



# City of Killeen

## Agenda

### Killeen Public Facility Corporation

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Tuesday, March 19, 2024

5:30 PM

City Hall  
Council Chambers  
101 N. College Street  
Killeen, Texas 76541

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#### Call to Order

#### Roll Call

##### *Directors*

___ Debbie Nash-King, Mayor	___ Nina Cobb
___ Riakos Adams	___ Jessica Gonzalez
___ Ramon Alvarez	___ Jose Segarra
___ Michael Boyd	___ Joseph Solomon

##### *City Staff*

___ Kent Cagle, Assistant Secretary
___ Holli Clements, City Attorney
___ Laura Calcote, Secretary
___ Judith Tangalin, Treasurer

#### Approval of Agenda

#### Citizen Comments

*This section allows members of the public to address the Board regarding any item(s), other than a public hearing item, on the agenda for the Board's consideration. Each person shall sign up in advance, may speak only one time, and such address shall be limited to four (4) minutes. A majority of the Board is required for any time extensions. The Board shall have one (1) minute to respond to citizen comments with a statement or explanation without engaging in dialogue.*

#### Approval of Minutes

1. [PFC-24-5](#) Consider Minutes of the Killeen Public Facility Corporation Meeting of March 5, 2024.

#### Agenda Items

2. [PFC-24-6](#) Consider a memorandum/resolution authorizing the adoption of Amendments to the Killeen Public Facility Corporation's Certificate of Formation.

**Attachments:** [Certificate for Resolution](#)

[Certificate of Amendment](#)

[Amended and Restated Certificate of Formation](#)

[Presentation](#)

3. [PFC-24-7](#) Consider a memorandum/resolution approving a Memorandum of Understanding with Crimson Bulldog Development, Inc. for the development of the Avanti Legacy Parkview Apartments.

**Attachments:** [Memorandum of Understanding](#)

[Presentation](#)

## Adjournment

*I certify that the above notice of meeting was posted on the Internet and on the bulletin board at Killeen City Hall on or before 5:00 p.m. on March 15, 2024.*

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Laura J. Calcote, City Secretary

*The public is hereby informed that notices for City of Killeen meetings will no longer distinguish between matters to be discussed in open or closed session of a meeting. This practice is in accordance with rulings by the Texas Attorney General that, under the Texas Open Meetings Act, the City Council may convene a closed session to discuss any matter listed on the agenda, without prior or further notice, if the matter is one that the Open Meetings Act allows to be discussed in a closed session.*

*This meeting is being conducted in accordance with the Texas Open Meetings Law [V.T.C.A., Government Code, § 551.001 et seq.]. This meeting is being conducted in accordance with the Americans with Disabilities Act [42 USC 12101 (1991)]. The facility is wheelchair accessible and handicap parking is available. Requests for sign interpretive services are available upon requests received at least 48 hours prior to the meeting. To make arrangements for those services, please call 254-501-7700, City Manager's Office, or TDD 1-800-734-2989.*



# City of Killeen

## Staff Report

File Number: PFC-24-5

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Consider Minutes of the Killeen Public Facility Corporation Meeting of March 5, 2024.

### City of Killeen

Killeen Public Facility Corporation  
Killeen City Hall Council Chambers  
March 5, 2024 at 5:00 p.m.

Presiding: President Jessica Gonzalez

Attending: Debbie Nash-King, Riakos Adams, Michael Boyd, Jose Segarra and Ramon Alvarez

Absent: Nina Cobb and Joseph Solomon

Also attending were City Manager/Assistant Secretary Kent Cagle, City Attorney Holli Clements, Secretary Laura Calcote and Treasurer Judith Tangalin

### Approval of Agenda

*Motion was made by Board Member Nash-King to approve the agenda, as presented. Motion was seconded by Board Member Adams. The motion carried unanimously (5-0).*

### Citizen Comments

Michael Fornino spoke regarding PFC-24-2 and PFC-24-3.

Mellisa Brown spoke regarding PFC-24-4.

Camron Cochran spoke regarding PFC-24-4.

### Approval of Minutes

**PFC-24-2** Consider Minutes of the Killeen Public Facility Corporation Meeting of August 22, 2023.

*Motion was made by Board Member Boyd to approve PFC-24-2, as written. Motion was seconded by Board Member Segarra. The motion carried unanimously (5-0).*

**PFC-24-3** Consider Minutes of the Killeen Public Facility Corporation Meeting of January 23, 2024.

*Motion was made by Board Member Nash-King to approve PFC-24-3, as written. Motion was*

*seconded by Board Member Adams. The motion carried unanimously (5-0).*

### **Agenda Items**

**PFC-24-4** Discuss and take possible action regarding a Resolution inducing the Avanti Legacy Parkview Apartments transaction, including authorizing the execution of all documentation necessary to obtain the financing for such transaction; authorizing all filings and agreements with Texas Department of Housing and Community Affairs in connection with applications for low income housing tax credits; authorizing the formation of any limited liability companies in connection with such transaction; and other matters in connection therewith.

City Attorney, Holli Clements, and Madhouse Development Inc. Representative, Henry Flores, presented this item. Avanti Parkview LP filed an application for finance requesting that the PFC participate in acquisition, construction and equipping of a proposed 108-unit multifamily housing facility. Avanti requested the PFC create a subsidiary limited liability company to serve as general partner and the PFC or subsidiary will own the land on which the project is to be located. The resolution would constitute the PFC's preliminary non-binding commitment to proceed.

*Motion was made by Board Member Nash-King to approve PFC-24-4. Motion was seconded by Board Member Segarra. The motion carried unanimously (5-0).*

### **Adjournment**

With no further business, upon motion being made by Board Member Nash-King, seconded by Board Member Adams, and unanimously approved, the meeting was adjourned at 5:45 p.m.



# City of Killeen

## Staff Report

File Number: PFC-24-6

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Consider a memorandum/resolution authorizing the adoption of Amendments to the Killeen Public Facility Corporation's Certificate of Formation.

**DATE:** March 19, 2024

**TO:** Kent Cagle, City Manager

**FROM:** Holli Clements, City Attorney

**SUBJECT:** Amendments to Certificate of Formation of Killeen Public Facility Corporation

### **BACKGROUND AND FINDINGS:**

The City Council created the Killeen Public Facility Corporation (PFC) in January 2021. The Certificate of Formation (COF) currently limits the purpose of the PFC to assisting the City through a public private partnership with the NRP Group for a mixed income apartment complex.

The PFC recently passed a non-binding resolution subject to amendment of the PFC Certificate of Formation (COF) to support the Avanti Legacy Parkview Apartments transaction. To continue to support the Avanti project and allow the PFC to participate in additional projects, amendments to the Certificate of Formation must be adopted.

Pursuant to the Public Facility Corporation Act, the PFC COF may be amended by resolution of the City Council. The amendments would broaden the purposes of the PFC to allow its participation in additional and varied projects.

The amendments must be approved by City Council and adopted by the PFC.

### **THE ALTERNATIVES CONSIDERED:**

N/A

### **Which alternative is recommended? Why?**

Staff recommends adoption of the amendments to the Certificate of Formation in the form approved by the Killeen City Council.

### **CONFORMITY TO CITY POLICY:**

This item conforms to applicable policy and law.

**FINANCIAL IMPACT:**

**What is the amount of the revenue/expenditure in the current fiscal year? For future years?**

N/A

**Is this a one-time or recurring revenue/expenditure?**

N/A

**Is this revenue/expenditure budgeted?**

N/A

**If not, where will the money come from?**

N/A

**Is there a sufficient amount in the budgeted line-item for this revenue/expenditure?**

N/A

**RECOMMENDATION:**

Staff recommends adoption of the amendments to the Certificate of Formation in the form approved by the Killeen City Council.

**DEPARTMENTAL CLEARANCES:**

N/A

**ATTACHED SUPPORTING DOCUMENTS:**

Certificate for Resolution  
Certificate of Amendment  
Amended and Restated Certificate of Formation  
Presentation

## CERTIFICATE FOR RESOLUTION

The undersigned officer of the Killeen Public Facility Corporation (the “Corporation”) hereby certifies as follows:

1. In accordance with the bylaws of the Corporation, the Board of Directors of the Corporation (the “Board”) held a meeting on March 19, 2024 (the “Meeting”) of the duly constituted officers and members of the Board, at which a duly constituted quorum was present. Whereupon among other business transacted at the Meeting, a written

### **RESOLUTION AUTHORIZING THE ADOPTION OF AMENDMENTS TO THE CORPORATION’S CERTIFICATE OF FORMATION, IN THE FORM APPROVED BY THE KILLEEN CITY COUNCIL**

(the “Resolution”) was duly introduced for the consideration of the Board and discussed. It was then duly moved and seconded that the Resolution be adopted; and, after due discussion, said motion, carrying with it the adoption of the Resolution, prevailed and carried by a majority vote of the Board.

