

March 19, 2024

Mr. Cody Campbell  
Director of Multifamily Finance  
Texas Department of Housing and Community Affairs  
221 E. 11<sup>th</sup> Street  
Austin, TX 78701

**RE: Request for Force Majeure for Kirkwood Crossing, #22023**

On behalf of 12000 Bissonnet Propco, L.P., Owner and recipient of a 2023 commitment of low-income housing tax credits for Kirkwood Crossing, we are submitting a request to return our tax credits and have TDHCA reallocate the tax credits in the current year pursuant to the “Force Majeure” provisions in Section 11.6(5) of the 2023 Qualified Allocation Plan (QAP).

Unforeseen Challenges and Efforts to Overcome

The credits are being returned before the issuance of Forms 8609. Kirkwood Crossing has had to manage and contend with sudden unforeseen circumstances outside of the Development Owner’s control. Our development has been impacted by multiple events that have made construction activity impossible and significantly impeded our progress. We’ve overcome pricing volatility, rising construction costs and labor shortages and now are impacted by rule and regulations required by a governmental entity.

Securing Additional Subsidies and Cost Engineering

Our team has worked to value engineer the project design to reduce project costs, but unfavorable market conditions have resulted in a challenging and time-consuming process. Additional operating and capital subsidies have been secured to close the financing gap created since the issuance of the housing tax credit commitment.

Leveraging ARPA Funds to Close Funding Gap

The American Rescue Plan Act (ARPA) was passed by Congress in March 2021 to provide additional relief to address the continued impact of COVID-19 on the economy, public health, state and local governments, individuals, and businesses. ARPA State and Local Fiscal Recovery Funds (SLFRF) can be directed by the jurisdiction receiving the funds so funds can best serve local communities.

Harris County received \$915 million in American Rescue Plan (ARPA) funds from the US Treasury, which must be committed by the end of 2024 and spent by the end of 2026. Harris County allocated funds to serve priorities of health, jobs and education, justice and safety and housing. The first year, or 2021, of the recovery plan focused on immediate relief projects, helping families and small businesses get back on their feet. The second year, or 2022, focused on the launch of strategic, longer-term transformative projects addressing disparities exacerbated during the pandemic. And last year, in 2023, Harris County began to direct investments toward affordable housing.

### Harris County TAMFAP Application and Approval Process

Harris County Community Services Department (HCCSD) released the Harris County Treasury ARPA Multi-Family Acquisition Program (TAMFAP) Request for Proposals (RFP). The RFP contemplated, among other things, that HCCSD would provide funding to acquire land, which it would own and ground lease to the Development Owner. HCCSD expressed a preference that it would serve as the general partner of the Development Owner, providing a tax exemption in conjunction with its participation. The RFP further included Harris County's Affordable Housing Standards for project design and construction, along with the Harris County Minimum Property Standards.

Round 1 TAMFAP applications were processed on a first come first served basis to all interested and eligible from 7/21/2023 to 12/31/2023. Kirkwood Crossing was one of the first respondents to the TAMFRP and applied 8/25/23. We went through four levels of County level review prior to being presented at commissioner's court for approval.

Our application was approved by commissioner's court 11/14/2023. Our next step to secure funding through the ground lease structure was to obtain approval through the Harris County Housing Finance Corporation. This approval was granted in 12/13/2023. After that approval, we received a first draft of an MOU proposing deal terms with HCHFC; it was signed effective as of 2/28/2024.

### Navigating Changes in County and Federal Requirements

Since the award, the County has engaged additional legal counsel and learned that these funds have several associated requirements to meet federal regulations. Specifically, while the RFP indicated that procurement requirements could apply, it provided no guidance on how they would apply. On 1/5/2024, the County sent an email, notifying award recipients that 2 CFR Part 200 would apply, without any further guidance. As we explored this, together with our counsel, we learned that the County's guidelines, attached to the RFP, were not wholly consistent with 2 CFR Part 200, raising questions as to which procurement requirements would apply. Initially, the County advised that procurement could apply to the general contractor, all subcontractors, and even the property manager. In early February, under the advice of its counsel, the County started to change some of its requirements for procurement. Finally, in late February, the County provided both a form Procurement Checklist and a form Transaction Checklist. We are still waiting on other promised guidance from the County for procurement. Our project had gone far down the road with its contractor prior to applying for the County ARPA funds. Compliance with the requirements will cause a delay in our closing and thus delay our ability to place in service by the deadline of 12/31/25.

