

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



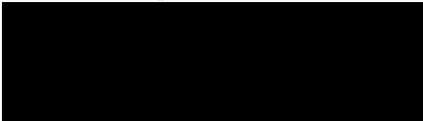
Director  
National Pollution Funds Center  
United States Coast Guard

NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd. Suite 1000  
Arlington, VA 20598-7100  
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1150 0000 4636 4025

5890/DWHZ  
06 August 2012

Ladner Properties, LLC



Re: Claim Number: N10036-1813

Dear Mr. and Mrs. Ladner:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-1813 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you find that you will be unable to gather particular information within the time period, you may include a request for an extension of time for a specified duration with your reconsideration request.

Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include claim number N10036-1813.

Mail reconsideration requests to:

Director (ca)  
NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd, Suite 1000  
Arlington, VA 20598-7100

Sincerely,



Claims Adjudication Division  
National Pollution Funds Center  
U.S. Coast Guard

Enclosure: (1) Claim Summary/Determination Form  
(2) Documents Submitted in Support of Claim

## CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1813
Claimant	Ladner Properties, LLC
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$450,000.00

### ***FACTS***

On or about 20 April 2010, the Mobile Offshore Drilling Unit Deepwater Horizon (Deepwater Horizon) exploded and sank in the Gulf of Mexico. As a result of the explosion and sinking, oil discharged. The Coast Guard designated the source of the discharge and identified BP as a responsible party (RP). BP accepted the designation and advertised its OPA claims process. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating certain individual and business claims on behalf of BP.

On 08 March 2012, the United States District Court, Eastern District of Louisiana issued a "Transition Order" (TO) limiting the GCCF's ability to accept, process, or pay claims except as provided in that order. The TO created a Transition Process (TP) to facilitate the transition of the claims process from the GCCF to a proposed Court Supervised Settlement Program (CSSP). The Court granted Preliminary Approval of the proposed settlement agreement on 02 May 2012, and the CSSP began processing claims on 04 June 2012.

### ***CLAIM AND CLAIMANT***

On 18 May 2012, Daniel and Sonja Ladner, on behalf of Ladner Properties, LLC (the Claimant), submitted a claim to the Oil Spill Liability Trust Fund (OSLTF), seeking \$450,000.00 in loss of profits and impairment of earning capacity damages.<sup>1</sup>

The Claimant is a property and rental management company in Kiln, Mississippi.<sup>2</sup> The Claimant alleged that it "lost several of [its] purchasers and renters due to the economic uncertainty and loss of jobs in [the] area" due to the Deepwater Horizon incident.<sup>3</sup> As a result, the Claimant alleged that it had to "lower the monthly rental charge in order to have the properties occupied and cannot think about selling due to the appraisals coming in lower than the [associated] mortgages."<sup>4</sup>

The Claimant asserts that its losses totaled \$450,000 as a result of the Deepwater Horizon incident.<sup>5</sup>

### ***APPLICABLE LAW***

Under the Oil Pollution Act of 1990 (OPA), at 33 U.S.C. § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into or upon the navigable

<sup>1</sup> Optional OSLTF Claim Form, signed 09 May 2012.

<sup>2</sup> Hardship Letter, dated 09 May 2012.

<sup>3</sup> Hardship Letter, dated 09 May 2012.

<sup>4</sup> Hardship Letter, dated 09 May 2012.

<sup>5</sup> Optional OSLTF Claim Form, signed 09 May 2012.

water, adjoining shorelines, or the exclusive economic zone of the United States, as described in § 2702(b) of OPA.

The OSLTF is available to pay claims for uncompensated damages pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. § 136. One type of damages available pursuant to 33 C.F.R. § 136.231 is a claim for loss of profits or impairment of earning capacity due to injury to or destruction of natural resources.

Under 33 C.F.R. § 136.233 a claimant must establish the following:

- (a) That real or personal property or natural resources have been injured, destroyed, or lost;
- (b) That the claimant's income was reduced as a consequence of injury to, destruction of, or loss of property or natural resources, and the amount of that reduction;
- (c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established; and
- (d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

Under 33 C.F.R. § 136.105(a) and § 136.105(e)(6), the claimant bears the burden of providing to the NPFC, all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

Under 33 C.F.R. § 136.235, the amount of compensation allowable for a claim involving loss of profits or impairment of earning capacity is limited to the actual net reduction or loss of earnings or profits suffered. Calculations for net reductions or losses must clearly reflect adjustments for—

- (a) All income resulting from the incident;
- (b) All income from alternative employment or business undertaken;
- (c) Potential income from alternative employment or business not undertaken, but reasonably available;
- (d) Any saved overhead or normal expenses not incurred as a result of the incident; and
- (e) State, local, and Federal taxes.

