

# **BOARD BOOK OF MARCH 21, 2019**



**J. B. Goodwin, Chair**

**Leslie Bingham Escareño, Vice-Chair**

**Paul Braden, Member**

**Asusena Reséndiz, Member**

**Sharon Thomason, Member**

**Leo Vasquez, III, Member**

## Texas Department of Housing and Community Affairs

### PROGRAMMATIC IMPACT IN FISCAL YEAR 2018

The Texas Department of Housing and Community Affairs (TDHCA) is the State of Texas' lead agency responsible for affordable housing and administers a statewide array of programs to help Texans become more independent and self-sufficient. Short descriptions and key impact measures for these programs – including the total number of households/individuals that were served and total funding either administered or pledged for Fiscal Year 2018 (September 1, 2017 through August 31, 2018) – are set out below:

#### **Multifamily New Construction & Rehabilitation:**

Provides mechanisms to attract investment capital and to make available significant financing for the construction and rehabilitation of affordable rental housing through the Housing Tax Credit, Multifamily Bond, and Multifamily Direct Loan programs.

**Total Households Served: 14,832**  
**Total Funding: \$1,460,067,840**

#### **Single Family Homebuyer Assistance, New Construction, Rehabilitation, Bootstrap, and Contract for Deed:**

Assists with the purchase, construction, repair, or rehabilitation of affordable single family housing by providing grants and loans through the HOME Single Family Development, HOME Homeowner Rehabilitation Assistance, HOME Homebuyer Assistance, Amy Young Barrier Removal, and Texas Bootstrap programs. Stabilizes homeownership in colonias through the HOME Contract for Deed program.

**Total Households Served: 257**  
**Total Funding: \$15,545,196**

#### **Single Family Homeownership Program:**

Provides down payment and closing cost assistance, mortgage loans, and mortgage credit certificates to eligible households through the My First Texas Home and Mortgage Credit Certificates programs.

**Total Households Served: 8,018**  
**Total Funding: \$1,279,041,464**

#### **Rental Assistance:**

Provides rental, security, and utility deposit assistance through HOME Tenant Based Rental Assistance, and rental assistance payments through HUD Section 8 Housing Choice Vouchers and Section 811 Project Based Rental Assistance.

**Total Households Served: 1,729**  
**Total Funding: \$10,145,027**

#### **Weatherization Assistance Program:**

Provides funding to help low-income households control energy costs through the installation of energy efficient materials and through energy conservation education.

**Total Households Served: 2,667**  
**Total Funding: \$21,395,454**

#### **Homelessness:**

Funds local programs and services for individuals and families at risk of homelessness or experiencing homelessness. Primary programs are the Homeless Housing and Services program and the Emergency Solutions Grants program.

**Total Individuals Served: 48,886**  
**Total Funding: \$12,811,075**

#### **Comprehensive Energy Assistance Program:**

Provides energy utility bill assistance to households with an income at or below 150% federal poverty guidelines.

**Total Households Served: 151,141**  
**Total Funding: \$108,351,163**

#### **Community Services Block Grant:**

Provides administrative support for essential services for low-income individuals through Community Action Agencies.

**Total Individuals Served: 385,869**  
**Total Funding: \$37,322,167**

Sources: this data comes from the TDHCA 2019 State Low Income Housing Plan and Annual Report draft. Multifamily New Construction & Rehab data come from the most recent award logs from FY2018 for 4%, 9%, and Direct Loan Applications. Because Multifamily logs are updated on a monthly basis to reflect the changing status of Applications, this impact statement will also be updated on a monthly basis.

Note: Some households may be served by more than one TDHCA program.



**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
GOVERNING BOARD MEETING**

**A G E N D A  
8:00 AM  
MARCH 21, 2019**

**Dewitt C. Greer State Highway Building  
Ric Williamson Hearing Room  
125 E. 11th Street  
Austin, Texas 78701**

CALL TO ORDER

ROLL CALL

**J.B. Goodwin, Chair**

CERTIFICATION OF QUORUM

*Pledge of Allegiance - I pledge allegiance to the flag of the United States of America, and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all.*

*Texas Allegiance - Honor the Texas flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible.*

Resolution Recognizing April as *Fair Housing Month*

**CONSENT AGENDA**

Items on the Consent Agenda may be removed at the request of any Board member and considered at another appropriate time on this agenda. Placement on the Consent Agenda does not limit the possibility of any presentation, discussion or approval at this meeting. Under no circumstances does the Consent Agenda alter any requirements under Chapter 551 of the Tex. Gov't Code, Texas Open Meetings Act. Action may be taken on any item on this agenda, regardless of how designated.