Other requirements for the County funding are still evolving as of the submission of this request. For instance, we were recently instructed to submit a waiver request for the inclusions of elevators, which are required in the Harris County standards, but not any federal regulations. Examples of changes in requirements during the last few months are in emails attached as Exhibit A. The requirements and changes thereto have caused us to rework structures. Accommodation of HCCSD's requirement for the ground lease and approval for its participation as a general partner will require further TDHCA approval at a subsequent Board meeting.

Concurrently, as we worked through the approval process for this gap financing, we continued with our city permit approvals and finalizing terms with our other funding sources. At this point, we have all financing in place. Our equity investor and debt provider require that we provide at least a 90-day buffer from our completion date to the place in service deadline.

We require additional time to place in service, as we expect that we will not meet the original deadline due to these sudden and unforeseen circumstances created as Harris County implemented its ARPA funding program. A 2024 tax credit allocation would give us the time we need to place in service in 2026. It is therefore imperative to the viability of the project that an extension is obtained.

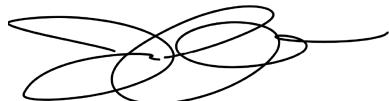
Force Majeure Criteria

As forementioned, the Owner and Development meet all the requirements of Force Majeure In accordance with Section 11.6(5) of the QAP, in that:

- The credits are being returned before the issuance of Forms 8609.
- The delays are not a result of acts or events caused by the negligent or willful act or omission of the Development Owner, Affiliate or a Related Party.
- Changes in Laws, Rules or Regulations are Force Majeure events facing the Development and are materially impeding the construction process.
- Reasonable steps including value engineering to reduce construction costs and locating additional subsidies to close the financing gap were done in effort to minimize and mitigate delay, and the Development Owner substantially fulfilled all obligations not impeded by the event.
- The Force Majeure events prevent the Development Owner from meeting the placement in service requirements of the original allocation.
- The requested current year Carryover Agreement allocates the same amount of credit as which will be returned.

We thank TDHCA for their consideration of our request. The delays imposed by the uncertainty in the construction market and compliance with changing rules are “Force Majeure” events that have materially impeded our ability to meet the place in service deadline. We have been diligent in our efforts to obtain gap financing to address cost increases, but the time required for compliance with new gap financing requests have made the current 2023 awardee timelines unachievable. We have spent \$1.27M in predevelopment activities and will continue to press forward. We are confident that our circumstance satisfies TDHCA’s requirements for a reallocation of Tax Credits under Section 11.6(5) of the 2023 QAP and we request that this matter be considered at the next available Board meeting with a recommendation for approval. If additional information is required, please contact me at [jmullins@impactresidential.com](mailto:jmullins@impactresidential.com) or 713.344.7055.

Sincerely,



Jessica Mullins

Authorized Representative

## EXHIBIT A

### Kirkwood Timeline for Gap Funding from Harris County

Date	Action
March 11, 2021	American Rescue Plan Act approved by Congress
March 26, 2021	Harris County Commissioner's Court establishes priorities for ARPA funds
March 1, 2022	Deadline by which Kirkwood 9% LIHTC application is filed
July 28, 2022	TDHCA Board meeting to award 9% LIHTCs
May 11, 2023	First time a 9% LIHTC deal from 2022 asks for <i>force majeure</i> relief
June 15, 2023	TDHCA Board receives 21 <i>force majeure</i> requests for 9% LIHTC deals from 2022
June 20, 2023	Kirkwood seeks <i>force majeure</i> relief, citing cost increases and need to find additional funding (Note that Kirkwood was aware of the pending ARPA relief funds at this time. Note, also, that timing is consistent with others in the 2022 9% round.)
July 6, 2023	TDHCA Board meeting grants <i>force majeure</i> relief, extending the placement in service deadline to December 31, 2025  8 other applicants from 2022 apply for relief, as well (total is now up to 31)
July 21, 2023	Harris County posts RFP for ARPA funds. Final deadline is December 31, 2023.
August 5, 2023	Kirkwood submits application to Harris County for ARPA funds
November 14, 2023	Harris County Commissioners Court decides the ARPA funds will be granted to Harris County Housing Finance Corporation to be loaned to applicants (Note this decision is what created the procurement issue; need to confirm if this was the first time this was known or whether this was already covered in the RFP.)
December 13, 2023	HCHFC passes a preliminary resolution to form an entity that will acquire the land for the Kirkwood development