Under 33 U.S.C. § 2712(f), paying any claim or obligation by the OSLTF under OPA shall be subject to the United States Government acquiring, by subrogation, all rights of the claimant or State to recover from the responsible party.

## ***DETERMINATION OF LOSS***

### **Claimant's Submission to the NPFC**

For a list of the Claimant's submissions to the NPFC, *see Enclosure 2.*

Prior to presenting this claim to the NPFC, the Claimant submitted an Emergency Advance Payment claim (EAP), a First Quarter Interim Claim (ICQ12011), and a Sixth Quarter Interim Claim (ICQ62012) to the RP/GCCF. The RP/GCCF assigned Claimant ID # 3358883 to the

Claimant,<sup>6</sup> and assigned the EAP claim # 420925, the ICQ12011 claim # 9243074, and the ICQ62012 claim # 9594370.<sup>7</sup> The RP/GCCF denied payment on all claims.<sup>8</sup>

On 18 May 2012, the Claimant presented this claim to the NPFC, seeking \$450,000 in loss of profits damages.<sup>9</sup> Based upon the Claimant's submissions, it appears that the subject matter for the RP/GCCF claims are identical to the claim now before the NPFC—i.e., that the Deepwater Horizon incident caused a regional economic decline, resulting in the Claimant's tenants relocating, thereby reducing the Claimant's earnings. The NPFC deems each of the Claimants' prior claims with the RP/GCCF to satisfy OPA presentation requirements.<sup>10</sup> Accordingly, this Claim Summary and Determination addresses the damages sought in the Claimant's prior submissions to the RP/GCCF. Any damages included in this claim that were not first submitted to the RP/GCCF are denied for improper presentment.

Additionally, the NPFC notes that evidence presented in this claim submission indicates that the Claimant is a member of the Deepwater Horizon oil spill economic and property damages class action settlement (the E&PD Settlement).

### **NPFC Determination**

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that any loss of income was due to injury, destruction or loss of real or personal property or of a natural resource as a result of a discharge or substantial threat of a discharge of oil. Under 33 C.F.R. § 136.105(a) and § 136.105(e)(6), the claimant bears the burden of providing all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

As an initial matter, it appears that the Claimant is a member of the E&PD Settlement. This claim is therefore considered to have been settled, and the Claimant is ineligible to recover funds from the OSLTF. According to OPA, the payment of any claim by the NPFC is subject to the NPFC's ability to obtain, by subrogation, the rights to recover all costs and damages from the responsible party. If a claim has been settled, the Claimant no longer has rights to the claim and therefore cannot subrogate rights to the NPFC.

While this claim may not have been quantified or paid, it is considered to have been settled by virtue of the Court's preliminary approval of the settlement agreement. If the Claimant disagrees that it is a member of the economic damages class of the E&PD Settlement, it should submit evidence to indicate that it has either opted out or is excluded from the E&PD Settlement in a request for reconsideration of this claim.

Furthermore, this claim for loss of profits and impairment of earning capacity damages is denied on its merits, as the Claimant has failed to establish a financial loss resulting from the Deepwater Horizon incident. In order to prove a claim for loss of profits damages, a claimant must provide documentation sufficiently proving (1) an actual financial loss, and (2) that the discharge of oil resulting from the Deepwater Horizon oil spill caused that loss.

The Claimant is a property rental and management company in Kiln, Mississippi. The Claimant alleges that the Deepwater Horizon incident caused a regional economic decline, prompting many of its tenants to relocate and prospective buyers to decline purchasing the Claimant's

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<sup>6</sup> GCCF Correspondence, dated 01 December 2010.

<sup>7</sup> GCCF Deficiency Letter, dated 15 June 2011; GCCF Denial Letter, dated 06 May 2012.

<sup>8</sup> GCCF Deficiency Letter, dated 15 June 2011; GCCF Denial Letter, dated 06 May 2012.

<sup>9</sup> Optional OSLTF Claim Form, signed 30 April 2012.