**ITEM 1: APPROVAL OF THE FOLLOWING ITEMS PRESENTED IN THE BOARD MATERIALS:**

**LEGAL**

- a) Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order of debarment for Fifth Ward Community Redevelopment Corporation, along with its board members Bridgette Steele, Wiley Henry, Harvey Clemons Jr, and Anthony Wilcots, relating to Lyons Village Townhomes (HTC 96171 / CMTS 1630)
- b) Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning West Gate Apartments (HOME 535259 / CMTS 2702)
- c) Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Holland House Apartments (HTC 07180 / CMTS 4471)
- d) Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Cottonwood and Westway Apartments (HTC 70111 / CMTS 2298)

**Jeffrey T. Pender**  
Deputy General  
Counsel

**COMMUNITY AFFAIRS**

- e) Presentation, discussion, and possible action on awards for 2019 Community Services Block Grant Discretionary Direct Client Assistance and Network Operational Investments

**Michael DeYoung**  
Director of  
Community Affairs

**MULTIFAMILY FINANCE**

f) Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits with another Issuer

**Marni Holloway**  
Director of  
Multifamily Finance

19416	Alsbury Apartments	San Antonio
18459	Manchaca Commons	Austin ETJ
19401	Stallion Ridge	Fort Worth
19402	Culebra Creek Apartments	San Antonio
19413	Wurzbach Manor	San Antonio

g) Presentation, discussion, and possible action on an Amendment to the 2019-2 Multifamily Special Purpose Notice of Funding Availability

**Marni Holloway**  
Director of  
Multifamily Finance

h) Presentation, discussion and possible action on disclosure under 10 TAC §11.101(a)(3) related to Neighborhood Risk Factors for #19146 New Hope Housing Avenue J

**OCI/HTF/NSP DIVISION**

i) Presentation, discussion, and possible action to authorize the programming of Neighborhood Stabilization Program One Program Income to support continued land bank program activity

**Raul Gonzales**  
Director of  
OCI/HTF/NSP

**ASSET MANAGEMENT**

j) Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement

**Rosalio Banuelos**  
Director of  
Asset Management

99142	Commonwealth Phase I	Nacogdoches
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**RULES**

k) Presentation, discussion, and possible action on an order adopting the amendment of 10 TAC §8.7 Program Regulations and Requirements, and directing publication for adoption in the *Texas Register*

**Brooke Boston**  
Director of  
Programs

**CONSENT AGENDA REPORT ITEMS**

**ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:**

TDHCA Outreach Activities, (February-March)

**Michael Lyttle**  
Director of  
External Affairs

**ACTION ITEMS**

**ITEM 3: MULTIFAMILY FINANCE**

Presentation, discussion and possible action regarding an Award of Direct Loan funds from the 2018-1 Multifamily Direct Loan Notice of Funding Availability

**Marni Holloway**  
Director of  
Multifamily Finance

18505	Mistletoe Station	Fort Worth
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**ITEM 4: INTERNAL AUDIT**

a) Review and possible acceptance of the State Auditor's Office audit of the TDHCA Financial Statements

**State Auditor's Office**

b) Report on the meeting of the Internal Audit and Finance Committee

**Sharon Thomason**  
Chair of the Audit  
And Finance  
Committee



**ITEM 5: BOND FINANCE**

Presentation, discussion, and possible action on Resolution No. 19-029 approving an increase in the maximum amount of outstanding advances under the Advances and Security Agreement with Federal Home Loan Bank of Dallas, authorizing use of available funds to repay advances, authorizing the execution of documents and instruments relating thereto, making certain findings and determinations in connection therewith, and containing other provisions relating to the subject

**Monica Galuski**  
Director of  
Bond Finance

**ITEM 6: COMMUNITY AFFAIRS**

Presentation, discussion, and possible action regarding the possible absorption of the Bay City Housing Authority's Section 8 Housing Choice Voucher Program (HCVP)

**Michael DeYoung**  
Director of  
Community Affairs

**ITEM 7: PROGRAMS**

Presentation, discussion, and possible action authorizing the release of the Draft Analysis of Impediments to Fair Housing Choice for public comment

**Cate Tracz**  
Manager of  
Fair Housing

**PUBLIC COMMENT ON MATTERS OTHER THAN ITEMS FOR WHICH THERE WERE POSTED AGENDA ITEMS**

**EXECUTIVE SESSION**

The Board may go into Executive Session (close its meeting to the public):

**J.B. Goodwin**  
Chair

The Board may go into Executive Session Pursuant to Tex. Gov't Code §551.074 for the purposes of discussing personnel matters including to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee;

Pursuant to Tex. Gov't Code §551.071(1) to seek the advice of its attorney about pending or contemplated litigation or a settlement offer;

Pursuant to Tex. Gov't Code §551.071(2) for the purpose of seeking the advice of its attorney about a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Tex. Gov't Code Chapter 551; including seeking legal advice in connection with a posted agenda item;

Pursuant to Tex. Gov't Code §551.072 to deliberate the possible purchase, sale, exchange, or lease of real estate because it would have a material detrimental effect on the Department's ability to negotiate with a third person; and/or

Pursuant to Tex. Gov't Code §2306.039(c) the Department's internal auditor, fraud prevention coordinator or ethics advisor may meet in an executive session of the Board to discuss issues related to fraud, waste or abuse.

**OPEN SESSION**

If there is an Executive Session, the Board will reconvene in Open Session. Except as specifically authorized by applicable law, the Board may not take any actions in Executive Session.