January 5, 2024	<p>Kirkwood starts to learn about procurement requirements and how they impact (and delay) the development.</p> <p>While requirements are being communicated progress with our predevelopment contractor are halted. Challenges also arise at the subconsultant level, having already contacted several vendors to inform our construction budget. The process involves obtaining an independent cost estimate, finalizing the RFP with the county, hosting a preproposal meeting, responding to questions, receiving, and evaluating proposals, and negotiating the contract. Final approval from the County is required. Meeting requirements from Harris County has consumed valuable time and paused our ability to move forward.</p>
January 23, 2024	HCHFC produces an MOU, including the terms of the ARPA funding
February 20, 2024	Kirkwood submits an exception request for Harris County Minimum Property Standards.
February 28, 2024	MOU is signed
March 1, 2024	With an 18-month construction schedule, a 90-day buffer required by the investor, and no HCHFC documents in sight, Kirkwood has no choice but to apply for <i>force majeure</i> relief

## Jessica Mullins

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**From:** Sen, Rupa (CSD) <Rupa.Sen@csd.hctx.net>  
**Sent:** Friday, January 5, 2024 7:49 AM  
**To:** Jessica Mullins  
**Subject:** Kirkwood Crossing 2 CFR Part 200  
**Attachments:** 0009\_1\_Backup CC Order for Kirkwood Crossing.pdf

### EXTERNAL

After in-depth discussions with our legal team, HCD has determined that compliance with all ARPA SLFRF requirements, including 2 CFR Part 200, is required on Harris County ARPA Multifamily projects. HCD is aware some other local governments using ARPA funds may not require compliance with 2 CFR Part 200, but we note that ARPA allows for use of funds under multiple eligibility categories. One eligibility category for ARPA, the Revenue Replacement category, does not require compliance with 2 CFR Part 200 (See 2023 Interim Final Rule (<https://home.treasury.gov/system/files/136/2023-Interim-Final-Rule.pdf> [home.treasury.gov]) and 2022 Final Rule (<https://www.govinfo.gov/content/pkg/FR-2022-01-27/pdf/2022-00292.pdf> [govinfo.gov])). However, the ARPA funds allocated to HCD for the ARPA multifamily program are not under the Revenue Replacement category (nor can the category be modified), and consequently all ARPA requirements must be followed.

We note that HOME and CDBG programs both provide express authorization that may allow certain eligible developers of eligible projects to be exempt from some federal procurement requirements, including 2 CFR Part 200, but these express authorizations are not available under ARPA (See, for example, HUD NSP Policy Alert: Guidance on the Procurement of Developers and Subrecipients regarding CDBG funding and 24 CFR Part 92, including definition of "subrecipient" and "Community housing development organization" under 24 CFR 92.2, regarding HOME). ARPA, however, expressly requires compliance with 2 CFR Part 200, does not exclude developers/CHDO's from the definition of subrecipient, and defines beneficiaries as "households and individuals" (See 2022 Final Rule: "§35.6 Eligible uses. (a) In general. Subject to §§35.7 and 35.8, a recipient may use funds for one or more of the purposes described in paragraphs (b) through (f) of this section. Further, while the U.S. Department of Treasury and HUD issued joint guidance for presumptively-eligible affordable housing projects, please note that this provides only for project eligibility and does not exempt the projects from following the ARPA requirements.

Please note that compliance with 2 CFR Part 200 may look different depending on the deal structure for any particular project. HCD will work with our legal team to provide exhibits to your construction and development agreements that identify what requirements are applicable to your particular deal. In short, 2 CFR Part 200 will require federally-compliant competitive formal procurement of some kind in every Harris County ARPA program project, but this does not necessarily mean that every subcontractor on a project must be formally procured. We also note that one benefit of ARPA is that it does not require compliance with Section 3 or Davis Bacon in most instances, so may actually be less burdensome on affordable housing projects with regard to compliance reporting.



