

**AGREEMENT BETWEEN CORPUS CHRISTI BUSINESS AND JOB DEVELOPMENT
CORPORATION AND
FISHPOND LIVING AT CORPUS CHRISTI, LP**

This Agreement for the Type A Affordable Housing Program – 1006 Sixth Street FishPond at Corpus Christi (“Agreement”) is entered into between the Corpus Christi Business and Job Development Corporation (“Corporation”) and FishPond Living at Corpus Christi LP (the “Developer”).

WHEREAS, the Texas Legislature in Section 501 of the Local Government Code (Development Corporation Act of 1979) empowered local communities with the ability to adopt an optional local sales and use tax as a means of improving the economic health and prosperity of their citizens;

WHEREAS, on November 5, 2002, residents of the City of Corpus Christi (the “City”) passed Proposition 2, New and Expanded Business Enterprises, which authorized the adoption of a sales and use tax for the promotion and development of new and expanded business enterprises at the rate of one-eighth of one percent to be imposed for 15 years;

WHEREAS, in the same election, the residents of the City passed Proposition 2B, Affordable Housing, which authorized the use of a portion of the sales and use tax approved under Proposition 2 for affordable housing, up to \$500,000 annually, so long as there are projects for which the amount can reasonably be used;

WHEREAS, the 1/8 cent sales tax authorized by passage of Proposition 2 and allocated under Proposition 2B for affordable housing was subsequently enacted by the City’s City Council (“City Council”) and filed with the State Comptroller of Texas, effective April 1, 2003, to be administered by the Corporation's Board of Directors (“Board”);

WHEREAS, the Board wishes to fund affordable housing projects in an effective manner;

WHEREAS, the Developer has proposed to develop new affordable housing units in the downtown in order to relocate residents from an old facility that is functionally obsolete;

WHEREAS, the Board has determined that it is in the best interests of the residents of the City that the Developer be awarded affordable housing funds, by execution of this Agreement, to accomplish the affordable housing project described in the Scope of Work, which is attached hereto as **Exhibit A** and incorporated herein by reference as if laid out here in its entirety;

In consideration of the covenants, promises, and conditions stated in this Agreement, the Corporation and the Developer agree as follows:

- 1. Agreement to Provide Affordable Housing Services.** This Agreement between the Corporation and the Developer is executed to implement the promotion and development of the Project. In performance of the Agreement, Developer will:
 - a. Construct 112 rental units at 1002 Sixth Street to provide affordable housing to residents of the existing Sea Gulf Villa in downtown Corpus Christi. The Project must be an affordable housing project, as described by 42 U.S.C. Section 12745, and must contain 111 affordable rental units available to qualified individuals and one manager unit. The

development must comply with all requirements of 42 U.S.C. Section 12745, including environmental building standards.

- b. Obtain all necessary approvals to allow the transfer of the Section 8 Housing Assistance Payment (HAP) contract for the current Sea Gulf Villa apartments in downtown Corpus Christi to the new site.
- c. Complete construction of the project and obtain a Certificate of Occupancy ("C of O") from the City's Development Services Department within two years following the Effective Date. Developer will comply with all laws, rules, and ordinances in the construction of the Project and will obtain all required permits.
- d. Developer will maintain the property and continue to rent 111 units only to qualified individuals as affordable housing in accordance with 42 U.S.C. Section 12475 for twenty years. If the property ceases to operate as an affordable housing facility during that twenty-year period, the Developer will immediately reimburse the Corporation all amounts paid to the Developer under this Agreement. If the Corporation is dissolved prior to the end of the twenty-year period and such reimbursement of funds is required under this provision, the Developer will immediately reimburse the City all amounts paid under this Agreement. The obligation to reimburse funds under this section will survive the termination or earlier expiration of this Agreement.

