, if an Administrative Deficiency is not fully resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then (5 points) shall be deducted from the selection criteria score for each additional day the deficiency remains unresolved. If Administrative Deficiencies are not resolved by 5:00 p.m. on the seventh business day following the date of the deficiency notice, then the Application shall be terminated, subject to appeal.

Staff issued a 20-item deficiency notice to the Applicant on May 23, 2018. Accounting for the Memorial Day holiday, the Administrative Deficiencies must have been fully resolved to the satisfaction of the Department by 5:00 p.m. Austin local time on May 31, 2018. The Applicant's response to the deficiency notice was received on May 31<sup>st</sup> at 4:56 p.m., leaving staff no time to review the submission and determine if the deficiencies had been resolved prior to the initial deadline. When the response was reviewed by staff, it was found to be deficient and an initial five-point penalty was applied to the Application. Staff contacted the Applicant via email on June 1<sup>st</sup> (the sixth business day) at 2:51 p.m. and informed the Applicant of the outstanding issues related to five of the deficient items. As of 5:00 p.m. on the sixth business day, staff had received no response from the Applicant, and the Application appropriately received a second five-point penalty. As of 5:00 p.m. on the seventh business day, staff had received no response from the Applicant, and the Application was terminated subject to appeal, as specified in the rule. The Applicant did not respond to the June 1<sup>st</sup> email until June 5<sup>th</sup>, the eighth business day.

The appeal states that the Applicant believed the items included in the June 1<sup>st</sup> email to be "clarification items and not deficiencies of missing information." In the email to the Applicant, attached as Exhibit A, staff did include some issues needing clarification, such as the need to correct the equity amount on a form or clarification of which board members were related to which organization. Staff also included items that were still missing from the Application, such as signatures on the Applicant Eligibility Certification form and Previous Participation forms for board members. The rule does not say that the response is due by 5:00 p.m. on the fifth business day following the date of the deficiency notice, as the appeal indicates. The rule requires that the Administrative Deficiency be "fully resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice." This means that, in order to avoid the initial five-point penalty, the response to the deficiency notice must be received in time for staff to determine that all Administrative Deficiencies have been resolved to the satisfaction of the Department. The response was received on May 31<sup>st</sup> (the day it was due) at 4:56 p.m.

Staff recommends the Board deny the appeal.

EXHIBIT A

18157

Staff Email Communication with  
Applicant

**From:** Elizabeth Henderson  
**To:** ["amartinez@stmdf.org"](mailto:amartinez@stmdf.org)  
**Cc:** [Sunny K. Philip](#)  
**Subject:** RE: 18157 - 9% HTC Application Deficiency Notice  
**Date:** Wednesday, June 06, 2018 3:23:00 PM

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Thank you, Alma. That one was right. Thanks very much!  
Elizabeth Henderson

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**From:** Alma Martinez-Botello [mailto:[amartinez@stchd.org](mailto:amartinez@stchd.org)]  
**Sent:** Wednesday, June 06, 2018 1:04 PM  
**To:** Elizabeth Henderson  
**Cc:** Sunny K. Philip  
**Subject:** Re: 18157 - 9% HTC Application Deficiency Notice

Good morning Elizabeth,

Attach is TAB 38 List of Organizations and Principals revised as requested. I hope I got it right this time. I do sincerely apologize.  
Please let me know if there is anything else you need from us, thank you so much. It also has been uploaded to Serv-U HTTPs.

On Tue, Jun 5, 2018 at 3:30 PM, Elizabeth Henderson  
<[elizabeth.henderson@tdhca.state.tx.us](mailto:elizabeth.henderson@tdhca.state.tx.us)> wrote:  
Hi Alma,

I'm going through what you just sent and the List of Organizations is still inconsistent with the org chart. The ownership of LFBE-GP, LLC is wrong. I'm going through the rest of it but you will need to correct this form such that it follows the org chart. If there is one owner of an entity, then that one owner is what should appear in the numbered lines in that entity's box. If there is a board, you need the full board in the numbered lines. The mistake you made in this one is that you skipped over the owner of the GP and went straight to the board. You'll need to correct that and do check your other entries to make sure that you didn't do the same thing in another box. I don't know whether you've missed any organizations yet, but make sure that you cover all of them if you have.

Thank you,  
Elizabeth Henderson

---

**From:** Alma Martinez-Botello [mailto:[amartinez@stchd.org](mailto:amartinez@stchd.org)]  
**Sent:** Tuesday, June 05, 2018 3:02 PM  
**To:** Elizabeth Henderson  
**Cc:** Sunny K. Philip  
**Subject:** Re: 18157 - 9% HTC Application Deficiency Notice

Good afternoon Elizabeth,

Attach is additional information you requested, ready for review. The deficiency response has also been uploaded as well. Please let me know if there is anything else you may need. Feel free to contact out office at (956) 797-2324 if you have additional questions. Thank you for your time and attention.

On Fri, Jun 1, 2018 at 2:51 PM, Elizabeth Henderson  
<[elizabeth.henderson@tdhca.state.tx.us](mailto:elizabeth.henderson@tdhca.state.tx.us)> wrote:  
Hello, Alma:

I've gone through all of the response and I still have the following numbers uncleared:

11. Tab 35, Syndication Term Sheet – The equity amount still doesn't match the Sources and Uses.
12. Tab 3, Applicant Eligibility Cert – There were still forms missing from the second board on your org chart.
13. Tab 38, List of Organizations – The boards are not connected to the correct entities, based on the org chart.
14. Tab 39, Previous Participation – The second board is missing.
17. Tab 45, Credit Limit 1 – Aida/Ida Silguero's name is spelled differently from the org chart. Correct the appropriate one.

Thank you,  
Elizabeth Henderson

---

**From:** Alma Martinez-Botello [mailto:[amartinez@stchd.org](mailto:amartinez@stchd.org)]  
**Sent:** Thursday, May 31, 2018 6:06 PM  
**To:** Elizabeth Henderson  
**Subject:** 18157 - 9% HTC Application Deficiency Notice

Good afternoon Elizabeth,

Our deficiency response has been uploaded today at 4: 56 to TDHCA Serv-U HTTPS for your review. See confirmation below. Thank you.

--

*Sincerely,*  
*Alma Martinez-Botello*  
*Director of Operations*  
*South Texas Collaborative for Housing Development, Inc.*  
[www.stchd.org](http://www.stchd.org)

[118 N. Main Street](http://www.stchd.org)  
P.O. Box 329  
La Feria, Texas 78559

Email: [amartinez@stchd.org](mailto:amartinez@stchd.org)  
Phone: (956) 797.2324  
Fax: (956) 277.0242

[Redacted]

--

*Sincerely,*

***Alma Martinez-Botello***

*Director of Operations*

*South Texas Collaborative for Housing Development, Inc. [www.stchd.org](http://www.stchd.org)*

*118 N. Main Street*

*P.O. Box 329*

*La Feria, Texas 78559*

*Email: [amartinez@stchd.org](mailto:amartinez@stchd.org)*

*Phone: [\(956\) 797.2324](tel:(956)797.2324)*

*Fax: [\(956\) 277.0242](tel:(956)277.0242)*

[Redacted]

--

*Sincerely,*

***Alma Martinez-Botello***

*Director of Operations*

*South Texas Collaborative for Housing Development, Inc. [www.stchd.org](http://www.stchd.org)*

*118 N. Main Street*

*P.O. Box 329*

*La Feria, Texas 78559*

*Email: [amartinez@stchd.org](mailto:amartinez@stchd.org)*

*Phone: [\(956\) 797.2324](tel:(956)797.2324)*

*Fax: [\(956\) 277.0242](tel:(956)277.0242)*

[Redacted]

18157

## Notification of Termination



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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

Greg Abbott  
GOVERNOR

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Asusena Resendiz, Member  
Sharon Thomason, Member  
Leo Vasquez, Member

June 22, 2018

*Writer's directphone# (512) 415-1676*  
*Email: [marni.bollowqy@tdhca.state.tx.us](mailto:marni.bollowqy@tdhca.state.tx.us)*

Mr. Sunny K. Philip  
Bamboo Estates, LP  
P.O. Box 329  
La Feria, Texas 78559

RE: TERMINATION OF 2018 COMPETITIVE HOUSING TAX CREDIT APPLICATIONS 18157  
BAMBOOESTATES

Dear Mr. Philip:

The Texas Department of Housing and Community Affairs ("the Department") is in receipt of the application submission indicated above. Per 10 TAC §10.201(7)(B), related to Administrative Deficiencies for Competitive HTC Applications:

Unless an extension has been timely requested and granted, if an Administrative Deficiency is not fully resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then (5 points) shall be deducted from the selection criteria score for each additional day the deficiency remains unresolved. If Administrative Deficiencies are not resolved by 5:00 p.m. on the seventh business day following the date of the deficiency notice, then the Application shall be terminated, subject to appeal.

Staff issued a 20-item deficiency notice to the Applicant on May 23, 2018. Accounting for the Memorial Day holiday, response to the notice was due to the Department by 5:00 p.m. Austin local time on May 31, 2018. The response was received on May 31 at 4:56 p.m., leaving staff no time to clear the deficiencies by the fifth business day following the date of the deficiency, this would support a five point deduction from the application score. On June 1, 2018, the sixth business day, at 2:51 p.m., staff sent an email to the Applicant alerting the Applicant that five of the 20 items remained unresolved. The Applicant did not clear the deficiencies by the sixth business day, which supports deduction of another five points from the application score. The Applicant responded on June 5th, the eighth business day. Because the Administrative Deficiencies were not fully resolved to the satisfaction of the Department by 5:00 p.m. on the seventh business day following the date of the deficiency notice, the Application has been terminated, subject to your right to appeal.





An appeal process exists for the Housing Tax Credit Program. The restrictions and requirements related to the filing of an appeal can be found in 10 TAC §10.902 of the 2018 Uniform Multifamily Rules, Subchapter C. Should you choose to appeal this decision to the Executive Director, you must file your appeal, in writing, with the Department not later than seven (7) calendar days after the date of this letter. If you are not satisfied with the decision of the Executive Director or if the Executive Director does not respond, you may file a further appeal with the Board of Directors of the Texas Department of Housing and Community Affairs. Please review 10 TAC §10.902 of the 2018 Uniform Multifamily Rules for full instructions on the appeals process.

If you have any questions or concerns, please contact me at 512-475-1676 or by email at [marni.holloway@tdhca.state.tx.us](mailto:marni.holloway@tdhca.state.tx.us).

Sincerely,

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

Marni Holloway  
Director of Multifamily Finance

18157  
Appeal to Executive Director

**South Texas Emerging Markets  
Development Fund, Inc.**

*A Non-Profit Fostering Economic Development*



June 27, 2018

**VIA ELECTRONIC TRANSMITTAL**

Mr. Tim Irvine, Executive Director  
Texas Department of Housing and Community Affairs P.O.  
Box 13941  
Austin, Texas 78711-3941  
E-Mail: [tim.irvine@tdhca.state.tx.us](mailto:tim.irvine@tdhca.state.tx.us)

Re: Bamboo Estates  
TDHCA Application No. 18157

Dear Mr. Irvine:

This letter is written on behalf of Bamboo Estates, TDHCA No. 18157 (“Applicant”) to appeal the scoring and termination decision made by TDHCA dated June 22, 2018. On June 22, 2018, TDHCA sent a letter stating that the score for the application was reduced by 10 points due to uncleared deficiencies.

Ms. Holloway indicates that the first five points were deducted because we submitted the deficiency response at 4:56 p.m. on May 31 that was due at 5:00 p.m. She indicates that the timing of our response did not give the staff time to respond. However, the Multifamily Rules clearly indicate that the deficiencies are due at 5:00 on the day they are due and the June 22<sup>nd</sup> letter acknowledges that we met that time frame. Therefore, we believe that the five points should not have been deducted for that submission.

On June 1, Ms. Henderson notified us that we had not cleared five of the deficiencies. We provided this information to Ms. Henderson on June 6<sup>th</sup>. However, based upon what had been previously submitted to TDHCA, it was our belief that the final items were clarification items and not deficiencies of missing information.

Therefore, we ask that TDHCA accept the application as complete and overturn the termination of the application.

Should you have any further questions, please feel free to contact me at (956) 797-2357.

Sincerely,

Sunny K. Philip

**P.O. Box 359  
La Feria, Texas 78559-5002  
Phone: (956) 797-2357 Fax: (956) 277-0242**

18157  
Executive Director's Response



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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

Greg Abbott  
GOVERNOR

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J.B. Goodwin, *Chair*  
Leslie Bingham-Escarefio, *Vice Chair*  
Paul A. Braden, Member  
Asusena Resendiz, Member  
Sharon Thomason, Member  
Leo Vasquez, Member

July 3, 2018

*Writer's direct dial: 512.475.3296*  
*Email - [tim.irvine@tdhca.state.tx.us](mailto:tim.irvine@tdhca.state.tx.us)*

Mr. Sunny K. Philip  
Bamboo Estates, LP  
P.O. Box 329  
La Feria, Texas 78559

RE: APPEAL RESPONSE RE 2018 COMPETITIVE HOUSING TAX CREDIT APPLICATION  
18157 BAMBOO ESTATES

Dear Mr. Philip:

As I understand the situation, Staff issued a twenty-item deficiency notice to the Applicant on May 23, 2018. Accounting for the Memorial Day holiday, response to the notice was due to the Department no later than 5:00 p.m. Austin local time on May 31, 2018. 10 TAC §10.201(7)(B) requires that the deficiencies raised must be addressed to the satisfaction of staff by a specified time (close of business on the fifth day after the deficiencies are issued). The rule specifies not that responsive materials must be submitted by the deadline but that the underlying issue must be "full, **resolved**" (*emphasis supplied*) by the deadline.

When one considers the nature of an administrative deficiency this makes sense. An applicant should not need five days to explain its application or provide required support. The explanation and the supplying of required support should be susceptible to immediate response in light of the fact that the administrative deficiency process is only to clarify or correct, not an opportunity to create new rationale or supporting evidence. If within a few days of receiving the administrative deficiency the applicant had submitted its response and contacted staff to see if anything further were needed, they could have sought, and staff would likely have granted, an extension as provided by the above-cited rule. However, the applicant waited until four minutes before the absolute deadline to respond.

Staff continued to work through the deficiencies as quickly as possible in light of the fact that the longer it took for the Applicant to clear them the greater the penalty. Ultimately it took more than the seven (7) days provided for in 10 TAC §10.201(7)(B) to clear the deficiencies, outside of the time provided for in rule, and by its terms the rule leads to termination subject to appeal. Accordingly, since I have no latitude to vary the rule, I must deny the appeal.



An appeal process exists for the Housing Tax Credit Program. The restrictions and requirements related to the filing of an appeal can be found in 10 TAC §10.902 of the 2018 Uniform Multifamily Rules, Subchapter G, should you choose to appeal this decision to the Board of Directors of the Texas Department of Housing and Community Affairs.

In order to expedite this process, we will place this item on the agenda for the July 12, 2018, Board meeting agenda. If you would like to provide additional materials for the Board, please send them not later than noon on Monday, July 9. If you prefer to take this appeal to the July 26, 2018, Board meeting, we will make that adjustment at your request.

Sincerely,



Timothy K. Irvine  
Executive Director

# **PULLED FROM THE AGENDA**

3b



**BOARD REPORT ITEM**  
**MULTIFAMILY FINANCE DIVISION**  
**JULY 12, 2018**

Presentation, discussion, and possible action on a remanded Request for Administrative Deficiency regarding site eligibility under 10 TAC §11.3(g) related to Proximity of Development Sites:

18033	The Miramonte	Fifth Street CDP
18043	Huntington at Miramonte	Fifth Street CDP
18047	Miramonte Single Living	Fifth Street CDP

**RECOMMENDED ACTION**

**WHEREAS**, 9% Housing Tax Credit Applications #18033 The Miramonte, 18043 Huntington at Miramonte, and 18047 Miramonte Single Living were submitted to the Department by the Full Application Delivery Date;

**WHEREAS**, staff received a Third Party Request for Administrative Deficiency requesting that staff review the Application and determine whether the Development Sites for 18033 and 18047 should be considered contiguous pursuant to 10 TAC §11.3(g) related to the Proximity of Development Sites;

**WHEREAS**, staff reviewed the sites as presented in the full application and determined that the Development Sites for 18033 and 18047 were not contiguous; and

**WHEREAS**, at the June 28, 2018, meeting of the Governing Board, the Board directed staff to re-analyze these applications under the current rule, and present this issue for Board consideration;

**NOW, therefore, it is hereby**

**RESOLVED**, that the Board hereby determines that the Development Sites for Applications 18033 The Miramonte and 18047 Miramonte Single Living are / are not considered “contiguous” pursuant to 10 TAC §11.3(g), and;

**FURTHER RESOLVED**, that staff take any further action necessary to effectuate the above resolution, including (if so resolved) relegation of the lower scoring of the two applications to “non-priority” status and not presenting it for final award unless the higher scoring of the applications is withdrawn or terminated.

**BACKGROUND**

Pursuant to 10 TAC §11.10 of the 2018 Qualified Allocation Plan related to Third Party Requests for Administrative Deficiency (“RFAD”), an unrelated person or entity may bring new, material information about an Application to staff’s attention. Third parties may request that staff consider whether an Application should be the subject of an Administrative Deficiency, based on the information submitted with the request. Staff will consider the request and proceed as it deems appropriate under the applicable rules including, if the Application in question is determined by staff to not be a priority Application, not reviewing the matter further. Requestors must provide, at the time of filing the request, all briefings,

documentation, and other information that the requestor offers in support of the deficiency. Requestors must provide sufficient credible evidence that, if confirmed, would substantiate the deficiency request. Assertions not accompanied by supporting documentation susceptible to confirmation will not be considered. The deadline for submission of RFADs was May 1, 2018.

At the June 28, 2018, meeting of the Governing Board, staff presented a report item detailing staff's review of the RFADs. The Board directed staff to prepare an action item for discussion regarding whether the Development Sites for 18033 and 18047 should be considered "contiguous" pursuant to 10 TAC §11.3(g) related to Proximity of Development Sites, and would, by operation of the rule, have the lower scoring of the two applications deemed "non-priority" and not reviewed for award unless the higher scoring of the applications was withdrawn or terminated.

Per the rule:

If two or more Competitive HTC Applications that are proposing Developments serving the same Target Population on contiguous sites are submitted in the same program year, the lower scoring Application, including consideration of tie-breaker factors if there are tied scores, will be considered a non-priority Application and will not be reviewed unless the higher scoring Application is terminated or withdrawn.

The Development Sites for 18033, 18043, and 18047 are carved out of a single 38.199-acre tract of land under common ownership in the Fifth Street Census Designated Place ("CDP"), just south of Stafford. Exhibits A-C depict the Applicant's delineation of the Development Sites, and Exhibit D, inserted from the RFAD, depicts the three sites as they are situated on the tract. The tract has not been legally subdivided. Per the RFAD:

With regard to applications #18033 and 18047, they propose to serve the same Target Population, and they are clearly on contiguous sites. The applicants will note that the two sites are actually separated by a 10 foot drainage easement retained by the seller, as shown on Exhibit F. There does not appear to be any logical reason for the seller to retain this drainage easement, since the seller is not retaining any surrounding land. The site design feasibility report shows drainage moving from detention to a roadside ditch at the front of the properties along Moore Road. The detention ponds for #18033 and #18047 appear to drain into the seller's easement and then to the ditch. The drainage could be handled without the seller retaining an easement. Seller's retention of a 10 foot easement for drainage should not be utilized for the purpose of avoiding a rule. The tracts for #18033 and #18047 should be deemed contiguous.

The survey from the Site Design and Feasibility Report depicting the three sites and the drainage reserve is included as Exhibit E, with the detail of the property lines relative to the drainage reserve included as Exhibit F. Contracts for the Developments Sites are attached as Exhibits G and H.

Staff had initially reviewed the RFAD and determined that the drainage reserve indicated in the contracts and on the site depictions represents a parcel of land between the Development Sites for 18033 and 18047, and that 10 TAC §11.3(g) was not applicable as the two Development Sites were not contiguous (i.e. the boundaries were not touching) due to the retainage by the seller of a 10 foot "drainage" strip between the Development Sites. However, this staff interpretation of 10 TAC §11.3(g) applied the determination of

whether two Development Sites were “contiguous” at full application only, and did not take into account whether the sites were represented as contiguous at pre-application.

Tex. Gov’t Code §2306.6704(a) states: “[t]o prevent unnecessary filing costs, the department by rule shall establish a voluntary preapplication process to enable a preliminary assessment of an application proposed for filing.” The Pre-application rule established by the Board (10 TAC §11.8) begins “the pre-application process allows Applicants interested in pursuing an Application to assess potential competition across the thirteen (13) state service regions, subregions and set-asides. Based on an understanding of the potential competition they can make a more informed decision whether they wish to proceed to prepare and submit an Application.”

The pre-applications for #18033 and 18047 were both listed as developments to serve a “General “ target population, and the pre-applications, themselves, internally referenced each other to the point of showing the same site map (Exhibit I). On this map, Tract A is the proposed Development Site for 18033, and Tract B is the proposed Development Site for 18047. Under a plain definition of the term, these Development Sites, as represented in Exhibit I at pre-application, are “contiguous.”

Although it is not uncommon for a large parcel of land to be submitted at pre-application as multiple proposed Development Sites, as occurred in this instance with pre-applications #18033 and 18047, the operation of 10 TAC §11.3(g) ensures that when contiguous sites serving the same target population are submitted at pre-application, either the Applicant for the contiguous sites will only submit a full application on one of them, or the lower-scoring Application will not proceed to final review or award by operation of the rule. Either way, an Applicant assessing potential competition in the region would be able to count on only one of the two contiguous pre-application development sites proceeding, and ultimately competing for, an award.

However, at full application, the Development Sites for #18033 and 18047 had been changed to as they are depicted in Exhibit D – namely, they are still next to each other, but are separated by a strip of land retained by the seller. This appears to have occurred as a result of a February 11, 2018, amendment executed by the land owner and the applicants for the Miramonte applications, wherein the amendment seeks to clarify that the seller is retaining ten foot strips between the parcels, and purports to make this amendment “effective as of January 4, 2018.” Exhibit G

The question for the Board’s determination concerns the timing of contiguity under 10 TAC §11.3(g): if submitted pre-applications show two proposed Development Sites as being contiguous and serving the same population, does the operation of 10 TAC §11.3(g), and the statutory and rule-stated purpose of pre-applications, support the conclusion that only one of the two contiguous pre-applications could proceed to award? Accordingly, must contiguity – or the lack of contiguity – be plainly evident in the pre-application, or is that determination made only on the basis of the Development Site information presented with the full application?

If the Board determines that contiguity determinations under 10 TAC §11.3(g) are made on the basis of pre-applications, then only the higher scoring of applications #18033 and 18047 may proceed to award, and the lower would be relegated to non-priority status. If the Board determines that contiguity determinations under 10 TAC §11.3(g) are made only on the basis of information presented with the full application, then applications #18033 and 18047 would both remain eligible to proceed toward award.

Staff contacted the Applicant regarding this issue, and the Applicant provided a response, included as Exhibit J.

Exhibit A  
18033 The Miramonte  
Development Site Depiction

# Miramonte

Write a description for your map.

