

**ASSIGNMENT AND ASSUMPTION AND AMENDMENT TO
ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION OF AND AMENDMENT TO ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT (this "Amendment") is entered into as of the 18th day of December, 2015 (the "Assignment Effective Date") by and among the CITY OF HARKER HEIGHTS, TEXAS (the "City"), whose address is P.O. Box 2518, Harker Heights, Texas 76548, D SQUARED DEVELOPMENT, LLC, a Florida limited liability company (the "Assignor"), whose office address is 421 West 3rd Street, Suite 1504, Austin, Texas 78701, and STILLHOUSE FLATS, LLC, a Florida limited liability company (the "Assignee"), whose office address is 421 West 3rd Street, Suite 1500, Austin, Texas 78701.

RECITALS

WHEREAS, the City and Assignor are parties to that certain Economic Development Incentive Agreement having an Effective Date of February 10, 2015 (the "380 Agreement");

WHEREAS, the 380 Agreement memorialized the City's "Commitment of Development Funding by a Local Political Subdivision" within the meaning of the TDHCA Qualified Allocation Plan with respect to the Tax Credits (the "Local Government Contribution");

WHEREAS, Assignor, through Assignee, intends to develop a 96-unit residential rental apartment project and related amenities facilities to be known as Stillhouse Flats and referenced in the 380 Agreement as the "Facility";

WHEREAS, Assignor desires to assign to Assignee (an Affiliated Entity as defined in the 380 Agreement) all of Assignor's right, title and interest in the 380 Agreement, and Assignee desires to assume all of same;

WHEREAS, the parties also desire to amend the 380 Agreement to provide that the Infrastructure will be completed by the City rather than by the Developer, to address oversizing of one of the sidewalks, to address construction of certain utility improvements, and to make certain other changes, all on the terms and conditions set forth in this Amendment.

NOW THEREFORE, in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, the City and Developer hereby agree as follows:

1. **RECITALS**: The above recitals are true and correct and incorporated into this Amendment by this reference.
2. **DEFINITIONS**: Any capitalized terms not defined in this Amendment shall have the meaning given to such term in the 380 Agreement.
3. **ASSIGNMENT AND ASSUMPTION**: Assignor hereby assigns to Assignee all of Assignor's right, title and interest in and to 380 Agreement, and Assignee hereby accepts such assignment and assumes all of Assignor's obligations under the 380 Agreement first arising

from and after the Assignment Effective Date. From and after the Assignment Effective Date, all references to "Developer" in the 380 Agreement shall mean and refer to Assignee.

4. RELEASE OF ASSIGNOR: As of the Assignment Effective Date, Assignor is released from all further obligations under the 380 Agreement arising after the Assignment Effective Date, and the City shall look solely to Assignee for performance of Developer's obligations thereunder arising after that date.

5. INFRASTRUCTURE CONSTRUCTION. Notwithstanding anything in the 380 Agreement to the contrary, the City agrees to construct, at its sole cost and expense, the Infrastructure in lieu of Developer's obligation to construct the Infrastructure at Developer's cost and the City reimbursing the Developer for the cost of the Infrastructure as contemplated by Sections 4.C. and 7.A.2 of the 380 Agreement, and any and all references to Developer's obligation to construct the Infrastructure are hereby deleted and of no further force or effect. The parties acknowledge and agree that all costs paid by the City in connection with the Infrastructure shall constitute and be deemed to be payment of the Incentives otherwise payable to Developer under the 380 Agreement, in satisfaction of the Local Governmental Contribution upon completion of the Infrastructure by the City, as evidenced by a certificate of substantial completion issued by the City's engineer. In the event the cost to the City for completion of the Infrastructure (the "Actual Infrastructure Costs") is less than \$352,000, the City agrees to reimburse Developer an amount equal to the difference between \$352,000 and the Actual Infrastructure Costs, with respect to other infrastructure improvements made by Developer either to the Facility or within the connector road right-of-way at the request of the City. Such payment, if applicable, should be made promptly following Developer's completion of such improvements, as evidenced by a certificate of substantial completion issued by Developer's architect or engineer of record for the Facility, such that the City's aggregate Local Governmental Contribution shall in no event be less than \$352,000.

