

CSH Avenue Heights, Ltd.

3701 Kirby Drive, Suite 860
Houston, Tx 77098

June 28, 2024

TDHCA
221 E. 11th Street
Austin, TX 78701
Attn: Cody Campbell

RE: Request for Return and Reallocation of Tax Credits – Force Majeure under 10 TAC 11.6(5)
Avenue Heights (TDHCA Application #23194)

Dear Mr. Campbell,

CSH Avenue Heights, Ltd. (the “Applicant”) received an award of 2023 9% Low Income Housing Tax Credits (the “HTCs”) for Avenue Heights (the “Development”) located in Killeen, Texas. For several months, the Applicant has working diligently with the Investor and Construction Lender to close the transaction. The closing was anticipated to occur prior to May 31st, 2024 initially. However, closing has been delayed. The development team is confidently targeting a closing on or before July 15th, 2024 with construction starting prior to August 1st, 2024. As detailed below, the Development has experienced delays from numerous sources. But mainly due to extraordinary review and conditions imposed by the City of Killeen during the rezoning, platting and permitting processes. The delays have been outside the control of the Applicant. Furthermore, the broad economic conditions have created circumstances where lower tax credit pricing and higher interest rates have required numerous redesign and repricing of the construction plans toward value engineering and maintaining Feasibility. The Applicant believes the circumstances, individually and collectively, constitute “force majeure”.

The Applicant requests that the Board (TDHCA) consider and approve this request to exchange 2023 Tax Credits for Avenue Heights (#23194) for an allocation of 2024 Tax Credits. The request is being made under 10 TAC 11.6(5). The force majeure exchange would allow Avenue Heights to meet the Placed-In-Service (“PIS”) deadlines and satisfy a requirement from the Investor that the Applicant request a placed-in-service extension.

Major Impact – Master Planning and Preliminary Platting of Off-Site Property

The Applicant is purchasing a 4.0 acres Development Site from SSK Lodging (the Seller). The Development Site is part of an 18+ acres overall tract of land owned by the Seller. At the onset of the rezoning and platting process, the Applicant anticipated simply rezoning the 4.0 acres tract then proceeding with concurrent platting and permitting of the Development Site only. Following submittal of an initial rezoning application, the City of Killeen informed the Applicant that master planning and preliminary platting of the overall 18+ acres tract and thus extensive planning and platting of the Seller remaining property would be required in conjunction with and prior to any rezoning and approval of the final plat for the Development. Additionally, the City required that master planning and preliminary platting to be completed entirely and approved by City Council prior to allowing fully completed construction plans to be submitted for review toward permitting.

CSH Avenue Heights, Ltd.

3701 Kirby Drive, Suite 860
Houston, Tx 77098

The Seller led the master planning and preliminary platting efforts initially not fully grasping the urgency surrounding the placed-in-service deadline. Due to initial delays and the potential impact on the Applicant's ability to meet the placed-in-service deadline, the Applicant eventually took over all master planning for the overall tract. Due to the unforeseen master planning and preliminary platting requirements imposed by the City following the initial submittal and the Sellers inability to implement timely preparation of the master planning and preliminary platting initially, the Applicant has experienced delays outside the control of the Applicant.

Major Impact - Seller Acquisition of Additional Land

The City of Killeen rejected initial submittals for preliminary plat approval due to unforeseen conditions. Following a series of initial meetings and discussions, the City indicated that any approval of the preliminary plat for the overall tract would require multiple access points or driveways to the overall 18+ acres tract. More specifically, the City required that the overall tract have at least two points of ingress and egress **BUT** allowed only one access point from the original 18+ acres tract. Consequently, after lengthy negotiations with adjacent property owners to acquire easements and presenting several options only to have them rejected by the City, the Seller eventually entered into an agreement and eventually purchased additional land from an adjacent property owner to accommodate a second offsite driveway. The purchase allowed the Applicant to prepare a preliminary plat that the City would accept for initial submittal and review.

Following delays to the City not accepting an initial submittal of the preliminary plat and imposing conditions that required acquisition of additional by the Seller, there were numerous other delays to the review, validation and placement of the preliminary plat on a meeting agenda for the Planning Commission and corresponding City Council agenda for approval. The delays were due the public meetings occurring infrequently (often only once a month) in addition to the Staff being inundated and unable to process submittals in time to meet certain deadlines. Furthermore, unbeknownst to the Applicant at initial submission, the City would not accept the fully completed construction plans for concurrent review and approval prior to submission and eventual approval of the preliminary plat.

Conditions imposed by the City requiring the Seller to acquire additional land prior any formal submission and approval of the preliminary plat, and any subsequent submission and approval of the construction plans, caused delays that were unforeseen and outside the control of the Applicant.