Exhibit A

18033

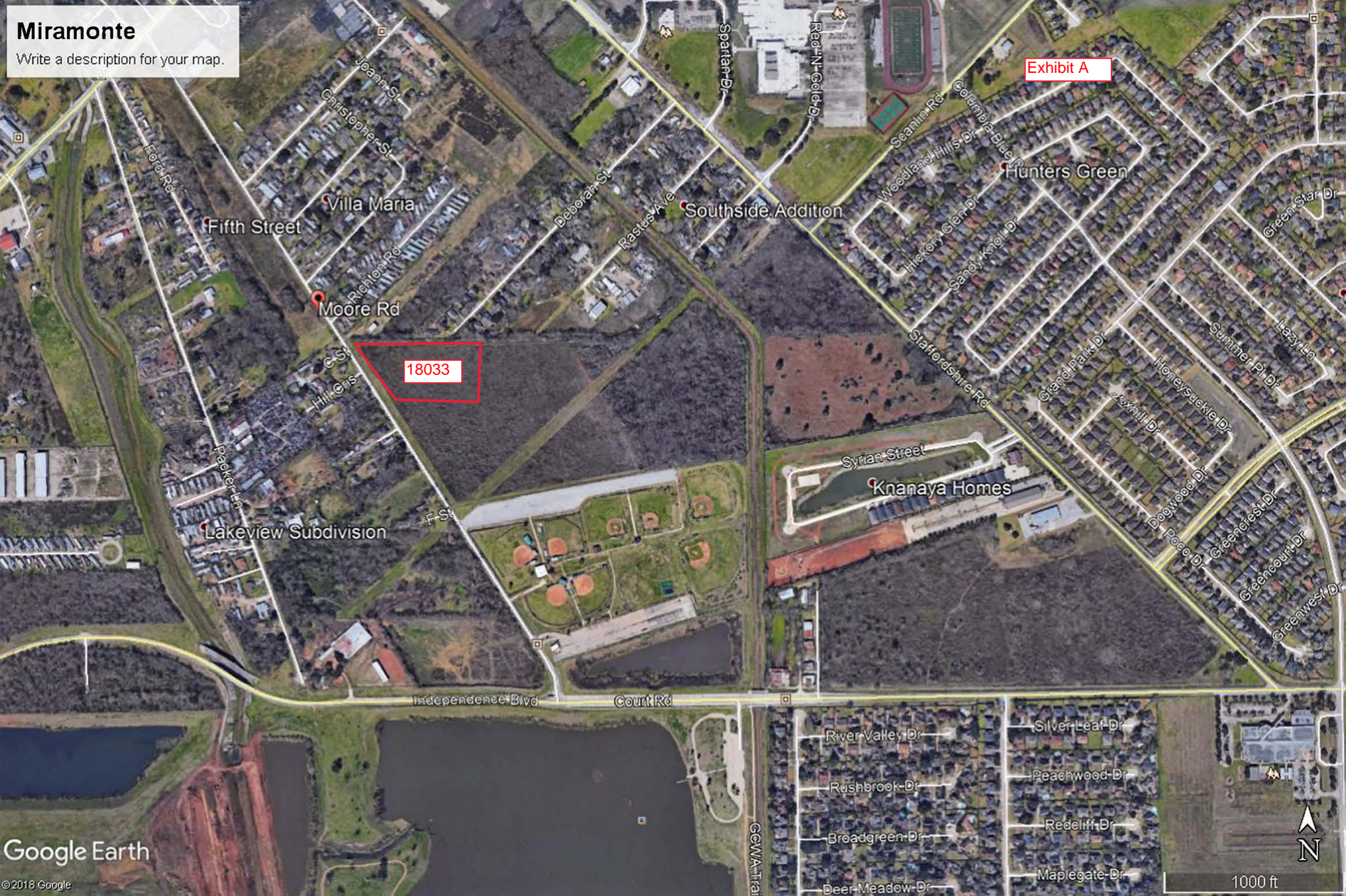


Exhibit B  
18043 Huntington at Miramonte  
Development Site Depiction

# Miramonte

Write a description for your map.

Exhibit B

18043

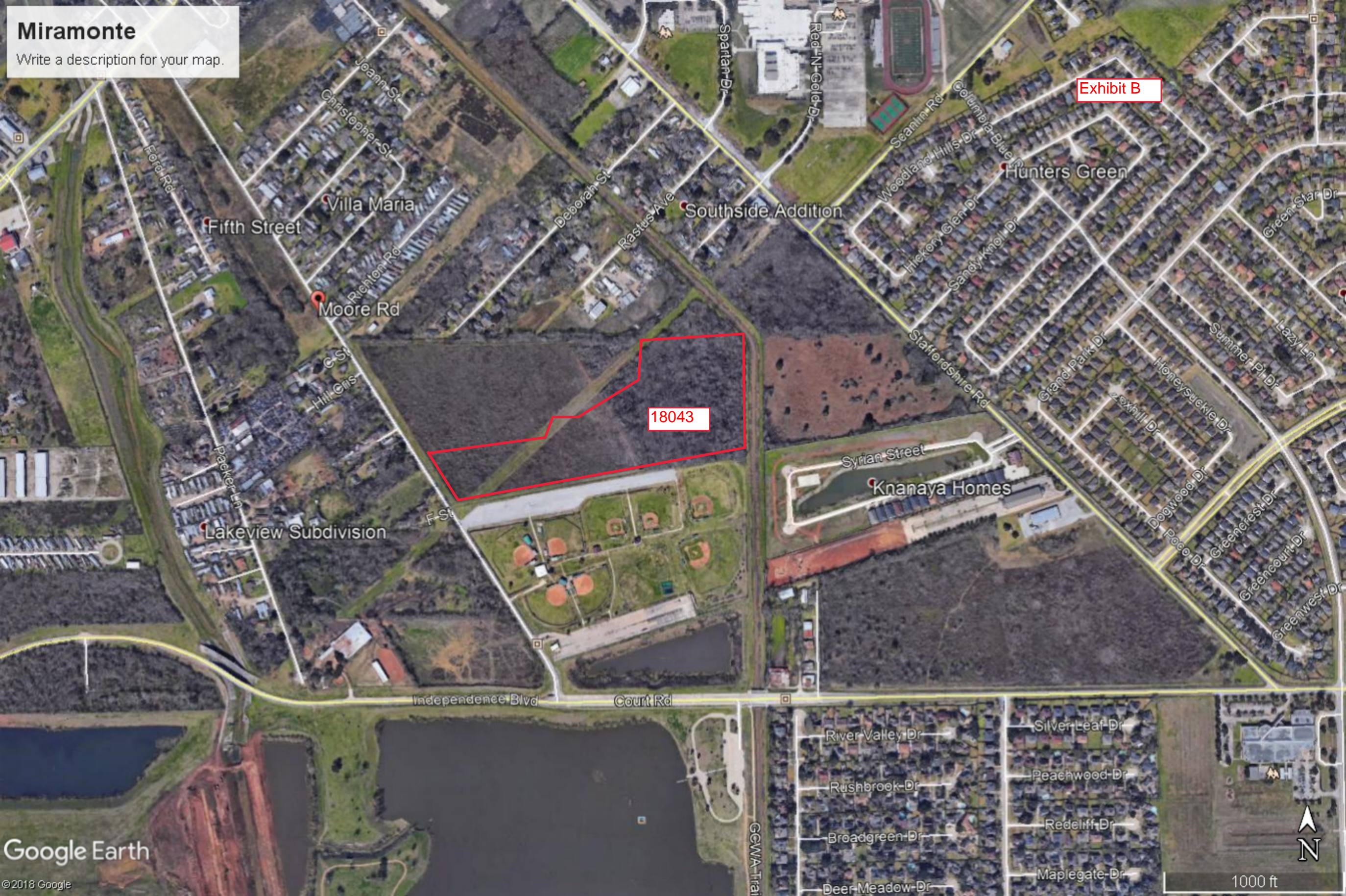
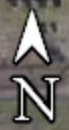


Exhibit C  
18047 Miramonte Single Living  
Development Site Depiction

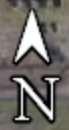


**Miramonte** Single Living

Write a description for your map.

Exhibit C

18047



1000 ft



Exhibit D  
Three Development Sites  
Depicted Contemporaneously

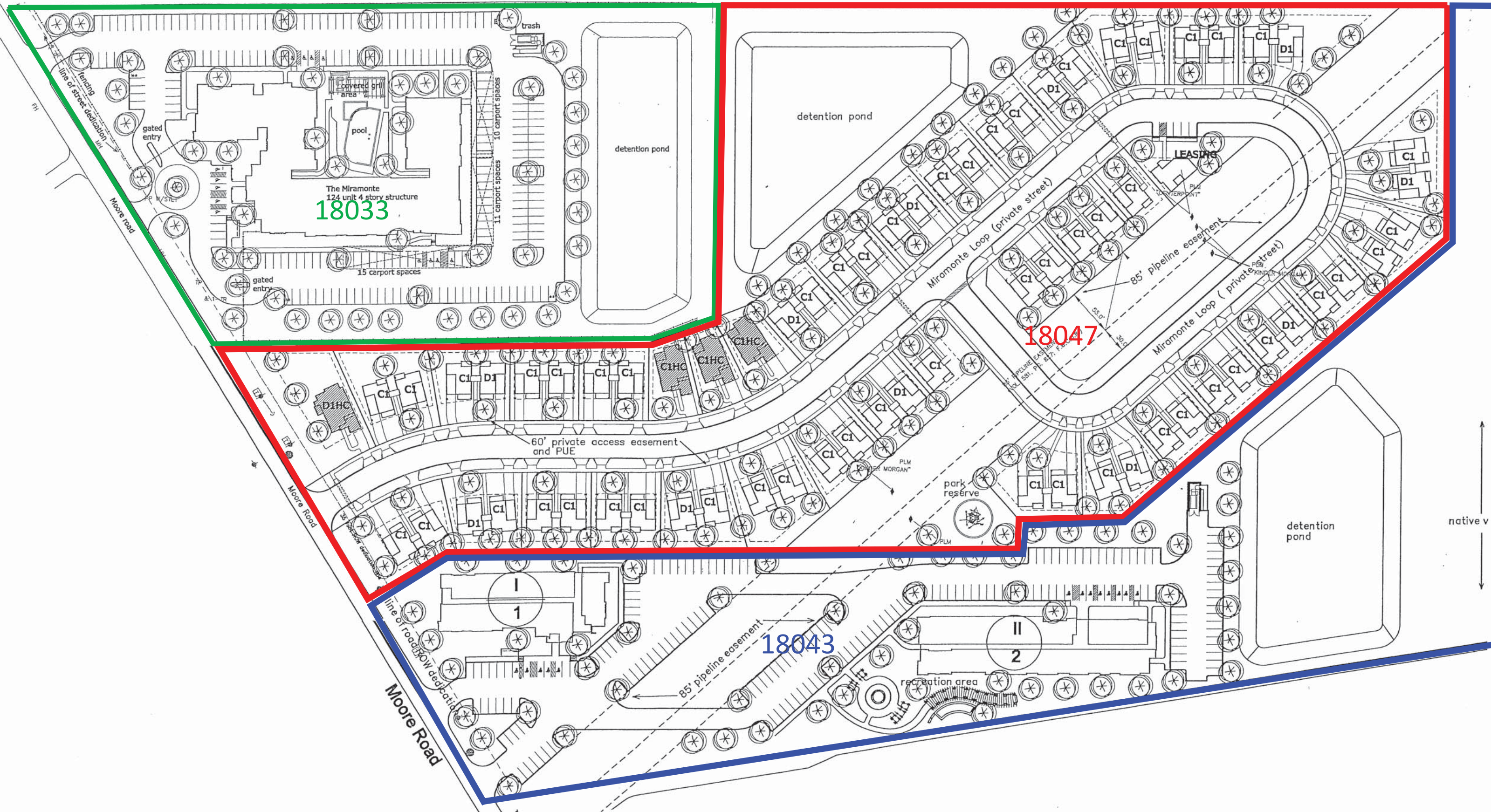
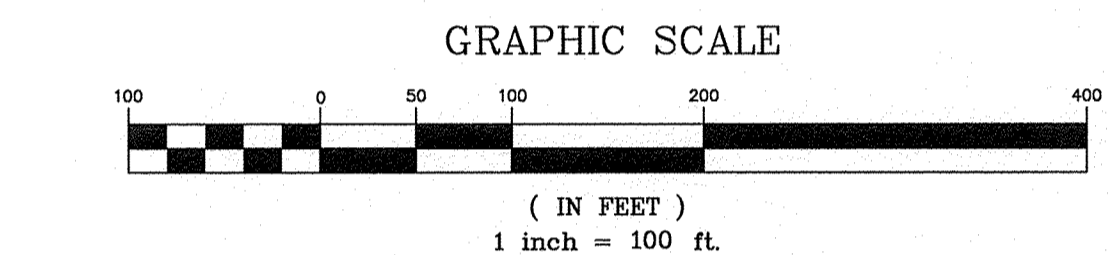
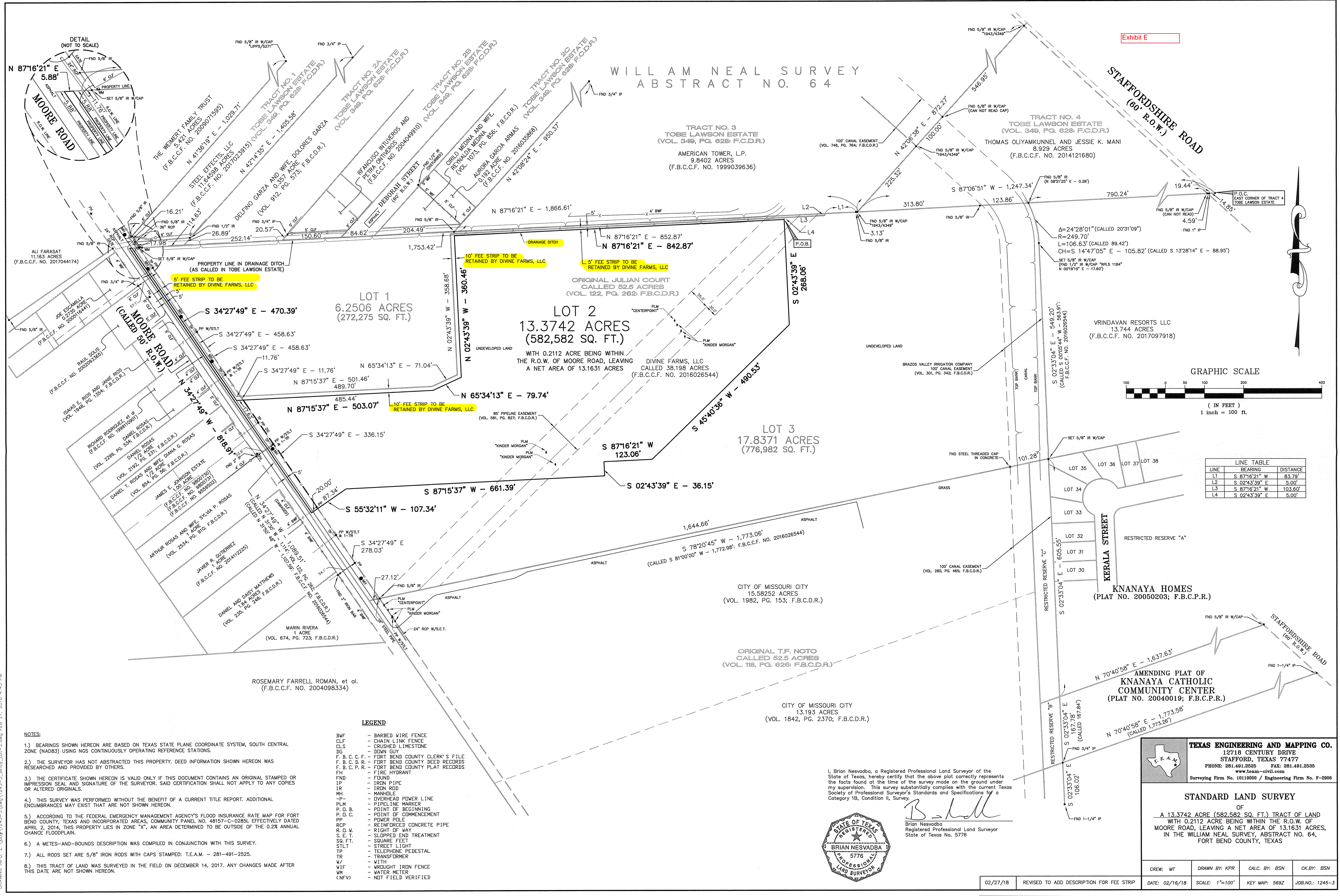


Exhibit E  
Survey Featuring Three  
Development Sites  
and Drainage Reserve

Exhibit E

# WILLIAM NEAL SURVEY ABSTRACT NO. 64



LINE	BEARING	DISTANCE
L1	S 87°16'21" W	83.79'
L2	S 02°43'39" E	5.00'
L3	S 87°16'21" W	103.60'
L4	S 02°43'39" E	5.00'

- NOTES:**
- 1.) BEARINGS SHOWN HEREON ARE BASED ON TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE (NAD83) USING NGS CONTINUOUSLY OPERATING REFERENCE STATIONS.
  - 2.) THE SURVEYOR HAS NOT ABSTRACTED THIS PROPERTY. DEED INFORMATION SHOWN HEREON WAS RESEARCHED AND PROVIDED BY OTHERS.
  - 3.) THE CERTIFICATE SHOWN HEREON IS VALID ONLY IF THIS DOCUMENT CONTAINS AN ORIGINAL STAMPED OR IMPRESSION SEAL AND SIGNATURE OF THE SURVEYOR. SAID CERTIFICATION SHALL NOT APPLY TO ANY COPIES OR ALTERED ORIGINALS.
  - 4.) THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A CURRENT TITLE REPORT. ADDITIONAL ENCUMBRANCES MAY EXIST THAT ARE NOT SHOWN HEREON.
  - 5.) ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY'S FLOOD INSURANCE RATE MAP FOR FORT BEND COUNTY, TEXAS AND INCORPORATED AREAS, COMMUNITY PANEL NO. 48157-C-0285L EFFECTIVELY DATED APRIL 2, 2014, THIS PROPERTY LIES IN ZONE "X", AN AREA DETERMINED TO BE OUTSIDE OF THE 0.2% ANNUAL CHANCE FLOODPLAIN.
  - 6.) A METES-AND-BOUNDS DESCRIPTION WAS COMPILED IN CONJUNCTION WITH THIS SURVEY.
  - 7.) ALL RODS SET ARE 5/8" IRON RODS WITH CAPS STAMPED: T.E.A.M. - 281-491-2525.
  - 8.) THIS TRACT OF LAND WAS SURVEYED IN THE FIELD ON DECEMBER 14, 2017. ANY CHANGES MADE AFTER THIS DATE ARE NOT SHOWN HEREON.

- LEGEND**
- BWF - BARBED WIRE FENCE
  - CLF - CHAIN LINK FENCE
  - CLS - CRUSHED LIMESTONE
  - DG - DOWN GUY
  - F. B. C. C. F. - FORT BEND COUNTY CLERK'S FILE
  - F. B. C. D. R. - FORT BEND COUNTY DEED RECORDS
  - F. B. C. P. R. - FORT BEND COUNTY PLAT RECORDS
  - FH - FIRE HYDRANT
  - FND - FOUND
  - IP - IRON PIPE
  - IR - IRON ROD
  - WH - MANHOLE
  - OP - OVERHEAD POWER LINE
  - PLM - PIPELINE MARKER
  - P. O. B. - POINT OF BEGINNING
  - P. O. C. - POINT OF COMMENCEMENT
  - PP - POWER POLE
  - RCF - REINFORCED CONCRETE PIPE
  - R. O. W. - RIGHT OF WAY
  - S. E. T. - SLOPPED END TREATMENT
  - SQ. FT. - SQUARE FEET
  - STLT - STREET LIGHT
  - TP - TELEPHONE PEDESTAL
  - TR - TRANSFORMER
  - W - WITH
  - WIF - WROUGHT IRON FENCE
  - WM - WATER METER
  - (NFV) - NOT FIELD VERIFIED



I, Brian Nesvadba, a Registered Professional Land Surveyor of the State of Texas, hereby certify that the above plat correctly represents the facts found at the time of the survey made on the ground under my supervision. This survey substantially complies with the current Texas Society of Professional Surveyors' Standards and Specifications for a Category 1B, Condition II, Survey.

*Brian Nesvadba*  
Registered Professional Land Surveyor  
State of Texas No. 5776

**TEXAS ENGINEERING AND MAPPING CO.**  
12718 CENTURY DRIVE  
STAFFORD, TEXAS 77477  
PHONE: 281.491.8225 FAX: 281.491.8235  
www.tea-civil.com  
Surveying Firm No. 10119000 / Engineering Firm No. E-2906

**STANDARD LAND SURVEY**  
OF  
A 13.3742 ACRE (582,582 SQ. FT.) TRACT OF LAND  
WITH 0.2112 ACRE BEING WITHIN THE R.O.W. OF  
MOORE ROAD, LEAVING A NET AREA OF 13.1631 ACRES,  
IN THE WILLIAM NEAL SURVEY, ABSTRACT NO. 64,  
FORT BEND COUNTY, TEXAS

02/27/18	REVISED TO ADD DESCRIPTION FOR FEE STRIP	DATE: 02/16/18	SCALE: 1"=100'	KEY MAP: 569Z	JOB NO.: 1245-3
CREW: MT	DRAWN BY: KPR	CALC. BY: BSN	CK BY: BSN		

DRAWING INFO: Z:\\_pba\1245-3\Draw\Lot-2.dwg, FEB 27, 2018, 4:45 PM

Exhibit F  
Depiction of  
Development Site Boundaries

Ruler

Line Path Polygon Circle 3D path 3D polygon

Measure the distance between two points on the ground

Map Length:	5,175.74	Feet
Ground Length:	5,175.74	
Heading:	137.73	degrees

Mouse Navigation    Save    Clear



Exhibit G  
Contracts for 18033 The Miramonte and  
18047 Miramonte Single Living



FIRST AMENDMENT OF  
TWO COMMERCIAL CONTRACTS - UNIMPROVED PROPERTY

This First Amendment (the "Amendment"), executed February 11, 2018, but to be effective as of January 4, 2018, serves to modify and amend (i) that certain Commercial Contract - Unimproved Property between Divine Farms as Seller and MGroup Holdings, Inc. as Buyer, Effective Date October 2, 2017, covering approximately 16 acres out of a 38.199 acres tract (out of a 52.5 acres tract) ("Contract A"); and (ii) that certain Commercial Contract - Unimproved Property between Divine Farms as Seller and MGroup Holdings, Inc. as Buyer, Effective Date December 8, 2017, covering approximately 12.4 acres out of 38.199 acres tract (out of a 52.5 acres tract) ("Contract B"); each in Fort Bend County, Texas, and collectively, the "Contracts." All capitalized words not otherwise defined herein shall have the meanings provided in the Contracts.

Recitals

A. Divine Farms ("Seller") and MGroup Holdings, Inc. ("Buyer") entered into the Contracts for the purpose of providing Buyer with flexibility in establishing the exact location for three proposed 9% Housing Tax Credit developments: (i) a multifamily development to be known as "The Miramonte" (the "Multifamily Project" or "Tract 1"); (ii) a single family development to be known as "Miramonte Single Living" (the "Single Family Project" or "Tract 2"); and (iii) an elderly project to be developed by a third-party and to be known as "Huntington at Miramonte" (the "Elderly Project" or "Tract 3").

B. Seller and Buyer acknowledge that an approximately 7 acre portion of the land covered by both the Contracts has been assigned to a third party, Oldham Goodwin Capital, LLC ("Assignee"), by Partial Assignment of Commercial Contracts - Unimproved Property dated as of January 4, 2018, for the purpose of developing the Elderly Project. The Assignee will acknowledge and join in the execution of this Amendment to evidence Assignee's concurrence with this Amendment.

C. Buyer has now determined that the Multifamily Project shall be located on approximately 6.4 acres located as shown on Schedule I attached. The finalized location includes a portion of the land described in Contract A, a portion of the land described in Contract B, and additionally includes a portion of approximately 7.8 acres (the "Residue Tract") that was not previously included in the Contracts. The purpose of this Amendment is to add the Residue Tract to the Contracts and to adjust the Purchase Price accordingly.

D. Buyer has now determined that the Single Family Project will be located on approximately 13.4 acres out of Contract A and Contract B, including a portion of the Residue Tract.

E. Buyer and Assignee have agreed that the Elderly Project being developed by the Assignee will be located on approximately 18 acres out of Contract A and Contract B, including a portion of the Residue Tract.