6. WATER, STORM SEWER, & SANITARY SEWER:

(a) Subject to subparagraph (b), below, as an additional Incentive and simultaneously with the Infrastructure Construction, the City agrees to construct certain improvements to the City's water, storm water, and sanitary sewer systems necessary to serve the Project ("Utility Extension"), as generally described on the engineer's Opinion of Probable Cost attached hereto as Exhibit "A" and incorporated by reference for all relevant purposes as if set forth at length herein. When the Utility Extension is complete the City will submit a detailed itemized invoice to the Developer, together with such supporting documentation as the Developer may reasonably require, and the Developer will reimburse the City for the actual and reasonable cost of all engineering, labor, materials, equipment, tools, construction equipment and machinery, utilities, transportation, superintendence, bidding, and other facilities and services necessary for the proper completion of the Utility Extension in a good and workmanlike manner and in compliance with applicable law.

(b) Notwithstanding subsection (a), above, if the estimated cost of the Utility Extension (including any change orders) is reasonably expected to exceed \$50,000, then before authorizing such work (or additional work, in the case of a change order), the City will deliver written notice to the Developer of the estimated cost, together with a copy of the estimate (the "Estimate Notice"), and Developer will have the option of electing (i) to authorize the City to

proceed, in which event Developer shall be obligated to reimburse the full cost as provided above, or (ii) to perform the Utility Extension at Developer's sole cost and expense, in which event the City shall have no obligation to construct the Utility Extension and Developer shall have no obligation to pay the City the cost thereof. Developer agrees to give the City written notice of its election within five (5) days following receipt of the Estimate Notice so as to avoid any delay or additional cost to the City in connection with the Infrastructure Construction, and if Developer fails to do so within such five (5) day period, then Developer shall be conclusively deemed to have elected to perform the Utility Extension at its sole cost and expense. In this regard, Developer acknowledges that once the roadway constituting the Infrastructure is paved Developer will not be allowed to cut the roadway; rather, any Utility Extension work performed in the right-of-way must be bored beneath the street, and will be subject to all applicable construction and testing standards of the City.

7. DEVELOPER RESTRICTIONS: Notwithstanding anything contained in Section 4.F. of the 380 Agreement to the contrary, the City acknowledges and agrees that at closing of the syndication of the Tax Credits, David O. Deutch may withdraw from Assignee and Wells Fargo Affordable Housing Community Development Corporation (the "Investor") may be admitted as the investor member of Developer. Furthermore, the restriction on transfer of interests in Developer set forth in Section 4.F of the 380 Agreement shall not apply to (i) any transfer by Investor of its interests in Assignee, (ii) the removal of D Squared Stillhouse, LLC, as Administrative Member of Assignee, or (iii) the removal of O-SDA Stillhouse, LLC, as Managing Member of Assignee, in accordance with the terms and conditions of Assignee's Amended and Restated Operating Agreement.

8. SECTION 4.C.3. DELETED: Notwithstanding anything contained herein to the contrary, Section 4.C.3. of the 380 Agreement is hereby deleted in its entirety, and shall have no further force and effect whatsoever.

9. SIDEWALK OVERSIZING:

(a) As part of its Project, Developer will be constructing certain sidewalks on the Property, including approximately 620 linear feet of sidewalk along the north side of the Infrastructure between Stillhouse Lake Road and the existing Cedar Knob Road ("Sidewalk.") The Code of Harker Heights requires the Sidewalk to be five feet (5') in width, but the City has requested and the Developer has agreed, subject to the terms of this Agreement, to increase the size of the Sidewalk to six feet (6').

(b) Developer will provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, utilities, transportation, and other facilities and services necessary for the proper completion of the Sidewalk in a good and workmanlike manner, using the degree of skill and attention normally exhibited by contractors on similar projects in Bell County. Developer shall at all times comply with all laws rules, regulations, and lawful orders of any public authority bearing on the construction of the work. When complete, Developer will dedicate the Sidewalk to the City, together with any easements that may be reasonably required for the inspection, maintenance, repair, removal and replacement thereof.