- 2. **Compensation.** Upon receipt of the C of O for the completed development, Developer shall request payment from the Corporation by providing notice in accordance with Section 8 below. The request for payment will include evidence that all costs of construction have been paid and that there are no liens on the property for unpaid construction costs. Upon receipt of the request for payment and verification that the development complies with all requirements of this Agreement, the Corporation shall, as soon as practicable, pay the developer an amount not to exceed \$500,000.
- 3. **Property Sale Limited to Affordable Housing.** During the term of this Agreement and the Affordability Period, Developer may only sell the property or the Project to qualified individuals for use as affordable housing. Sale of the property for any other purpose will require repayment of all funds under Section 1(c) above.
- 4. **Effective Date.** The effective date of this Program Agreement is the date on which the City Council grants approval to the Corporation for this Project, so long as all parties have executed this Agreement.
- 5. **Term.** The term of this Agreement is for two years beginning on the effective date.
- 6. **Termination.** Corporation may terminate this Agreement with 30 days' written notice of Developer's failure to comply with any terms of the Agreement.
- 7. **Amendments or Modifications.** No amendments or modifications to this Agreement or to the Project may be made, nor any provision waived, unless the amendment or modification is made in writing and signed by persons duly authorized to sign agreements on behalf of all parties.

8. **Notices.** Any required written notices shall be sent, certified mail, return receipt requested, addressed as follows:

If to Corporation:

City of Corpus Christi Business and Job Development Corporation
Attn: President
1201 Leopard Street
Corpus Christi, Texas 78401

With a copy to:

City of Corpus Christi
Attn.: City Attorney
P.O. Box 9277
Corpus Christi, Texas 78469-9277

If to Developer:

FishPond Living at Corpus Christi, LP
Attn.: David Fournier
500 W. 2nd Street, Suite 1900 #29
Austin, TX 78701

Notice is effective upon deposit in the United States mail in the manner provided above.

9. Relationship of Parties. In performing this Agreement, the Corporation and the Developer shall act in an individual capacity, and not as agents, representatives, employees, employers, partners, joint-venturers, or associates of one another. The employees or agents of either party may not be, nor be construed to be, the employees or agents of the other party for any purpose.

10. Insurance; Bonds. Not Applicable.

11. Non-Appropriation. The continuation of this Agreement after the close of any fiscal year of the City and Corporation, which fiscal year ends on September 30th annually, is subject to appropriations and budget approval specifically covering this Agreement as an expenditure in said budget, and it is within the sole discretion of the City's City Council and the Corporation's Board to determine whether or not to fund this Agreement. The Corporation does not represent that this budget item will be adopted, as said determination is within the City Council's sole discretion when adopting each budget.

12. Waiver. No waiver by either party of any breach of any term or condition of this Agreement waives any subsequent breach of the same.

13. Taxes. The Developer covenants to pay payroll taxes, Medicare taxes, FICA taxes, unemployment taxes and all other applicable taxes. Upon request, the Corporation shall be provided proof of payment of these taxes within 15 days of such request.

14. DEVELOPER SHALL FULLY INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY OF CORPUS CHRISTI, THE CORPUS CHRISTI BUSINESS AND JOB DEVELOPMENT CORPORATION, AND THEIR RESPECTIVE OFFICERS, EMPLOYEES AND AGENTS (“INDEMNITEES”) FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, CLAIMS, DEMANDS, SUITS, AND CAUSES OF ACTION OF WHATEVER NATURE, CHARACTER, OR DESCRIPTION ON ACCOUNT OF PERSONAL INJURIES, PROPERTY LOSS, OR DAMAGE, OR ANY OTHER KIND OF INJURY, LOSS, OR DAMAGE, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, ATTORNEYS’ FEES AND EXPERT WITNESS FEES, WHICH ARISE OR ARE CLAIMED TO ARISE OUT OF OR IN CONNECTION WITH A BREACH OF THIS AGREEMENT OR THE PERFORMANCE OF THIS AGREEMENT BY THE DEVELOPER OR RESULTS FROM THE NEGLIGENT ACT, OMISSION, MISCONDUCT, OR FAULT OF THE DEVELOPER OR ITS EMPLOYEES, CONTRACTORS, OR AGENTS. DEVELOPER MUST, AT ITS OWN EXPENSE, INVESTIGATE ALL CLAIMS AND DEMANDS, ATTEND TO THEIR SETTLEMENT OR OTHER DISPOSITION, DEFEND ALL ACTIONS BASED THEREON WITH COUNSEL SATISFACTORY TO THE CITY ATTORNEY, AND PAY ALL CHARGES OF ATTORNEYS AND ALL OTHER COSTS AND EXPENSES OF ANY KIND ARISING OR RESULTING FROM ANY SAID LIABILITY, DAMAGE, LOSS, CLAIMS, DEMANDS, SUITS, OR ACTIONS. THE INDEMNIFICATION OBLIGATIONS OF DEVELOPER UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.