**Rupa Sen**  
Deputy Director, Multi-Family Housing and  
Community Development  
Email: [rupa.sen@csd.hctx.net](mailto:rupa.sen@csd.hctx.net)  
Phone: 832-927-4753  
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## Jessica Mullins

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**From:** Sen, Rupa (CSD) <Rupa.Sen@csd.hctx.net>  
**Sent:** Wednesday, February 7, 2024 9:43 AM  
**To:** Logan Kieweg; Jessica Mullins  
**Cc:** Drra Purnell  
**Subject:** 2 CFR 200- Kirkwood

**EXTERNAL**

Good morning, we would like to meet with you with our outside counsel, Derra Purnell to discuss 2CFR 200 and our internal compliance component. Would you be available on Feb 20<sup>th</sup> at 2.00 pm ( Central time ) for 30 min?

Thank you,



**Rupa Sen**  
Deputy Director, Multi-Family  
Development  
Email: [rupa.sen@csd.hctx.net](mailto:rupa.sen@csd.hctx.net)  
Phone: (346)-689-4013

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Houston, Texas 77002  
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[\[csd.harriscountytexas.gov\]](http://csd.harriscountytexas.gov)

New requirements released by Harris county. Still under development as of the submission of this request.

## Jessica Mullins

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**From:** Sen, Rupa (CSD) <Rupa.Sen@csd.hctx.net>  
**Sent:** Wednesday, February 21, 2024 1:41 PM  
**To:** Jessica Mullins  
**Cc:** Logan Kieweg  
**Subject:** FW: Kirkwood Crossing - MOU  
**Attachments:** HCD MF Procurement - Developer Checklist-c1.docx

### EXTERNAL

See attached.

Rupa Sen  
Deputy Director, Multi-Family Community Services Department  
Cell (346) 689-4013

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**From:** Sen, Rupa (CSD)  
**Sent:** Wednesday, February 21, 2024 11:55 AM  
**To:** Prihoda, Andy <[andrew.prihoda@bracewell.com](mailto:andrew.prihoda@bracewell.com)>  
**Cc:** Drra Purnell <[derra.purnell@bbklaw.com](mailto:derra.purnell@bbklaw.com)>  
**Subject:** RE: Kirkwood Crossing - MOU

Attached please find the Schedule 4 that goes with the additional language B 9. If you can circulate that. Thank you Andy.

Rupa Sen  
Deputy Director, Multi-Family Community Services Department  
Cell (346) 689-4013

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**From:** Prihoda, Andy <[andrew.prihoda@bracewell.com](mailto:andrew.prihoda@bracewell.com)>  
**Sent:** Wednesday, February 21, 2024 11:40 AM  
**To:** Richardson, Christine <[CRichardson@lockelord.com](mailto:CRichardson@lockelord.com)>; Logan Kieweg <[lkieweg@impactresidential.com](mailto:lkieweg@impactresidential.com)>; Jessica Mullins <[jmullins@impactresidential.com](mailto:jmullins@impactresidential.com)>; Morrow, Richard D. <[rmorrow@lockelord.com](mailto:rmorrow@lockelord.com)>; Bast, Cynthia L. <[CBast@lockelord.com](mailto:CBast@lockelord.com)>  
**Cc:** Bowes, Elizabeth <[elizabeth.bowes@bracewell.com](mailto:elizabeth.bowes@bracewell.com)>; Plummer, James <[james.plummer@bracewell.com](mailto:james.plummer@bracewell.com)>; Martinez, Rene (CSD) <[Rene.Martinez@csd.hctx.net](mailto:Rene.Martinez@csd.hctx.net)>; Keenan, Randy (CAO) <[Randy.Keenan@harriscountytx.gov](mailto:Randy.Keenan@harriscountytx.gov)>; Greathouse, Summer <[summer.greathouse@bracewell.com](mailto:summer.greathouse@bracewell.com)>; Drra Purnell <[derra.purnell@bbklaw.com](mailto:derra.purnell@bbklaw.com)>; Sen, Rupa (CSD) <[Rupa.Sen@csd.hctx.net](mailto:Rupa.Sen@csd.hctx.net)>; Borders, Samuel (CSD) <[Samuel.Borders@csd.hctx.net](mailto:Samuel.Borders@csd.hctx.net)>; Koerner, Rachel <[rachel.koerner@bracewell.com](mailto:rachel.koerner@bracewell.com)>; Alex Waterbury <[awaterbury@impactresidential.com](mailto:awaterbury@impactresidential.com)>  
**Subject:** RE: Kirkwood Crossing - MOU