2. A true, full, and correct copy of the Resolution adopted at the Meeting is attached to and follows this Certificate; the Resolution has been duly recorded in the Board’s minutes of the Meeting; each of the officers and members of the Board was duly and sufficiently notified officially and personally, in advance, of the time, place, and purpose of the Meeting; and the Meeting was held and conducted in accordance with the Bylaws of the Corporation.

SIGNED March 19, 2024.

\_\_\_\_\_  
\_\_\_\_\_, Assistant Secretary

**RESOLUTION AUTHORIZING THE ADOPTION OF AMENDMENTS TO THE CORPORATION'S CERTIFICATE OF FORMATION, IN THE FORM APPROVED BY THE KILLEEN CITY COUNCIL**

WHEREAS, the board of directors (the "Board") of the Killeen Public Facility Corporation (the "Corporation") has determined that it is in the best interest of the Corporation to amend and restate the Corporation's certificate of formation (the "Amendments") to broaden its purposes to allow it to participate in additional and varied projects;

WHEREAS, the Killeen City Council (the "Council") must authorize the Amendments prior to their adoption;

WHEREAS, the Council has authorized the Amendments and the Corporation wishes to formally adopt the Amendments;

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE KILLEEN PUBLIC FACILITY CORPORATION THAT:

Section 1. The Amendments and all actions necessary or desirable in connection with the adoption of the Amendments are hereby approved.

Section 2. All resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 3. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the Board hereby declares that this Resolution would have been enacted without such invalid provision.

Section 4. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. This Resolution shall be in force and effect from and after its passage.

\* \* \*



**CERTIFICATE OF AMENDMENT  
AMENDED AND RESTATED CERTIFICATE OF FORMATION  
OF KILLEEN PUBLIC FACILITY CORPORATION  
WITH NEW AMENDMENTS**

Killeen Public Facility Corporation, a Texas nonprofit public facility corporation (the “Corporation”), by and through the undersigned authorized officer, hereby adopts the following amended and restated certificate of formation (the “*Amended and Restated Certificate of Formation*” which is attached hereto as Appendix A) in accordance with the Texas Business Organizations Code (the “TBOC”) and Chapter 303 of the Texas Local Government Code (the “Act”).

1. The name of the Corporation is Killeen Public Facility Corporation.
2. The Corporation is a nonprofit public facility corporation formed and existing under the laws of the State of Texas.
3. The file number issued to the Corporation by the Secretary of State of Texas is 803907943.
4. The date of formation of the Corporation is January 22, 2021.
5. The Board of Directors duly adopted resolutions proposing to amend and restate the original Certificate of Formation (as amended and restated, the “*Certificate of Formation*”) of the Corporation, declaring said amendment and restatement to be advisable and in the best interests of the Corporation, and the Certificate of Formation was duly adopted at a meeting of the Board of Directors upon receiving a majority vote of directors as required by the TBOC. The governing body of the sponsor of the Corporation, the City of San Antonio, Texas (the “*City*”), approved and authorized the Certificate of Formation on March 19, 2024, in accordance with the Act. The City’s address is 101 N. College Street, Killeen, Texas 76541. Further, the Board of Directors authorizes the appropriate officer(s) of the Corporation to execute and deliver to the Secretary of State the Amended and Restated Certificate of Formation attached as Appendix A, such Appendix A containing the full text of the Amended and Restated Certificate of Formation.
6. Each amendment has been made in accordance with the provisions of the TBOC and the Act. The new amendments to the Certificate of Formation and the Amended and Restated Certificate of Formation have been approved in the manner required by the TBOC, the Act and the governing documents of the Corporation. Set forth below is an identification by reference of each added, amended or deleted provision:
  - a. Articles One, Two, Three, Four, Five, Six, Seven, Eight, Nine, Ten, Eleven, Twelve and Thirteen have been amended.
  - b. Articles Fourteen and Fifteen have been deleted.
7. The attached Amended and Restated Certificate of Formation accurately states the text of the Certificate of Formation and each amendment to the Certificate of Formation that is in effect, and as further amended by this document. The attached Amended and Restated Certificate of Formation does not contain any other change in the Certificate of Formation except for the information permitted to be omitted by the provisions of the TBOC or the Act applicable to

the Corporation. The Certificate of Formation of the Corporation and all amendments and supplements thereto are hereby superseded by the attached Amended and Restated Certificate of Formation.

8. The Amended and Restated Certificate of Formation becomes effective when filed and approved by the Secretary of State of the State of Texas.

*[Signature Page Follows]*

The undersigned affirms that the person designated as registered agent in the Amended and Restated Certificate of Formation 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.

VERIFICATION: AMENDMENTS APPROVED AND CERTIFIED TO BE TRUE AND CORRECT and to accurately reflect the official action of the duly constituted officers and members of the Corporation's Board of Directors, by majority vote of the Board of Directors in office, on March 19, 2024.

IN WITNESS WHEREOF, I, Jessica Gonzalez, the President of the Corporation, have hereto set my name this \_\_ day of \_\_\_\_\_, 2024.

**KILLEEN PUBLIC FACILITY CORPORATION**

By: \_\_\_\_\_  
\_\_\_\_\_, President

By: \_\_\_\_\_  
\_\_\_\_\_, City Secretary

STATE OF TEXAS

COUNTY OF BELL

Before me, a notary public, on this day personally appeared [City Secretary's name], known to me to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, declared that the statements therein are true and correct.

\_\_\_\_\_  
Notary Public's Signature

(Seal)

## APPENDIX A

**AMENDED AND RESTATED  
CERTIFICATE OF FORMATION  
OF  
KILLEEN PUBLIC FACILITY CORPORATION**

Pursuant to the provisions of Chapter 303 of the Texas Local Government Code (the “Act”), as amended, and specifically Section 303.029 of the Act, the undersigned nonprofit public facility corporation adopts, with the approval of the City Council of the City (the “Governing Body”), as evidenced by the Resolution attached hereto as Exhibit A and made a part hereof for all purposes, the following Amended and Restated Certificate of Formation (this “Amended and Restated Certificate”), which shall amend and restate in its entirety the Certificate of Formation (the “Original Certificate”) filed in the office of the Secretary of State of the State of Texas (the “SOS”) on January 22, 2021, and which such Amended and Restated Certificate accurately copies the Original Certificate and all amendments that are in effect of the date of filing without further changes:

**ARTICLE ONE  
NAME**

The name of the Corporation is the Killeen Public Facility Corporation (the “Corporation”). The filing number issued to the Corporation by the SOS is 803907943.

**ARTICLE TWO  
DURATION**

Subject to the provisions of Article Eleven hereof, the period of duration of the Corporation is perpetual.

**ARTICLE THREE  
PURPOSE AND LIMITATIONS**

(a) The Corporation is organized exclusively for the purpose of assisting the City of Killeen (the “City”) in financing, refinancing, or providing public facilities. The Corporation shall have and possess the broadest possible powers to provide for the acquisition, construction, rehabilitation, renovation, repair, equipping, furnishing and placement in service of public facilities in an orderly, planned manner and at the lowest possible borrowing costs. The Corporation is further authorized to acquire an interest in any partnership or other entity in order to accomplish any of the above purposes. The Corporation is a public nonprofit corporation, a constituted authority, and a public instrumentality within the meaning of the Act, the United States Treasury Department, the rulings of the Internal Revenue Service prescribed and promulgated pursuant to sections 103 and 141 of the Internal Revenue Code of 1986, as amended, and the Corporation is authorized to act on behalf of the City as provided in this Amended and Restated Certificate. The Corporation is not authorized to issue “bonds” as defined and permitted by the Act; provided, however, that notwithstanding the foregoing, the Corporation may enter into any contracts and agreements, and incur such other obligations, as permitted under the Act, without first receiving Governing Body approval

The Corporation will not advertise or hold out to the public in any manner that it is a state or national bank, trust company or depository institution, or that it is authorized to conduct banking or trust business.