15. Assignment. No assignment of this Agreement by the Developer, or of any right or interest contained herein, is effective unless the Executive Director of the Corporation first gives written consent to such assignment. The performance of this Agreement by the Developer is of the essence of this Agreement, and the Executive Director’s right to withhold consent to such assignment is within the sole discretion of the Executive Director on any ground whatsoever.

16. Severability. Each provision of this Agreement is considered to be severable and, if, for any reason, any provision or part of this Agreement is determined to be invalid and contrary to applicable law, such invalidity shall not impair the operation of nor affect those portions of this Agreement that are valid, but this Agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part had been omitted.

17. Governing Law. Developer agrees to comply with all federal, Texas, and City laws in the performance of this Agreement. The applicable law for any legal disputes arising out of this Agreement is the law of the State of Texas, and such form and venue for such disputes is the appropriate district, county, or justice court in and for Nueces County, Texas.

18. Undocumented Workers. Developer does not and agrees that it will not knowingly employ any undocumented workers. If, after receiving payments under this Agreement, Developer is convicted of a violation under 8 U.S.C. Section 1324a(f), Developer shall repay the payments received under this Agreement, including the cost of property acquisition, to the Corporation, with interest at the Wall Street Journal Prime Rate, not later than the 120th day after the date Developer has been notified of the violation.

19. Entire Agreement. This Agreement constitutes the entire agreement between the parties concerning the subject matter of this Agreement and supersedes all prior negotiations, arrangements, agreements and understandings, either oral or written, between the parties.

[Signature Page Follows]

**CORPUS CHRISTI BUSINESS &
JOB DEVELOPMENT CORPORATION**

Scott Harris
President

Date: _____

FISH POND LIVING AT CORPUS CHRISTI LP

David Fournier
Manager

Date: _____

ATTEST:

Rebecca Huerta
City Secretary

Date: _____

APPROVED AS TO FORM:

Aimee Alcorn-Reed
Assistant City Attorney
Attorney for Corporation

Exhibit A – Scope of Work

As proposed, FishPond at Corpus Christi will be a new 112-unit community (including one Manager's unit) on a 1.48-acre site (inclusive of a 60' easement purchased from the City of Corpus Christi) on Sixth Street between Buford and Hancock Street. The site is approximately 1.2 miles south of the existing Sea Gulf Property.

The proposed replacement property will consist of a 4-story structure over podium and will be elevator serviced. The building will offer amenity space for community events plus offices to house on-site management and the service coordinator. All units will be 1-bedroom units (currently there are 18 studios and 93 1-bedroom units at Sea Gulf Villa) and the units will be approximately 700 SF (~100 SF or 17% larger than the current units of 575 SF and 595 SF for the studio and one-bedroom units, respectively). Furthermore, ~ 70 surface parking spaces, twice what is currently available, will be located on-site which is much more convenient for residents than the off-site parking at Sea Gulf Villa. Some of the parking will be covered as it will be underneath the building. The new community will substantially increase the quality of life for the residents.