(c) Upon completion of the Sidewalk the Developer will submit to the City a detailed itemized invoice for the City's Contribution, together with such supporting

documentation as the City may reasonably require. Within thirty (30) days following final acceptance of the Sidewalk (which shall not be unreasonably withheld, conditioned or delayed) the City will reimburse the Developer one hundred percent of the actual and reasonable cost of materials and labor expended to complete the oversizing of the Sidewalk, but not to exceed \$2,889.20 ("City's Contribution.") In the event of any overpayment by City hereunder, Developer will refund the overpayment to the City upon demand, together with interest thereon at the maximum legal rate from the date Developer received such overpayment until the City actually collects such refund. Developer's obligations under this paragraph shall survive termination of this Agreement.

10. **FULL FORCE AND EFFECT:** Except as specifically modified by this Amendment, all other provisions of the Agreement remain in full force and effect. To the extent of any conflict between the provisions of the Agreement and this Amendment, the provisions of this Amendment shall control.

11. **AUTHORITY:** City and Developer represent and warrant to the other that such party has the full right, power, and lawful authority to enter into, execute, and perform under this Amendment and that such actions do not violate any other agreement, covenant, or restriction placed upon such party. City and Developer further represent and warrant to the other that the person signing this Amendment on its behalf has been duly authorized to sign this Amendment.

12. **GOVERNING LAW:** This Amendment shall be governed by the laws of the State of Texas, without application of its conflict of law principles.

13. **BINDING EFFECT:** This Amendment shall be binding upon, and shall inure to the benefit of, City, Developer, and their respective successors or assigns.

14. **HEADINGS:** The headings contained in this Amendment are for convenience of reference only and shall not be construed as limiting or defining in any way the provisions of this Amendment.

15. **COUNTERPARTS:** This Amendment may be executed in counterparts, each of which shall be an original, and all of which shall constitute one and the same instrument. Any signature delivered by facsimile or other forms of electronic transmission, such as a PDF, shall be considered an original signature by the sending party.

[Signatures Appear on Following Page]

IN WITNESS WHEREOF, City and Developer have executed this Amendment as of the Effective Date.

CITY:

CITY OF HARKER HEIGHTS, TEXAS

By: David R. Mitchell
Name: David R. Mitchell
Title: City Manager
Date: 12/21/15

Attest:

By: Michelle Middleton
Name: Michelle Middleton

ASSIGNOR:

D SQUARED DEVELOPMENT, LLC,
a Florida limited liability company

By: David O. Deutch, President
David O. Deutch, President
Date: 12-21-15

ASSIGNEE

STILLHOUSE FLATS, LLC, a Florida limited liability company

By: D Squared Stillhouse, LLC, a Florida limited liability company, its authorized member
By: David O. Deutch, President
David O. Deutch, President
Date: 12-21-15

EXHIBIT "A"
Engineer's Probable Cost Estimate

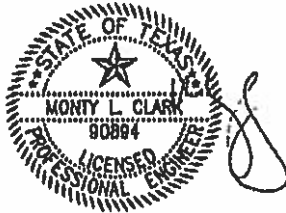
EXHIBIT A



OPINION OF PROBABLE COST
Cedar Knob Utility Extension
Located within City of Harker Heights, Texas

Date: 12-14-2015

Item Description	Unit	Unit Cost	Quantity	Total
Water, Storm, and Sanitary Sewer				
1. 6" PVC SDR 26 Sanitary Sewer Main	L.F.	\$ 65.00	70	\$ 4,550.00
2. 6" PVC SDR 26 Cap	EA.	\$ 450.00	2	\$ 900.00
3. Testing per COHH & TCEQ Requirements	L.S.	\$ 1,100.00	100%	\$ 1,100.00
4. 48" RCP Storm Sewer	L.F.	\$ 120.00	70	\$ 8,400.00
5. 48" Storm Sewer Plug	EA.	\$ 950.00	2	\$ 1,900.00
6. 6'x6' Precast Concrete Junction Box	EA.	\$ 4,500.00	1	\$ 4,500.00
7. 6" PVC C900 Class 150 Water Main	L.F.	\$ 54.00	70	\$ 3,780.00
8. Trench Safety Plan & Implementation	EA.	\$ 2,500.00	100%	\$ 2,500.00
				SUBTOTAL: \$ 27,630.00
				10% CONSTRUCTION CONTINGENCY: \$ 2,763.00
				TOTAL CONSTRUCTION: \$ 30,393.00



12/14/2015