(b) In the fulfillment of its corporate purpose, the Corporation shall have and may exercise the powers described in paragraph (a) of this Article, together with all of the other powers granted to the corporations that are incorporated under the Act and to the extent not in conflict with the Act, the

Corporation shall additionally have and may exercise all of the rights, powers, privileges, authorities, and functions given by the general laws of the State of Texas (the "State") to nonprofit corporations under the Texas Nonprofit Corporation Law, Chapter 22 of the Texas Business Organizations Code, as amended, or any other applicable laws of the State.

(c) The Corporation shall have the purposes and powers permitted by the Act, but the Corporation does not have, and shall not exercise the powers of sovereignty of the City, including the power to tax, eminent domain, and police power. However, for the purposes of the Texas Tort Claims Act (Subchapter A, Chapter 101, Texas Civil Practice and Remedies Code, as amended), the Corporation is a governmental unit, and its actions are governmental functions.

(d) No bonds or other obligations, contracts, or agreements of the Corporation are or shall ever be deemed to be or constitute the contracts, agreements, bonds, other debt instruments, or other obligations or the lending of credit, or a grant of the public money or things of value, of, belonging to, or by the State, the City, or any other political corporation, subdivision or agency of the State, or a pledge of the faith and credit of any of them. Any and all of such contracts, agreements, other debt instruments, and other obligations, contracts and agreements shall be payable solely and exclusively from the revenues and funds received by the Corporation from the sources authorized by the Act and from such other sources as may be otherwise lawfully available and belonging to the Corporation from time to time.

(e) The Governing Body, in its sole discretion, may alter the Corporation's structure, name, organization, programs, or activities, consistent with the Act and subject to limitations provided by law relating to the impairment of contracts entered into by the Corporation.

#### **ARTICLE FOUR FINANCING**

(a) The Corporation shall not sell or deliver any bonds.

(b) In the exercise of the powers of the Corporation, the Corporation may enter into loan, lease, trust, or other agreements as authorized by the Act that are necessary and appropriate to the fulfillment of the public purpose of the Corporation.

#### **ARTICLE FIVE MEMBERS**

The Corporation has no members and is a nonstock corporation.

#### **ARTICLE SIX AMENDMENTS**

This Amended and Restated Certificate may be amended at any time as provided in the Act, to make any changes and add any provisions which might have been included in the Certificate of Formation in the first instance. The Governing Body may, at its sole discretion, and at any time, amend this Amended and Restated Certificate and alter or change the structure, name, organization, programs or activities of the Corporation, or terminate or dissolve the Corporation (subject to Article Thirteen and the provisions of the Act, and subject to any limitation provided by the constitutions and laws of the impairment of contract entered into by the Corporation) by a resolution adopting the certificate of amendment or certificate of termination at a meeting of the Governing Body, and delivering a certificate of amendment or certificate of termination to the Secretary of State, as provided in the Act. An amended and restated certificate of formation may be filed with the Secretary of State as provided in the Act.

**ARTICLE SEVEN  
ADDRESS**

The street address of the registered office of the Corporation is 101 N. College Street, Killeen, Texas 76541, and the name of its registered agent at that address is City Manager Kent Cagle.

**ARTICLE EIGHT  
BOARD OF DIRECTORS**

(a) The affairs of the Corporation shall be managed by, and all powers of the Corporation shall be vested in, a board of directors (the "Board of Directors"), which shall be composed of the Mayor and Councilmembers of the City (each, a "Director"). Each Director's term will be coterminous with their term as Mayor or as a Councilmember of the City. Any Director shall cease to be a Director at the time he or she ceases to be a member of the Governing Body. Each time a new Mayor or Councilmember of the City takes office, they shall automatically become a member of the Board of Directors. Directors are removable by the Governing Body under the same terms, conditions, and procedures as required for the removal of members of the Governing Body. A majority of the entire membership of the Board of Directors, including any vacancies, is a quorum. The Board of Directors shall conduct all meetings within the boundaries of the City.

(b) The number of directors of the Corporation is eight. The names and street addresses of the persons who are current Directors are as follows:

<b>Names</b>	<b>Addresses</b>
Jessica Gonzalez	101 N. College Street, Killeen, Texas 76541
Michael Boyd	101 N. College Street, Killeen, Texas 76541
Debbie Nash-King	101 N. College Street, Killeen, Texas 76541
Nina Cobb	101 N. College Street, Killeen, Texas 76541
Jose L. Segarra	101 N. College Street, Killeen, Texas 76541
Ramon Alvarez	101 N. College Street, Killeen, Texas 76541
Joseph Solomon	101 N. College Street, Killeen, Texas 76541
Riakos Adams	101 N. College Street, Killeen, Texas 76541

(c) The Directors shall serve without compensation, but they shall be reimbursed for their actual expenses incurred in the performance of their duties as directors.

(d) The Directors shall elect a president, vice president, secretary, and any other officers that the Corporation considers necessary, to serve as executive officers of the Corporation, as more specifically provided in the Corporation's Bylaws. The City Manager shall serve as an Assistant Secretary to the Corporation.

(e) Any Director or officer may resign at any time, and a successor shall be appointed in accordance with the procedures set forth in the Bylaws.

## **ARTICLE NINE BYLAWS**

The initial Bylaws of the Corporation have been adopted by the Board of Directors and shall, together with this Amended and Restated Certificate, govern the initial affairs of the Corporation until and unless amended in accordance with the provisions of the Act and this Amended and Restated Certificate. The Bylaws and each amendment and repeal of the Bylaws must be approved by the Governing Body by a resolution.

## **ARTICLE TEN GOVERNING BODY APPROVAL**

(a) The City has specifically authorized the Corporation by resolution to act on its behalf to further the public purposes stated in this Amended and Restated Certificate, and the City has by the Resolution attached hereto as Exhibit A, approved this Amended and Restated Certificate. The date of approval of this Amended and Restated Certificate by the Governing Body is March 19, 2024, at which time this Amended and Restated Certificate was determined to be advisable and was authorized by a majority vote of the members of the Governing Body. A copy of the Resolution is on file among the permanent public records of the City and the Corporation. As set forth in Article Six, the Governing Body, in its sole discretion, may alter the Corporation's structure, name, organization, programs, or activities, consistent with the provisions of the Act.

(b) The City is the Corporation's "Sponsor" (as defined by the Act) and has caused this Corporation to be created. The City's principal office address is 101 N. College Street, Killeen, Texas 76541, and the Corporation's principal office address is 101 N. College Street, Killeen, Texas 76541.

## **ARTICLE ELEVEN DISSOLUTION**

(a) The duration of the Corporation is perpetual.

(b) The Governing Body, by written resolution, may authorize and direct the dissolution of the Corporation. However, the Corporation shall not be dissolved, and its business shall not be terminated, by act of the Governing Body or otherwise, so long as the Corporation shall be obligated to pay any debt obligation.

(c) No action shall be taken pursuant to paragraph (a) of this Article or pursuant to paragraph (b) of Article Twelve of this Amended and Restated Certificate, in any manner or at any time that would impair any contract, lease, right, or other obligation executed, granted, or incurred by the Corporation prior to such action.



**ARTICLE TWELVE  
MISCELLANEOUS**

(a) All properties owned by the Corporation shall be held for the use and benefit of the public on a nondiscriminatory basis.

(b) No dividends shall ever be paid by the Corporation, and no part of its net earnings remaining after payment of its expenses and other obligations shall be distributed to or inure to the benefit of its directors or officers, or any individual, private firm, or private corporation or association, except in reasonable amounts for services rendered and expenses incurred.

(c) If, after the close of any fiscal year, the Board of Directors shall determine that sufficient provision has been made for the full payment of all current and future expenses and needs of the Corporation, together with all amounts payable on the contracts, agreements, and other obligations of the Corporation, and that all of the terms, provisions, and covenants therein have been met, then any net earnings derived from sources thereafter accruing in connection with public facilities financed or refinanced pursuant to the Act may be provided to the City.

(d) If the Corporation ever should be dissolved when it has, or is entitled to, any interest in any funds or property of any kind, real, personal or mixed, such funds or property or rights thereto shall not be transferred to private ownership, but shall be transferred and delivered to the City after satisfaction of debts and claims.

(e) No part of the Corporation's activities shall consist of the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in any political campaign of or in opposition to any candidate for public office.

(f) Every amendment to the Original Certificate contained in this Amended and Restated Certificate has been made in conformity with the Act.

(g) This Amended and Restated Certificate accurately copies the Original Certificate and all previous amendments in effect on the date hereof, as further amended by the amendments in this Amended and Restated Certificate.