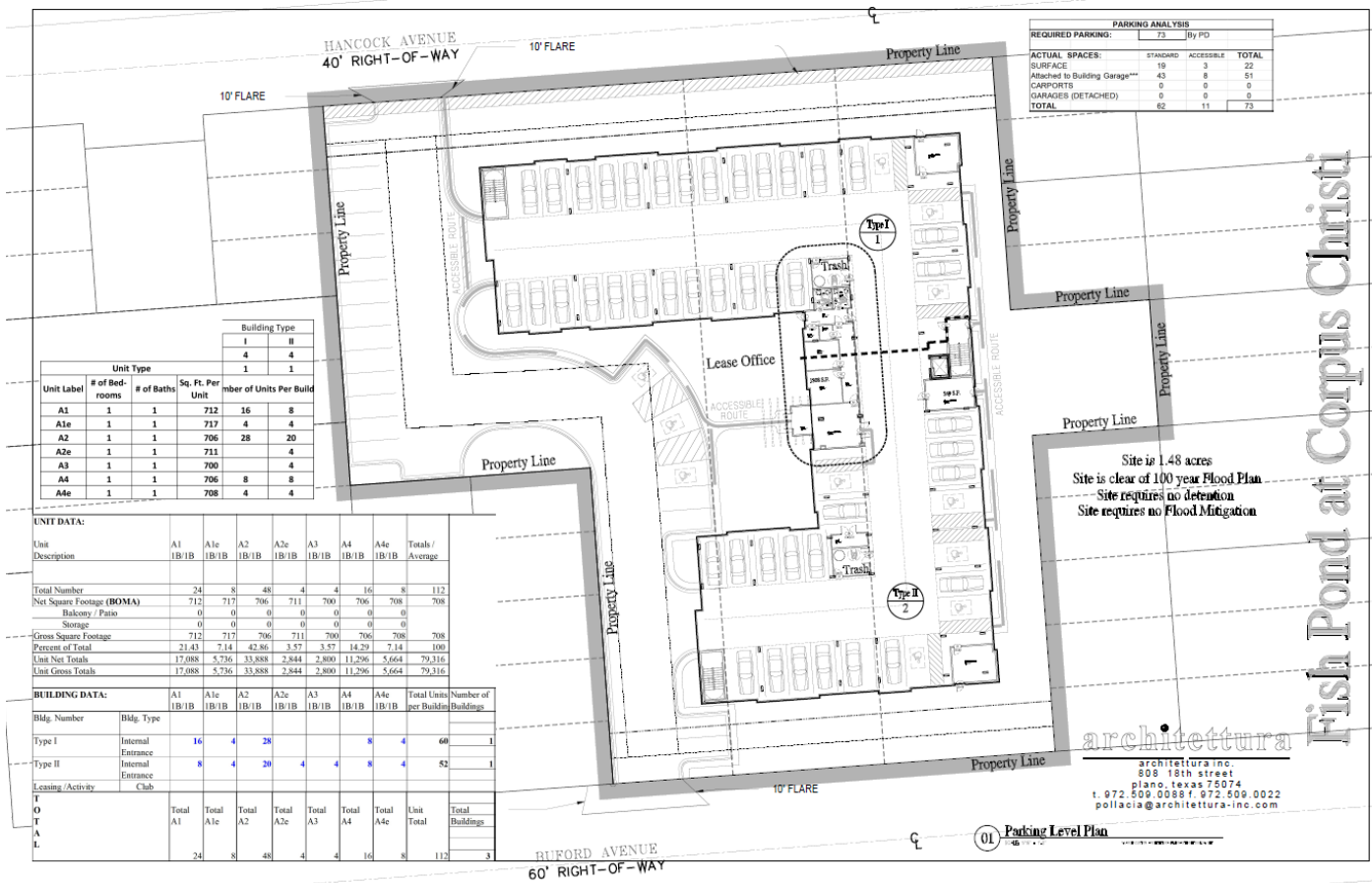
Like our other developments, the design of the FishPond at Corpus Christi will include many Green construction features such as high efficiency HVAC and lighting. It will also have Class A features such as full wood cabinets and granite countertops. The exhibits show a rendering of FishPond at Corpus Christi and floorplans.