## Amendments

1. The legal description for Contract B is hereby revised to include the Residue Tract, so that Contract B will hereafter cover approximately 19.9 acres in total.

2. The Purchase Prices in the Contracts are hereby amended to be as follows:

(a) The Purchase Price to buy the Multifamily Project site shall be \$3.25 per square foot, as confirmed by agreed survey, net of any dedications required along Moore Road.

(b) The Purchase Price to buy the Single Family Project site shall be \$2.25 per square foot, as confirmed by agreed survey, net of any dedications required along Moore Road.

(c) The Purchase Price to buy the Elderly Project site shall be \$1.95 per square foot, as confirmed by agreed survey, net of any dedications required along Moore Road.

3. The Contracts are amended to provide that the project sites must be purchased in the following combinations:

(a) The Buyer may purchase the Multifamily Project Site, without the Single Family Project site or the Elderly Project site.

(b) The Buyer may purchase the Multifamily Project Site and the Single Family Project site, without the Elderly Project site.

(c) The Buyer may purchase the Multifamily Project Site, the Single Family Site and the Elderly Site.

4. The Seller will retain a 10-foot fee drainage strip as shown on the survey.

5. Notwithstanding anything to the contrary contained in the Contracts or the Partial Assignment, and taking into consideration the requirements of Section 3 above, any termination under the Contracts shall be a termination of the right to purchase as it relates to Tract I, Tract 2 or Tract 3, and shall not be based upon whether the right being terminated originated in Contract A or Contract B.

6. Notwithstanding anything to the contrary contained in the Contracts or the Partial Assignment, the \$50,000.00 in Earnest Money previously escrowed with the Title Company shall be released to the Seller as follows. All Earnest Money is non-refundable upon release, but is applicable to the Purchase Price of the project indicated.

(a) \$5,000.00 has been already released upon execution of the Contracts.

(b) On March 1, if the Contracts have not been previously terminated by Buyer, Buyer authorizes the Title Company to release to Seller as follows:

Tract I \$3,500

Tract 2 \$3,500

Tract 3 \$3,500

Total earnest money released to seller as of March 1 is \$15,500

(c) On April 1, if the Contracts have not been previously terminated by Buyer, Buyer authorizes the Title Company to release to Seller as follows:

Tract 1 \$3,500

Tract 2 \$3,500

Tract 3 \$3,500

Total Earnest Money released to Seller as of April 1 is \$26,000

(d) On May 1, if the Contracts have not been previously terminated by Buyer, Buyer authorizes the Title Company to release to Seller as follows:

Tract 1 \$3,500

Tract 2 \$3,500

Tract 3 \$3,500

Total Earnest Money released to seller as of May 1 is \$36,500

(e) On June 1, if the Contracts have not been previously terminated by Buyer, Buyer authorizes the Title Company to release to Seller as follows:

Tract 1 \$4,500

Tract 2 \$4,500

Tract 3 \$4,500

Total Earnest Money released to Seller as of June 1 is \$50,000

7. The Closing shall occur no later than September 30, 2018, provided that the Buyer shall have the option to extend the Closing to October 31, 2018, upon payment of a one-time \$5000.00 closing extension fee prior to September 30, 2018.

8. Except as otherwise amended herein, the Contracts and the Partial Assignment shall remain in full force and effect.

Executed to be effective as of the date set forth above.

SCHEDULE I

SKETCH OF PROJECT SITES

EXHIBIT A

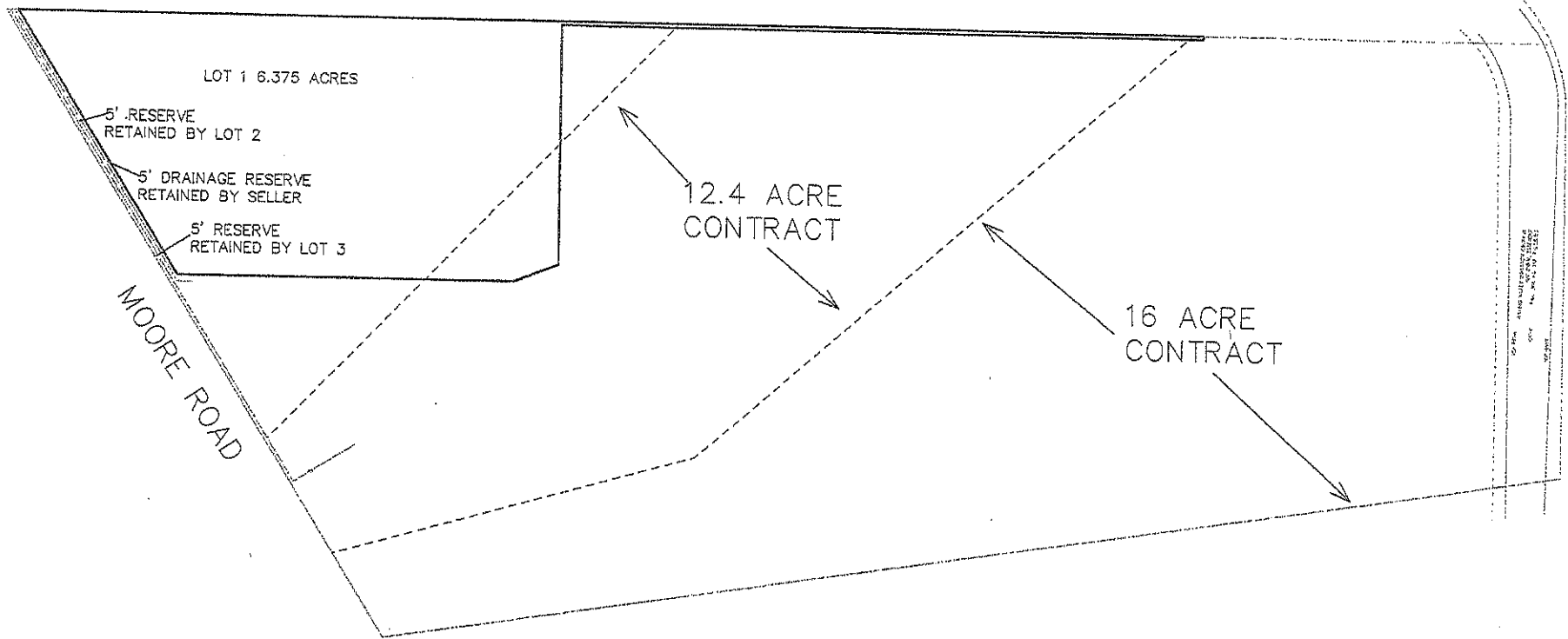


EXHIBIT B

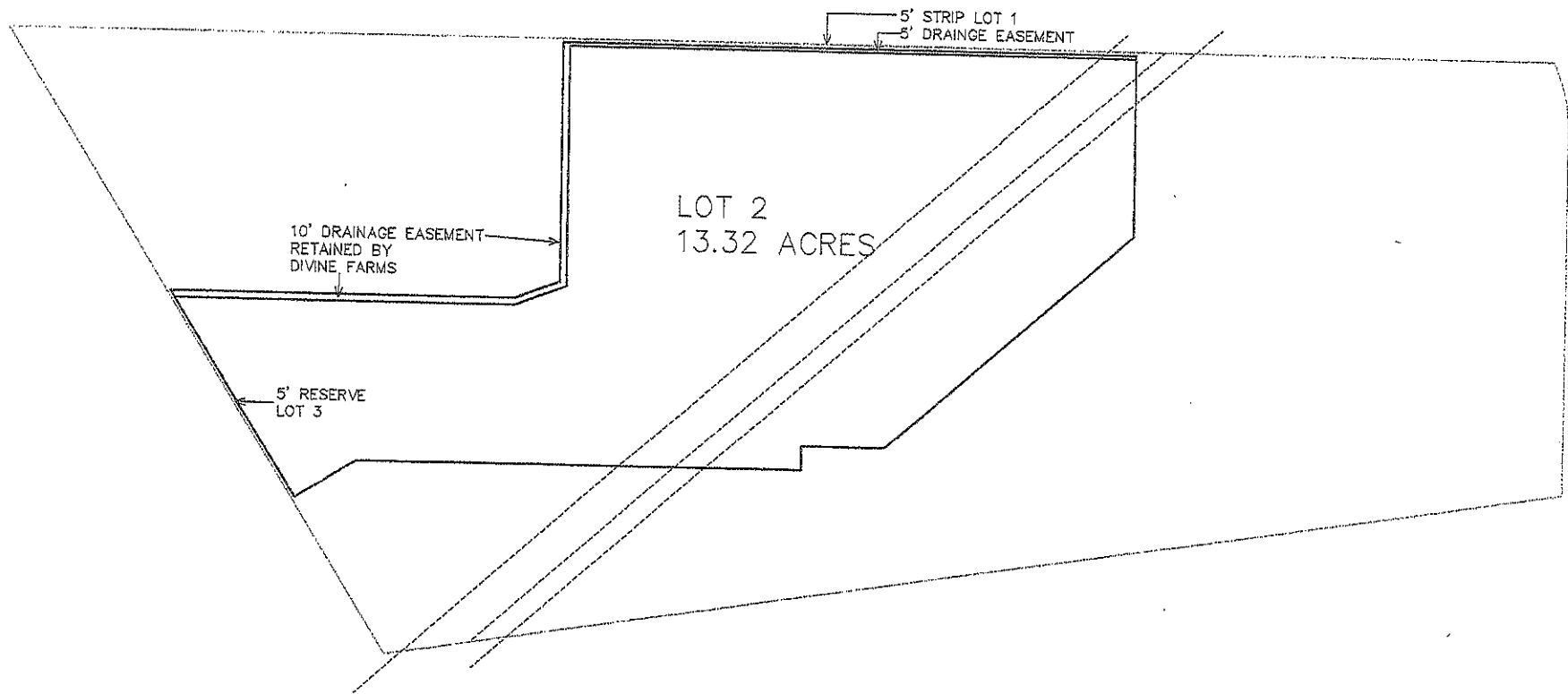
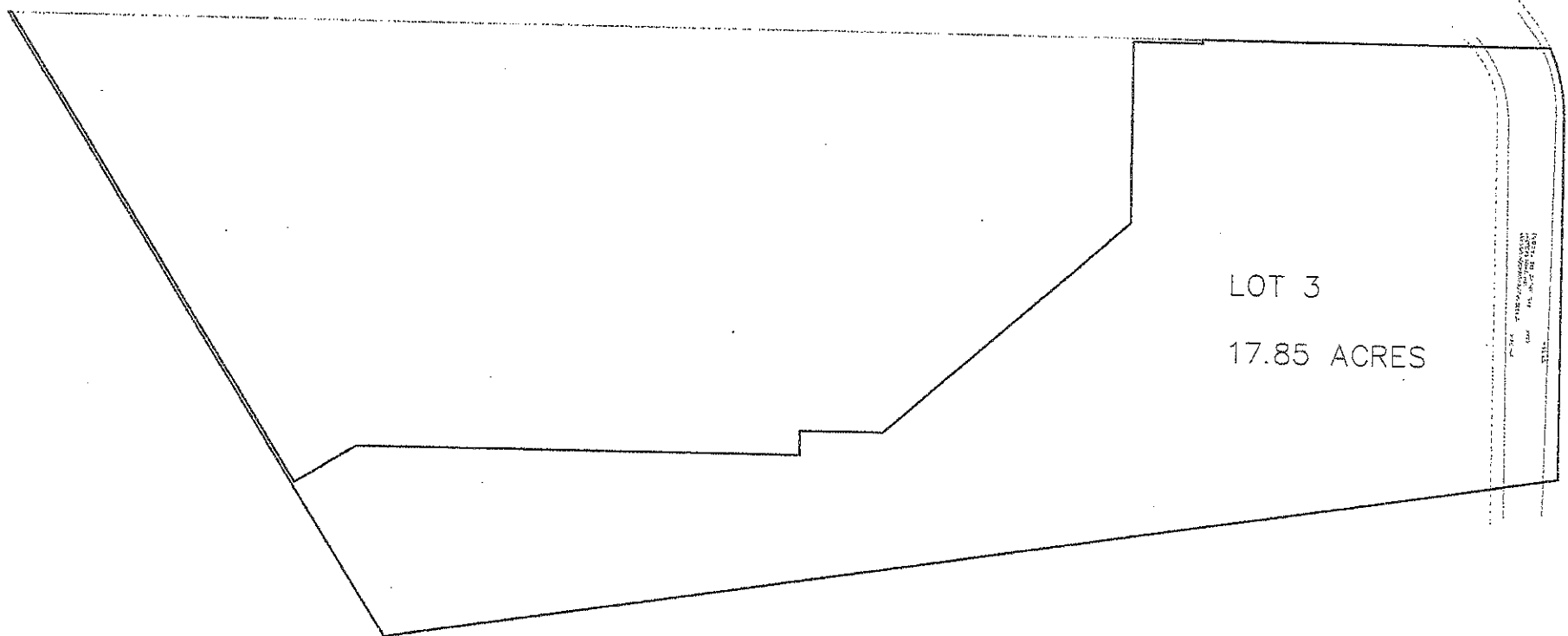
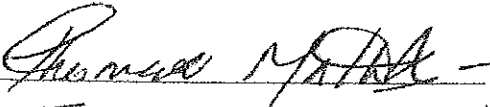


EXHIBIT C

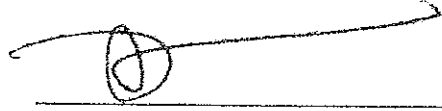


PLANNING AND ZONING DEPARTMENT  
CITY OF CHICAGO  
JAN 14 2014 10:00 AM

SELLER: DIVINE FARMS, LLC, a Texas limited liability company

By:   
Name: THOMAS MATHEW  
Title: GENERAL PARTNER

BUYER: MGROUP HOLDINGS, INC., a Texas corporation

By:   
Mark D. Musemeche, Vice President

JOINED BY ASSIGNEE TO EVIDENCE CONSENT:

OLDHAM GOODWIN CAPITAL, LLC, a Texas limited liability company

By:   
Casey M. Oldham, Manager





TEXAS ASSOCIATION OF REALTORS®  
**COMMERCIAL CONTRACT - UNIMPROVED PROPERTY**

USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS® IS NOT AUTHORIZED.  
 ©Texas Association of REALTORS®, Inc. 2016

1. **PARTIES:** Seller agrees to sell and convey to Buyer the Property described in Paragraph 2. Buyer agrees to buy the Property from Seller for the sales price stated in Paragraph 3. The parties to this contract are:

Seller: Divine Farms

Address: 615 Overdell Dr, Sugar Land, TX 77479-2158

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

Fax: \_\_\_\_\_ Other: \_\_\_\_\_

Buyer: Mgroup Holdings, Inc.

Mark Musemeche

Address: 1013 Van Buren St, Houston, TX 77019-4126

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

Fax: \_\_\_\_\_ Other: \_\_\_\_\_

2. **PROPERTY:**

A. "Property" means that real property situated in Fort Bend County, Texas at MOORE RD (BETWEEN COURT RD & 5TH ST.) (address) and that is legally described on the attached Exhibit A or as follows: approx. 16 acres out of 38.199 ACRES TRACT ( OUT OF A 52.5 ACRES TRACT)

B. Seller will sell and convey the Property together with:

- (1) all rights, privileges, and appurtenances pertaining to the Property, including Seller's right, title, and interest in any minerals, utilities, adjacent streets, alleys, strips, gores, and rights-of-way;
- (2) Seller's interest in all leases, rents, and security deposits for all or part of the Property; and
- (3) Seller's interest in all licenses and permits related to the Property.

(Describe any exceptions, reservations, or restrictions in Paragraph 12 or an addendum.)

(If mineral rights are to be reserved an appropriate addendum should be attached.)

3. **SALES PRICE:**

A. At or before closing, Buyer will pay the following sales price for the Property:

(1) Cash portion payable by Buyer at closing	\$	<u>1,359,072.00</u>
(2) Sum of all financing described in Paragraph 4	\$	<u>1,359,072.00</u>
(3) Sales price (sum of 3A(1) and 3A(2))	\$	<u>1,359,072.00</u>

B. Adjustment to Sales Price: (Check (1) or (2) only.)

(1) The sales price will not be adjusted based on a survey.

(2) The sales price will be adjusted based on the latest survey obtained under Paragraph 6B.

(a) The sales price is calculated on the basis of \$ 1751.95 <sup>(Final)</sup> per:

(i) square foot of  total area  net area.

(ii) acre of  total area  net area.

(b) "Total area" means all land area within the perimeter boundaries of the Property. "Net area" means total area less any area of the Property within:

(i) public roadways;

(ii) rights-of-way and easements other than those that directly provide utility services to the Property; and

(iii) \_\_\_\_\_

(c) If the sales price is adjusted by more than 30.000 % of the stated sales price, either party may terminate this contract by providing written notice to the other party within 5 days after the terminating party receives the survey. If neither party terminates this contract or if the variance is less than the stated percentage, the adjustment to the sales price will be made to the cash portion of the sales price payable by Buyer.

4. **FINANCING:** Buyer will finance the portion of the sales price under Paragraph 3A(2) as follows:

A. Third Party Financing: One or more third party loans in the total amount of \$ \_\_\_\_\_.

This contract:

(1) is not contingent upon Buyer obtaining third party financing.

(2) is contingent upon Buyer obtaining third party financing in accordance with the attached Commercial Contract Financing Addendum (TAR-1931).

B. Assumption: In accordance with the attached Commercial Contract Financing Addendum (TAR-1931), Buyer will assume the existing promissory note secured by the Property, which balance at closing will be \$ \_\_\_\_\_.

C. Seller Financing: The delivery of a promissory note and deed of trust to Seller under the terms of the attached Commercial Contract Financing Addendum (TAR-1931) in the amount of \$ \_\_\_\_\_.

5. **EARNEST MONEY:**

A. Not later than 3 days after the effective date, Buyer must deposit \$ \$25,000.00 as earnest money with SEE ADDENDUM (title company) at \_\_\_\_\_ (address) \_\_\_\_\_ (closer).

If Buyer fails to timely deposit the earnest money, Seller may terminate this contract or exercise any of Seller's other remedies under Paragraph 15 by providing written notice to Buyer before Buyer deposits the earnest money.

B. Buyer will deposit an additional amount of \$ n/a with the title company to be made part of the earnest money on or before:

(i) \_\_\_\_\_ days after Buyer's right to terminate under Paragraph 7B expires; or

(ii) \_\_\_\_\_

Buyer will be in default if Buyer fails to deposit the additional amount required by this Paragraph 5B within 3 days after Seller notifies Buyer that Buyer has not timely deposited the additional amount.

C. Buyer may instruct the title company to deposit the earnest money in an interest-bearing account at a federally insured financial institution and to credit any interest to Buyer.

**6. TITLE POLICY AND SURVEY:**

A. Title Policy:

(1) Seller, at Seller's expense, will furnish Buyer an Owner's Policy of Title Insurance (the title policy) issued by any underwriter of the title company in the amount of the sales price, dated at or after closing, insuring Buyer against loss under the title policy, subject only to:

- (a) those title exceptions permitted by this contract or as may be approved by Buyer in writing; and
- (b) the standard printed exceptions contained in the promulgated form of title policy unless this contract provides otherwise.

(2) The standard printed exception as to discrepancies, conflicts, or shortages in area and boundary lines, or any encroachments or protrusions, or any overlapping improvements:

- (a) will not be amended or deleted from the title policy.
- (b) will be amended to read "shortages in areas" at the expense of  Buyer  Seller.

(3) Within \_\_\_\_\_ days after the effective date, Seller will furnish Buyer a commitment for title insurance (the commitment) including legible copies of recorded documents evidencing title exceptions. Seller authorizes the title company to deliver the commitment and related documents to Buyer at Buyer's address.

B. Survey: Within 10 days after the effective date:

(1) Buyer will obtain a survey of the Property at Buyer's expense and deliver a copy of the survey to Seller. The survey must be made in accordance with the: (i) ALTA/ACSM Land Title Survey standards, or (ii) Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition. Seller will reimburse Buyer n/a (insert amount) of the cost of the survey at closing, if closing occurs.

(2) Seller, at Seller's expense, will furnish Buyer a survey of the Property dated after the effective date. The survey must be made in accordance with the: (i) ALTA/ACSM Land Title Survey standards, or (ii) Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition.

(3) Seller will deliver to Buyer and the title company a true and correct copy of Seller's most recent survey of the Property along with an affidavit required by the title company for approval of the existing survey. If the existing survey is not acceptable to the title company, Seller, at Seller's expense, will obtain a new or updated survey acceptable to the title company and deliver the acceptable survey to Buyer and the title company within 20 days after Seller receives notice that the existing survey is not acceptable to the title company. The closing date will be extended daily up to 20 days if necessary for Seller to deliver an acceptable survey within the time required. Buyer will reimburse Seller n/a (insert amount) of the cost of the new or updated survey at closing, if closing occurs.

C. Buyer's Objections to the Commitment and Survey:

(1) Within 10 days after Buyer receives the commitment, copies of the documents evidencing the title exceptions, and any required survey, Buyer may object in writing to matters disclosed in the items if: (a) the matters disclosed are a restriction upon the Property or constitute a defect or encumbrance to title other than those permitted by this contract or liens that Seller will satisfy at closing or Buyer will assume at closing; or (b) the items show that any part of the Property lies in a special flood hazard area (an "A" or "V" zone as defined by FEMA). If Paragraph 6B(1) applies,

Buyer is deemed to receive the survey on the earlier of: (i) the date of Buyer's actual receipt of the survey; or (ii) of the deadline specified in Paragraph 6B.

(2) Seller may, but is not obligated to, cure Buyer's timely objections within 15 days after Seller receives the objections. The closing date will be extended as necessary to provide such time to cure the objections. If Seller fails to cure the objections by the time required, Buyer may terminate this contract by providing written notice to Seller within 5 days after the time by which Seller must cure the objections. If Buyer terminates, the earnest money, less any independent consideration under Paragraph 7B(1), will be refunded to Buyer.

(3) Buyer's failure to timely object or terminate under this Paragraph 6C is a waiver of Buyer's right to object except that Buyer will not waive the requirements in Schedule C of this commitment.

**7. PROPERTY CONDITION:**

A. Present Condition: Buyer accepts the Property in its present condition except that Seller, at Seller's expense, will complete the following before closing: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

B. Feasibility Period: Buyer may terminate this contract for any reason within see special provision days after the effective date (feasibility period) by providing Seller written notice of termination. *(Check only one box.)*

(1) If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer less \$ see special provision that Seller will retain as independent consideration for Buyer's unrestricted right to terminate. Buyer has tendered the independent consideration to Seller upon payment of the amount specified in Paragraph 5A to the title company. The independent consideration is to be credited to the sales price only upon closing of the sale. If no dollar amount is stated in this Paragraph 7B(1) or if Buyer fails to deposit the independent consideration, Buyer will not have the right to terminate under this Paragraph 7B.

(2) Not later than 3 days after the effective date, Buyer must pay Seller \$ \_\_\_\_\_ as independent consideration for Buyer's right to terminate by tendering such amount to Seller or Seller's agent. If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer and Seller will retain the independent consideration. The independent consideration will be credited to the sales price only upon closing of the sale. If no dollar amount is stated in this Paragraph 7B(2) or if Buyer fails to pay the earnest money, Buyer will not have the right to terminate under this Paragraph 7B.

C. Inspections, Studies, or Assessments:

(1) During the feasibility period, Buyer, at Buyer's expense, may complete or cause to be completed any and all inspections, studies, or assessments of the Property (including all improvements and fixtures) desired by Buyer.

(2) Buyer must:

- (a) employ only trained and qualified inspectors and assessors;
- (b) notify Seller, in advance, of when the inspectors or assessors will be on the Property;
- (c) abide by any reasonable entry rules or requirements of Seller;
- (d) not interfere with existing operations or occupants of the Property; and
- (e) restore the Property to its original condition if altered due to inspections, studies, or assessments that Buyer completes or causes to be completed.