**ARTICLE THIRTEEN  
DIRECTOR LIABILITY; INDEMNIFICATION**

(a) To the fullest extent permitted by State law, as the same exist or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits broader limitations than permitted prior to such amendment), a member of the Board of Directors shall not be liable, or shall be liable only to the extent provided in this Amended and Restated Certificate, to the Corporation for monetary damages for an act or omission in the director's capacity as a director. Any repeal or amendment of this Article shall be prospective only, and shall not adversely affect any limitation on the personal liability of a member of the Board of Directors existing at the time of such repeal or amendment.

(b) The Corporation may indemnify any director, officer, employee or agent or former director, officer, employee or agent of the Corporation for expenses and costs, including attorney's fees, actually or necessarily incurred by the person in connection with any claim asserted against the person, by action in

court or other forum, by reason of such person having been a director, officer, employee or other agent, except that the Corporation may not provide indemnity in a matter if the director, officer, employee, or agent is guilty of negligence or misconduct in relation to the matter.

*[The remainder of this page intentionally left blank.]*

IN WITNESS WHEREOF, the undersigned have executed this Amended and Restated Certificate as of \_\_\_\_\_, 2024

\_\_\_\_\_  
\_\_\_\_\_, President  
Killeen Public Facility Corporation

\_\_\_\_\_  
\_\_\_\_\_, City Secretary

**EXHIBIT A**

**Approving Resolution of the City**



# AMENDMENTS TO THE PFC'S CERTIFICATE OF FORMATION

PFC-24-6

March 19, 2024

# Background

- ❑ The City Council approved the Certificate of Formation (COF) for the Killeen Public Facility Corporation in January 2021.
- ❑ The COF limits the purpose of the PFC to a partnership on one specific project.
- ❑ On March 5, 2024, subject to amendment of the COF, the PFC approved a non-binding resolution inducing the Avanti Legacy Parkview Apartments transaction. To continue to support the Avanti project and allow the PFC to participate in additional projects, amendments to the COF must be adopted.
- ❑ The COF may be amended by resolution of the City Council and adopted by the PFC.

# *Amended and Restated Certificate of Formation*

- Updates dates, numbering, and names of Directors to include current Councilmembers
- Broadens the purpose of the PFC to allow participation in additional projects
- If approved by the City Council and adopted by the PFC, amendments will be filed with the Secretary of State

# Recommendation

4

Staff recommends adoption of the amendments to the Certificate of Formation in the form approved by the Killeen City Council.





# City of Killeen

## Staff Report

File Number: PFC-24-7

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Consider a memorandum/resolution approving a Memorandum of Understanding with Crimson Bulldog Development, Inc. for the development of the Avanti Legacy Parkview Apartments.

**DATE:** March 19, 2024

**TO:** Kent Cagle, City Manager

**FROM:** Holli Clements, City Attorney

**SUBJECT:** Memorandum of understanding regarding Avanti Legacy Parkview Apartments

### **BACKGROUND AND FINDINGS:**

On March 5, 2024, the PFC approved an inducement resolution regarding Avanti Legacy Parkview Apartments transaction.

Avanti Legacy Parkview is expected to contain 108 residential units and is intended to be financed, in part, with low-income housing tax credits. The PFC or subsidiary limited liability company will serve as general partner and own the land on which the project will be located.

The proposed Memorandum of Understanding with the Developer Crimson Bulldog Development, Inc. provides for the ownership structure, financing structure, ground lease and ad valorem tax exemption, design and construction, management and operation, fees and expenses, and other miscellaneous provisions. While further details of the partnership will be finalized in a formal Partnership Agreement, ground lease, and other legal documents, the purpose of this Memorandum of Understanding is to set forth the general understanding of the parties for development of the Avanti Legacy Parkview Apartments.

### **THE ALTERNATIVES CONSIDERED:**

Click or tap here to enter text.

### **Which alternative is recommended? Why?**

Staff recommends that the PFC consider approval of the Memorandum of Understanding with Crimson Bulldog Development, Inc. for the development of Avanti Legacy Parkview Apartments.

### **CONFORMITY TO CITY POLICY:**

Yes

**FINANCIAL IMPACT:**

**What is the amount of the revenue/expenditure in the current fiscal year? For future years?**

At the end of fifteen years, the PFC has the right to require the Developer to purchase the property from the PFC for a payment equal to the amount of the foregone property taxes for the fifteen years. The PFC is entitled to 5% of the developer fee and cash flow from operations or sale/refinancing of the project which will be escrowed to ensure payment at the end of the fifteen years.

**Is this a one-time or recurring revenue/expenditure?**

N/A

**Is this revenue/expenditure budgeted?**

N/A

**If not, where will the money come from?**

N/A

**Is there a sufficient amount in the budgeted line-item for this revenue/expenditure?**

N/A

**RECOMMENDATION:**

Staff recommends that the PFC consider approval of the Memorandum of Understanding with Crimson Bulldog Development, Inc. for the development of Avanti Legacy Parkview Apartments.

**DEPARTMENTAL CLEARANCES:**

Click or tap here to enter text.

**ATTACHED SUPPORTING DOCUMENTS:**

MOU

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
KILLEEN PUBLIC FACILITY CORPORATION  
AND  
CRIMSON BULLDOG DEVELOPMENT, INC.  
(AVANTI LEGACY PARKVIEW)**

This Memorandum of Understanding (the “**MOU**”) is between the Killeen Public Facility Corporation, a Texas public facility corporation organized under Chapter 303 of the Texas Local Government Code (“**PFC**”), and Crimson Bulldog Development, Inc., a Texas corporation (“**Developer**”), and is dated effective as of March 19, 2024.

Developer is a developer of affordable housing in the State of Texas. PFC is a public housing facility corporation that, as a part of its mission, provides safe, decent and sanitary housing for low-income persons and manages resources efficiently and effectively. PFC or its affiliate will be the owner of certain real property located in the City of Killeen, Bell County, Texas as more particularly described below. Developer and PFC hereby agree to work cooperatively to develop and operate affordable housing in accordance with the terms of this MOU:

A senior multifamily development in Killeen, Texas to be known as “Avanti Legacy Parkview,” expected to contain approximately 108 residential units (the “**Project**”). The Project is intended to be financed, in part, with low-income housing tax credits (“**Tax Credits**”) under Section 42 of the Internal Revenue Code of 1986, as amended (the “**Code**”). The Project will be located at the 51 N W S Young Drive, Killeen, Texas, 76541. as more particularly described on **Exhibit A** attached hereto and made a part hereof (the “**Land**,” collectively with the Project, the “**Property**”).

In order to accomplish this purpose, the parties agree as follows:

**AGREEMENTS:**

1. **Ownership Structure.**

1. The Developer has formed Avanti Legacy Parkview, LP, a Texas limited partnership (the “**Partnership**”) for the purpose of owning the fee interest in the Project leasehold interest in the land on which the Project is located. PFC will form a single-member limited liability company to serve as the General Partner (herein so called) of the Partnership after Closing (as defined herein). Under no circumstances will the PFC execute documents on behalf of the Partnership that are effective prior to PFC’s admission to the General Partner. An affiliate of the Developer will own a special limited partner (herein so called) interest (“**Special Limited Partner**”) in the Partnership, and the Special Limited Partner (as hereinafter defined) shall be the special limited partner of the Partnership as set forth in Section B.3 below. In recognition of the guaranties to be provided by the Developer and its affiliates, the Special Limited Partner will be delegated authority to enter into and execute documents on behalf of the Partnership after meaningful consultation with General Partner (provided, however, that if General Partner has not responded within 10 business days after notice by Special Limited Partner, the Special Limited

Partner shall be entitled to proceed based upon such authority) and be delegated primary decision-making authority for matters that could impact the financial obligations of the Developer or its affiliates under any guarantees. Such rights shall be set forth in the Partnership Agreement (as hereinafter defined). In addition, the Special Limited Partner shall have consent rights over major decisions regarding the Partnership and the Project. A low-income housing tax credit investor will have an investor limited partner (“**Investor Limited Partner**”) interest in the Partnership and will have certain consent and approval rights as are customary for such low-income housing tax credit investors. The full duties of the General Partner and the Developer Partner shall be set forth in the Partnership Agreement, including without limitation those terms included on Schedule 2, attached hereto and incorporated herein for all purposes.

The Partnership, General partner, the Special Limited Partner and Investor Limited Partner have been formed or will be formed before Closing (as hereinafter defined).