Thanks all – updated (presumed final) draft and CPO redline is attached. This draft incorporates all developer comments *except as noted below*, along with an update requested by the County to include a diligence list relating to procurement and construction contract requirements required for ARPA compliance.

Chris – the one change we cannot accept is the change requested in K.1.ii. The HFC needs to retain its discretion not to participate in the transaction in whatever capacity and for whatever reason, which event would result in a termination of the MOU.

## Jessica Mullins

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**From:** Derra Purnell <Derra.Purnell@bbklaw.com>  
**Sent:** Wednesday, March 13, 2024 2:03 PM  
**To:** Sen, Rupa (CSD); Logan Kieweg; Jessica Mullins  
**Cc:** Tyler McIntosh; Munerlyn, Kynira (CSD)  
**Subject:** RE: Kirkwood internal compliance documents

### EXTERNAL

Jessica,

I am working on getting you answers, but answers to those questions are a little more involved than it might seem. I will try to get answers out ahead of the meeting if at all possible, but will answer them on the call if I cannot get to you before that.

 To help protect your privacy, Microsoft Office has automatically redacted this file for you.

**Derra [bbklaw.com] Purnell [bbklaw.com]**

Of Counsel  
derra.purnell@bbklaw.com  
T: (713) 997-8644 | C: (214) 405-0733  
bbklaw.com [bbklaw.com] |  

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**From:** Sen, Rupa (CSD) <Rupa.Sen@csd.hctx.net>  
**Sent:** Wednesday, March 13, 2024 1:58 PM  
**To:** Logan Kieweg <lkieweg@impactresidential.com>; Jessica Mullins <jmullins@impactresidential.com>  
**Cc:** Tyler McIntosh <tm McIntosh@starwood.com>; Derra Purnell <Derra.Purnell@bbklaw.com>; Munerlyn, Kynira (CSD) <Kynira.Munerlyn@csd.hctx.net>  
**Subject:** RE: Kirkwood internal compliance documents

**CAUTION - EXTERNAL SENDER.**

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That is our goal with your team. Thanks

Rupa Sen  
Deputy Director, Multi-Family Community Services Department  
Cell (346) 689-4013

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**From:** Logan Kieweg <lkieweg@impactresidential.com>  
**Sent:** Wednesday, March 13, 2024 1:56 PM  
**To:** Sen, Rupa (CSD) <Rupa.Sen@csd.hctx.net>; Jessica Mullins <jmullins@impactresidential.com>  
**Cc:** Tyler McIntosh <tm McIntosh@starwood.com>; Derra Purnell <derra.purnell@bbklaw.com>; Munerlyn, Kynira (CSD) <Kynira.Munerlyn@csd.hctx.net>  
**Subject:** RE: Kirkwood internal compliance documents

Hey Derra –

Could you please address the questions Jessica presented below prior to our call on Tuesday?

We believe that would result in a more productive call.

Thanks in advance,

**Logan Kieweg | Director of Development**  
**Impact Residential Development**  
414-559-5376



---

**From:** Sen, Rupa (CSD) <[Rupa.Sen@csd.hctx.net](mailto:Rupa.Sen@csd.hctx.net)>

**Sent:** Tuesday, March 12, 2024 11:48 AM

**To:** Jessica Mullins <[jmullins@impactresidential.com](mailto:jmullins@impactresidential.com)>; Logan Kieweg <[lkieweg@impactresidential.com](mailto:lkieweg@impactresidential.com)>

**Cc:** Tyler McIntosh <[tmcmintosh@starwood.com](mailto:tmcmintosh@starwood.com)>; Drra Purnell <[derra.purnell@bbklaw.com](mailto:derra.purnell@bbklaw.com)>; Munerlyn, Kynira (CSD) <[Kynira.Munerlyn@csd.hctx.net](mailto:Kynira.Munerlyn@csd.hctx.net)>

**Subject:** Re: Kirkwood internal compliance documents

**EXTERNAL**

Good morning, we have a slot next Tuesday if you would like to join at 2 o'clock so we can discuss your questions below. Please let me know if the time would work and I will send you and the team to talk to Derra and myself.