Major Impact – Roadway Planning and Construction

The Applicant initially reviewed conceptual plans with the City and anticipated that a short section of driveway would provide access to the Development Site from the existing Illinois Avenue roadway. During the extensive master planning and preliminary platting process, the City eventually concluded that none of the proposed tracts as depicted on the preliminary plat would be allowed direct and independent access from the existing Illinois Avenue roadway. All future development sites including Avenue Heights (despite having frontage along an existing roadway) will have to be accessed from a public roadway extension to be constructed by the Seller. As a condition for eventual approval of a Final Plat and future occupancy for Avenue Heights, the City of Killeen is requiring that the Seller construct the first phase of a public roadway extension immediately adjacent to the Development Site. The roadway extension must be constructed, inspected, accepted and dedicated prior to any approvals from the City for the Final Plat and to occupy Avenue Heights.

CSH Avenue Heights, Ltd.

3701 Kirby Drive, Suite 860
Houston, Tx 77098

Being that occupancy, operation and meeting the placed-in-service deadline for the proposed development are now contingent on the construction of the roadway, the Applicant assumed all control of the design and permitting of the roadway extension. Furthermore, the Applicant and the Seller will enter into a development agreement obligating the Seller to construct and dedicate the roadway extension. The requirement to build a roadway and enter into a development agreement was not contemplated by the Applicant and Seller when the parties entered into the purchase agreement.

Due to the critical nature of the roadway extension and a development agreement now obligating the Seller to construct the roadway, the Applicant's due diligence with the Investor and Construction Lender has led to extensive due diligence with the Seller and the Roadway Contractor selected by the Seller to construct the roadway. The Seller and the Roadway Contractor didn't anticipate and have been overwhelmed by the level of due diligence required by the Tax Credit Investor and Construction Lender. Coordinating with the Seller and the Roadway Contractor to obtain due diligence materials required by and in a format acceptable to the Applicant, Investor and Construction Lender prior to Closing has led to delays. The construction plans for the roadway extension were approved by the City on May 21st, 2024. The Seller and Roadway Contractor anticipated closing and starting construction by May 31st, 2024. The Seller releasing the Roadway Contractor to commence construction has been delayed as the Roadway Contractor gathers due diligence items such as assignments of the construction contract to the Applicant, bonds with the Applicant, Investor and Construction Lender as additional obligees, insurance certificates with the Applicant, Investor and Construction Lender as Certificate Holders in addition to other due diligence items. Similarly, the closing for Avenue Heights has been delayed as the items are a condition to close with the Investor and Construction Lender.

The requirement to design and construct a public roadway as a condition to final plat, occupancy and thus placed-in-service was unforeseeable. The extensive coordination has led to delays that are outside the Applicant's control. Furthermore, construction of the roadway being a requirement of occupancy presents an ongoing threat to the Development meeting the current placed-in-service deadline of December 31st, 2025. However, with closing now targeted to occur by July 15th, 2024 and constructed starting at Avenue Heights by August 1st, 2024, approval of the request under the force majeure provision is seemingly justified and would eliminate the threat to the Development meeting the placed-in-service deadline.

Other Impacts – Houston derecho

The 2024 Houston Derecho (as named by the National Weather Service) struck the Houston area on May 16th and May 17th resulting in extensive damage and closure to home, businesses, and government offices in addition to vast power outages affecting millions of people.

The Insurance Agent initially selected for the construction period insurance such as builders risk as well as partnership and contractor liability insurance coverages is a Houston based company. The offices of the Insurance Agent were damaged directly from the storm. Prior to the storm, the Insurance Agent had gone to market and was working towards obtaining the requisite insurance coverages in order to provide the proof of insurance in anticipation of Closing by May 31st, 2024. Damage to their offices and inability to work from their offices created a delay in the Insurance Agent providing insurance coverage and insurance certificates required by the Investor and Construction Lender as a condition to close. Subsequently, the closing has been delayed and will now occur by July 15th, 2024.

The General Contractor for the Development is a Houston-based construction company. The offices of the Contractor were without power for an extended period following the storm. This has delayed value

CSH Avenue Heights, Ltd.

3701 Kirby Drive, Suite 860

Houston, Tx 77098

engineering, final bidding and preparation of the construction documents required to close with the Investor and Construction Lender.

Other Impacts - Supplier, Materials and Labor Shortages

The construction industry has been working through upheaval since the commencement of the pandemic. Higher costs due to labor and material shortages remain a problem. The lead time to get certain construction materials and supplies has increased causing delays.

Higher prices for construction materials and supplies in addition to labor shortages following global inflation has created challenges to maintaining feasibility. Overcoming the challenges has required extensive time-consuming coordination with the Architects, Engineers, Contractors, Lenders, and Investors.

CONCLUSION

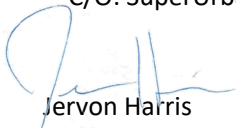
Despite the delays due to the Impacts referenced above, the Applicant is committed to closing and delivering the Development on a timely basis. The Applicant is requesting TDHCA approval at the next available board meeting for a Force Majeure Exchange of Tax Credits for Avenue Heights (#23194)

Your helpful attention to this matter is greatly appreciated.

Sincerely,

CSH Avenue Heights, Ltd.

C/O: SuperUrban Realty Ventures (Development Consultant)



Jervon Harris

jervonharris@superurbanrealty.com

713-503-4477