2. PFC (or its designee) will receive a Right of First Refusal (herein so called) to acquire the Property at the end of the 15th year of the LIHTC compliance period (the “**Compliance Period**”) for the statutory minimum price in accordance with Section 42(i)(7) of the Internal Revenue of 1986, as amended (the “Code”). No consent from any other partners will be required for PFC to either (a) market the Project for sale or (b) subsequently acquire the property at the end of the Compliance Period pursuant to the Right of First Refusal. The Partnership will be structured to minimize or eliminate potential exit taxes at the end of the Compliance Period. For clarity, the statutory minimum price referenced above is intended to include the industry-standard price amounts as follows: (i) the amount of outstanding indebtedness secured by the Project, (ii) the amount of federal, state and local tax liability projected to be imposed on the partners in the Partnership as a result of the sale pursuant to the Right of First Refusal, including federal income tax liability incurred due to the payment of amounts pursuant to this clause (ii), (iii) the amount of any unreimbursed deficiency in tax credits owed to the Investor Limited Partner, and (iv) reimbursable guaranty obligations or other loan amounts owed to the Investor Limited Partner or the Special Limited Partner pursuant to the Partnership Agreement.

3. Long Term Ownership and Project Disposition: In addition to the aforementioned Right of First Refusal, throughout the life of the Partnership, PFC or its designated affiliate shall have the following purchase option (collectively, the “**Purchase Option**”) as follows:

a. throughout the life of each Partnership, PFC shall have an option to acquire the Property (the “**Project Option**”) for a price equal to the greater of (i) 100% of the then fair market value of the Partnership's leasehold interest in the Land and fee simple title in the Project (subject to the then existing rent and other restrictions on the Project), reduced by customary costs of sale, including customary sales commissions, as determined by an appraisal and taking into account (1) the existence of continued income and rent restrictions on the Property, (2) any deferred maintenance and capital need requirements set forth in a physical needs assessment, or (3) the existence of the right of first refusal requirements; or (ii) the sum of (i) all then outstanding amounts under all of the Partnership's, (ii) plus the amount of all federal, state and local taxes which Investor Limited Partner and Special Limited Partner would be obligated to pay arising out

of such sale, (iii) repayment of other amounts owing pursuant to the Partnership Agreement, including loans or advances made by a partner or its affiliate, (iv) the amount necessary to obtain an [12]% internal rate of return for Investor Limited Partner and Special Limited Partner, (v) all costs and expenses incurred in connection with the exercise of the Project Option. In addition, if the Project Option is exercised during the Compliance Period, the purchase price for the Property will be calculated to include a full return of all investment capital, payment of any Tax Credit recapture, penalties, interest, and repayment of all indebtedness, including repayment of reimbursable guaranty obligations to the Special Limited Partner and its Affiliates and any other indebtedness owed to the Investor Limited Partner and the Special Limited Partner or their respective affiliates, payment of Deferred Development Fee (as hereinafter defined), and payment of projected cash flow to the Investor Limited Partner and Special Limited Partner; and

b. upon the expiration of the Compliance Period, an option to acquire the collective interests of the Investor Limited Partner and the Special Limited Partner and any other limited partner interests in each Partnership (the “**Interest Option**”), if applicable, for an amount equal to the greater of (i) 100% of the then fair market value of such interest, determined by an appraisal and based on a going concern basis and taking into account (1) the existence of continued income and rent restrictions on the Property, (2) any deferred maintenance and capital need requirements set forth in a physical needs assessment, (3) the existence of the right of first refusal requirements, (4) the lack of control rights inherent in the limited partner's interest, or (ii) the amount of any income tax which Investor Limited Partner (or other limited partner, if applicable) would be obligated to pay arising out of such sale. The purchase price with respect to the interest of the Special Limited Partner shall also include repayment of all guaranty obligations and other loans advanced by the Special Limited Partner or its affiliates to the extent not already covered by the foregoing calculation.

c. The Purchase Option and the Right of First Refusal are all subject to PFC or its designated affiliate assuming all remaining guarantees in favor of third-party lenders and causing a release of Special Limited Partner and its affiliates from such guaranties (or providing an indemnity to the Special Limited Partner and its affiliates if a release is not permitted).

d. The parties acknowledge that PFC's long-term ownership of the Property is partially in consideration for the Exemption (as hereinafter defined), and they agree to work together to achieve these goals. Notwithstanding any of the foregoing, if the Exemption terminates or is not obtainable as to the Property and/or General Partner is removed as the general partner of the Partnership for an act or omission of General Partner or its affiliate, the Right of First Refusal, the Project Option, the Interest Option, and any other rights of PFC and General Partner with respect to long-term ownership of the Project will terminate, along with PFC's interest in the Ground Lease for the Project. In such event, all of PFC's interest in the Project and the Land will be transferred to a party designated by the Special Limited Partner.

e. In addition, if PFC has not acquired the Project through the exercise of either the Project Option or the Right of First Refusal, the Project Option, the Right of First Refusal, and the Interest Option will all terminate upon the sale of the Project to a third party. PFC shall cooperate, at no expense to PFC, with the Special Limited Partner and the buyer as necessary in order to facilitate the sale to such third party, including but not limited to, executing a release

or termination of the Project Option, the Right of First Refusal, the Interest Option, and the Ground Lease, and executing any conveyance documents related to the transfer of the Land to the third party, at the Partnership's sole cost and expense, including any expenses of PFC counsel.

f. Notwithstanding anything to the contrary set forth herein, Developer shall remain responsible for providing certain development and asset management services relating to the Project and shall earn the fees set forth in Exhibit 4 attached hereto. Upon the end of the Compliance Period, the PFC shall have a put option, subject to any Right of First Refusal set forth herein, to require Developer to acquire (i) the General Partner's interest in the Partnership and (ii) fee title to the Property in exchange for an amount equal to the portion of property taxes abated during the Compliance Period that would have otherwise been payable (such amount to earn simple interest throughout the Compliance Period at a rate of prime at the time of Closing plus 1%), currently expected to be approximately \$600,000 plus interest (the "**Abated Taxes**").

g. Developer shall procure title insurance for the Project, including a fee owner policy on behalf of PFC from a reputable title company authorized to operate in Bell County, Texas.

## B. **Financing.**

1. Prior to closing, Developer intends to obtain either debt or equity pre-development financing. Developer shall notify PFC of any such financing within five business days of obtaining any commitment for such financing and at least five business days prior to closing on such financing.

2. The development of the Project will be financed using 9% low-income housing tax credits ("**Tax Credits**"), and/or other sources of affordable housing financing as mutually agreed upon by PFC and the Developer.

3. The Tax Credits will be utilized to obtain equity investment for the construction of the Project. Partnership has received a housing tax credit commitment from TDHCA in program year 2022 for 9% Tax Credits, as supplemented by a force majeure requested granted by TDHCA on June 5, 2023. It is anticipated that an affiliate of RBC Community Investments, LLC, will be admitted as the equity investor (the "**Investor Limited Partner**") with an up to 99.99% limited partner interest in the Partnership pursuant to an Amended and Restated Agreement of Limited Partnership (the "**Partnership Agreement**"). PFC will have the right to meaningfully review and approve the financing arrangements and the terms and conditions of any equity financing documents, which review and approval shall not be unreasonably withheld, conditioned, or delayed.

4. On behalf of the Partnership, Developer will apply for construction and permanent debt financing for the Project, as well as other financing as may be necessary, which may include, without limitation, leveraged funds from private, non-governmental sources (collectively, the "**Loans**"). It is anticipated that Churchill Stateside Group will provide the construction and permanent Loans for the Project. PFC will have the right to meaningfully review and approve the

financing arrangements and the terms and conditions of any debt financing documents, which review and approval shall not be unreasonably withheld, conditioned, or delayed.

5. Subject to the terms and conditions hereof, the parties anticipate that the Partnership will enter into documents for the Loan(s) and the equity financing (including the Partnership Agreement). The execution of such documents and the funding of the Loans and the equity financing is collectively referred to herein as the “**Closing.**”

7. Developer and/or its affiliates shall provide all required guaranties for the Loans and Equity. Developer and its affiliates shall have sole discretion in their consent to the terms of any such guaranties.

8. Developer and PFC (at Developer’s sole cost and expense) will cooperate as reasonably necessary and appropriate with respect to responding to due diligence and underwriting requirements for the Loans and equity financing.