<sup>10</sup> 33 C.F.R. § 136.103(a).

property for sale. As a result, the Claimant alleges that it had to reduce rental rates to maintain occupancy.<sup>11</sup>

In a letter dated 25 May 2012, the NPFC requested additional information from the Claimant. The NPFC sought documentation establishing occupancy rates, rental rates, and clarifying the Claimant's role in managing the properties owned in other entities' names.<sup>12</sup> The Claimant responded to this request with signed copies of several leases, financial documentation (that also provides some insight into when tenants occupied the properties), and itemized responses to the questions asked.<sup>13</sup>

### *1. Financial Loss*

At issue in this claim is the rental and sale of 13 pieces of real estate: eight lots in the Creekside Estates development and five houses on Rocky Hill-Dedeaux Road. Of these, the Claimant owns one in its own name; the other 12 pieces of property are owned in the Claimant's principals' names or in the name of Amy Lea Construction, LLC, a separate company also owned by the Claimant's principals.<sup>14</sup> The Claimant manages and rents those properties it does not own.<sup>15</sup>

The Claimant alleged that the Deepwater Horizon incident caused an economic decline, resulting in several tenants relocating and prospective buyers not purchasing property for sale. The Claimant alleges that it was unable to fill the vacant properties at the prices charged before the Deepwater Horizon incident, requiring the Claimant to drop rent and purchase prices to maintain occupancy.<sup>16</sup>

#### *a. Property For Sale*

Of the thirteen properties at issue, the Claimant points to three properties on which it allegedly suffered a loss in their sale: Lots 6, 7, and 12 at Creekside Estates. The Claimant, however, owns only Lot 7 in its own name.<sup>17</sup> The Claimant cannot sell property that it does not own; any losses associated with selling those properties may only be claimed by the person or entity owning them. As such, any losses associated with Lots 6 and 12 of Creekside Estates are denied for failure to establish that the Claimant itself sustained any loss associated with those properties.

Insofar as Lot 7 is concerned, the Claimant has also failed to establish that it actually lost a sale of that property. The Claimant has submitted a Lease Agreement with an Option to Purchase, but has failed to establish that the tenant actually intended to exercise that purchase option.<sup>18</sup> The Claimant has not provided a copy of a contract for sale or any financial documentation establishing that the tenant ever made the down payment prescribed in the agreement in order to exercise the purchase option. A tenant's failure to exercise a purchase option is not a lost sale. As such, the Claimant has failed to establish that it has suffered a loss on the sale of Lot 7.

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<sup>11</sup> Hardship Letter, dated 09 May 2012.

<sup>12</sup> Request for Additional Information, dated 21 May 2012.

<sup>13</sup> Response to Request for Additional Information, dated 07 June 2012; List of Bids Awarded for 2008, 2009, 2010, and 2011; List of Bids Submitted for Second Quarter 2010 through Third Quarter 2011.

<sup>14</sup> Response to Request for Additional Information, dated 07 June 2012.

<sup>15</sup> Response to Request for Additional Information, dated 07 June 2012.

<sup>16</sup> Response to Request for Additional Information, dated 07 June 2012.

<sup>17</sup> Response to Request for Additional Information, dated 07 June 2012.

<sup>18</sup> Lease Agreement with Option to Purchase, signed 07 July 2009.

## *b. Rental Properties*

The Claimant manages and rents the remaining ten properties at issue in this claim. The Claimant does not own any of these ten properties, but rather it handles “[a]ll income of [the] rentals and maintenance of [the] rentals.”<sup>19</sup>

The Claimant provided several signed leases for tenancies both before and after the Deepwater Horizon incident. These submissions, though, do not demonstrate the decline in rents which the Claimant alleged occurred after the Deepwater Horizon incident. Some of these leases establish that the rental rates dropped after the Deepwater Horizon incident,<sup>20</sup> while others show a drop in rental rates that predate the Deepwater Horizon incident.<sup>21</sup> The Claimant has not provided any explanation as to how these leases establish a financial loss associated with those properties whose rental rates dropped prior to the Deepwater Horizon incident.

### *2. Failure to Prove Deepwater Horizon Incident Caused Alleged Losses*

The Claimant has not met its burden to prove the required causal link between the Deepwater Horizon incident and any losses it may have sustained, as it has failed to establish that any tenants relocated because of the Deepwater Horizon incident. In a letter dated 25 May 2012, the NPFC requested copies of any correspondence with tenants, the tenants’ contact information, or any other documentation to support the Claimant’s assertion that the Deepwater Horizon incident caused tenants to relocate.<sup>22</sup> The Claimant failed to respond to this request. The Claimant’s assertions, without more, are insufficient to substantiate the claim that the Deepwater Horizon incident caused the losses claimed.

Furthermore, as noted above, the Claimant’s documentation shows that rental rates for some properties were dropping before the Deepwater Horizon incident occurred. The Claimant has not provided documentation establishing that those factors leading to reductions in rental rates had abated by the time of the Deepwater Horizon incident, or that the Deepwater Horizon incident exacerbated those factors, thereby reducing rental rates even further.