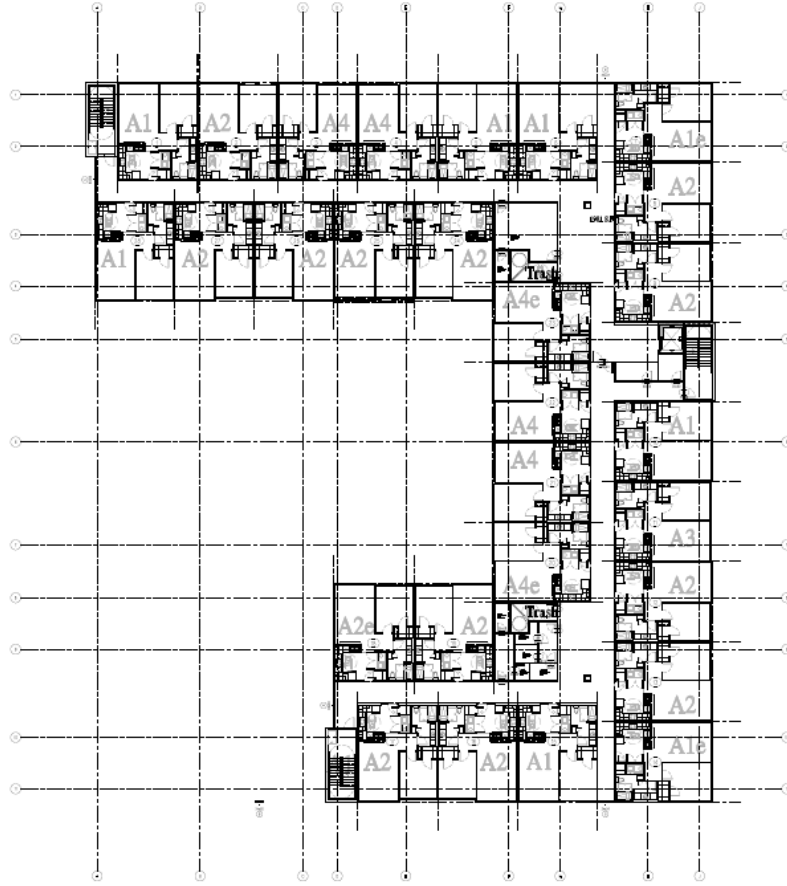
Note that under the financing plan, the new property will have a 30-year Regulatory Agreement monitored by TDHCA which will require all units remain affordable to residents at 30%, 50% and 60% of Area Median Income. In addition, the new property will assume the existing HUD Regulatory Agreement and rent structure. As such, residents will not see any increase in rents, nor will residents incur any relocation costs.

Upon completion of the new development and transfer of the Regulatory Agreements to the new property, the existing Sea Gulf property will be available for redevelopment. Phase II will entail a complete redevelopment of Sea Gulf into loft-style market rate housing, which we believe is more appropriate for the more commercialized downtown location.



Image of proposed FishPond at Corpus Christi





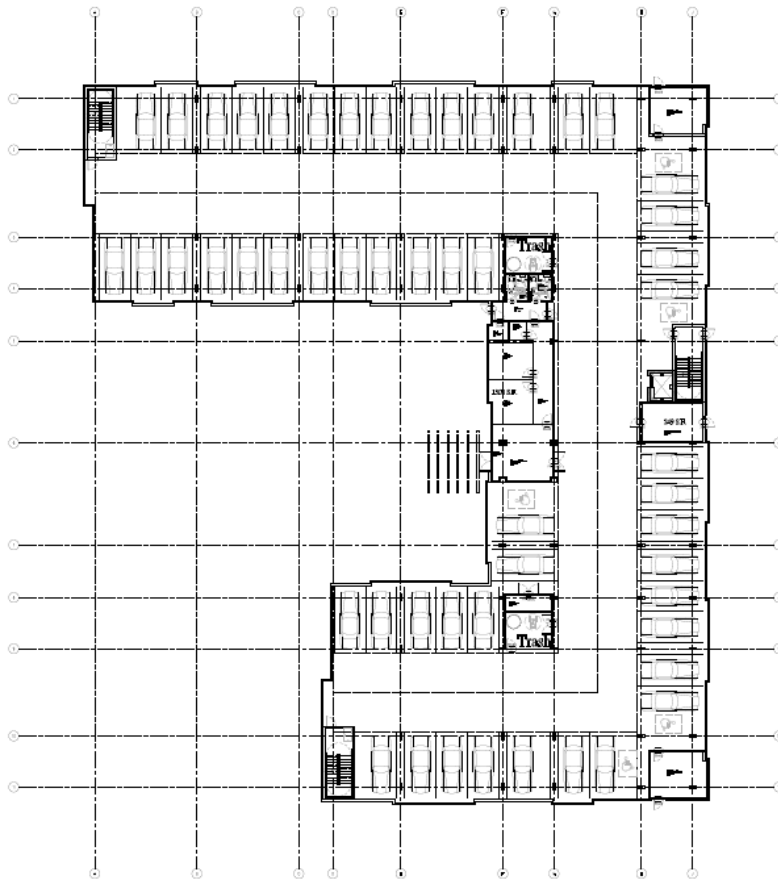
architettura

architettura inc.
609 west 15th street suite 140
plano, texas 75075
t. 972.509.0088 f. 972.509.0022
pollacia@architettura-inc.com