**C. Ground Lease; Ad Valorem Tax Exemption.**

1. Ground Lease. An affiliate of Developer purchased the Land, which shall be conveyed to PFC or its affiliate at Closing. At Closing, fee simple title to the buildings and other improvements constituting the Project that are to be constructed on the Land will be owned by the Partnership and fee simple title to the Land will be owned by PFC, or an affiliate of PFC, and concurrently with the acquisition of the Land such party will, as ground lessor, enter into a 99-year ground lease (the “**Ground Lease**”) with the Partnership, as ground lessee of the Property. Funding for the development of the Property will come from the Loan(s), and the Equity financing, and will be paid to PFC or its affiliate in the form of an up-front Ground Lease payment, the amount of which will be equal to the purchase price of the Land. In addition to the up-front rental payment, which PFC or its affiliate will use to pay the costs to purchase the Land, the Ground Lease will provide for nominal \$100.00 annual rent that will be deferred so long as the Property is used for affordable housing purposes, provided such deferral does not have an adverse impact for federal income tax purposes. Upon termination of the Ground Lease, ownership of the Property will revert to PFC or its affiliate. The terms and provisions of the Ground Lease will be subject to the approval of Developer.

2. Ad Valorem Tax Exemption. The contemplated ownership structure is expected to generate an ad valorem tax exemption for the Project (the “**Exemption**”). Prior to entering into the Ground Lease, PFC, on behalf of the Partnership, will use commercially reasonable efforts to work with the applicable appraisal district to obtain a pre-determination letter confirming the availability of the Exemption; provided, however, that failure to obtain such letter shall not constitute a breach or default of PFC hereunder. The Ground Lease, combined with PFC’s service as the general partner of the Partnership and the Right of First Refusal and a Purchase Option described above are intended to establish PFC’s equitable ownership of the Project in order for the Project to qualify for the Exemption. PFC shall not have any right to terminate the Ground Lease during the 15-year Tax Credit compliance period without the approval of the Investor Limited Partner, the Special Limited Partner, and any third-party Lender(s); provided, however, that PFC shall have the right to enforce certain remedies against Tenant,

including rights to indemnification, reimbursement and enforcement of any use restrictions via specific performance.

**D. Design and Construction.**

1. Developer and the Partnership will enter into a development agreement for the Project that will cover all aspects of the development of the Project but will follow this MOU as an essential guide.

2. Reserved.

3. PFC shall have the right to review and reasonably approve in writing any construction contract relating to the Project prior to the execution thereof. PFC shall have the right to review, comment upon and approve the form of general contract which shall be provided with a reasonable amount of time to allow for meaningful review by PFC or its advisors.

4. Developer shall be responsible for the development of the Project, including obtaining all governmental approvals and permits needed in order to construct and operate the Project, including without limitation any entitlements and permits required in connection with the Project. PFC shall reasonably cooperate with Developer at Developer's sole cost and expense (unless otherwise reimbursed or paid by Partnership) in obtaining all such approvals as needed and shall respond to any requests for assistance from Developer by no later than five business days of receiving such request.

5. The Project shall be constructed so as to comply with applicable ADA and section 504 requirements, as well as any other federal, state or local requirements applicable to the Property.

**E. Management and Operation.**

1. Asset Living shall be designated as the initial property manager for the Project and shall remain in such capacity so long as any affiliate of Developer has guarantees related to the Project. Accordingly, Asset Living may only be removed for cause. Following Closing, any change of property manager will require the approval of PFC, General Partner, the Special Limited Partner (unless the Management Company is removed for cause), Project Lender(s) and Investor Limited Partner.

2. Provisions will be negotiated to help the PFC assure that the Project remains a Well-Maintained Tax Credit Project throughout the Term of the Lease, including conducting periodic physical needs assessments by an engineer experienced in such assessments at seven (7) year intervals, and at any point in time when there is a change in occupancy below the 85% level. For avoidance of doubt, the parties agree that maintaining the Project as a Well-Maintained Tax Credit Project means keeping the Project as originally designed and constructed in appropriate condition to compete with other Well-Maintained Tax Credit Projects of the same age as the Project, but does not mean adding amenities, making structural or other changes to the exterior or interior of the Project to make it consistent with newly constructed Projects at a future date. Furthermore, in



order for the Project to be a Well-Maintained Tax Credit Project, the Developer shall complete the items identified as needing repair or replacement in the physical needs assessment; if such items are not repaired or replaced, the Partnership shall be in default under the Lease and shall not make any distributions or other payments to its partners except to pay deferred developer fee.

3. Subject to termination for reasonable cause, Developer shall provide accounting services (including but not limited to: (i) bookkeeping, monitoring reporting requirements and processing construction loan draws and change orders, and (ii) preparation of and/or coordinating preparation of cost certification, carryover, 10% test, tax returns and the Partnership's audit and audited financial statements for filing or certification by the Partnership's outside accountants,) to the Project and (iii) preparing and filing General Partner and Partnership federal income tax returns and franchise tax filings. Partnership shall be responsible for paying any costs incurred by PFC in connection with compliance or filings (including, without limitation, tax returns) related to the Project.

Upon a reasonable request, the General Partner shall have access to all records and financial reports and budgets within a reasonable time after such documents have been prepared. Specifically with respect to financial reports of the Project, such reports shall be provided as reasonably requested by the General Partner and in a manner that PFC prescribes.

F. **Fees and Expenses.**

1. For its development of the Project, Developer shall be entitled to receive a Developer's Fee of 15% of the Project's actual total development cost as calculated pursuant to TDHCA guidelines. The Developer Fee shall be split 5% to PFC and 95% to Developer. At the Closing, the Partnership shall establish the amount of developer's fee that is expected to be paid from debt and equity financing proceeds (the "**Current Portion**") and the amount of the developer's fee that is expected to be deferred and paid out of the Partnership's net cash flow (the "**Deferred Development Fee**").

2. Neither party shall enter into any contractual relationship or agreement relating to the Property that would cause either financial or legal liability to the other, without the other party's prior written consent. The parties acknowledge and agree that Developer has no authority to execute documentation on behalf of PFC.

3. All expenses and costs incurred by PFC and Developer for the Project in reliance upon this MOU (including reasonable legal fees) shall be paid out of the Property budget at the Closing; provided, that if Closing does not occur, Developer shall pay any expenses of the PFC, including without limitation, legal fees of PFC counsel based on actual hours worked to the time it is communicated that Closing will not occur.

4. After payment of any other priority net cash flow payments established in the Partnership Agreement, cash flow or proceeds from sale or refinance of the Project shall be paid to 5% to PFC (or its affiliate) and 95% to Developer. All Operating Deficit Loans or partner loans shall be repaid prior to payment of incentive or management fees.

5. Any amounts of Developer Fee (whether cash or deferred), cash flow or proceeds from sale or refinance of the Project that are due and payable to the PFC or any of its affiliates shall be deposited in an escrow account at an institution chosen by PFC. Such amount shall be applied toward the Abated Taxes and interest thereon payable to the PFC upon its exercise of the put option as set forth in Section 1.3(f), or shall be paid to PFC upon its determination to exercise its Right of First Refusal set forth in Section 1.2.

G. **Community Support.**

PFC and Developer will be responsible for interfacing with the local governmental officials in connection with garnering support for the Project. Developer will consult with PFC and coordinate the response to any media inquiries and/or public opposition to the Project that may arise.

H. **Termination.**

This MOU shall continue until terminated upon the occurrence of one of the following conditions:

- (i) PFC and Developer sign a mutual consent to terminate this MOU, effective as of the date set forth in such consent;
- (ii) Any consent or approval required hereunder is specifically denied, including but not limited to the consent of TDHCA to the documents of the transactions described herein;
- (iii) Either party breaches its obligations under this MOU, the non-breaching party provides the breaching party notice of such fact and a 30-day opportunity to cure, and the breaching party fails to do so;
- (iv) Either party files for bankruptcy protection, makes an assignment for the benefit of creditors, has a receiver appointed as to its assets, or generally becomes insolvent;
- (v) If Developer determines that the transactions contemplated by this MOU are not economically feasible;
- (vi) If Developer determines that that the Project is unlikely to qualify for the Exemption;
- (vii) A party is ineligible to participate in the Tax Credit program pursuant to TDHCA's rules, then the other part may terminate this MOU by providing written notice thereof to the party being found ineligible; or
- (viii) Any legal, administrative or governmental action (including without limitation, a failure of the PFC Board of Directors to approve the

transaction) prohibits a party from consummating the transactions contemplated herein.