(3) Except for those matters that arise from the negligence of Seller or Seller's agents, Buyer is responsible for any claim, liability, encumbrance, cause of action, and expense resulting from Buyer's inspections, studies, or assessments, including any property damage or personal injury. Buyer will indemnify, hold harmless, and defend Seller and Seller's agents against any claim involving a matter for which Buyer is responsible under this paragraph. This paragraph survives termination of this contract.

D. Property Information:

(1) Delivery of Property Information: Within 10 days after the effective date, Seller will deliver to Buyer: (Check all that apply.)

- (a) copies of all current leases pertaining to the Property, including any modifications, supplements, or amendments to the leases;
- (b) copies of all notes and deeds of trust against the Property that Buyer will assume or that Seller will not pay in full on or before closing;
- (c) copies of all previous environmental assessments, geotechnical reports, studies, or analyses made on or relating to the Property;
- (d) copies property tax statements for the Property for the previous 2 calendar years;
- (e) plats of the Property;
- (f) copies of current utility capacity letters from the Property's water and sewer service provider; and
- (g) \_\_\_\_\_

(2) Return of Property Information: If this contract terminates for any reason, Buyer will, not later than 10 days after the termination date: (Check all that apply.)

- (a) return to Seller all those items described in Paragraph 7D(1) that Seller delivered to Buyer in other than an electronic format and all copies that Buyer made of those items;
- (b) delete or destroy all electronic versions of those items described in Paragraph 7D(1) that Seller delivered to Buyer or Buyer copied; and
- (c) deliver copies of all inspection and assessment reports related to the Property that Buyer completed or caused to be completed.

This Paragraph 7D(2) survives termination of this contract.

E. Contracts Affecting Operations: Until closing, Seller: (1) will operate the Property in the same manner as on the effective date under reasonably prudent business standards; and (2) will not transfer or dispose of any part of the Property, any interest or right in the Property, or any of the personal property or other items described in Paragraph 2B or sold under this contract. After the feasibility period ends, Seller may not enter into, amend, or terminate any other contract that affects the operations of the Property without Buyer's written approval.

8. **LEASES:**

A. Each written lease Seller is to assign to Buyer under this contract must be in full force and effect according to its terms. Seller may not enter into any new lease, fail to comply with any existing lease, or make any amendment or modification to any existing lease without Buyer's written consent. Seller must disclose, in writing, if any of the following exist at the time Seller provides the leases to the Buyer or subsequently occur before closing:

- (1) any failure by Seller to comply with Seller's obligations under the leases;
- (2) any circumstances under any lease that entitle the tenant to terminate the lease or seek any offsets or damages;
- (3) any advance sums paid by a tenant under any lease;
- (4) any concessions, bonuses, free rents, rebates, brokerage commissions, or other matters that affect any lease; and

(5) any amounts payable under the leases that have been assigned or encumbered, except as security for loan(s) assumed or taken subject to under this contract.

B. **Estoppel Certificates:** Within n/a days after the effective date, Seller will deliver to Buyer estoppel certificates signed not earlier than \_\_\_\_\_ by each tenant that leases space in the Property. The estoppel certificates must include the certifications contained in the current version of TAR Form 1938 - Commercial Tenant Estoppel Certificate and any additional information requested by a third party lender providing financing under Paragraph 4 if the third party lender requests such additional information at least 10 days prior to the earliest date that Seller may deliver the signed estoppel certificates.

**9. BROKERS:**

A. The brokers to this sale are:

Principal Broker: DN COMMERCIAL  
Danny Nguyen  
Agent: \_\_\_\_\_  
Address: 9999 Bellaire Ste. 909  
Houston TX 77036  
Phone & Fax: (713)270-5400-  
E-mail: dannynguyen@DNcommercial.net  
License No.: \_\_\_\_\_

Cooperating Broker: \_\_\_\_\_  
Agent: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone & Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_  
License No.: \_\_\_\_\_

Principal Broker: (Check only one box.)

- represents Seller only.
- represents Buyer only.
- is an intermediary between Seller and Buyer.

Cooperating Broker represents: Buyer.

B. **Fees:** (Check only (1) or (2) below.)

(Complete the Agreement Between Brokers on page 13 only if (1) is selected.)

(1) Seller will pay Principal Broker the fee specified by separate written commission agreement between Principal Broker and Seller. Principal Broker will pay Cooperating Broker the fee specified in the Agreement Between Brokers found below the parties' signatures to this contract.

(2) At the closing of this sale, Seller will pay:

Principal Broker a total cash fee of:  
 \_\_\_\_\_ % of the sales price.  
 \_\_\_\_\_

Cooperating Broker a total cash fee of:  
 \_\_\_\_\_ % of the sales price.  
 \_\_\_\_\_

The cash fees will be paid in Fort Bend County, Texas. Seller authorizes the title company to pay the brokers from the Seller's proceeds at closing.

*NOTICE: Chapter 62, Texas Property Code, authorizes a broker to secure in earned commission with a lien against the Property.*

C. The parties may not amend this Paragraph 9 without the written consent of the brokers affected by the amendment.

**10. CLOSING:**

- A. The date of the closing of the sale (closing date) will be on or before the later of
  - (1)  \_\_\_\_\_ days after the expiration of the feasibility period.
  - \_\_\_\_\_ (specific date).
  - See special provision** \_\_\_\_\_.
  - (2) 7 days after objections made under Paragraph 6C have been cured or waived.
- B. If either party fails to close by the closing date, the non-defaulting party may exercise the remedies in Paragraph 15.
- C. At closing, Seller will execute and deliver, at Seller's expense, a  general  special warranty deed. The deed must include a vendor's lien if any part of the sales price is financed. The deed must convey good and indefeasible title to the Property and show no exceptions other than those permitted under Paragraph 6 or other provisions of this contract. Seller must convey the Property:
  - (1) with no liens, assessments, or other security interests against the Property which will not be satisfied out of the sales price, unless securing loans Buyer assumes;
  - (2) without any assumed loans in default; and
  - (3) with no persons in possession of any part of the Property as lessees, tenants at sufferance, or trespassers except tenants under the written leases assigned to Buyer under this contract.
- D. At closing, Seller, at Seller's expense, will also deliver to Buyer:
  - (1) tax statements showing no delinquent taxes on the Property;
  - (2) an assignment of all leases to or on the Property;
  - (3) to the extent assignable, an assignment to Buyer of any licenses and permits related to the Property;
  - (4) evidence that the person executing this contract is legally capable and authorized to bind Seller;
  - (5) an affidavit acceptable to the title company stating that Seller is not a foreign person or, if Seller is a foreign person, a written authorization for the title company to: (i) withhold from Seller's proceeds an amount sufficient to comply applicable tax law; and (ii) deliver the amount to the Internal Revenue Service (IRS) together with appropriate tax forms; and
  - (6) any notices, statements, certificates, affidavits, releases, and other documents required by this contract, the commitment, or law necessary for the closing of the sale and issuance of the title policy, all of which must be completed by Seller as necessary.
- E. At closing, Buyer will:
  - (1) pay the sales price in good funds acceptable to the title company;
  - (2) deliver evidence that the person executing this contract is legally capable and authorized to bind Buyer;
  - (3) sign and send to each tenant in a lease for any part of the Property a written statement that:
    - (a) acknowledges Buyer has received and is responsible for the tenant's security deposit; and
    - (b) specifies the exact dollar amount of the security deposit;
  - (4) sign an assumption of all leases then in effect; and
  - (5) execute and deliver any notices, statements, certificates, or other documents required by this contract or law necessary to close the sale.
- F. Unless the parties agree otherwise, the closing documents will be as found in the basic forms in the current edition of the State Bar of Texas Real Estate Forms Manual without any additional clauses.

**11. POSSESSION:** Seller will deliver possession of the Property to Buyer upon closing and funding of this sale in its present condition with any repairs Seller is obligated to complete under this contract, ordinary wear and tear excepted. Any possession by Buyer before closing or by Seller after closing that is not authorized by a separate written lease agreement is a landlord-tenant at sufferance relationship between the parties.

**12. SPECIAL PROVISIONS:** The following special provisions apply and will control in the event of a conflict with other provisions of this contract. (If special provisions are contained in an Addendum, identify the Addendum here and reference the Addendum in Paragraph 22D.)

**See Addendum for Feasibility & Closing Condition**

**13. SALES EXPENSES:**

- A. Seller's Expenses: Seller will pay for the following at or before closing:
- (1) releases of existing liens, other than those liens assumed by Buyer, including prepayment penalties and recording fees;
  - (2) release of Seller's loan liability, if applicable;
  - (3) tax statements or certificates;
  - (4) preparation of the deed;
  - (5) one-half of any escrow fee;
  - (6) costs to record any documents to cure title objections that Seller must cure; and
  - (7) other expenses that Seller will pay under other provisions of this contract.
- B. Buyer's Expenses: Buyer will pay for the following at or before closing:
- (1) all loan expenses and fees;
  - (2) preparation of any deed of trust;
  - (3) recording fees for the deed and any deed of trust;
  - (4) premiums for flood insurance as may be required by Buyer's lender;
  - (5) one-half of any escrow fee;
  - (6) other expenses that Buyer will pay under other provisions of this contract.

**14. PRORATIONS:**

- A. Prorations:
- (1) Interest on any assumed loan, taxes, rents, and any expense reimbursements from tenants will be prorated through the closing date.
  - (2) If the amount of ad valorem taxes for the year in which the sale closes is not available on the closing date, taxes will be prorated on the basis of taxes assessed in the previous year. If the taxes for the year in which the sale closes vary from the amount prorated at closing, the parties will adjust the prorations when the tax statements for the year in which the sale closes become available. This Paragraph 14A(2) survives closing.
  - (3) If Buyer assumes a loan or is taking the Property subject to an existing lien, Seller will transfer all reserve deposits held by the lender for the payment of taxes, insurance premiums, and other charges to Buyer at closing and Buyer will reimburse such amounts to Seller by an appropriate adjustment at closing.
- B. Rollback Taxes: If Seller's use or change in use of the Property before closing results in the assessment of additional taxes, penalties, or interest (assessments) for periods before closing, the assessments will be the obligation of the Seller. If this sale or Buyer's use of the Property after closing results in additional assessments for periods before closing, the assessments will be the obligation of Buyer. This Paragraph 14B survives closing.
- C. Rent and Security Deposits: At closing, Seller will tender to Buyer all security deposits and the following advance payments received by Seller for periods after closing: prepaid expenses, advance rental payments, and other advance payments paid by tenants. Rents prorated to one party but received by the other party will be remitted by the recipient to the party to whom it was prorated within 5 days after the rent is received. This Paragraph 14C survives closing.



**15. DEFAULT:**

- A. If Buyer fails to comply with this contract, Buyer is in default and Seller, as Seller's sole remedy(ies), may terminate this contract and receive the earnest money, as liquidated damages for Buyer's failure except for any damages resulting from Buyer's inspections, studies or assessments in accordance with Paragraph 7C(3) which Seller may pursue; or  
(Check if applicable)  
 enforce specific performance, or seek such other relief as may be provided by law.
- B. If, without fault, Seller is unable within the time allowed to deliver the estoppel certificates, survey or the commitment, Buyer may:
  - (1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7B(1), as liquidated damages and as Buyer's sole remedy; or
  - (2) extend the time for performance up to 15 days and the closing will be extended as necessary.
- C. Except as provided in Paragraph 15B, if Seller fails to comply with this contract, Seller is in default and Buyer may:
  - (1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7B(1), as liquidated damages and as Buyer's sole remedy; or
  - (2) enforce specific performance, or seek such other relief as may be provided by law, or both.

**16. CONDEMNATION:** If before closing, condemnation proceedings are commenced against any part of the Property, Buyer may:

- A. terminate this contract by providing written notice to Seller within 15 days after Buyer is advised of the condemnation proceedings and the earnest money, less any independent consideration paid under Paragraph 7B(1), will be refunded to Buyer; or
- B. appear and defend in the condemnation proceedings and any award will, at Buyer's election, belong to:
  - (1) Seller and the sales price will be reduced by the same amount; or
  - (2) Buyer and the sales price will not be reduced.

**17. ATTORNEY'S FEES:** If Buyer, Seller, any broker, or the title company is a prevailing party in any legal proceeding brought under or with relation to this contract or this transaction, such party is entitled to recover from the non-prevailing parties all costs of such proceeding and reasonable attorney's fees. This Paragraph 17 survives termination of this contract.

**18. ESCROW:**

- A. At closing, the earnest money will be applied first to any cash down payment, then to Buyer's closing costs, and any excess will be refunded to Buyer. If no closing occurs, the title company may require payment of unpaid expenses incurred on behalf of the parties and a written release of liability of the title company from all parties.
- B. If one party makes written demand for the earnest money, the title company will give notice of the demand by providing to the other party a copy of the demand. If the title company does not receive written objection to the demand from the other party within 15 days after the date the title company sent the demand to the other party, the title company may disburse the earnest money to the party making demand, reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and the title company may pay the same to the creditors.
- C. The title company will deduct any independent consideration under Paragraph 7B(1) before disbursing any earnest money to Buyer and will pay the independent consideration to Seller
- D. If the title company complies with this Paragraph 18, each party hereby releases the title company from all claims related to the disbursement of the earnest money.

- E. Notices under this Paragraph 18 must be sent by certified mail, return receipt requested. Notices to the title company are effective upon receipt by the title company.
- F. Any party who wrongfully fails or refuses to sign a release acceptable to the title company within 7 days after receipt of the request will be liable to the other party for: (i) damages; (ii) the earnest money; (iii) reasonable attorney's fees; and (iv) all costs of suit.
- G.  Seller  Buyer intend(s) to complete this transaction as a part of an exchange of like-kind properties in accordance with Section 1031 of the Internal Revenue Code, as amended. All expenses in connection with the contemplated exchange will be paid by the exchanging party. The other party will not incur any expense or liability with respect to the exchange. The parties agree to cooperate fully and in good faith to arrange and consummate the exchange so as to comply to the maximum extent feasible with the provisions of Section 1031 of the Internal Revenue Code. The other provisions of this contract will not be affected in the event the contemplated exchange fails to occur.

**19. MATERIAL FACTS:** To the best of Seller's knowledge and belief: *(Check only one box.)*

- A. Seller is not aware of any material defects to the Property except as stated in the attached Commercial Property Condition Statement (TAR-1408).
- B. Except as otherwise provided in this contract, Seller is not aware of:
  - (1) any subsurface: structures, pits, waste, springs, or improvements;
  - (2) any pending or threatened litigation, condemnation, or assessment affecting the Property;
  - (3) any environmental hazards or conditions that materially affect the Property;
  - (4) whether the Property is or has been used for the storage or disposal of hazardous materials or toxic waste, a dump site or landfill, or any underground tanks or containers;
  - (5) whether radon, asbestos containing materials, urea-formaldehyde foam insulation, lead-based paint, toxic mold (to the extent that it adversely affects the health of ordinary occupants), or other pollutants or contaminants of any nature now exist or ever existed on the Property;
  - (6) any wetlands, as defined by federal or state law or regulation, on the Property;
  - (7) any threatened or endangered species or their habitat on the Property;
  - (8) any present or past infestation of wood-destroying insects in the Property's improvements;
  - (9) any contemplated material changes to the Property or surrounding area that would materially and detrimentally affect the ordinary use of the Property;
  - (10) any condition on the Property that violates any law or ordinance.*(Describe any exceptions to (1)-(10) in Paragraph 12 or an addendum.)*

**20. NOTICES:** All notices between the parties under this contract must be in writing and are effective when hand-delivered, mailed by certified mail return receipt requested, or sent by facsimile transmission to the parties addresses or facsimile numbers stated in Paragraph 1. The parties will send copies of any notices to the broker representing the party to whom the notices are sent.

- A. Seller also consents to receive any notices by e-mail at Seller's e-mail address stated in Paragraph 1.
- B. Buyer also consents to receive any notices by e-mail at Buyer's e-mail address stated in Paragraph 1.

**21. DISPUTE RESOLUTION:** The parties agree to negotiate in good faith in an effort to resolve any dispute related to this contract that may arise. If the dispute cannot be resolved by negotiation, the parties will submit the dispute to mediation before resorting to arbitration or litigation and will equally share the costs of a mutually acceptable mediator. This paragraph survives termination of this contract. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.

**22. AGREEMENT OF THE PARTIES:**

- A. This contract is binding on the parties, their heirs, executors, representatives, successors, and permitted assigns. This contract is to be construed in accordance with the laws of the State of Texas.

If any term or condition of this contract shall be held to be invalid or unenforceable, the remainder of this contract shall not be affected thereby.

- B. This contract contains the entire agreement of the parties and may not be changed except in writing.
- C. If this contract is executed in a number of identical counterparts, each counterpart is an original and all counterparts, collectively, constitute one agreement.

D. Addenda which are part of this contract are: (Check all that apply.)

- (1) Property Description Exhibit identified in Paragraph 2;
- (2) Commercial Contract Financing Addendum (TAR-1931);
- (3) Commercial Property Condition Statement (TAR-1408);
- (4) Commercial Contract Addendum for Special Provisions (TAR-1940);
- (5) Notice to Purchaser of Real Property in a Water District (MUD);
- (6) Addendum for Coastal Area Property (TAR-1915);
- (7) Addendum for Property Located Seaward of the Gulf Intracoastal Waterway (TAR-1916);
- (8) Information About Brokerage Services (TAR-2501); and
- (9) \_\_\_\_\_

(Note: Counsel for the Texas Association of REALTORS® (TAR) has determined that any of the foregoing addenda which are promulgated by the Texas Real Estate Commission (TREC) or published by TAR are appropriate for use with this form.)

E. Buyer  may  may not assign this contract. If Buyer assigns this contract Buyer will be relieved of any future liability under this contract only if the assignee assumes, in writing, all obligations and liability of Buyer under this contract.

**23. TIME:** Time is of the essence in this contract. The parties require strict compliance with the times for performance. If the last day to perform under a provision of this contract falls on a Saturday, Sunday, or legal holiday, the time for performance is extended until the end of the next day which is not a Saturday, Sunday, or legal holiday.

**24. EFFECTIVE DATE:** The effective date of this contract for the purpose of performance of all obligations is the date the title company receipts this contract after all parties execute this contract

**25. ADDITIONAL NOTICES:**

- A. Buyer should have an abstract covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a title policy.
- B. If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fees of the district before final execution of this contract.
- C. Notice Required by §13.257, Water Code: "The real property, described below that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned purchaser hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in the notice or at closing of purchase of the real property." The real property is described in Paragraph 2 of this contract.

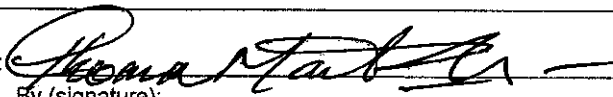
- D. If the Property adjoins or shares a common boundary with the tidally influenced submerged lands of the state, §33.135 of the Texas Natural Resources Code requires a notice regarding coastal area property to be included as part of this contract.
- E. If the Property is located seaward of the Gulf Intracoastal Waterway, §31.025, Texas Natural Resources Code, requires a notice regarding the seaward location of the Property to be included as part of this contract.
- F. If the Property is located outside the limits of a municipality, the Property may now or later be included in the extra-territorial jurisdiction (ETJ) of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and ETJ. To determine if the Property is located within a municipality's ETJ, Buyer should contact all municipalities located in the general proximity of the Property for further information.
- G. Brokers are not qualified to perform property inspections, surveys, engineering studies, environmental assessments, or inspections to determine compliance with zoning, governmental regulations, or laws. Buyer should seek experts to perform such services. Buyer should review local building codes, ordinances and other applicable laws to determine their effect on the Property. Selection of experts, inspectors, and repairmen is the responsibility of Buyer and not the brokers. Brokers are not qualified to determine the credit worthiness of the parties.
- H. NOTICE OF WATER LEVEL FLUCTUATIONS: If the Property adjoins an impoundment of water, including a reservoir or lake, constructed and maintained under Chapter 11, Water Code, that has a storage capacity of at least 5,000 acre-feet at the impoundment's normal operating level, Seller hereby notifies Buyer: "The water level of the impoundment of water adjoining the Property fluctuates for various reasons, including as a result of: (1) an entity lawfully exercising its right to use the water stored in the impoundment; or (2) drought or flood conditions."

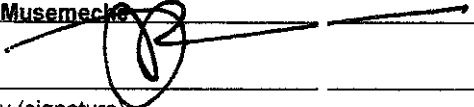
**26. CONTRACT AS OFFER:** The execution of this contract by the first party constitutes an offer to buy or sell the Property. Unless the other party accepts the offer by 5:00 p.m., in the time zone in which the Property is located, on November 28, 2016, the offer will lapse and become null and void.

**READ THIS CONTRACT CAREFULLY.** The brokers and agents make no representation or recommendation as to the legal sufficiency, legal effect, or tax consequences of this document or transaction. **CONSULT** your attorney **BEFORE** signing.

Seller: Divine Farms

Buyer: Mgroup Holdings, Inc.

By:   
 By (signature): \_\_\_\_\_  
 Printed Name: THOMAS MATHEW  
 Title: PRESIDENT

Mark Musemeck  
 By:   
 By (signature): \_\_\_\_\_  
 Printed Name: MARK MUSEMECK  
 Title: \_\_\_\_\_

By: \_\_\_\_\_  
 By (signature): \_\_\_\_\_  
 Printed Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

By: \_\_\_\_\_  
 By (signature): \_\_\_\_\_  
 Printed Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

**AGREEMENT BETWEEN BROKERS**

*(use only if Paragraph 9B(1) is effective)*

Principal Broker agrees to pay \_\_\_\_\_ (Cooperating Broker) a fee when the Principal Broker's fee is received. The fee to be paid to Cooperating Broker will be:

\$ \_\_\_\_\_, or  
 \_\_\_\_\_ % of the sales price, or  
 \_\_\_\_\_ % of the Principal Broker's fee.

The title company is authorized and directed to pay Cooperating Broker from Principal Broker's fee at closing. This Agreement Between Brokers supersedes any prior offers and agreements for compensation between brokers.

Principal Broker: \_\_\_\_\_ Cooperating Broker: \_\_\_\_\_

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

**ATTORNEYS**

Seller's attorney: \_\_\_\_\_ Buyer's attorney: \_\_\_\_\_

Address: \_\_\_\_\_ Address: \_\_\_\_\_

Phone & Fax: \_\_\_\_\_ Phone & Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_ E-mail: \_\_\_\_\_

Seller's attorney requests copies of documents, notices, and other information:

the title company sends to Seller.  
 Buyer sends to Seller.

Buyer's attorney requests copies of documents, notices, and other information:

the title company sends to Buyer.  
 Seller sends to Buyer.

**ESCROW RECEIPT**

The title company acknowledges receipt of:

- A. the contract on this day October 2, 2017 (effective date);  
 B. earnest money in the amount of \$ 25,000.00 in the form of wire transfer  
on October 2, 2017.

Title company: Texas State Title Address: 8807 W Sam Houston Pkwy N, Suite 150

By:  \_\_\_\_\_ Address: Houston, Texas 77040

Assigned file number (GF#): 1715722171 Phone & Fax: 281-640-7667

E-mail: csobieski@texasstatetitle.com  
tclark@texasstatetitle.com

**EXHIBIT B**  
SPECIAL PROVISIONS TO CONTRACT

This Exhibit B attaches to the Commercial Contract-Unimproved Property between D Vine Farms Seller, and Mgroup Holdings, Inc., Buyer, covering the approximately 16 acres MOL out of 38 199 acres on Moore Road, Stafford ETJ, Fort Bend, Texas.

- A. EARNEST MONEY:** Within three (3) business days after the deposit of a fully executed copy of this Agreement with Texas State Title Company, Attention: Cody Sobiesaki, 88 17 West Sam Houston Parkway North, Suite 150, Houston Texas, 77040; Telephone: (281) 6 0-7667 Email:csobiesaki@texasstatetitle.com (the "Title Company"), Buyer shall deposit with the Title Company the sum of \$25,000 as earnest money for this transaction (the "Initial Earnest Money Installment").