Accordingly, this claim of \$450,000.00 is denied in its entirety because the Claimant has not demonstrated (1) a financial loss in the amount alleged, and (2) that the alleged loss is due to the injury, destruction, or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil. Furthermore, this claim is considered to have been settled

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<sup>19</sup> Response to Request for Additional Information, dated 07 June 2012.

<sup>20</sup> Lease for 2373 Rocky Hill-Dedeaux Road, term beginning 01 February 2012 (showing rent of \$700/mo.); Lease for 2373 Rocky Hill-Dedeaux Road, term beginning 01 March 2010 (showing rent of \$750/mo.).

It should be noted that the reliability of these leases is questionable. The Claimant has filled in at least a portion of the 2012 lease after submitting them to the NPFC. The date of the agreement for the 2012 lease was filled in after signature, and after first being submitted blank to the NPFC. The Claimant included the first page and signature pages of this lease in its original submissions, and the date of the agreement was blank. The Claimant later followed up with the entire lease. This resubmitted copy, though, has the date of the agreement filled in as 01 February 2012.

Claimants submitting false claims or making false statements in connection with those claims risk prosecution under Federal law, including but not limited to 18 U.S.C. §§ 287 and 1001. 33 C.F.R. § 136.9. Additionally, those submitting written documentation supporting their claim that they know or should know is false may be subject to a civil penalty for each claim.

<sup>21</sup> Lease for Lot 46, Creekside Estates, term beginning 01 September 2008 (showing rent of \$1,100/mo.); Lease for Lot 46, Creekside Estates, term beginning 01 February 2010 (showing rent of \$500/mo.); Lease for Lot 30, Creekside Estates, term beginning 20 March 2009 (showing \$1,100/mo. for six-month rental); Lease for Lot 30, Creekside Estates, term beginning 20 January 2010 (showing \$950/mo. for 12-month rental).

<sup>22</sup> NPFC Request for Additional Information, dated 25 May 2012.

by virtue of the Claimant belonging to the E&PD Settlement, and is therefore not eligible for OSLTF compensation.

Claim Supervisor: *NPT [REDACTED] Division*

Date of Supervisor's Review: *8/6/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

**ENCLOSURE 2**  
**Documents Submitted in Support of Claim**  
**Claim No. N10036-1813**

The following is a list of documents submitted by the Claimants to the NPFC in support of claim number N10036-1813:

- Optional OSLTF Claim Form, signed 09 May 2012;
- Hardship letter, signed 09 May 2012;
- Response to NPFC Request for Additional Information, undated;
- Monthly and year-to-date profit & loss statements for 2012;
- Monthly and annual profit & loss statements for 2011;
- Monthly and annual profit & loss statements for 2010;
- Monthly and annual profit & loss statements for 2009;
- Income by Customer Detail for all properties, dated April 2008 through December 2011;
- Income by Customer Detail for Lot 12, Creekside Estates, dated 01 September 2008 through 10 July 2012;
- First page of Form 7004, Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns, for Ladner Properties, LLC, undated;
- Mississippi LLC Certificate of Formation for Ladner Properties, LLC;
- 2010 federal income tax returns for partnership income for Ladner Properties, LLC;
- 2009 federal income tax returns for partnership income for Ladner Properties, LLC; and
- 2008 federal income tax returns for partnership income for Ladner Properties, LLC;
- Lease of 2363 Rocky Hill Dedeaux Road to Joseph and Donna Stephens, dated 12 May 2011;
- Lease of 2363 Rocky Hill Dedeaux Road to Drake Oliver Harris, dated 16 August 2010;
- Modification of Deed of Trust for 2371 Rocky Hill Dedeaux Road, dated 14 February 2011;
- First page and signature pages for lease of 2371 Rocky Hill Dedeaux Road to John and Alisa White, dated 22 March 2010;
- Lease of 2373 Rocky Hill Dedeaux Road to Sandra Jackson, dated 10 February 2010;
- First page and signature pages for lease of 2373 Rocky Hill Dedeaux Road to Ryan Hoda and Amy Ladner, undated;
- Lease of 2373 Rocky Hill Dedeaux Road to Ryan Hoda and Amy Ladner, dated 01 February 2012;
- Warranty Deed for 2391 Rocky Hill Dedeaux Road, signed 14 December 2009;
- Modification of Deed of Trust for 2395 Rocky Hill Dedeaux Road, dated 14 February 2011;
- First page and signature pages for lease of 2395 Rocky Hill Dedeaux Road to James Luketich, dated 11 June 2011;
- First page and signature pages for lease of 2395 Rocky Hill Dedeaux Road to Charlotte and Kevin Ray, dated 29 February 2012;
- Lease of 2397 Rocky Hill Dedeaux Road to Sarah Mendoza, dated 29 February 2012;
- Lease of 2397 Rocky Hill Dedeaux Road to Joseph and Donna Stevens, dated 29 March 2010;
- Warranty Deed for Lot 6, Creekside Estates, undated, unsigned, stamped as filed in Deed Book 09 February 2009;
- Lease with purchase option and mortgage summary (with notes) for Lot 6, Creekside Estates, to Hector and Juanita Izaquirre, dated 25 May 2009;
- Lease of Lot 6, Creekside Estates, to Louis and Artie Breaux, dated 15 July 2010;
- Written notice of lease termination signed by Louis and Artie Breaux, dated 15 June 2011 (two copies);
- Lease of Lot 6, Creekside Estates, to Matthew Hollinghead and Heather Ladner, dated 30 September 2011;
- Real Property Tax Statement for Lot 7, Creekside Estates, addressed to Ladner Properties, LLC, dated 01 December 2010 (two copies);