Upon termination of this MOU for any of the reasons above, neither party shall have any ongoing obligations to the other with respect to this MOU and the Project, except as set forth in Section F.3.

If not earlier terminated, this MOU shall terminate upon the Closing when PFC and Developer and their affiliates, as applicable, enter into definitive agreements with respect to the governance of the Partnership and the development, construction, financing, and operation of the Project as contemplated herein. The terms in such agreements, once finalized, shall control over any inconsistent or conflicting provisions in the MOU.

In the event this MOU is terminated prior to Closing or the transaction fails to close as contemplated herein, the Developer shall retain the sole right to control of the Land and any future development thereof.

#### **I. Miscellaneous.**

1. Developer represents and warrants it is a limited liability company duly organized, validly existing and in good standing under the laws of the state of Texas, and has all requisite limited liability company power and authority to carry on its business. The execution, delivery and performance of this MOU by Developer and the consummation by Developer of the transactions contemplated hereby, have been or will be duly authorized by all requisite action and no further action or approval will be required in order to permit Developer to consummate the transactions contemplated hereby, except the consents contemplated herein. This MOU constitutes the legal, valid and binding obligation of Developer, enforceable in accordance with its terms. The making and performance of this MOU, and the consummation of the transactions contemplated hereby are in accordance with the terms hereof and will not (i) conflict with the organizational and governance documents of Developer, or (ii) result in the violation of any provisions of law applicable to the Developer, the violation of which could have an adverse effect upon the business of Developer, the Partnership, or the Project. Developer has not received any notice to indicate that it is or may be ineligible to apply for any of the proposed financing for the Project.

2. PFC represents and warrants that it is duly organized and validly existing under the laws of the state of Texas, with all requisite power and authority to carry on its business. Subject to approval by the Board of Directors of PFC, the execution, delivery and performance of this MOU by PFC will be duly authorized by all requisite action and no further action or approval will be required in order to permit PFC to consummate the transactions contemplated hereby, except the consents contemplated herein. This MOU constitutes the legal, valid and binding obligation of PFC, enforceable in accordance with its terms. The making and performance of this MOU, and the consummation of the transactions contemplated hereby are in accordance with the terms hereof and will not (i) conflict with its organizational and governance documents, or (ii) result in the violation of any provisions of law applicable to it, the violation of which could have an adverse effect upon the ability of PFC to perform its obligations hereunder. PFC has not received any notice to indicate that it is or may be ineligible to apply for any of the proposed financing for the

Project.

3. THIS MOU SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF TEXAS, EXCLUSIVE OF CONFLICT OF LAWS PRINCIPLES. THE PARTIES HERETO EXPRESSLY CONSENT AND AGREE THAT ANY DISPUTE, CONTROVERSY, LEGAL ACTION OR OTHER PROCEEDING THAT ARISES UNDER, RESULTS FROM, CONCERNS OR RELATES TO THIS MOU MAY BE BROUGHT IN THE FEDERAL AND STATE COURTS IN AND OF THE COUNTY OF BELL, STATE OF TEXAS. THE PARTIES HERETO HEREBY ACKNOWLEDGE THAT SAID COURTS HAVE JURISDICTION OVER ANY SUCH DISPUTE OR CONTROVERSY, AND THAT THEY HEREBY WAIVE ANY OBJECTION TO PERSONAL JURISDICTION OR VENUE IN THESE COURTS OR THAT SUCH COURTS ARE AN INCONVENIENT FORUM. ALL REMEDIES AT LAW, IN EQUITY, BY STATUTE OR OTHERWISE SHALL BE CUMULATIVE AND MAY BE ENFORCED CONCURRENTLY OR FROM TIME TO TIME AND, SUBJECT TO THE EXPRESS TERMS OF THIS AGREEMENT, THE ELECTION OF ANY REMEDY OR REMEDIES SHALL NOT CONSTITUTE A WAIVER OF THE RIGHT TO PURSUE ANY OTHER AVAILABLE REMEDIES.

4. This MOU reflects the entire understanding between the parties and may only be amended in writing, signed by both parties. This MOU shall be binding upon and inure to the benefit of each party hereto and is not merely an "agreement to agree."

5. The parties hereto are each prohibited from assigning any of its interests, benefits or responsibilities hereunder to any third party or related third party, without the prior written consent of the other party. The terms and conditions of this MOU shall inure to the benefit of and be binding upon any permitted successors and assigns. Nothing in this MOU, express or implied, is intended to confer upon any party, other than the parties hereto and their permitted successor and assigns any rights, remedies, obligations or liabilities.

6. In case any one or more of the provisions contained in this MOU for any reason are held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision hereof, and this MOU will be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

7. (Reserved.)

8. Any subject headings contained in this MOU are for reference purposes only and do not affect in any way the meaning or interpretation hereof.

9. Any terms or conditions of this MOU may be waived in writing at any time by the party which is entitled to the benefits thereof, and this MOU may be modified or amended by a written instrument executed by the parties hereto. No supplement, modification or amendment of this MOU shall be binding unless executed in writing by all of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

10. All notices of communication required or permitted hereunder shall be in writing and shall be effective (a) three (3) business days after deposit when sent by United States mail, addressed to the party to be notified, postage prepaid and registered or certified with return receipt requested, or (b) the following business day when sent by a nationally recognized overnight delivery service to the addresses set forth below:

PFC: Killeen Public Facility Corporation  
c/o City of Killeen  
101 N. College Street  
Killeen, Texas 76541  
Attention: City Manager

With a copy to: Bracewell LLP  
300 Convent Street, Suite 2700  
San Antonio, Texas 78205  
Attn: Summer B. Greathouse

Developer: Crimson Bulldog Development, Inc.  
c/o Madhouse Development Services  
3933 Steck Ave, Suite B-120  
Austin, Texas 78759  
Attention: Henry Flores, Sr.

With copies to: Locke Lord LLP  
600 Colorado Street, Suite 2100  
Austin, Texas 78701  
Attn: Cynthia L. Bast

or at such other address or counsel as any party hereto shall specify in writing from time to time and provide notice of such address change as set forth above for other notices. In the event a notice or communication delivered in accordance with this provision is not accepted by the recipient or is not received because the recipient failed to properly notify of a change of address, the notice shall be deemed delivered hereunder, nonetheless.

11. This MOU may be executed in counterparts and all such counterparts shall constitute one single MOU. An electronic copy of a signature attached to this MOU shall be deemed to be an original signature.

12. In each instance in which PFC or its affiliate has the right to approve or consent to the item set forth in each respective paragraph, such approval or consent shall not be unreasonably withheld, delayed or conditioned, and PFC or its affiliate will have fifteen (15) business days following receipt of notice of the item requiring approval or consent in which to review the matter and to make comments. If PFC or its affiliate fails within such fifteen (15) business days to approve or consent or make comments with respect to the subject matter in which approval or consent is required, then approval or consent shall be deemed given with respect to such matter. **Any matter**

**requiring PFC Board approval shall not be subject to the 15-business day approval requirement.**

13. The parties agree that to the maximum extent allowed by the law including the rules and regulations governing the funding applications contemplated in this MOU, to keep this MOU and all terms and conditions of the development strictly confidential. Parties acknowledge that the development, design, financing structure and details of this Project have significant value and are to be treated as a confidential and valuable resource of both PFC and Developer. This MOU may be expressly shared with the Investor Limited Partner and/or prospective construction and permanent lender(s) and professionals providing legal, accounting, or similar services to either PFC or Developer provided that the engagement of such professionals is subject to confidentiality requirements. Notwithstanding the foregoing, Developer acknowledges that PFC is subject to the Texas Public Information Act, Texas Government Code Section 552 and PFC may be compelled to disclose all or part of this MOU pursuant thereto.

Any challenges to such disclosure shall be the sole responsibility, and at the sole cost and expense, of the Developer.

14. Neither Developer nor PFC shall enter into any contractual relationship or agreement relating to the Project that would cause either financial or legal liability to the other without the other party's prior written consent.

*[Remainder of page intentionally left blank for signature]*

EXECUTED to be effective as of the date above shown.

KILLEEN PUBLIC FACILITY CORPORATION,  
a Texas public facility corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CRIMSON BULLDOG DEVELOPMENT, INC.,  
a Texas corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## SCHEDULE 1

### LIMITED PARTNERSHIP AGREEMENT TERMS

The following is a preliminary summary of provisions that Killeen Public Facility Corporation (“PFC”) will require in any Limited Partnership Agreement (“Limited Partnership Agreement”) creating the Partnership (the “Partnership”) which is to involve a PFC-affiliated entity. The following list is not intended to be exhaustive and is intended to supplement and not limit the terms of the Memorandum of Understanding (“MOU”) entered into relating to the subject project(s) (the “Residential Development”).