Within 3 days of receipt by the Title Company of the fully executed Commercial Contract, Buyer authorizes the Title Company to release to Seller \$2,500 of the Initial Earnest Money. This portion of the Initial Earnest Money shall be non-refundable to Buyer.

On March 1, 2018, if contract has not been previously terminated by Buyer, Buyer authorizes the Title Company to release to Seller \$2,500 of Initial Earnest Money. This portion of the Initial Earnest Money shall be non-refundable to Buyer.

On May 15, 2018, if contract has not been previously terminated by Buyer, Buyer authorizes the Title Company to release to Seller an additional \$5,000 of Initial Earnest Money. This portion of the Initial Earnest Money shall be non-refundable to Buyer.

On June 15, 2018, if contract has not been previously terminated by Buyer, Buyer authorizes the Title Company to release to Seller an additional \$5,000 of Initial Earnest Money. This portion of the Initial Earnest Money shall be non-refundable to Buyer.

On August 1, 2018, if contract has not been previously terminated by Buyer, Buyer authorizes the Title Company to release to Seller an additional \$10,000 of Initial Earnest Money. This portion of the Initial Earnest Money shall be non-refundable to Buyer.

All Initial Earnest Money deposits and Additional Earnest Money Deposits shall be applicable to the Purchase Price.

**B. CLOSING:** The Closing (herein so called) shall occur no later than September 30, 2018 provided, however that Buyer shall have the option to extend Closing for up to three (2) thirty day periods by paying to Seller \$5,000.00 in Closing Extension Money for each additional thirty day extension. Any Closing Extension Money shall be nonrefundable to Buyer and shall not be applicable to purchase price.

**C. REVIEW PERIOD:** Buyer shall have from the Effective Date until August 1, 2018 (the "Review Period") to, among other things (i) obtain and/or perform all property studies and investigations deemed

necessary or desirable by Buyer, (ii) verify availability of utilities for Buyer's use or development of the Property, (iii) determine any platting or re-platting requirements and zoning change requirements for the Property, and (v) obtain a commitment for financing Buyer's acquisition and development of the Property. If platting and a zoning change are necessary, Seller shall cooperate with Buyer with the necessary applications for the change. All costs associated with such applications shall be a Buyer's expense.


**D. Survey and adjustment**

Buyer at Buyer's sole expense will prepare a boundary survey of the Property to standards to meet Buyer's lender requirements. The Property will be sold based on a gross square foot basis at a rate of \$~~1.75~~<sup>1.95</sup>/sf, subject to final survey. Final adjustment to the total gross square footage of the Property shall be allowed upon completion of the survey in an amount not to exceed 30% of the 16 acres contemplated herein without further approval or consent of the parties. In the event the survey adjustment exceeds 30%, either party may terminate this agreement by providing notice of termination within 5 days of receipt of the Survey.

EXECUTED to be effective as of the Effective Date.

SELLER:

Divine Farms

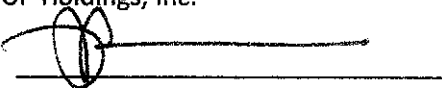
By: 

Name: THOMAS MATHEW

Title: PRESIDENT

PURCHASER:

MGROUP Holdings, Inc.

By: 

Name: MARK MUSSEMPECK

Title: VICE PRESIDENT

Receipt of a fully executed copy of this Agreement and of the Earnest Money specified in Article 5 of this Agreement is hereby acknowledged as of the date hereinafter set forth which date shall be the Effective Date of this Agreement.

Dated: 09/08/ 2017.

TITLE COMPANY:

Texas State Title

By:



Name:

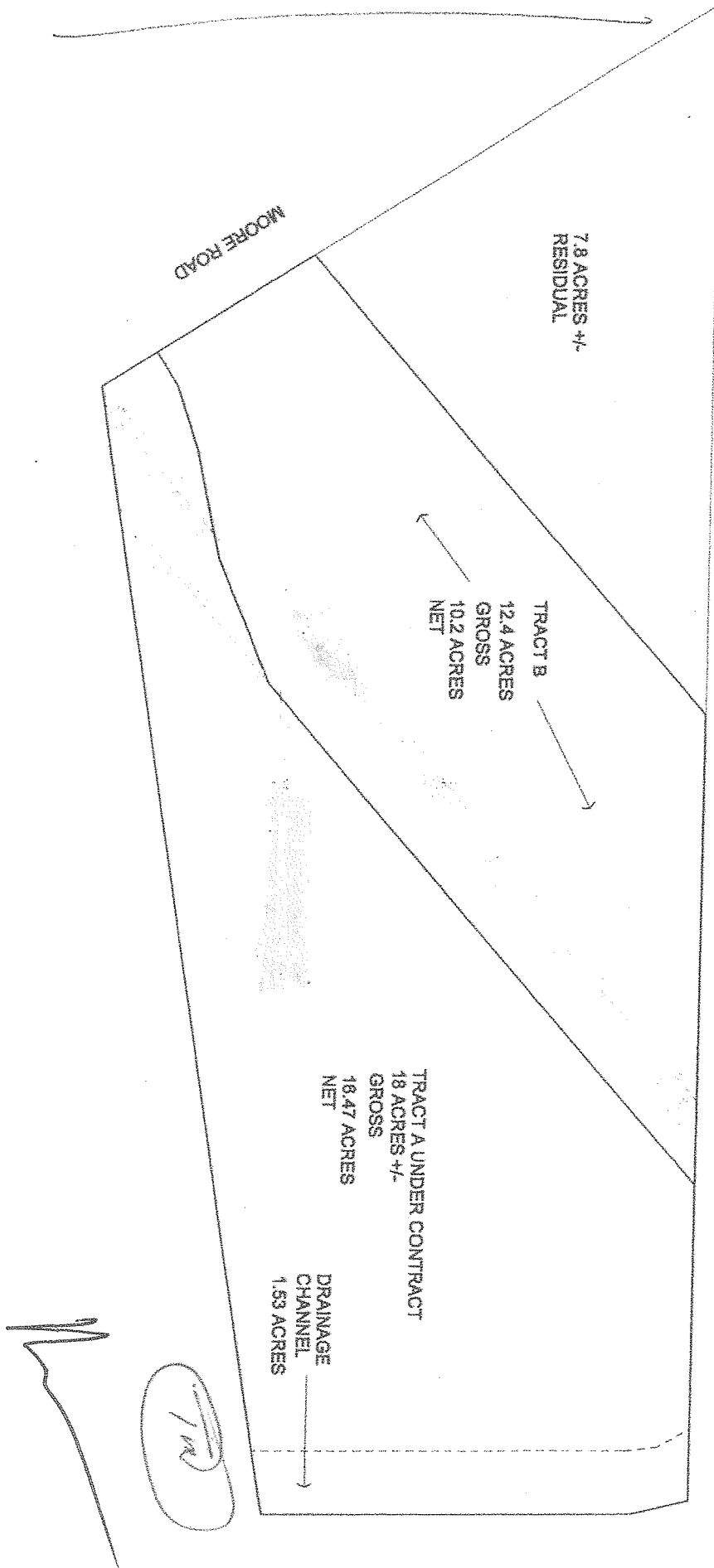
Cody Sobieski

Title:

President



# EXHIBIT "A"





TEXAS ASSOCIATION OF REALTORS®  
**COMMERCIAL CONTRACT - UNIMPROVED PROPERTY**

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1. **PARTIES:** Seller agrees to sell and convey to Buyer the Property described in Paragraph 2. Buyer agrees to buy the Property from Seller for the sales price stated in Paragraph 3. The parties to this contract are:

Seller: Divine Farms

Address: 615 Overdell Dr, Sugar Land, TX 77479-2158

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

Fax: \_\_\_\_\_ Other: \_\_\_\_\_

Buyer: Mgroup Holdings, Inc.

Mark Musemeche

Address: 1013 Van Buren St, Houston, TX 77019-4126

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

Fax: \_\_\_\_\_ Other: \_\_\_\_\_

2. **PROPERTY:**

A. "Property" means that real property situated in Fort Bend County, Texas at MOORE RD (BETWEEN COURT RD & 5TH ST.) (address) and that is legally described on the attached Exhibit A or as follows: **APPROX. 12.4 ACRES OUT OF 38.199 ACRES TRACT ( OUT OF A 52.5 ACRES TRACT)**

B. Seller will sell and convey the Property together with:

- (1) all rights, privileges, and appurtenances pertaining to the Property, including Seller's right, title, and interest in any minerals, utilities, adjacent streets, alleys, strips, gores, and rights-of-way;
- (2) Seller's interest in all leases, rents, and security deposits for all or part of the Property; and
- (3) Seller's interest in all licenses and permits related to the Property.

*(Describe any exceptions, reservations, or restrictions in Paragraph 12 or an addendum.)  
 (If mineral rights are to be reserved an appropriate addendum should be attached.)*

3. **SALES PRICE:**

A. At or before closing, Buyer will pay the following sales price for the Property:

(1) Cash portion payable by Buyer at closing .....	\$	<u>1,200,000.00</u>
(2) Sum of all financing described in Paragraph 4 .....	\$	_____
(3) Sales price (sum of 3A(1) and 3A(2)) .....	\$	<u>1,200,000.00</u>

B. Adjustment to Sales Price: (Check (1) or (2) only.)

(1) The sales price will not be adjusted based on a survey.

(2) The sales price will be adjusted based on the latest survey obtained under Paragraph 6B.

(a) The sales price is calculated on the basis of \$ \_\_\_\_\_ per:

(i) square foot of  total area  net area.

(ii) acre of  total area  net area.

(b) "Total area" means all land area within the perimeter boundaries of the Property. "Net area" means total area less any area of the Property within:

(i) public roadways;

(ii) rights-of-way and easements other than those that directly provide utility services to the Property; and

(iii) \_\_\_\_\_

(c) If the sales price is adjusted by more than 30.000 % of the stated sales price, either party may terminate this contract by providing written notice to the other party within 5 days after the terminating party receives the survey. If neither party terminates this contract or if the variance is less than the stated percentage, the adjustment to the sales price will be made to the cash portion of the sales price payable by Buyer.

4. **FINANCING:** Buyer will finance the portion of the sales price under Paragraph 3A(2) as follows:

A. Third Party Financing: One or more third party loans in the total amount of \$ \_\_\_\_\_

This contract:

(1) is not contingent upon Buyer obtaining third party financing.

(2) is contingent upon Buyer obtaining third party financing in accordance with the attached Commercial Contract Financing Addendum (TAR-1931).

B. Assumption: In accordance with the attached Commercial Contract Financing Addendum (TAR-1931), Buyer will assume the existing promissory note secured by the Property, which balance at closing will be \$ \_\_\_\_\_.

C. Seller Financing: The delivery of a promissory note and deed of trust to Seller under the terms of the attached Commercial Contract Financing Addendum (TAR-1931) in the amount of \$ \_\_\_\_\_.

5. **EARNEST MONEY:**

A. Not later than 3 days after the effective date, Buyer must deposit \$ \$25,000.00 as earnest money with Fidelity National Title (title company) at 9999 Bellaire Blvd. #988, Houston TX 77036 (address) \_\_\_\_\_ (closer). If Buyer fails to timely deposit the earnest money, Seller may terminate this contract or exercise any of Seller's other remedies under Paragraph 15 by providing written notice to Buyer before Buyer deposits the earnest money.

B. Buyer will deposit an additional amount of \$ n/a with the title company to be made part of the earnest money on or before:

(i) \_\_\_\_\_ days after Buyer's right to terminate under Paragraph 7B expires; or

(ii) \_\_\_\_\_

Buyer will be in default if Buyer fails to deposit the additional amount required by this Paragraph 5B within 3 days after Seller notifies Buyer that Buyer has not timely deposited the additional amount.

C. Buyer may instruct the title company to deposit the earnest money in an interest-bearing account at a federally insured financial institution and to credit any interest to Buyer.

**6. TITLE POLICY AND SURVEY:**

A. Title Policy:

- (1) Seller, at Seller's expense, will furnish Buyer an Owner's Policy of Title Insurance (the title policy) issued by any underwriter of the title company in the amount of the sales price, dated at or after closing, insuring Buyer against loss under the title policy, subject only to:
  - (a) those title exceptions permitted by this contract or as may be approved by Buyer in writing; and
  - (b) the standard printed exceptions contained in the promulgated form of title policy unless this contract provides otherwise.
- (2) The standard printed exception as to discrepancies, conflicts, or shortages in area and boundary lines, or any encroachments or protrusions, or any overlapping improvements:
  - (a) will not be amended or deleted from the title policy.
  - (b) will be amended to read "shortages in areas" at the expense of  Buyer  Seller.
- (3) Within \_\_\_\_\_ days after the effective date, Seller will furnish Buyer a commitment for title insurance (the commitment) including legible copies of recorded documents evidencing title exceptions. Seller authorizes the title company to deliver the commitment and related documents to Buyer at Buyer's address.

B. Survey: Within 10 days after the effective date:

- (1) Buyer will obtain a survey of the Property at Buyer's expense and deliver a copy of the survey to Seller. The survey must be made in accordance with the: (i) ALTA/ACSM Land Title Survey standards, or (ii) Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition. Seller will reimburse Buyer n/a (insert amount) of the cost of the survey at closing, if closing occurs.
- (2) Seller, at Seller's expense, will furnish Buyer a survey of the Property dated after the effective date. The survey must be made in accordance with the: (i) ALTA/ACSM Land Title Survey standards, or (ii) Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition.
- (3) Seller will deliver to Buyer and the title company a true and correct copy of Seller's most recent survey of the Property along with an affidavit required by the title company for approval of the existing survey. If the existing survey is not acceptable to the title company, Seller, at Seller's expense, will obtain a new or updated survey acceptable to the title company and deliver the acceptable survey to Buyer and the title company within 20 days after Seller receives notice that the existing survey is not acceptable to the title company. The closing date will be extended daily up to 20 days if necessary for Seller to deliver an acceptable survey within the time required. Buyer will reimburse Seller n/a (insert amount) of the cost of the new or updated survey at closing, if closing occurs.

C. Buyer's Objections to the Commitment and Survey:

- (1) Within 10 days after Buyer receives the commitment, copies of the documents evidencing the title exceptions, and any required survey, Buyer may object in writing to matters disclosed in the items if: (a) the matters disclosed are a restriction upon the Property or constitute a defect or encumbrance to title other than those permitted by this contract or liens that Seller will satisfy at closing or Buyer will assume at closing; or (b) the items show that any part of the Property lies in a special flood hazard area (an "A" or "V" zone as defined by FEMA). If Paragraph 6B(1) applies,

Buyer is deemed to receive the survey on the earlier of: (i) the date of Buyer's actual receipt of the survey; or (ii) of the deadline specified in Paragraph 6B.

- (2) Seller may, but is not obligated to, cure Buyer's timely objections within 15 days after Seller receives the objections. The closing date will be extended as necessary to provide such time to cure the objections. If Seller fails to cure the objections by the time required, Buyer may terminate this contract by providing written notice to Seller within 5 days after the time by which Seller must cure the objections. If Buyer terminates, the earnest money, less any independent consideration under Paragraph 7B(1), will be refunded to Buyer.
- (3) Buyer's failure to timely object or terminate under this Paragraph 6C is a waiver of Buyer's right to object except that Buyer will not waive the requirements in Schedule C of the commitment.

**7. PROPERTY CONDITION:**

A. Present Condition: Buyer accepts the Property in its present condition except that Seller, at Seller's expense, will complete the following before closing: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

B. Feasibility Period: Buyer may terminate this contract for any reason within see special provisi days after the effective date (feasibility period) by providing Seller written notice of termination. (Check only one box.)

(1) If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer less \$ see special provision that Seller will retain as independent consideration for Buyer's unrestricted right to terminate. Buyer has tendered the independent consideration to Seller upon payment of the amount specified in Paragraph 5A to the title company. The independent consideration is to be credited to the sales price only upon closing of the sale. If no dollar amount is stated in this Paragraph 7B(1) or if Buyer fails to deposit the independent consideration, Buyer will not have the right to terminate under this Paragraph 7B.

(2) Not later than 3 days after the effective date, Buyer must pay Seller \$ \_\_\_\_\_ as independent consideration for Buyer's right to terminate by tendering such amount to Seller or Seller's agent. If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer and Seller will retain the independent consideration. The independent consideration will be credited to the sales price only upon closing of the sale. If no dollar amount is stated in this Paragraph 7B(2) or if Buyer fails to pay the earnest money, Buyer will not have the right to terminate under this Paragraph 7B.

C. Inspections, Studies, or Assessments:

- (1) During the feasibility period, Buyer, at Buyer's expense, may complete or cause to be completed any and all inspections, studies, or assessments of the Property (including all improvements and fixtures) desired by Buyer.
- (2) Buyer must:
  - (a) employ only trained and qualified inspectors and assessors;
  - (b) notify Seller, in advance, of when the inspectors or assessors will be on the Property;
  - (c) abide by any reasonable entry rules or requirements of Seller;
  - (d) not interfere with existing operations or occupants of the Property; and
  - (e) restore the Property to its original condition if altered due to inspections, studies, or assessments that Buyer completes or causes to be completed.

(3) Except for those matters that arise from the negligence of Seller or Seller's agents, Buyer is responsible for any claim, liability, encumbrance, cause of action, and expense resulting from Buyer's inspections, studies, or assessments, including any property damage or personal injury. Buyer will indemnify, hold harmless, and defend Seller and Seller's agents against any claim involving a matter for which Buyer is responsible under this paragraph. This paragraph survives termination of this contract.

D. Property Information:

(1) Delivery of Property Information: Within 10 days after the effective date, Seller will deliver to Buyer: *(Check all that apply.)*

- (a) copies of all current leases pertaining to the Property, including any modifications, supplements, or amendments to the leases;
- (b) copies of all notes and deeds of trust against the Property that Buyer will assume or that Seller will not pay in full on or before closing;
- (c) copies of all previous environmental assessments, geotechnical reports, studies, or analyses made on or relating to the Property;
- (d) copies property tax statements for the Property for the previous 2 calendar years;
- (e) plats of the Property;
- (f) copies of current utility capacity letters from the Property's water and sewer service provider; and
- (g) \_\_\_\_\_

(2) Return of Property Information: If this contract terminates for any reason, Buyer will, not later than 10 days after the termination date: *(Check all that apply.)*

- (a) return to Seller all those items described in Paragraph 7D(1) that Seller delivered to Buyer in other than an electronic format and all copies that Buyer made of those items;
- (b) delete or destroy all electronic versions of those items described in Paragraph 7D(1) that Seller delivered to Buyer or Buyer copied; and
- (c) deliver copies of all inspection and assessment reports related to the Property that Buyer completed or caused to be completed.

This Paragraph 7D(2) survives termination of this contract.

E. Contracts Affecting Operations: Until closing, Seller: (1) will operate the Property in the same manner as on the effective date under reasonably prudent business standards; and (2) will not transfer or dispose of any part of the Property, any interest or right in the Property, or any of the personal property or other items described in Paragraph 2B or sold under this contract. After the feasibility period ends, Seller may not enter into, amend, or terminate any other contract that affects the operations of the Property without Buyer's written approval.

8. LEASES:

A. Each written lease Seller is to assign to Buyer under this contract must be in full force and effect according to its terms. Seller may not enter into any new lease, fail to comply with any existing lease, or make any amendment or modification to any existing lease without Buyer's written consent. Seller must disclose, in writing, if any of the following exist at the time Seller provides the leases to the Buyer or subsequently occur before closing:

- (1) any failure by Seller to comply with Seller's obligations under the leases;
- (2) any circumstances under any lease that entitle the tenant to terminate the lease or seek any offsets or damages;
- (3) any advance sums paid by a tenant under any lease;
- (4) any concessions, bonuses, free rents, rebates, brokerage commissions, or other matters that affect any lease; and

(5) any amounts payable under the leases that have been assigned or encumbered, except as security for loan(s) assumed or taken subject to under this contract.

B. Estoppel Certificates: Within n/a days after the effective date, Seller will deliver to Buyer estoppel certificates signed not earlier than \_\_\_\_\_ by each tenant that leases space in the Property. The estoppel certificates must include the certifications contained in the current version of TAR Form 1938 - Commercial Tenant Estoppel Certificate and any additional information requested by a third party lender providing financing under Paragraph 4 if the third party lender requests such additional information at least 10 days prior to the earliest date that Seller may deliver the signed estoppel certificates.

9. **BROKERS:**

A. The brokers to this sale are:

Principal Broker: DN COMMERCIAL  
Danny Nguyen  
Agent: \_\_\_\_\_  
Address: 9999 Bellaire Ste. 909  
Houston TX 77036  
Phone & Fax: (713)270-5400-  
E-mail: dannynguyen@DNcommercial.net  
License No.: \_\_\_\_\_

Cooperating Broker: \_\_\_\_\_  
Agent: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone & Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_  
License No.: \_\_\_\_\_

Principal Broker: (Check only one box.)

- represents Seller only.
- represents Buyer only.
- is an intermediary between Seller and Buyer.

Cooperating Broker represents Buyer.

B. Fees: (Check only (1) or (2) below.)

(Complete the Agreement Between Brokers on page 13 only if (1) is selected.)

(1) Seller will pay Principal Broker the fee specified by separate written commission agreement between Principal Broker and Seller. Principal Broker will pay Cooperating Broker the fee specified in the Agreement Between Brokers found below the parties' signatures to this contract.

(2) At the closing of this sale, Seller will pay:

Principal Broker a total cash fee of:  
 \_\_\_\_\_ % of the sales price.

Cooperating Broker a total cash fee of:  
 \_\_\_\_\_ % of the sales price.

The cash fees will be paid in Fort Bend County, Texas. Seller authorizes the title company to pay the brokers from the Seller's proceeds at closing.

*NOTICE: Chapter 62, Texas Property Code, authorizes a broker to secure an earned commission with a lien against the Property.*

C. The parties may not amend this Paragraph 9 without the written consent of the brokers affected by the amendment.

**10. CLOSING:**

A. The date of the closing of the sale (closing date) will be on or before the later of:

- (1)  \_\_\_\_\_ days after the expiration of the feasibility period.  
 \_\_\_\_\_ (specific date).  
 See special provision

(2) 7 days after objections made under Paragraph 6C have been cured or waived.

B. If either party fails to close by the closing date, the non-defaulting party may exercise the remedies in Paragraph 15.

C. At closing, Seller will execute and deliver, at Seller's expense, a  general  special warranty deed. The deed must include a vendor's lien if any part of the sales price is financed. The deed must convey good and indefeasible title to the Property and show no exceptions other than those permitted under Paragraph 6 or other provisions of this contract. Seller must convey the Property:

- (1) with no liens, assessments, or other security interests against the Property which will not be satisfied out of the sales price, unless securing loans Buyer assumes;  
(2) without any assumed loans in default; and  
(3) with no persons in possession of any part of the Property as lessees, tenants at sufferance, or trespassers except tenants under the written leases assigned to Buyer under this contract.

D. At closing, Seller, at Seller's expense, will also deliver to Buyer:

- (1) tax statements showing no delinquent taxes on the Property;  
(2) an assignment of all leases to or on the Property;  
(3) to the extent assignable, an assignment to Buyer of any licenses and permits related to the Property;  
(4) evidence that the person executing this contract is legally capable and authorized to bind Seller;  
(5) an affidavit acceptable to the title company stating that Seller is not a foreign person or, if Seller is a foreign person, a written authorization for the title company to: (i) withhold from Seller's proceeds an amount sufficient to comply applicable tax law; and (ii) deliver the amount to the Internal Revenue Service (IRS) together with appropriate tax forms; and  
(6) any notices, statements, certificates, affidavits, releases, and other documents required by this contract, the commitment, or law necessary for the closing of the sale and issuance of the title policy, all of which must be completed by Seller as necessary.