4 Levels over
Parking Podium

01 First Floor Plan

Fish Pond at Corpus Christi



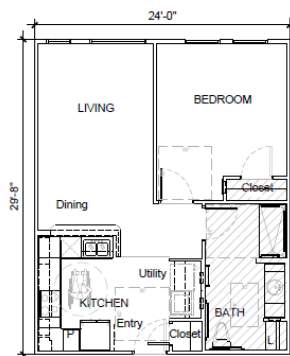
architettura

architettura inc.
808 18th street
plano, texas 75074
t. 972.509.0088 f. 972.509.0022
pollacia@architettura-inc.com

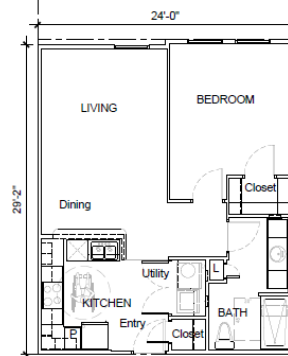
4 Levels over
Parking Podium

01 Parking Level Plan

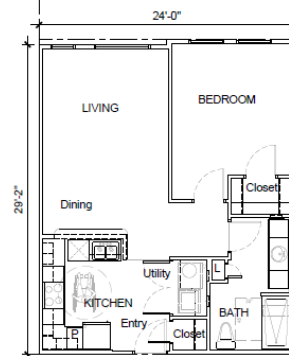
Fish Pond at Corpus Christi



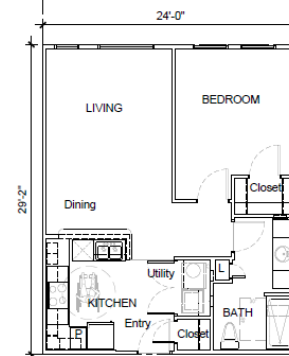
Unit A1HC Net SF = 712



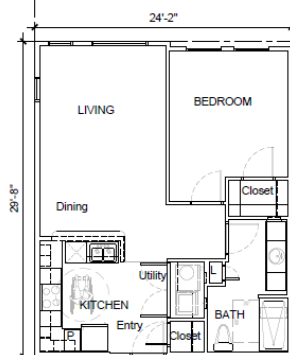
Unit A4e Net SF = 708



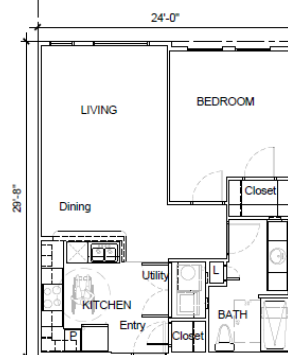
Unit A4 Net SF = 706



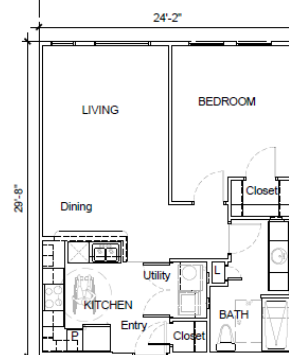
Unit A3 Net SF = 700



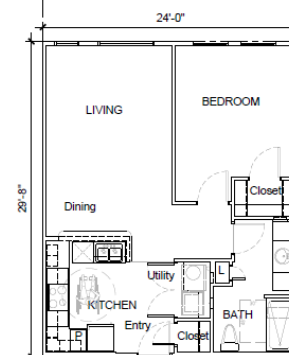
Unit A2e Net SF = 711



Unit A2 Net SF = 706



Unit A1e Net SF = 717



Unit A1 Net SF = 712