#### Representations

- The General Partner (the “General Partner”) will make representations only as to its own existence and due authorization and execution of Partnership documents or such other items personal to and actually known by the General Partner. To the extent the Organizational Documents require the General Partner to give any representations not actually known by it, Developer Partner shall make such representations to the General Partner in the assignment of memberships interests of the General Partner to the PFC and shall indemnify the General Partner and PFC for any breaches, costs, expenses or losses based upon such representations.
- The General Partner is not performing due diligence on the Residential Development. Therefore, any representations regarding the Residential Development must be provided by the Developer Partner.
- Any General Partner’s representations are only as to its own knowledge. The knowledge of the General Partner may not be qualified by phrases such as “after due inquiry.” The General Partner will make no inquiry.

#### Covenants

- The General Partner may covenant not to take affirmative actions, but the General Partner cannot covenant not to permit or allow others to take actions. The General Partner cannot covenant to maintain the property tax exemption, but the General Partner may agree to cooperate with the Developer Partner in making any required filings.
- Any covenants relating to the operation of the Partnership, or the construction or operation of the Residential Development should be made by the Developer Partner (including, but not limited to, qualification for tax credits).
- The General Partner will not covenant to maintain adequate capital.

#### Indemnities and Guaranties

- The General Partner and PFC shall be indemnified by the Partnership and by the Developer Partner for all losses, costs, damages, expenses and liability of any nature (including but not limited to attorneys’ fees, litigation and court costs,



amounts paid in settlement and amounts paid to discharge judgments) directly or indirectly resulting from, arising out of or related to the design, construction, installation, operation, use, occupancy, maintenance or ownership of the Residential Development, other than those caused by its gross negligence or willful misconduct.

- The General Partner's indemnification shall not be conditioned on a court determination.
- The General Partner will not indemnify for actions or inactions of the Developer Partner. Any indemnification by the General Partner will be limited to losses caused directly and exclusively by the General Partner's own gross negligence or willful misconduct, and will be further limited as follows which shall be set forth in the Limited Partnership Agreement:

**“Limitation of Liability of the General Partner and the Owner of the General Partner.**

The Partners acknowledge and agree that the General Partner has been adequately capitalized to fulfill its obligations under the documents governing the Partnership. The obligations and liabilities of the General Partner under this Agreement are solely the obligations and liabilities of the General Partner and not of the owner of the General Partner, which shall have no liability under this Agreement. The clawback of payments made to the General Partner prior to the time a liability of General Partner accrues shall be prohibited. The liability of General Partner under this Agreement shall be limited to the positive balance of its Capital Account, provided, however, that in all events, the full amount of the insurance policy maintained by Partnership on General Partner's behalf shall apply and be accessible and subrogated as necessary to cover the liability of General Partner, to the extent such liability is covered by the applicable policy.”

- Neither the General Partner nor PFC will provide completion guaranties, environmental guaranties, credit guaranties, or covenant to make up for cash flow short falls.
- The General Partner will not be required to make loans to the Partnership.
- If the Partnership is required to provide a guaranty, the guaranty should either be limited to the assets of the Partnership or should explicitly state that the guaranty is not intended to be recourse to the General Partner.

INSURANCE

- The Developer Partner will be responsible for obtaining any insurance required by the Limited Partnership Agreement or other Partnership documents and will name PFC, General Partner and any contractor as additional insured parties where applicable.
- The Partnership or the Developer Partner shall obtain and maintain a liability insurance policy covering the Development with umbrella coverage covering PFC and the General Partner with a policy limit of \$5,000,000 and the Partnership shall pay the premium for the same each year.

### Duties and Obligations for Administration of Partnership

- PFC or its affiliate will only become the sole member of the General Partner at the closing of the transaction, therefore pre-closing items must be addressed by the Developer Partner or another affiliate of the Developer. Under no circumstances will the General Partner execute documents on behalf of the Partnership that are effective prior to PFC's admission to the General Partner. Developer and Developer Partner shall indemnify the General Partner and PFC for any actions taken prior to the admission of the General Partner or PFC into the ownership structure, and such indemnification obligations shall be set forth in the assignment of ownership interest and any major agreement or similar agreement between Developer and PFC.
- The General Partner will approve changes to the Project budget and plans and specifications for the Project except for Minor Field Changes and change orders under \$200,000 per incident and \$600,000 cumulatively; otherwise, the General Partner will make a broad delegation to the Developer Partner with respect to the administration of the Partnership and the operation of the Residential Development which shall include, but not be limited to, the right of the Developer Partner to execute any documents related to construction draws, trust requisitions, and capital contributions.
- The Developer Partner will be responsible for ensuring any requirements for maintaining the ad valorem tax exemption are met other than those requirements related to the qualification of PFC as a public facility corporation under Texas law, which shall be the sole responsibility of PFC. The General Partner will agree to provide reasonable cooperation at the direction of the Developer Partner with respect to the ad valorem tax exemption.
- All reports that are required shall be made by the Developer Partner, and any penalties imposed for late reports shall be imposed only on the Developer Partner.

### Limitations on Transfers of Partnership Interests

- The Investor will be prohibited from selling its interest to a Prohibited Actor. "Prohibited Actor" means any party, or their affiliates, who (a) is listed as a prohibited/debarred party by any state finance agency as a result of its interactions with respect to year 15 issues; or (b) the General Partner can provide evidence acceptable to the Investor that the party has attempted to impede, failed to permit, or unreasonably delayed the exercise, pursuant to the terms of the documents as drafted, of the Section 42(i)(7) ROFR in an agreement with a non-profit sponsor/grantee.
- The Developer Partner will have to obtain the consent of the General Partner to sell its interest. The Developer Partner will be prohibited from selling its interest to any entity with whom PFC, the Issuer or General Partner or an Affiliate of any of the foregoing has actively engaged in litigation.

### Taxes and Allocations

- Losses in excess of capital accounts are allocated to the Developer Partner rather than the General Partner.
- The Developer Partner will be responsible for the preparation, organization, and filing of the tax return and tax filings including the General Partner's, if any. The General Partner will cooperate with the Developer Partner to the extent its signature is required. Any fees relating to the preparation or filing of the tax return or other tax filings will be the sole responsibility of the Partnership.
- The General Partner will not have a deficit restoration obligation either annually or on liquidation.
- The Developer Partner will be the "Partnership representative" for the purposes of tax audits.
- If the Partnership has an adjustment on audit, the General Partner will pay its allocated share out of future distributions but will not put additional funds into the Partnership.

#### Removal

- Unless a removal is caused by its own gross negligence or willful misconduct, the General Partner will not be liable for the costs related to removal or replacement.
- Notwithstanding the removal or replacement of the General Partner, (i) any indebtedness resulting from a loan by the General Partner or PFC to the Partnership shall remain outstanding and subject to the terms of the documents evidencing such loans and (ii) the Partnership will remain obligated to repay any loan(s) made to the Partnership by the General Partner or PFC.
- The General Partner will not be liable for events after removal.
- Any indebtedness resulting from a loan by the General Partner or PFC to the Partnership or Project shall remain outstanding and subject to the terms of the documents evidencing such loans, notwithstanding the removal of the General Partner for any reason.

#### Miscellaneous

- PFC may require the entering of a master agreement between the general partner and the special limited partner relating to the further division of duties and responsibilities.
- Developer Partner is responsible for communicating the terms of the Memorandum of Understanding and this Schedule to any proposed lenders or equity investors for the Project.

The governing law, jurisdiction, and venue will be Bell County, Texas.



# AVANTI LEGACY PARKVIEW APARTMENTS MOU

PFC-24-7

March 19, 2024

# Background

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- Avanti Parkview LP requested that the PFC participate in acquisition, construction, and equipping of a proposed multifamily housing facility.
- On March 5, 2024, the PFC approved a non-binding resolution inducing the Avanti transaction

# *Avanti Legacy Parkview Apartments MOU*

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- Ownership Structure
- Financing
- Ground Lease and Ad Valorem Tax Exemption
- Design and Construction
- Management and Operation
- Fees and Expenses
- Miscellaneous Provisions

# Recommendation

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Staff recommends that the PFC consider approval of the Memorandum of Understanding for the development of the Avanti Legacy Parkview Apartments.