E. At closing, Buyer will:

- (1) pay the sales price in good funds acceptable to the title company;  
(2) deliver evidence that the person executing this contract is legally capable and authorized to bind Buyer;  
(3) sign and send to each tenant in a lease for any part of the Property a written statement that:  
(a) acknowledges Buyer has received and is responsible for the tenant's security deposit; and  
(b) specifies the exact dollar amount of the security deposit;  
(4) sign an assumption of all leases then in effect; and  
(5) execute and deliver any notices, statements, certificates, or other documents required by this contract or law necessary to close the sale.

F. Unless the parties agree otherwise, the closing documents will be as found in the basic forms in the current edition of the State Bar of Texas Real Estate Forms Manual without any additional clauses.

**11. POSSESSION:** Seller will deliver possession of the Property to Buyer upon closing and funding of this sale in its present condition with any repairs Seller is obligated to complete under this contract, ordinary wear and tear excepted. Any possession by Buyer before closing or by Seller after closing that is not authorized by a separate written lease agreement is a landlord-tenant at sufferance relationship between the parties.



**12. SPECIAL PROVISIONS:** The following special provisions apply and will control in the event of a conflict with other provisions of this contract. *(If special provisions are contained in an Addendum, identify the Addendum here and reference the Addendum in Paragraph 22D.)*

**Buyer agrees that front tract (this contract) could not be sold separately WITHOUT the back tract (the first Contract) being closed at the same time or earlier.**

**See Addendum for Feasibility & Closing Condition and joint Access**

**13. SALES EXPENSES:**

A. Seller's Expenses: Seller will pay for the following at or before closing:

- (1) releases of existing liens, other than those liens assumed by Buyer, including prepayment penalties and recording fees;
- (2) release of Seller's loan liability, if applicable;
- (3) tax statements or certificates;
- (4) preparation of the deed;
- (5) one-half of any escrow fee;
- (6) costs to record any documents to cure title objections that Seller must cure; and
- (7) other expenses that Seller will pay under other provisions of this contract.

B. Buyer's Expenses: Buyer will pay for the following at or before closing:

- (1) all loan expenses and fees;
- (2) preparation of any deed of trust;
- (3) recording fees for the deed and any deed of trust;
- (4) premiums for flood insurance as may be required by Buyer's lender;
- (5) one-half of any escrow fee;
- (6) other expenses that Buyer will pay under other provisions of this contract.

**14. PRORATIONS:**

A. Prorations:

- (1) Interest on any assumed loan, taxes, rents, and any expense reimbursements from tenants will be prorated through the closing date.
- (2) If the amount of ad valorem taxes for the year in which the sale closes is not available on the closing date, taxes will be prorated on the basis of taxes assessed in the previous year. If the taxes for the year in which the sale closes vary from the amount prorated at closing, the parties will adjust the prorations when the tax statements for the year in which the sale closes become available. This Paragraph 14A(2) survives closing.
- (3) If Buyer assumes a loan or is taking the Property subject to an existing lien, Seller will transfer all reserve deposits held by the lender for the payment of taxes, insurance premiums, and other charges to Buyer at closing and Buyer will reimburse such amounts to Seller by an appropriate adjustment at closing.

B. Rollback Taxes: If Seller's use or change in use of the Property before closing results in the assessment of additional taxes, penalties, or interest (assessments) for periods before closing, the assessments will be the obligation of the Seller. If this sale or Buyer's use of the Property after closing results in additional assessments for periods before closing, the assessments will be the obligation of Buyer. This Paragraph 14B survives closing.

C. Rent and Security Deposits: At closing, Seller will tender to Buyer all security deposits and the following advance payments received by Seller for periods after closing: prepaid expenses, advance rental payments, and other advance payments paid by tenants. Rents prorated to one party but received by the other party will be remitted by the recipient to the party to whom it was prorated within 5 days after the rent is received. This Paragraph 14C survives closing.

**15. DEFAULT:**

- A. If Buyer fails to comply with this contract, Buyer is in default and Seller, as Seller's sole remedy(ies), may terminate this contract and receive the earnest money, as liquidated damages for Buyer's failure except for any damages resulting from Buyer's inspections, studies or assessments in accordance with Paragraph 7C(3) which Seller may pursue; or  
(Check if applicable)  
 ~~enforce specific performance, or seek such other relief as may be provided by law.~~
- B. If, without fault, Seller is unable within the time allowed to deliver the estoppel certificates, survey or the commitment, Buyer may:  
(1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7B(1), as liquidated damages and as Buyer's sole remedy; or  
(2) extend the time for performance up to 15 days and the closing will be extended as necessary.
- C. Except as provided in Paragraph 15B, if Seller fails to comply with this contract, Seller is in default and Buyer may:  
(1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7B(1), as liquidated damages and as Buyer's sole remedy; or  
(2) enforce specific performance, or seek such other relief as may be provided by law, or both.

**16. CONDEMNATION:** If before closing, condemnation proceedings are commenced against any part of the Property, Buyer may:

- A. terminate this contract by providing written notice to Seller within 15 days after Buyer is advised of the condemnation proceedings and the earnest money, less any independent consideration paid under Paragraph 7B(1), will be refunded to Buyer; or
- B. appear and defend in the condemnation proceedings and any award will, at Buyer's election, belong to:  
(1) Seller and the sales price will be reduced by the same amount; or  
(2) Buyer and the sales price will not be reduced.

**17. ATTORNEY'S FEES:** If Buyer, Seller, any broker, or the title company is a prevailing party in any legal proceeding brought under or with relation to this contract or this transaction, such party is entitled to recover from the non-prevailing parties all costs of such proceeding and reasonable attorney's fees. This Paragraph 17 survives termination of this contract.

**18. ESCROW:**

- A. At closing, the earnest money will be applied first to any cash down payment, then to Buyer's closing costs, and any excess will be refunded to Buyer. If no closing occurs, the title company may require payment of unpaid expenses incurred on behalf of the parties and a written release of liability of the title company from all parties.
- B. If one party makes written demand for the earnest money, the title company will give notice of the demand by providing to the other party a copy of the demand. If the title company does not receive written objection to the demand from the other party within 15 days after the date the title company sent the demand to the other party, the title company may disburse the earnest money to the party making demand, reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and the title company may pay the same to the creditors.
- C. The title company will deduct any independent consideration under Paragraph 7B(1) before disbursing any earnest money to Buyer and will pay the independent consideration to Seller.
- D. If the title company complies with this Paragraph 18, each party hereby releases the title company from all claims related to the disbursal of the earnest money.

- E. Notices under this Paragraph 18 must be sent by certified mail, return receipt requested. Notices to the title company are effective upon receipt by the title company.
- F. Any party who wrongfully fails or refuses to sign a release acceptable to the title company within 7 days after receipt of the request will be liable to the other party for: (i) damages; (ii) the earnest money; (iii) reasonable attorney's fees; and (iv) all costs of suit.
- G.  Seller  Buyer intend(s) to complete this transaction as a part of an exchange of like-kind properties in accordance with Section 1031 of the Internal Revenue Code, as amended. All expenses in connection with the contemplated exchange will be paid by the exchanging party. The other party will not incur any expense or liability with respect to the exchange. The parties agree to cooperate fully and in good faith to arrange and consummate the exchange so as to comply to the maximum extent feasible with the provisions of Section 1031 of the Internal Revenue Code. The other provisions of this contract will not be affected in the event the contemplated exchange fails to occur.

**19. MATERIAL FACTS:** To the best of Seller's knowledge and belief: *(Check only one box.)*

- A. Seller is not aware of any material defects to the Property except as stated in the attached Commercial Property Condition Statement (TAR-1408).
- B. Except as otherwise provided in this contract, Seller is not aware of:
  - (1) any subsurface: structures, pits, waste, springs, or improvements;
  - (2) any pending or threatened litigation, condemnation, or assessment affecting the Property;
  - (3) any environmental hazards or conditions that materially affect the Property;
  - (4) whether the Property is or has been used for the storage or disposal of hazardous materials or toxic waste, a dump site or landfill, or any underground tanks or containers;
  - (5) whether radon, asbestos containing materials, urea-formaldehyde foam insulation, lead-based paint, toxic mold (to the extent that it adversely affects the health of ordinary occupants), or other pollutants or contaminants of any nature now exist or ever existed on the Property;
  - (6) any wetlands, as defined by federal or state law or regulation, on the Property;
  - (7) any threatened or endangered species or their habitat on the Property;
  - (8) any present or past infestation of wood-destroying insects in the Property's improvements;
  - (9) any contemplated material changes to the Property or surrounding area that would materially and detrimentally affect the ordinary use of the Property;
  - (10) any condition on the Property that violates any law or ordinance.

*(Describe any exceptions to (1)-(10) in Paragraph 12 or an addendum.)*

**20. NOTICES:** All notices between the parties under this contract must be in writing and are effective when hand-delivered, mailed by certified mail return receipt requested, or sent by facsimile transmission to the parties addresses or facsimile numbers stated in Paragraph 1. The parties will send copies of any notices to the broker representing the party to whom the notices are sent.

- A. Seller also consents to receive any notices by e-mail at Seller's e-mail address stated in Paragraph 1.
- B. Buyer also consents to receive any notices by e-mail at Buyer's e-mail address stated in Paragraph 1.

**21. DISPUTE RESOLUTION:** The parties agree to negotiate in good faith in an effort to resolve any dispute related to this contract that may arise. If the dispute cannot be resolved by negotiation, the parties will submit the dispute to mediation before resorting to arbitration or litigation and will equally share the costs of a mutually acceptable mediator. This paragraph survives termination of this contract. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.

**22. AGREEMENT OF THE PARTIES:**

- A. This contract is binding on the parties, their heirs, executors, representatives, successors, and permitted assigns. This contract is to be construed in accordance with the laws of the State of Texas.

If any term or condition of this contract shall be held to be invalid or unenforceable, the remainder of this contract shall not be affected thereby.

- B. This contract contains the entire agreement of the parties and may not be changed except in writing.
- C. If this contract is executed in a number of identical counterparts, each counterpart is an original and all counterparts, collectively, constitute one agreement.

D. Addenda which are part of this contract are: *(Check all that apply.)*

- (1) Property Description Exhibit identified in Paragraph 2;
- (2) Commercial Contract Financing Addendum (TAR-1931);
- (3) Commercial Property Condition Statement (TAR-1408);
- (4) Commercial Contract Addendum for Special Provisions (TAR-1940);
- (5) Notice to Purchaser of Real Property in a Water District (MUD);
- (6) Addendum for Coastal Area Property (TAR-1915);
- (7) Addendum for Property Located Seaward of the Gulf Intracoastal Waterway (TAR-1916);
- (8) Information About Brokerage Services (TAR-2501); and
- (9) \_\_\_\_\_

*(Note: Counsel for the Texas Association of REALTORS® (TAR) has determined that any of the foregoing addenda which are promulgated by the Texas Real Estate Commission (TREC) or published by TAR are appropriate for use with this form.)*

E. Buyer  may  may not assign this contract. If Buyer assigns this contract, Buyer will be relieved of any future liability under this contract only if the assignee assumes, in writing, all obligations and liability of Buyer under this contract.

**23. TIME:** Time is of the essence in this contract. The parties require strict compliance with the times for performance. If the last day to perform under a provision of this contract falls on a Saturday, Sunday, or legal holiday, the time for performance is extended until the end of the next day which is not a Saturday, Sunday, or legal holiday.

**24. EFFECTIVE DATE:** The effective date of this contract for the purpose of performance of all obligations is the date the title company receipts this contract after all parties execute this contract.

**25. ADDITIONAL NOTICES:**

- A. Buyer should have an abstract covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a title policy.
- B. If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fees of the district before final execution of this contract.
- C. Notice Required by §13.257, Water Code: "The real property, described below, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned purchaser hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in the notice or at closing of purchase of the real property." The real property is described in Paragraph 2 of this contract.

- D. If the Property adjoins or shares a common boundary with the tidally influenced submerged lands of the state, §33.135 of the Texas Natural Resources Code requires a notice regarding coastal area property to be included as part of this contract.
- E. If the Property is located seaward of the Gulf Intracoastal Waterway, §61.025, Texas Natural Resources Code, requires a notice regarding the seaward location of the Property to be included as part of this contract.
- F. If the Property is located outside the limits of a municipality, the Property may now or later be included in the extra-territorial jurisdiction (ETJ) of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and ETJ. To determine if the Property is located within a municipality's ETJ, Buyer should contact all municipalities located in the general proximity of the Property for further information.
- G. Brokers are not qualified to perform property inspections, surveys, engineering studies, environmental assessments, or inspections to determine compliance with zoning, governmental regulations, or laws. Buyer should seek experts to perform such services. Buyer should review local building codes, ordinances and other applicable laws to determine their effect on the Property. Selection of experts, inspectors, and repairmen is the responsibility of Buyer and not the brokers. Brokers are not qualified to determine the credit worthiness of the parties.
- H. NOTICE OF WATER LEVEL FLUCTUATIONS: If the Property adjoins an impoundment of water, including a reservoir or lake, constructed and maintained under Chapter 11, Water Code, that has a storage capacity of at least 5,000 acre-feet at the impoundment's normal operating level, Seller hereby notifies Buyer: "The water level of the impoundment of water adjoining the Property fluctuates for various reasons, including as a result of: (1) an entity lawfully exercising its right to use the water stored in the impoundment; or (2) drought or flood conditions."

26. **CONTRACT AS OFFER:** The execution of this contract by the first party constitutes an offer to buy or sell the Property. Unless the other party accepts the offer by 5:00 p.m., in the time zone in which the Property is located, on December 4, 2017, the offer will lapse and become null and void.

**READ THIS CONTRACT CAREFULLY.** The brokers and agents make no representation or recommendation as to the legal sufficiency, legal effect, or tax consequences of this document or transaction. **CONSULT** your attorney **BEFORE** signing.

Seller: Divine Farms

Buyer: Mgroup Holdings, Inc.

Mark Musemeche

By: THOMAS MATHEW  
 By (signature): [Signature]  
 Printed Name: THOMAS MATHEW  
 Title: GENERAL PARTNER

By: Mark Musemeche  
 By (signature): [Signature]  
 Printed Name: MARK MUSEMECHE  
 Title: VICE PRESIDENT

By: \_\_\_\_\_  
 By (signature): \_\_\_\_\_  
 Printed Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

By: \_\_\_\_\_  
 By (signature): \_\_\_\_\_  
 Printed Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

**AGREEMENT BETWEEN BROKERS**

(use only if Paragraph 9B(1) is effective)

Principal Broker agrees to pay \_\_\_\_\_ (Cooperating Broker) a fee when the Principal Broker's fee is received. The fee to be paid to Cooperating Broker will be:

- \$ \_\_\_\_\_, or
- \_\_\_\_\_ % of the sales price, or
- \_\_\_\_\_ % of the Principal Broker's fee.

The title company is authorized and directed to pay Cooperating Broker from Principal Broker's fee at closing. This Agreement Between Brokers supersedes any prior offers and agreements for compensation between brokers.

Principal Broker: \_\_\_\_\_ Cooperating Broker: \_\_\_\_\_

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

**ATTORNEYS**

Seller's attorney: \_\_\_\_\_ Buyer's attorney: \_\_\_\_\_

Address: \_\_\_\_\_ Address: \_\_\_\_\_

Phone & Fax: \_\_\_\_\_ Phone & Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_ E-mail: \_\_\_\_\_

Seller's attorney requests copies of documents, notices, and other information:

- the title company sends to Seller.
- Buyer sends to Seller.

Buyer's attorney requests copies of documents, notices, and other information:

- the title company sends to Buyer.
- Seller sends to Buyer.

**ESCROW RECEIPT**

The title company acknowledges receipt of:

- A. the contract on this day December 8, 2017 (effective date);
- B. earnest money in the amount of \$ 25,000.00 in the form of wire on December 8, 2017.

Title company: Fidelity National Title

Address: 9999 Bellaire Blvd Suite 988  
Houston, TX 77036

By: Rosa Richards

Phone & Fax: 713-779-7779/ 713-779-1779

Assigned file number (GF#): FAH17009499

E-mail: closing@fidelity88.com

EXHIBIT B  
SPECIAL PROVISIONS TO CONTRACT

This Exhibit B attaches to the Commercial Contract-Unimproved Property between Divine Farms Seller, and Mgroup Holdings, Inc., Buyer, covering the approximately 12 acres MOL out of 38.199 acres on Moore Road, Stafford ETJ, Fort Bend, Texas.

- A. EARNEST MONEY: Within three (3) business days after the deposit of a fully executed copy of this Agreement with Texas State Title Company, Attention: Cody Sobiesaki, 8807 West Sam Houston Parkway North, Suite 150, Houston Texas, 77040; Telephone: {281} 640-7667 Email:csobiesaki@texasstatetitle.com (the "Title Company"}, Buyer shall deposit with the Title Company the sum of \$25,000 as earnest money for this transaction (the "Initial Earnest Money Installment").

Within 3 days of receipt by the Title Company of the fully executed Commercial Contract, Buyer authorizes the Title Company to release to Seller \$2,500 of the Initial Earnest Money. This portion of the Initial Earnest Money shall be non-refundable to Buyer.

On March 1, 2018, if contract has not been previously terminated by Buyer, Buyer authorizes the Title Company to release to Seller \$2,500 of Initial Earnest Money. This portion of the Initial Earnest Money shall be non-refundable to Buyer.

On May 15, 2018, if contract has not been previously terminated by Buyer, Buyer authorizes the Title Company to release to Seller an additional \$5,000 of Initial Earnest Money. This portion of the Initial Earnest Money shall be non-refundable to Buyer.

On June 15, 2018, if contract has not been previously terminated by Buyer, Buyer authorizes the Title Company to release to Seller an additional \$5,000 of Initial Earnest Money. This portion of the Initial Earnest Money shall be non-refundable to Buyer.

On August 1, 2018, if contract has not been previously terminated by Buyer, Buyer authorizes the Title Company to release to Seller an additional \$10,000 of Initial Earnest Money. This portion of the Initial Earnest Money shall be non-refundable to Buyer.

All Initial Earnest Money deposits and Additional Earnest Money Deposits shall be applicable to the Purchase Price.

B. CLOSING: The Closing (herein so called) shall occur no later than September 30, 2018; provided, however that Buyer shall have the option to extend Closing for up to three (2) thirty day periods by paying to Seller \$5,000.00 in Closing Extension Money for each additional thirty day extension. Any Closing Extension Money shall be nonrefundable to Buyer and shall not be applicable to purchase price.

C. REVIEW PERIOD: Buyer shall have from the Effective Date until August 1, 2018 (the "Review Period") to, among other things (i) obtain and/or perform all property studies and investigations deemed

necessary or desirable by Buyer, (ii) verify availability of utilities for Buyer's use or development of the Property, (iii) determine any platting or re-platting requirements and zoning change requirements for the Property, and (v) obtain a commitment for financing Buyer's acquisition and development of the Property. If platting and a zoning change are necessary, Seller shall cooperate with Buyer with the necessary applications for the change. All costs associated with such applications shall be a Buyer's expense.

EXECUTED to be effective as of the Effective Date.

SELLER:

Divine Farms

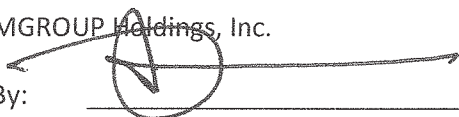
By: \_\_\_\_\_

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

Title: \_\_\_\_\_

PURCHASER:

MGROUP Holdings, Inc.

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

Name: MARK MUSTEMECHÉ

Title: VICE PRESIDENT

Receipt of a fully executed copy of this Agreement and of the Earnest Money specified in Article 5 of this Agreement is hereby acknowledged as of the date hereinafter set forth which date shall be the Effective Date of this Agreement.

Dated: December 8, , 2017.

TITLE COMPANY:

By: Rosa Richards

Name: Rosa Richards

Title: Escrow Officer



necessary or desirable by Buyer, (ii) verify availability of utilities for Buyer's use or development of the Property, (iii) determine any platting or re-platting requirements and zoning change requirements for the Property, and (iv) obtain a commitment for financing Buyer's acquisition and development of the Property. If platting and a zoning change are necessary, Seller shall cooperate with Buyer with the necessary applications for the change. All costs associated with such applications shall be a Buyer's expense.

EXECUTED to be effective as of the Effective Date.

SELLER:

Divine Farms

By: Thomas Mathew

Name: THOMAS MATHEW

Title: GENERAL PARTNER

PURCHASER:

MGROUP  Inc.

By: Mark Mustemacke

Name: MARK MUSTEMACKE

Title: VIC PRESIDENT

Receipt of a fully executed copy of this Agreement and of the Earnest Money specified in Article 5 of this Agreement is hereby acknowledged as of the date hereinafter set forth which date shall be the Effective Date of this Agreement.

Dated: 12/08/2017, 2017.

TITLE COMPANY:

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

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

Title: \_\_\_\_\_

# EXHIBIT "A"

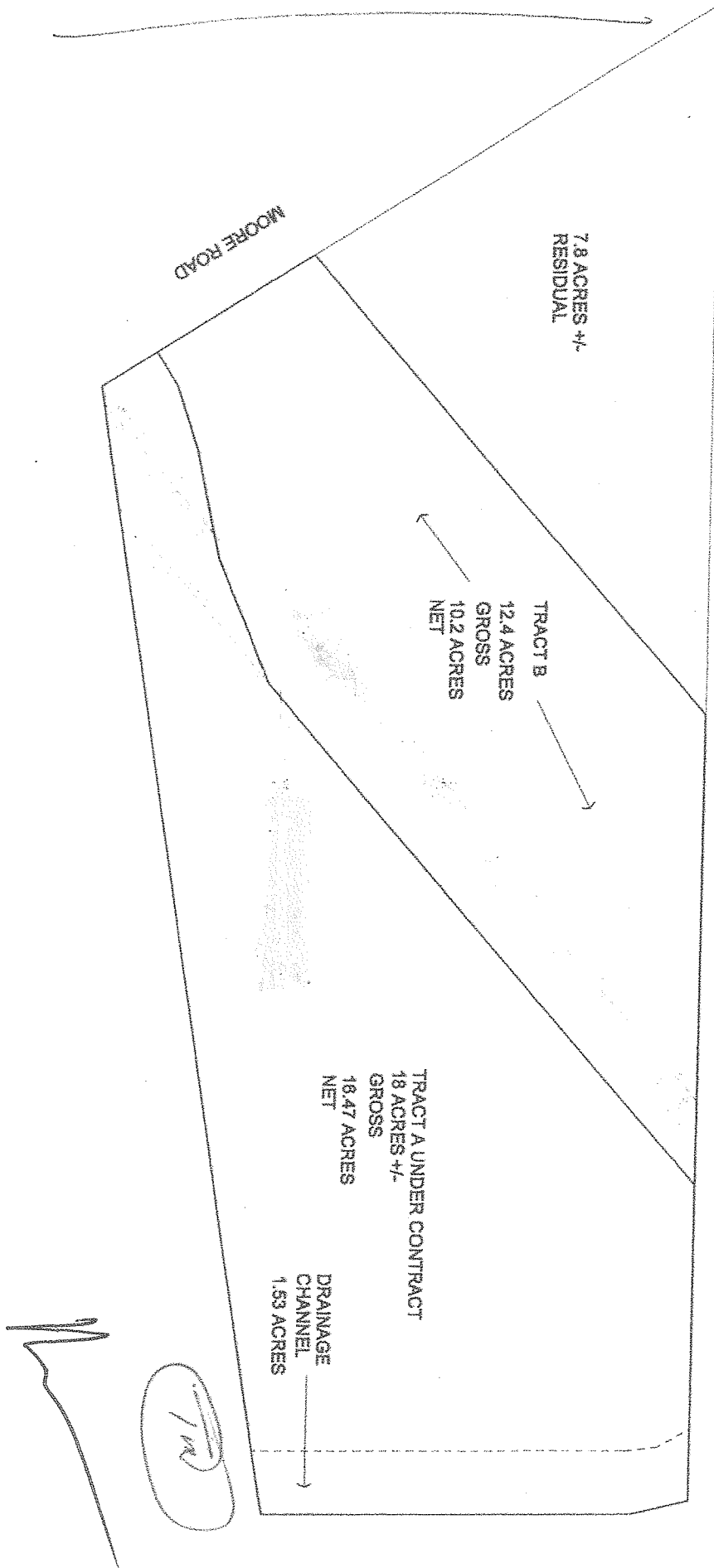


Exhibit H  
Contract for 18043  
Huntington at Miramonte

# THE ELLISON FIRM

## ATTORNEYS AT LAW

302 HOLLEMAN DRIVE EAST, SUITE  
76 COLLEGE STATION, TEXAS  
77840-7000

CHARLES A. (CIU CK)  
ELLISON AMYL CLOUGH\*\*  
BRADLEY T. SHARPLE\*\*  
JEFFREY C. HARRIS\*\*  
SARAH S. BRIDEN, CPA  
GERRY M. BROWN\*\*

\*Board Certified - Estate Planning and Probate Law  
•Board Certified - Commercial Real Estate Law

MAILING ADDRESS  
P.O. BOX 10103  
COLLEGE STATION, TEXAS 77842-0103

TELEPHONE: (979) 696-9889  
FACSIMILE: (979) 693-8819  
EMAIL:  
amy:@ellisonlaw.com

February 26, 2018

Texas Department of Housing & Community Affairs  
Attn: Marni Holloway  
P.O. Box 13941  
Austin, TX 78741

**Re:** Evidence of Site Control - OGC Huntington Miramonte Apartments, LLC

Dear Ms. Holloway:

This firm represents Oldham Goodwin Group, LLC ("OGG") and its affiliated entities. The sole principals and managers of OGG are R. Hunter Goodwin and Casey M. Oldham. Oldham Goodwin Capital, LLC and Oldham Goodwin Development, LLC, the Co-Developer, are wholly owned subsidiaries of OGG. The rights of buyer under the Commercial Contract - Unimproved Property dated October 21, 2017 and the Commercial Contract - Unimproved Property dated December 8, 2017 (collectively, as amended the "Contracts") for the purchase of the Site have been assigned to Oldham Goodwin Capital, LLC. Oldham Goodwin Capital, LLC has the unrestricted right under the terms of the Contracts (paragraph 22.E) to assign the Contracts to the Applicant, OGC Huntington Miramonte Apartments, LP. OGC Huntington Miramonte Apartments, LP will be a Texas limited partnership controlled by R. Hunter Goodwin and Casey M. Oldham in their capacities as Members owning 60% of the general partner, Napa Huntington Miramonte Apartments, LLC. Due to common control and the shared principals between the organizations, Oldham Goodwin Capital, LLC and Applicant constitute Affiliates. This letter is being provided to evidence control of the project Site by Applicant.