Thank you,  
Rupa Sen  
Deputy Director  
(346) 689-4013

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**From:** Jessica Mullins <[jmullins@impactresidential.com](mailto:jmullins@impactresidential.com)>

**Sent:** Thursday, March 7, 2024 2:38:44 PM

**To:** Logan Kieweg <[lkieweg@impactresidential.com](mailto:lkieweg@impactresidential.com)>; Sen, Rupa (CSD) <[Rupa.Sen@csd.hctx.net](mailto:Rupa.Sen@csd.hctx.net)>

**Cc:** Tyler McIntosh <[tmcmintosh@starwood.com](mailto:tmcmintosh@starwood.com)>; Drra Purnell <[derra.purnell@bbklaw.com](mailto:derra.purnell@bbklaw.com)>; Munerlyn, Kynira (CSD) <[Kynira.Munerlyn@csd.hctx.net](mailto:Kynira.Munerlyn@csd.hctx.net)>

**Subject:** RE: Kirkwood internal compliance documents

Afternoon everyone, we continue to work through our strategy to comply with CFR 200.

I have a few follow up questions to round out our understanding.

- Q: Other than advertising the opportunity to bid to the subcontractor community, please identify any other requirements associated with the "publication and posting" requirements for the subcontractor bidding process.
  - A: Place the bid opportunity publicly (in the Chronicle) and post on your website. The opportunity must be published at least once and the opportunity available for 30 days. [please correct my understanding if this is inaccurate]
- Q: Please provide more information regarding the requirement to post a 5% bid bond and confirm whether this obligation is satisfied by the general contractor's posting of a 100% payment and performance bond.
- Q: Please clarify the County's expectations regarding the sealed bid procurement process.

- Q: Can the bidding take place after the construction contract is executed and project financing closes (i.e., during the project) or must the bidding process take place pre-closing?
  - A: The bidding may take place after closing on less impactful line items (like signage) where we can hold an allowance while we procure. The guidance we've received is to bid prior to closing. [please correct my understanding if this is inaccurate]
- Q: Please confirm whether the County imposes any limitation on the calculation of the General Contractor's contractual mark-up applied to the costs invoiced by its subcontractors and suppliers.

Regards,  
Jess

**Jessica Mullins | President**  
**Impact Residential Development**

Mobile: +1 (713) 344-7055  
Schedule time with me: <https://calendly.com/jessicamullins/calendly.com>

**From:** Logan Kieweg <[lkieweg@impactresidential.com](mailto:lkieweg@impactresidential.com)>

**Sent:** Friday, March 1, 2024 10:17 AM

**To:** Sen, Rupa (CSD) <[Rupa.Sen@csd.hctx.net](mailto:Rupa.Sen@csd.hctx.net)>; Jessica Mullins <[jmullins@impactresidential.com](mailto:jmullins@impactresidential.com)>

**Cc:** Tyler McIntosh <[tmcintosh@starwood.com](mailto:tmcintosh@starwood.com)>; Drra Purnell <[derra.purnell@bbklaw.com](mailto:derra.purnell@bbklaw.com)>; Munerlyn, Kynira (CSD) <[Kynira.Munerlyn@csd.hctx.net](mailto:Kynira.Munerlyn@csd.hctx.net)>

**Subject:** RE: Kirkwood internal compliance documents

Morning. Received – we are working on them. Thanks, Logan.