- Lease with purchase option and mortgage summary (with notes) for Lot 7, Creekside Estates, to Nestor Izaquirre, dated 07 July 2009;
- Lease of Lot 7, Creekside Estates, to Shaena and Shawn Ladner, dated 02 May 2011;
- Lease of Lot 7, Creekside Estates, to Devin White and Kaydee Patterson, dated 22 January 2012;
- Real Property Tax Statement for Lot 12, Creekside Estates, addressed to Daniel Ladner, dated 01 December 2010;
- Contract for Deed and amortization schedule (with notes) for Lot 12, Creekside Estates, for purchase by Theron Ladner and Jessica Williams, dated 28 March 2010;
- Contract for Deed and amortization schedule (with notes) for Lot 12, Creekside Estates, for purchase by Steven Warino, dated 09 September 2010;
- Lease of Lot 12, Creekside Estates, to Royal Flowers, dated 19 October 2011;
- Real Property Tax Statement for Lot 30, Creekside Estates, addressed to Amy Lea Construction, LLC, dated 01 December 2010;
- Lease of Lot 30, Creekside Estates, to Brian Nelson, dated 20 March 2009;
- Lease of Lot 30, Creekside Estates, to Sherman Necaise, Adam Haller, and Josh Foster, dated 05 January 2010;
- Lease of Lot 30, Creekside Estates, to Rocky Dedeaux and Jonathan Greco, dated 19 November 2011;
- Real Property Tax Statement for Lot 41, Creekside Estates, addressed to Amy Lea Construction, LLC, dated 01 December 2010;
- First page and signature pages for lease of Lot 41, Creekside Estates, to Donnie Doucet, dated 05 September 2009;
- First page, signature page, and amortization schedules (plus notes) of lease with purchase option for Lot 41, Creekside Estates, to Leslie Moran and Douglas Cuevas, dated 23 January 2011;
- Real Property Tax Statement for Lot 43, Creekside Estates, addressed to Amy Lea Construction, LLC, dated 1 December 2010;
- Contract for Deed for Lot 43, Creekside Estates, for purchase by Richard and Dianne Walters, dated 11 September 2009, including amendment dated 28 September 2009;
- Lease of Lot 46, Creekside Estates, to Donald and Savannah Ladner, dated 07 February 2010;
- First page of Rental Contract for 6019 Alyssa Lane, Lot 46, Creekside Estates to Robinson and Chastity Taveras, undated;
- Second page through twelfth page of Part A of DRS Contract for 6019 Alyssa Lane, Lot 46, Creekside Estates to Robinson and Chastity Taveras, signed 09 August 2008;
- Release from Delinquent Tax Sale for Lot 46, Creekside Estates, addressed to Daniel Ladner, dated 07 December 2011;
- Real Property Tax Statement for Lot 52, Creekside Estates, addressed to Amy Lea Construction, LLC, dated 01 December 2010;
- Housing Assistance Payment contract for Lot 52, Creekside Estates, providing assistance to Debra Z. Wall beginning 29 July 2010;
- First page and signature pages for lease of Lot 52, Creekside Estates, to Debra Wall, dated 20 July 2010;
- First page and signature pages for lease of 22057 Rayvan Lane, Creekside Estates (no lot noted) to Monique Peterson and Shannon Champagne, dated 24 March 2010;
- Rental contract for 22068 Rayvan Lane, Creekside Estates (no lot noted) to Joseph and Donna Stevens, dated 01 October 2008;
- Small Rental Assistance Program Fair Market Rental Rates and income Limits for 2009 – 2012.