Should you have any questions, please do not hesitate to contact the undersigned.

Very truly yours,

  
Amy L. Clough

ALC:km

**cc:** Casey M. Oldham (via email) R.  
Hunter Goodwin (via email)

FIRST AMENDMENT OF  
TWO COMMERCIAL CONTRACTS - UNIMPROVED PROPERTY

This First Amendment (the "Amendment"), executed February 11, 2018, but to be effective as of January 4, 2018, serves to modify and amend (i) that certain Commercial Contract - Unimproved Property between Divine Farms as Seller and MGroup Holdings, Inc. as Buyer, Effective Date October 2, 2017, covering approximately 16 acres out of a 38.199 acres tract (out of a 52.5 acres tract) ("Contract A"); and (ii) that certain Commercial Contract - Unimproved Property between Divine Farms as Seller and MGroup Holdings, Inc. as Buyer, Effective Date December 8, 2017, covering approximately 12.4 acres out of 38.199 acres tract (out of a 52.5 acres tract) ("Contract B"); each in Fort Bend County, Texas, and collectively, the "Contracts." All capitalized words not otherwise defined herein shall have the meanings provided in the Contracts.

Recitals

A. Divine Farms ("Seller") and MGroup Holdings, Inc. ("Buyer") entered into the Contracts for the purpose of providing Buyer with flexibility in establishing the exact location for three

proposed 9% Housing Tax Credit developments: (i) a multifamily development to be known as "The Miramonte" (the "Multifamily Project" or "Tract 1"); (ii) a single family development to be known as "Miramonte Single Living" (the "Single Family Project" or "Tract 2"); and (iii) an elderly project to be developed by a third-party and to be known as "Huntington at Miramonte" (the "Elderly Project" or "Tract 3").

B. Seller and Buyer acknowledge that an approximately 7 acre portion of the land covered by both the Contracts has been assigned to a third party, Oldham Goodwin Capital, LLC ("Assignee"), by Partial Assignment of Commercial Contracts - Unimproved Property dated as of January 4, 2018, for the purpose of developing the Elderly Project. The Assignee will acknowledge and join in the execution of this Amendment to evidence Assignee's concurrence with this Amendment.

C. Buyer has now determined that the Multifamily Project shall be located on approximately 6.4 acres located as shown on Schedule I attached. The finalized location includes a portion of the land described in Contract A, a portion of the land described in Contract B, and additionally includes a portion of approximately 7.8 acres (the "Residue Tract") that was not previously included in the Contracts. The purpose of this Amendment is to add the Residue Tract to the Contracts and to adjust the Purchase Price accordingly.

D. Buyer has now determined that the Single Family Project will be located on approximately 13.4 acres out of Contract A and Contract B, including a portion of the Residue Tract.

E. Buyer and Assignee have agreed that the Elderly Project being developed by the Assignee will be located on approximately 18 acres out of Contract A and Contract B, including a portion of the Residue Tract.

## Amendments

- I. The legal description for Contract B is hereby revised to include the Residue Tract, so that Contract B will hereafter cover approximately 19.9 acres in total.
2. The Purchase Prices in the Contracts are hereby amended to be as follows:
  - (a) The Purchase Price to buy the Multifamily Project site shall be \$3.25 per square foot, as confirmed by agreed survey, net of any dedications required along Moore Road.
  - (b) The Purchase Price to buy the Single Family Project site shall be \$2.25 per square foot, as confirmed by agreed survey, net of any dedications required along Moore Road.
  - (c) The Purchase Price to buy the Elderly Project site shall be \$1.95 per square foot, as confirmed by agreed survey, net of any dedications required along Moore Road.
3. The Contracts are amended to provide that the project sites must be purchased in the following combinations:
  - (a) The Buyer may purchase the Multifamily Project Site, without the Single Family Project site or the Elderly Project site.
  - (b) The Buyer may purchase the Multifamily Project Site and the Single Family Project site, without the Elderly Project site.
  - (c) The Buyer may purchase the Multifamily Project Site, the Single Family Site and the Elderly Site.
4. The Seller will retain a 10-foot fee drainage strip as shown on the survey.
5. Notwithstanding anything to the contrary contained in the Contracts or the Partial Assignment, and taking into consideration the requirements of Section 3 above, any termination under the Contracts shall be a termination of the right to purchase as it relates to Tract I, Tract 2 or Tract 3, and shall not be based upon whether the right being terminated originated in Contract A or Contract B.
6. Notwithstanding anything to the contrary contained in the Contracts or the Partial Assignment, the \$50,000.00 in Earnest Money previously escrowed with the Title Company shall be released to the Seller as follows. All Earnest Money is non-refundable upon release, but is applicable to the Purchase Price of the project indicated.
  - (a) \$5,000.00 has been already released upon execution of the Contracts.
  - (b) On March 1, if the Contracts have not been previously terminated by Buyer, Buyer authorizes the Title Company to release to Seller as follows:

Tract I \$3,500

Tract 2 \$3,500

Tract 3 \$3,500

Total earnest money released to seller as of March 1 is \$15,500

(c) On April 1, if the Contracts have not been previously terminated by Buyer, Buyer authorizes the Title Company to release to Seller as follows:

Tract 1 \$3,500

Tract 2 \$3,500

Tract 3 \$3,500

Total Earnest Money released to Seller as of April 1 is \$26,000

(d) On May 1, if the Contracts have not been previously terminated by Buyer, Buyer authorizes the Title Company to release to Seller as follows:

Tract 1 \$3,500

Tract 2 \$3,500

Tract 3 \$3,500

Total Earnest Money released to seller as of May 1 is \$36,500

(e) On June 1, if the Contracts have not been previously terminated by Buyer, Buyer authorizes the Title Company to release to Seller as follows:

Tract 1 \$4,500

Tract 2 \$4,500

Tract 3 \$4,500

Total Earnest Money released to Seller as of June 1 is \$50,000

7. The Closing shall occur no later than September 30, 2018, provided that the Buyer shall have the option to extend the Closing to October 31, 2018, upon payment of a one-time \$5000.00 closing extension fee prior to September 30, 2018.

8. Except as otherwise amended herein, the Contracts and the Partial Assignment shall remain in full force and effect.

Executed to be effective as of the date set forth above.

SCHEDULE I

SKETCH OF PROJECT SITES





EXHIBIT B

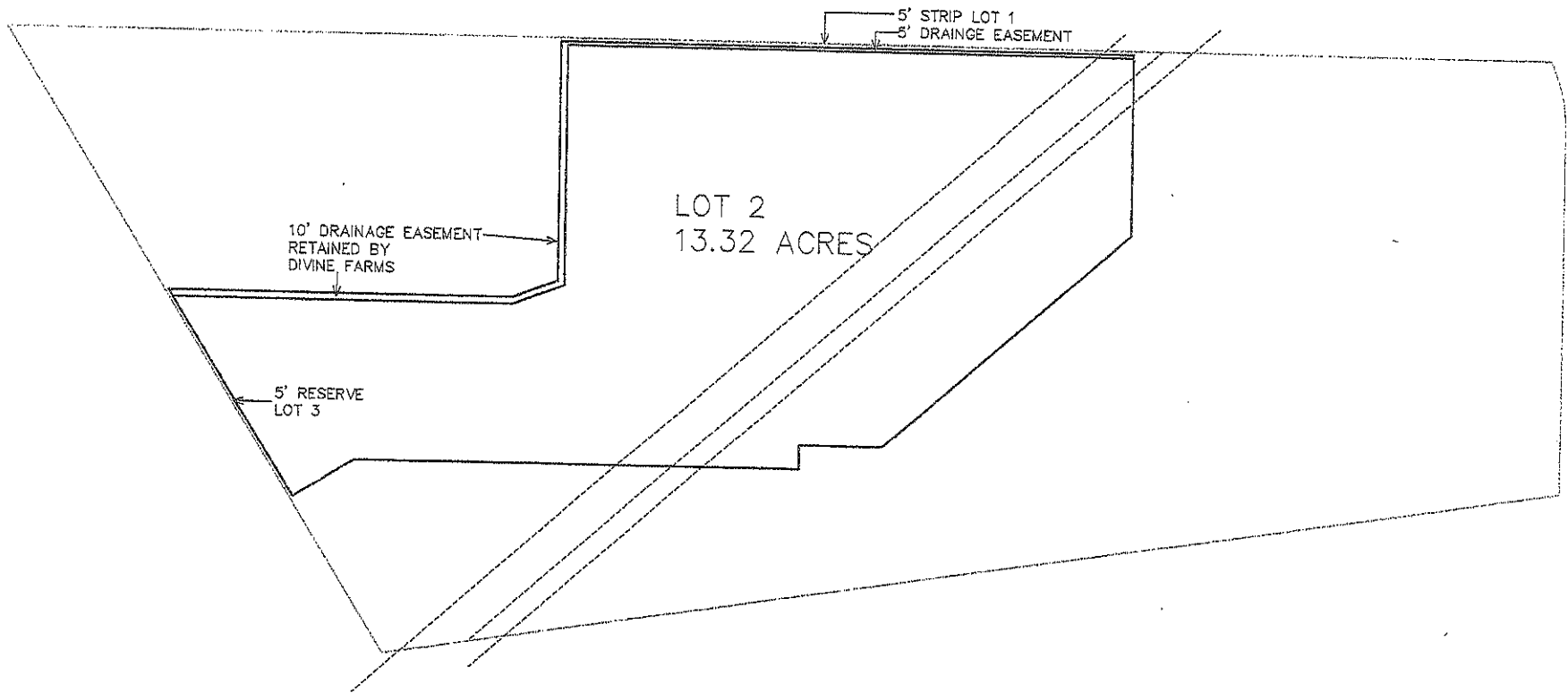
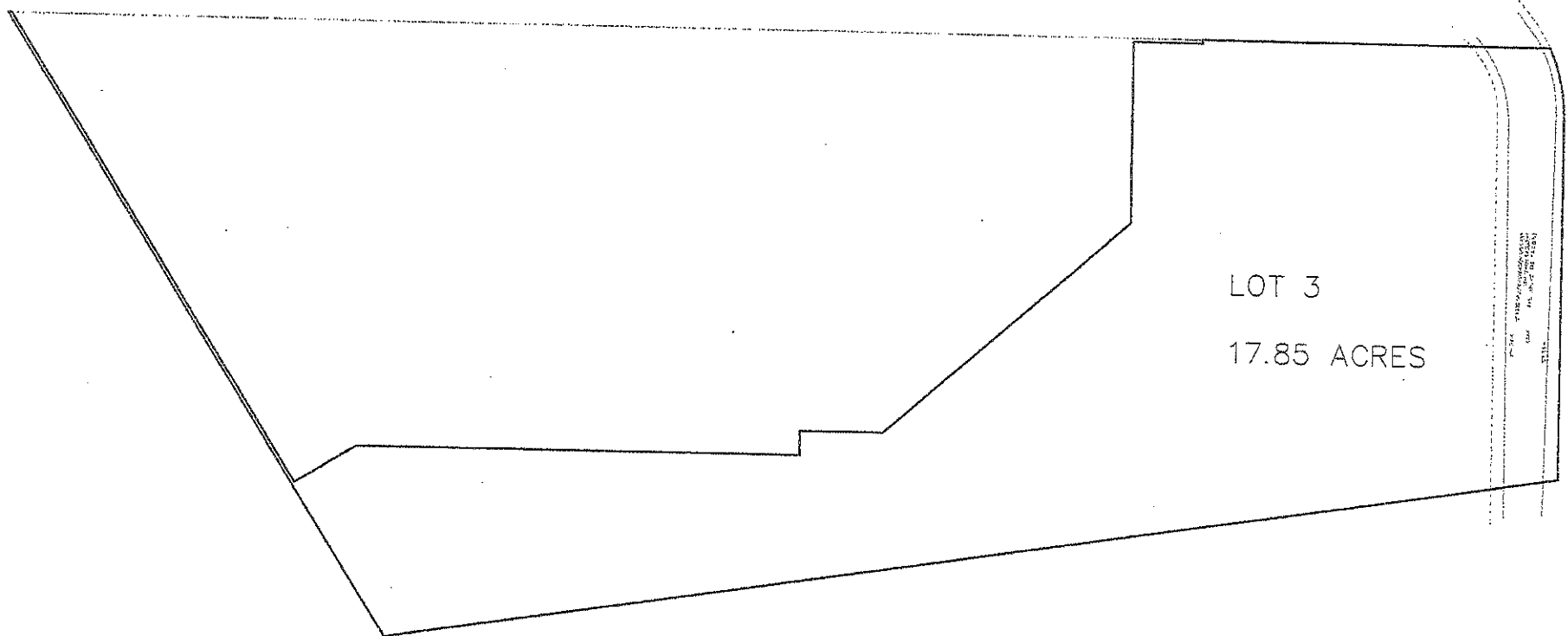


EXHIBIT C

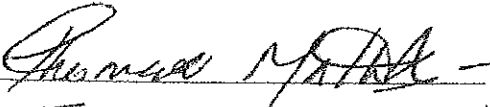


LOT 3

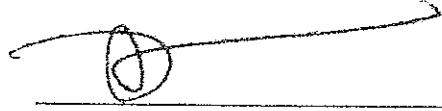
17.85 ACRES

PLANNING AND ZONING  
COMMISSION  
APR 10 2013 10:15 AM

SELLER: DIVINE FARMS, LLC, a Texas limited liability company

By:   
Name: THOMAS MATHEW  
Title: GENERAL PARTNER

BUYER: MGROUP HOLDINGS, INC., a Texas corporation

By:   
Mark D. Musemeche, Vice President

JOINED BY ASSIGNEE TO EVIDENCE CONSENT:

OLDHAM GOODWIN CAPITAL, LLC, a Texas limited liability company

By:   
Casey M. Oldham, Manager

## **PARTIAL ASSIGNMENT OF COMMERCIAL CONTRACTS - UNIMPROVED PROPERTY**

THIS Partial Assignment of two (2) Commercial Contracts - Unimproved Property (the "Assignment") is made and entered into as of the 4th day of January, 2018 (the "Effective Date") is executed by MGROUP HOLDINGS, INC., a Texas corporation ("Assignor"), in favor of OLDHAM GOODWIN CAPITAL, LLC, a Texas limited liability company ("Assignee").

### RECITALS:

A. Pursuant to a Commercial Contract - Unimproved Property (the "16 Acre Contract") between Divine Farms (a/k/a Divine Farms, LLC), as "Seller," and Assignor, as "Buyer," Seller has agreed to sell and convey to Buyer and Buyer has agreed to purchase and accept from Seller that certain 16 acres of land, more or less, being out of a certain 52.5 acre tract of land located in Fort Bend County, Texas (the "16 Acre Property").

B. Pursuant to a Commercial Contract - Unimproved Property (the "12.4 Acre Contract") between Divine Farms (a/k/a Divine Farms, LLC), as "Seller," and Assignor, as "Buyer," Seller has agreed to sell and convey to Buyer and Buyer has agreed to purchase and accept from Seller that certain 12.4 acres of land, more or less, being out of a certain 38.199 acre tract of land located in Fort Bend County, Texas (the "12.4 Acre Property").

C. The 16 Acre Property and the 12.4 Acre Property are depicted together on Exhibit A attached hereto as Tracts A and B, and have been divided to show Tracts I, 2 and 3.

D. Assignor desires to partially sell, assign and transfer to Assignee certain of the rights, title, interests, remedies, powers and benefits of Assignor under the 16 Acre Contract and the 12.4 Acre Contract being approximately 7 +/- acres shown as Tract 2 on Exhibit A attached hereto (the "Property").

E. Assignee desires to purchase and accept the partial assignment of the 16 Acre Contract and the 12.4 Acre Contract (collectively, the "Contracts") and partially assume Assignor's obligations thereunder only to the extent the Contracts relate to the Property so that it can purchase the Property pursuant to the terms of the Contracts.

F. Assignor desires to retain its rights, title, interest and obligations under the Contracts only to the extent the Contracts relate to the remaining approximately 21.4 +/- acres of the 16 Acre Property and the 12.4 Acre Property which is shown as Tracts I and 3 on Exhibit A (collectively, the "Remainder Property").

### AGREEMENTS AND ASSIGNMENT

NOW, THEREFORE, for and in consideration of the above-stated recitals, the respective covenants and agreements Assignor and Assignee set forth below, the benefits flowing between Assignor and Assignee pursuant to this Assignment, Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confirmed by both parties, Assignor and Assignee agree as follows:

1. Assignment. Subject to the terms and conditions of this Assignment, Assignor has TRANSFERRED, SOLD, BARGAINED, and ASSIGNED to Assignee, and by these presents does TRANSFER, SELL, BARGAIN, and ASSIGN unto Assignee (a) all rights, title, interests, powers, claims, benefits, entitlements, privileges and remedies which Assignor has in, to and under the Contracts which apply and relate to the Property, and (b) all rights, powers, claims, benefits, entitlements, privileges and remedies of Assignor in and against \$12,300 of the total Earnest Money deposited or held under the Contracts (the items described in clauses (a) and (b) collectively, the "Purchase Agreement Rights"). Assignor reserves, and does not assign to Assignee, all rights, title, interests, powers, claims, benefits, entitlements, privileges and remedies which Assignor has in, to and under the Contracts and the Earnest Money which are not included in the Purchase Agreement Rights.

The parties agree upon completion of an on-the-ground survey, the metes and bounds prepared in connection therewith will be the agreed upon boundaries for the Property.

2. Assumption of Obligations; Delegation of Rights. As of the Effective Date, Assignee assumes and agrees to discharge and perform the duties and obligations of the Buyer under the Contracts which apply and relate to the Property. Assignor shall be released from any of its duties and obligations regarding the Property under the Contracts by reason of the execution of this Assignment.

3. Earnest Money. Assignor and Assignee agree the sum of Twelve Thousand Three Hundred and No/100 Dollars (\$12,300.00) of the Earnest Money, half deposited with Texas State Title Company and half deposited with Fidelity National Title (collectively, the "Title Company") shall be allocated to the Property (the "Assignment Earnest Money"). The Assignment Earnest Money shall be paid to Seller at the Closing and credited against the Sales Price of the Property, or if this Agreement is terminated, it shall be paid as provided in the Contracts. As Earnest Money is released to the Seller under the Contracts, half of each released portion of the Earnest Money shall be deemed attributable to the Assignment Earnest Money.

4. Seller and Title Company. Each of Seller and the Title Company may rely on this Assignment in all respects and, from and after the Effective Date, may deal with Assignee in all respects relating to the Purchase Agreement Rights without the need of any authorization, joinder or approval by Assignor.

5. Closing under Contracts. This Assignment is expressly conditioned upon (i) Seller's performance under the Contracts, and (ii) the simultaneous closing of the transactions.

6. Counterparts. This Assignment may be executed simultaneously in two or more counterparts and by different parties on different counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument upon execution of a counterpart by each party.

7. Binding Effect. This Assignment shall be binding upon and shall inure to the benefit of Assignor, Assignee and their respective successors and assigns.

8. Special Provision. Assignee acknowledges that this Assignment relates to only a portion of the land under the Contracts and that Assignee's failure to close on the Property could detrimentally affect the Assignor's rights regarding the Remainder Property. Accordingly, Assignee agrees that if it wishes to terminate its right to acquire the Property, it may not do so until it notifies the Assignor of such decision, and the Assignor shall have the option of requiring that Assignee's rights under this Assignment be reassigned to Assignor in exchange for a return to Assignee of all sums paid by Assignee to Assignor pursuant to this Assignment, provided that Assignee shall additionally pay to Assignor an amount equal to any Assignment Earnest Money already released to the Seller under the Contracts.

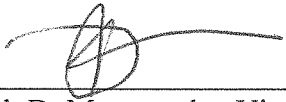
[Signature Page Follows]

EXECUTED as of the Effective Date.

ASSIGNOR:

MGROUP HOLDINGS, INC., a Texas corporation

By:

  
\_\_\_\_\_  
Mark D. Musemeche, Vice President

ASSIGNEE:

OLDHAM GOODWIN CAPITAL, LLC, a Texas limited liability company

By:

\_\_\_\_\_  
Casey M. Oldham, Manager



EXECUTED as of the Effective Date.