**Logan Kieweg | Director of Development**

**Impact Residential Development**

414-559-5376



**From:** Sen, Rupa (CSD) <[Rupa.Sen@csd.hctx.net](mailto:Rupa.Sen@csd.hctx.net)>

**Sent:** Friday, March 1, 2024 10:06 AM

**To:** Jessica Mullins <[jmullins@impactresidential.com](mailto:jmullins@impactresidential.com)>; Logan Kieweg <[lkieweg@impactresidential.com](mailto:lkieweg@impactresidential.com)>

**Cc:** Drra Purnell <[derra.purnell@bbklaw.com](mailto:derra.purnell@bbklaw.com)>; Munerlyn, Kynira (CSD) <[Kynira.Munerlyn@csd.hctx.net](mailto:Kynira.Munerlyn@csd.hctx.net)>

**Subject:** RE: Kirkwood internal compliance documents

**EXTERNAL**

Good morning, how are these coming along ???

Rupa Sen  
Deputy Director, Multi-Family Community Services Department  
Cell (346) 689-4013

**From:** Sen, Rupa (CSD)

**Sent:** Tuesday, February 20, 2024 2:24 PM

**To:** Jessica Mullins <[jmullins@impactresidential.com](mailto:jmullins@impactresidential.com)>; Logan Kieweg <[lkieweg@impactresidential.com](mailto:lkieweg@impactresidential.com)>

**Cc:** Drra Purnell <[derra.purnell@bbklaw.com](mailto:derra.purnell@bbklaw.com)>; Munerlyn, Kynira (CSD) <[Kynira.munerlyn@csd.hctx.net](mailto:Kynira.munerlyn@csd.hctx.net)>

**Subject:** Kirkwood internal compliance documents

Jessica following up from our call this afternoon. I have attached for your completion prior to closing:

1. Cover letter that handles the compliance piece.
2. Internal control check list
3. Pre - Award risk questionnaire
4. Contractor vs. Subrecipient checklist

We will also require from you “ program chart organization” and label as subrecipient, contractor and sub-contractor.

If you have any questions, please let Derra and the rest of the team know.

Thank you,



**Rupa Sen**  
Deputy Director, Multi-Family  
Development  
Email: [rupa.sen@csd.hctx.net](mailto:rupa.sen@csd.hctx.net)  
Phone: (346)-689-4013

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March 18, 2024

Mr. Cody Campbell  
Director of Multifamily Finance  
Texas Department of Housing and Community Affairs  
221 E. 11<sup>th</sup> Street  
Austin, TX 78701

RE: Support for Request for Force Majeure for Kirkwood Crossing, #22023

National Equity Fund, Inc. (NEF) is participating in the above referenced project as the Limited Partner. As a standard underwriting guideline, NEF (and our investor) require at least a 90 day cushion from the end of the construction schedule to the Placed in Service expiration date (PIS). The 2023 9% credits result in a PIS of December 30, 2025. Given the involvement of Harris County and current construction environment, NEF will require a 12 month PIS extension to December 30, 2026 prior to closing the partnership. NEF remains fully committed to Kirkwood Crossing Apartments with the vast majority of our due diligence complete.

Sincerely,



Jason Aldridge  
Managing Director



Ray Miller  
Vice President  
4576 Research Forest Drive  
The Woodlands, TX 77381

March 18, 2024

12000 Bissonnet Propco L.P.  
Impact Residential Development  
Jessica Mullins  
400 Galleria Parkway, Suite 1450  
Atlanta, GA 33039

RE: Kirkwood Crossing Apartments

Dear Ms. Mullins,

Zions Bancorporation, N.A dba Amegy Bank (“Bank”) is interested in providing financing for Kirkwood Crossing Apartments. The Bank has issued a term sheet representing the preliminary interest in exploring a credit arrangement, however the term sheet is non-binding on the Bank and addressee. The terms proposed are subject to revision at the Bank’s discretion and final loan documents may contain additional or different terms, covenants, and conditions.

As part of its routine underwriting criteria, Amegy insists on maintaining a minimum 90-day buffer following the construction timeline before the deadline for Placed in Service (PIS). The allocation of 2023 9% credits is subject to a Placed in Service deadline of December 30, 2025.

However, due to the participation of Harris County and additional time required to ensure compliance with its requirements, the Bank deems it necessary to extend the PIS deadline by 12 months to December 30, 2026, before proceeding to financial closing. Amegy is dedicated to the success of the Kirkwood Crossing Apartments, having finalized our due diligence, including securing approval from our investment committee.