ASSIGNOR:

MGROUP HOLDINGS, INC., a Texas corporation

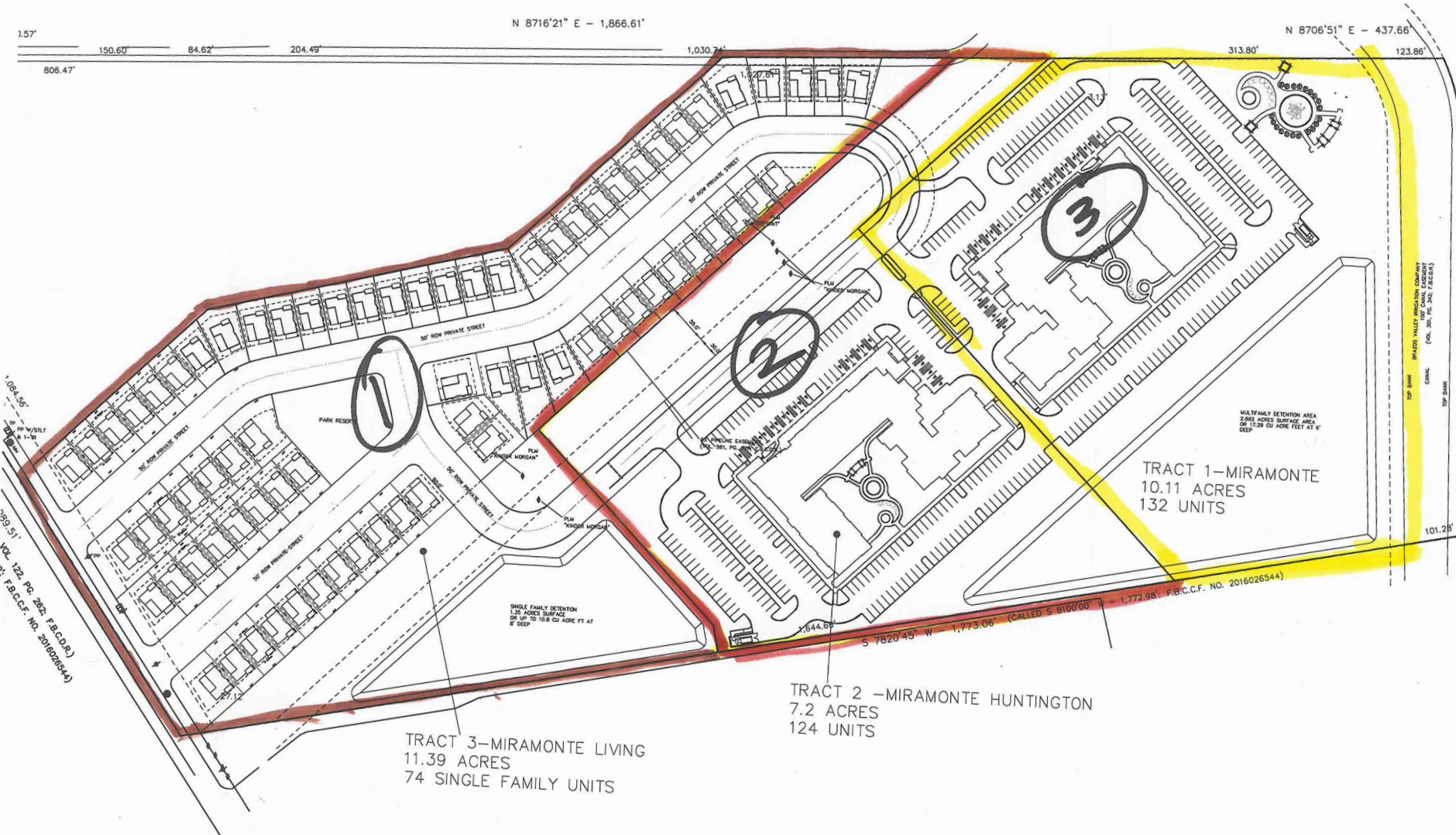
By: \_\_\_\_\_  
Mark D. Musemeche, Vice President

ASSIGNEE:

OLDHAM GOODWIN CAPITAL, LLC, a Texas limited liability company

By: \_\_\_\_\_  
  
Casey M. Oldham, Manager

# Exhibit A



1.57' N 8716'21" E - 1,866.61'  
 150.60' 84.62' 204.43' 1,030.74'  
 806.47' 313.80' 123.86'  
 N 8706'51" E - 437.66'

\U+0394=2428'C  
 R=249.70'  
 L=106.63'  
 CH=S 1447'05" E

S 0233'04" E - 549.20'  
 (CALLED S 0005'44" W - 583.91')  
 F.B.C.C.F. NO. 2016026544)

1,084.56'  
 10' WIDE  
 1-18'  
 70'  
 769.51'  
 VOL. 122, PG. 262, F.B.C.C.F.  
 F.B.C.C.F. NO. 2016026544)

TRACT 3-MIRAMONTE LIVING  
 11.39 ACRES  
 74 SINGLE FAMILY UNITS

TRACT 2 -MIRAMONTE HUNTINGTON  
 7.2 ACRES  
 124 UNITS

TRACT 1-MIRAMONTE  
 10.11 ACRES  
 132 UNITS

SINGLE FAMILY DETENTION  
 1.25 ACRES SURFACE  
 OR UP TO 10.8 CU ACRE FT AT  
 8' DEEP

MULTIFAMILY DETENTION AREA  
 2.88 ACRES SURFACE AREA  
 OR 12.28 CU ACRE FEET AT 8'  
 DEEP

S 7820'45" W 1,773.06' (CALLED S 6100'60"  
 S 1772'58" F.B.C.C.F. NO. 2016026544)

TOP BANK  
 BRAZOS VALLEY IRRIGATION COMPANY  
 CANAL (VOL. 201, PG. 241, F.B.C.C.F.)  
 BOTTOM BANK

101.28'

Exhibit I  
Applicant Input

# COATS | ROSE

A PROFESSIONAL CORPORATION

Exhibit I

TAMEA A. DULA  
OF COUNSEL

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

July 3, 2018

By Email to [sharon.gamble@tdhca.state.tx.us](mailto:sharon.gamble@tdhca.state.tx.us)  
Ms. Sharon Gamble, Administrator  
Housing Tax Credits Competitive Round  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, Texas 78701-2410

RE: #18033 The Miramonte;  
#18043 Huntington at Miramonte; and  
#18047 Miramonte Single Living.

Dear Ms. Gamble:

The above referenced applications are for three (3) projects (the "Projects") that are to be situated on approximately 35 acres purchased from a single seller. The developer of #18033 and #18047 is MGroup Holdings, Inc. (Principal - Mark Musemeche). The developer of #18043 is Oldham, Goodwin Development, LLC, although Mark Musemeche is involved in that application as a consultant and architect. The two General Population Projects (#18033 and #18047) are to be separated by landscape/open space reserves in fee simple strips of land that will be retained by the seller. The fee strips destroy any contiguity between Development Sites and therefore bring the two General Population Projects into compliance with proximity limitations established by §11.3(g) of the 2018 Qualified Allocation Plan ("QAP"). The Huntington at Miramonte (#18043) does not have any issues with contiguity because it is for a different Target Population (Elderly Limitation).

It has come to our attention that during Staffs report on the disposition of Third Party Requests for Administrative Deficiencies ("RFADs") at the June 28, 2018 TDHCA Board Meeting, opposition comments were made concerning the siting of the above-referenced proposed Projects. Much dissent was expressed regarding whether the Development Sites should be considered "contiguous." In that regard, §11.3(g) of the QAP reads:

*(g) Proximity of Development Sites. If two or more Competitive HTC Applications that are proposing Developments serving the same Target Population on contiguous sites are submitted in the same program year, the lower scoring*

9 Greenway Plaza, Suite 1000 Houston, Texas 77046  
Phone: 713-651-0111 Fax: 713-651-0220  
Web: [www.coatsrose.com](http://www.coatsrose.com)

HOUSTON | AUSTIN | DALLAS | SAN ANTONIO | NEW ORLEANS | CINCINNATI

*Application, including consideration of tie-breaker factors if there are tied scores, will be considered a non-priority Application and will not be reviewed unless the higher scoring Application is terminated or withdrawn. [Emphasis added.]*

It is clear that the critical word here is "contiguous." Attached to this letter as Exhibit A are definitions of "contiguous" from three different sources: Black's Law Dictionary Free Online Legal Dictionary 2<sup>nd</sup> Ed.; Merriam-Webster; and the Oxford Dictionaries. The primary meaning, in all instances, is that contiguous items touch, whether along a boundary or at a point. The word is derived from the Latin word *contiguus*, which means "touching" and comes from the verb *contingere*, which is "be in contact."

Mr. Musemeche additionally sought and received written guidance concerning what "contiguous" means in the context of §11.3(g). Your response dated February 7, 2018 was: "If the sites touch at all, no matter how minimal, they are contiguous." Please see the attached Exhibit B.

The complaint being made against these applications is that they followed the letter of the QAP requirement. Section 11.3(g) of the QAP is one of the anti-concentration rules, several of which are statutory requirements, **BUT §11.3(g) IS NOT A STATUTORY REQUIREMENT.** Had the intent been to strictly limit the number of same Target Population developments within an area, then it would have been far more appropriate to have used distances to establish such limitations, as was done with §11.3(b) - Two Mile Same Year Rule, and §11.3(d) - One Mile Three Year Rule, both of which are statutory in nature. Instead, the TD HCA elected to limit the proximity of projects with the same Target Population by prohibiting "contiguity" of sites. If the sites are not "contiguous," they do not fall within the purview of §11.3(g). Here the unambiguous meaning of §11.3(g) is that sites for two developments for the same Target Population in the same year may not touch. The three Development Sites for the above referenced applications are not contiguous, due to the intervening ownership of fee simple title to a strip of land that is being retained by the seller of the sites.

Because these Projects all claimed points for Readiness to Proceed and must therefore close on all financing by October 31<sup>st</sup>, they are all well-advanced in their development. A preliminary plat of the three Development Sites has been prepared and is attached as Exhibit C to this letter. Section One shows lots platted for single family and duplex homes, whereas Sections Two and Three are platted as Unrestricted Reserves because it is anticipated that they will be multifamily construction. Noted on the plat in Section Two is a "Reserve B" (initially thought to be used for drainage, but ultimately determined to be landscape/open space), which is a fee strip that divides Section One and Section Two. Also noted in Section One are "Reserve A" and "Reserve E"

which are landscape and open space strips that lie between Section One and Moore Road. This

Ms. Sharon Gamble, Administrator

July 3, 2018

Page 3

preliminary plat was approved by the City of Stafford Planning and Zoning Commission on April 10, 2018 and by the City Council of Stafford on April 18, 2018. There are no conditions that would preclude the plat from being recorded as shown, which is currently scheduled for the end of August if an award is made. The non-contiguity of Miramonte Village Sections One and Two has been approved by the engineering department of the municipality with jurisdiction over the developments.

Much was made in the Board Meeting regarding the potential for these Projects to be funded in preference to applications located in Houston. We would like to point out that on the most recent 2018 9% Housing Tax Credit Full Application Log dated June 15, 2018, the seven top-scoring applications in Region 6/Urban are all located in Harris County (the top six are in Houston and the seventh in Seabrook), and are requesting an aggregate of \$10,459,230 in tax credits out of the \$13,587,011 in credits available for the entirety of Region 6/Urban. The potential award of credits to the Projects is not going to adversely impact the Houston-Woodlands-Sugar Land Metroplex (the "Metroplex"), because the Projects are also in the Metroplex. These Projects are located in the community of Fifth Street, which is a Census Designated Place within the ETJ of the City of Stafford, in Fort Bend County. If anything, an award of credits to one or more of the Projects would provide some much-needed diversity in Region 6/Urban. The two developers who spoke in opposition to the Projects at the Board Meeting have five applications pending between them, four in Houston and one in Pasadena - all of which are in Harris County.

We note that currently it appears only two of the three Projects are likely to be funded. Huntington at Miramonte (#18043) is an Elderly Limitation development and probably will not be funded because of the limitation on credits that can be awarded to Elderly Limitation applications in Region 6/Urban. Given the credits available in Region 6/Urban per the current Full Application Log, it appears that The Miramonte and Miramonte Single Living present the only opportunity for funding outside of Harris County. These two Projects together will provide an aggregate of 142 units of low-income housing to an area that has never had any housing supported by housing tax credits or private activity bonds, which is by no means an over concentration of affordable units.

We respectfully request that the above circumstances, as well as the unambiguous language of § 1.1.3(g) of the QAP, be taken into consideration in your review of the Projects' compliance with the Proximity of Development Sites requirements of the QAP. These Projects are in a disaster-impacted county, and have claimed Readiness to Proceed points, promising to close on construction and equity financing by October 31<sup>st</sup>. Mr. Musemeche advises that he has already incurred more than \$800,000 on development work needed to meet that pledge, acting in reliance upon the industry-wide understanding of "contiguous" as well as Staffs own interpretation of

Ms. Sharon Gamble, Administrator  
July 3, 2018  
Page4

that word as used in §11.3(g). If the TDHCA now believes that developments with the same Target Population should be farther apart than simply being non-contiguous, then the appropriate action would be to revise the 2019 QAP to make proximity under §11.3(g) limited by distance and not contiguity.

Sincerely,



Tamea A. Dula

Attachments

cc: Mark Musemeche  
Casey M. Oldham  
Hunter Goodwin  
Barry J. Palmer

# EXHIBIT A



# The Law Dictionary

Featuring Black's Law Dictionary Free Online Legal Dictionary 2nd Ed.

Navigation 

AdChoices

- Law Dictionary Legal
- Insurance Claims
- Property Law
- Business Law
- Law Companies
- Car Law

## What is CONTIGUOUS?

In close proximity; in actual close contact Touching; bounded or traversed by. The term is not synonymous with "vicinal." *Plaster Co. v. Campbell*, 89 Va. 396, 16 S. E 274; *Bank v. Hopkins*, 47 Kan. 580, 28 Pac. 000, 27 Am. St. Rep. 309; *Raxedale v. Seip*, 32 La. Ann. 435; *Arkell v. Insurance Co.*, 69 N. Y. 191, 25 Am. Rep. 168.

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2. How to Close a Failed Bank Resolution
3. What Are the Different Types of Insurance?
4. Can You Borrow Against a Term Life Insurance Policy?
5. Understanding Section 79 Plans With Permanent Life Insurance
6. What Is A No-Contact Order?
7. What Does Auto Liability Insurance Cover?
8. PNC Bank Vs. Keybank
9. International Business Law
10. How to Find Low Cost Insurance Carriers

#### Related Legal Terms

CONTIGUOUS UNITED STATES, BANK FAILURE, DE CIAUSO FRACTO, CLOSE, N, QUARE CIAUSUM FREGIT, CANDLESTICK CHART, SETTLEMENT COST, AT THE OPEN ORDER, PARTICIPATING INSURANCE, CANCEIABLE INSURANCE

#### Link to This Definition

Did you find this definition of CONTIGUOUS helpful? You can share it by copying the code below and adding it to your blog or web page.

```
<a href="https://thelawdictionary.org/contiguous/" title="CONTIGUOUS">CONTIGUOUS</a>
```

Written and fact checked by The Law Dictionary

< POWER

POWER OF SALE >



SIGN IN

DICTIONARY

contiguous



WORD OF THE DAY amygdaloid



Home British & World English contiguous

Definition of contiguous in English:

# contiguous



## ADJECTIVE

1 Sharing a common border; touching.

*'the Southern Ocean is contiguous with the Atlantic'*

More example sentences

Synonyms

1.1 Next or together in sequence.

*'five hundred contiguous dictionary entries'*

More example sentences

Synonyms

## Origin

Early 16th century: from Latin *contiguus* 'touching', from the verb *contingere* 'be in contact, befall' (see *contingent*), + *-ous*.

## Pronunciation

**contiguous** /kən'tɪgjuəs/

GET WORD OF THE DAY BY EMAIL

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Weekly Word Watch: civility, poorface, and Schadenfreude



8 words for daydreamers



# EXHIBIT B

----- Forwarded Message -----

**From:** Mark Musemeche <[mgroupinc@sbcglobal.net](mailto:mgroupinc@sbcglobal.net)>  
**To:** Sharon Gamble <[sharon.gamble@tdhca.state.tx.us](mailto:sharon.gamble@tdhca.state.tx.us)>  
**Sent:** Wednesday, February 7, 2018 4:22 PM  
**Subject:** Re: QAP question

Thanks!

Sent from my iPhone

On Feb 7, 2018, at 3:14 PM, Sharon Gamble <[sharon.gamble@tdhca.state.tx.us](mailto:sharon.gamble@tdhca.state.tx.us)> wrote:

If the sites touch at all, no matter how minimal, they are contiguous.

Sent from my iPhone

On Feb 7, 2018, at 1:44 PM, Mark Musemeche <[mgroupinc@sbcglobal.net](mailto:mgroupinc@sbcglobal.net)> wrote:

Hey Sharon-

All yall publishing a FAQ this cycle?

We have a question related to 11.3(g) **Proximity of Development Sites**. “Contiguous” by definition means to have “borders that physically touch” or stated differently, to have a shared common boundary line...correct? If there is any separation of distance between two site’s property lines ( and such separation distance is not owned by the applicants for either site) then the sites are not contiguous?

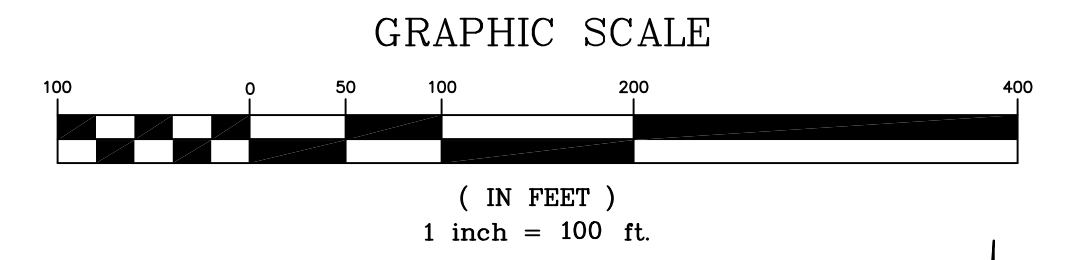
Pretty sure I’m right and this is a simple definition but just wanted to double check!

Take care,

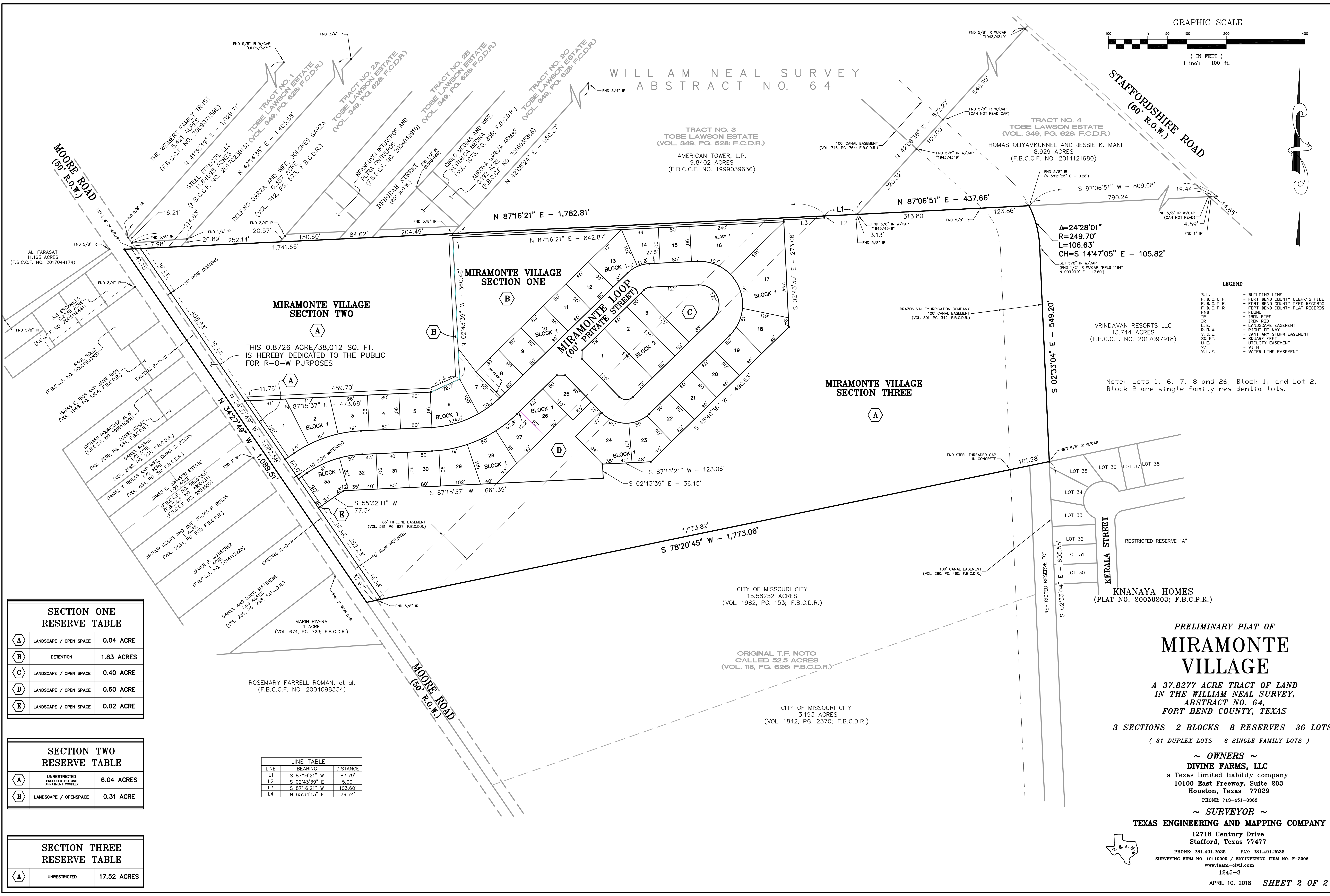
Mark Musemeche , A.I.A.

MGroup  
1013 Van Buren Houston, Texas 77019 713.522.4141 (w) 713.522.9775 (F)  
[mgroupinc@sbcglobal.net](mailto:mgroupinc@sbcglobal.net)

# EXHIBIT C



WILLIAM NEAL SURVEY  
ABSTRACT NO. 64



- LEGEND**
- B.L. - BUILDING LINE
  - F.B.C.C.F. - FORT BEND COUNTY CLERK'S FILE
  - F.B.C.D.R. - FORT BEND COUNTY DEED RECORDS
  - F.B.C.P.R. - FORT BEND COUNTY PLAT RECORDS
  - FND - FOUND
  - IP - IRON PIPE
  - IR - IRON ROD
  - L.E. - LANDSCAPE EASEMENT
  - R.O.W. - RIGHT OF WAY
  - S.S.E. - SANITARY STORM EASEMENT
  - SQ. FT. - SQUARE FEET
  - U.E. - UTILITY EASEMENT
  - W. - WITH
  - W.L.E. - WATER LINE EASEMENT

Note: Lots 1, 6, 7, 8 and 26, Block 1; and Lot 2, Block 2 are single family residential lots.

**SECTION ONE RESERVE TABLE**

A	LANDSCAPE / OPEN SPACE	0.04 ACRES
B	DETENTION	1.83 ACRES
C	LANDSCAPE / OPEN SPACE	0.40 ACRES
D	LANDSCAPE / OPEN SPACE	0.60 ACRES
E	LANDSCAPE / OPEN SPACE	0.02 ACRES

**SECTION TWO RESERVE TABLE**

A	UNRESTRICTED PROPOSED 124 UNIT APARTMENT COMPLEX	6.04 ACRES
B	LANDSCAPE / OPENSACE	0.31 ACRES

**SECTION THREE RESERVE TABLE**

A	UNRESTRICTED	17.52 ACRES
---	--------------	-------------

**LINE TABLE**

LINE	BEARING	DISTANCE
L1	S 87°16'21" W	83.79'
L2	S 02°43'39" E	5.00'
L3	S 87°16'21" W	103.60'
L4	N 65°34'13" E	79.74'

PRELIMINARY PLAT OF  
**MIRAMONTE VILLAGE**

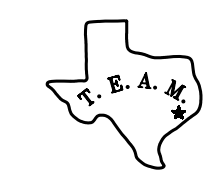
A 37.8277 ACRE TRACT OF LAND  
IN THE WILLIAM NEAL SURVEY,  
ABSTRACT NO. 64,  
FORT BEND COUNTY, TEXAS

3 SECTIONS 2 BLOCKS 8 RESERVES 36 LOTS  
( 31 DUPLEX LOTS 6 SINGLE FAMILY LOTS )

~ OWNERS ~  
**DIVINE FARMS, LLC**  
a Texas limited liability company  
10100 East Freeway, Suite 203  
Houston, Texas 77029  
PHONE: 713-451-0363

~ SURVEYOR ~  
**TEXAS ENGINEERING AND MAPPING COMPANY**  
12718 Century Drive  
Stafford, Texas 77477

PHONE: 281.491.2525 FAX: 281.491.2535  
SURVEYING FIRM NO. 10119000 / ENGINEERING FIRM NO. F-2906  
www.team-civil.com



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