A handwritten signature in black ink, appearing to read "Ray J. Miller".

Ray Miller  
Vice President



## HARRIS COUNTY COMMUNITY SERVICES DEPARTMENT

Thao Costis, Executive Director

To whom it may concern,

Texas Department of Housing and Community Affairs- Force Majeure Request

When Harris County became aware it would receive approximately \$915 million of American Rescue Plan Act (ARPA) funds in March 2021, it established a plan for the deployment of those funds in the following Focus Areas: Health, Housing, Jobs & Education, and County Operations. The County sought community engagement to create an equitable framework. Necessarily, the County prioritized funding for immediate needs, but pursued planning for longer-term transformational investments on a parallel track.

In 2021, the County created programs providing economic relief for low-income households for basic needs, assistance for small businesses, funding for supportive services for those experiencing homelessness, vaccine incentives, and relief for the court system.<sup>1</sup>

Through 2022, the County established preferred outcomes for its Focus Areas. An integrated team was created for each Focus Area, to engage in additional outreach and research before recommending any particular investments to the County's steering committee. In the Housing Focus Area, the County sought to:

- reduce the number of persons experiencing homelessness
- increase the supply of affordable housing
- increase housing stability for low-income households
- enable successful transition out of the criminal justice system
- increase access to clean drinking water and functional sewer systems, especially in underserved communities

In these areas, the County approved funding for supportive housing, the addition of staff members to implement the programs, and the engagement of professionals to study infrastructure needs. The

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<sup>1</sup> Harris County 2021 Recovery Plan Performance Report

[https://harriscountyarpa.org/Portals/arpa/Documents/SLFRF\\_Recovery\\_Plan\\_Performance\\_Report.pdf](https://harriscountyarpa.org/Portals/arpa/Documents/SLFRF_Recovery_Plan_Performance_Report.pdf)

County further began to establish program guidelines and seek third party contractors to assist with the implementation of RFPs to expand the availability of affordable housing.<sup>2</sup>

For 2023, the County committed to substantial investment in affordable housing development.<sup>3</sup> It created the Harris County Treasury ARPA Multi-Family Acquisition Program Request for Proposal (RFP), published July 21, 2023, with an application period extending to December 31, 2023. At the time Harris County created this RFP, it did not anticipate that so many applicants would be seeking gap funding for projects that were already underway, particularly those that had received 9% low-income housing tax credits (LIHTCs). This requires special considerations for federal regulatory issues, including procurement requirements for construction contractors and subcontractors. The County hired special counsel for this undertaking. With the assistance of counsel, the County is working as quickly as possible to address questions and provide guidance so that the applicants can proceed. Admittedly, the County's guidance for its applicants has evolved since the RFP was published.

Many other applicants for the ARPA funds were applying for reservations in the Bond Review Board lottery. A number of them receive reservations in January and now have hard closing deadlines in July. The nature of these deadlines is that the County must prioritize processing and closing the transactions using bonds ahead of those using 9% LIHTCs.

Per the American Rescue Plan Act, the County must commit all of its funding by December 31, 2024, and it is on track to do. Having implemented its own pandemic-related programs, we know TDHCA understands the many levels of work required to implement assistance across diverse populations and industry sectors, with transparency and accountability. Consistent with TDHCA's statutory purpose to assist local governments with providing essential services, Harris County seeks TDHCA's cooperation. We respectfully request that you act favorably on *force majeure* relief for 9% LIHTC applicants to allow the County to implement its funds for these developments.

Respectfully,  
Sam Borders, Director

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<sup>2</sup> Harris County 2022 Recovery Plan Performance Report  
[https://harriscountyarpa.org/Portals/arpa/Documents/7\\_27\\_SLFRF\\_Recovery\\_Plan\\_FINAL.pdf](https://harriscountyarpa.org/Portals/arpa/Documents/7_27_SLFRF_Recovery_Plan_FINAL.pdf)

<sup>3</sup> Harris County 2023 Recovery Plan Performance Report <https://harriscountyarpa.org/Portals/arpa/Documents/FINAL%20-202023%20Harris%20County%20ARPA%20Recovery%20Plan%20.pdf>