**ADJOURN**

To access this agenda and details on each agenda item in the board book, please visit our website at [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us) or contact Michael Lyttle, 512-475-4542, TDHCA, 221 East 11<sup>th</sup> Street, Austin, Texas 78701, and request the information. If you would like to follow actions taken by the Governing Board during this meeting, please follow TDHCA account (@tdhca) on Twitter.

Individuals who require auxiliary aids, services or sign language interpreters for this meeting should contact Terri Roeber, ADA Responsible Employee, at 512-475-3959 or Relay Texas at 1-800-735-2989, at least five (5) days before the meeting so that appropriate arrangements can be made. Non-English speaking individuals who require interpreters for this meeting should contact Elena Peinado, 512-475-3814, at least five (5) days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Elena Peinado, al siguiente número 512-475-3814 por lo menos cinco días antes de la junta para hacer los preparativos apropiados.

**NOTICE AS TO HANDGUN PROHIBITION DURING THE OPEN MEETING OF A GOVERNMENTAL ENTITY IN THIS ROOM ON THIS DATE:**

Pursuant to Section 30.06, Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun.

De acuerdo con la sección 30.06 del código penal (ingreso sin autorización de un titular de una licencia con una pistola oculta), una persona con licencia según el subcapítulo h, capítulo 411, código del gobierno (ley sobre licencias para portar pistolas), no puede ingresar a esta propiedad con una pistola oculta.

Pursuant to Section 30.07, Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly.

De acuerdo con la sección 30.07 del código penal (ingreso sin autorización de un titular de una licencia con una pistola a la vista), una persona con licencia según el subcapítulo h, capítulo 411, código del gobierno (ley sobre licencias para portar pistolas), no puede ingresar a esta propiedad con una pistola a la vista.

**NONE OF THESE RESTRICTIONS EXTEND BEYOND THIS ROOM ON THIS DATE AND DURING THE MEETING OF THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

## Texas Department of Housing and Community Affairs

### RESOLUTION

**WHEREAS**, April 2019 is Fair Housing Month, and marks 51 years since the passage of the federal Fair Housing Act (Title VIII of the Civil Rights Act of 1968), signed by U.S. President Lyndon Baines Johnson on April 11, 1968;

**WHEREAS**, the Fair Housing Act provides that no person shall be subjected to discrimination because of race, color, national origin, religion, sex, disability, or familial status in the sale, rental, financing, or advertising of housing and charges the Secretary of the U.S. Department of Housing and Urban Development (HUD) with administering HUD programs in a manner that meets the requirements of the law and purposes of the Fair Housing Act;

**WHEREAS**, the Texas Department of Housing and Community Affairs (the Department) administers HUD and other housing programs that promote the development and supply of safe, decent, affordable housing for qualifying Texans;

**WHEREAS**, it is the policy of the Department to support equal housing opportunity in the administration of all of its programs and services, including encouraging equitable lending practices for its homebuyer programs and ensuring compliance with Fair Housing rules and guidelines for its multifamily developments;

**WHEREAS**, the Department, through its programs, workshops, trainings, and materials seeks to educate property managers, consultants, program administrators, architects, contractors, developers, engineers, lenders, real estate professionals, and others about the importance of their adherence to the requirements of the Fair Housing Act;

**WHEREAS**, the Department encourages the development of educational fair housing programs in local communities throughout the State and is seeking to build new opportunities for fair housing education and training; and

**WHEREAS**, the Department and the State of Texas support equal housing opportunity and housing choice in accordance with the Fair Housing Act not only during Fair Housing Month in April, but throughout the entire year;

**NOW, THEREFORE**, it is hereby

**RESOLVED**, that the Texas Department of Housing and Community Affairs —

- (1) recognizes the significance of Fair Housing Month as an important time to acknowledge, better understand, and support equal housing opportunity, and encourages the continued commitment to fair housing in the State of Texas; and
- (2) recognizes that in the pursuit of the goal and responsibility of providing affordable housing and equal housing opportunities for all, the Governing Board of the Texas Department of

Housing and Community Affairs does hereby celebrate April 2019 as Fair Housing Month in Texas and encourages all Texas individuals and organizations, public and private, to join and work together in this observance of the impact and importance of affordable housing and equal housing opportunity to the success of all Texans.

Signed this twenty-first day of March 2019.



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J. B. Goodwin, Chair

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Leslie Bingham Escareño, Vice Chair

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Leo Vasquez , Member

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Paul A. Braden, Member

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Asusena Reséndiz, Member

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Sharon Thomason, Member

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David Cervantes, Acting Director

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**BOARD ACTION REQUEST**

**LEGAL DIVISION**

**MARCH 21, 2019**

Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order of debarment for Fifth Ward Community Redevelopment Corporation, along with its board members Bridgette Steele, Wiley Henry, Harvey Clemons Jr, and Anthony Wilcots, relating to Lyons Village Townhomes (HTC 96171 / CMTS 1630)

**RECOMMENDED ACTION**

**WHEREAS**, Lyons Village Townhomes (Property), owned by Lyons Village Ltd., is required to comply with 10 TAC §10.621, which outlines Department requirements regarding Property Condition Standards;

**WHEREAS**, Fifth Ward Community Redevelopment Corporation (Fifth Ward) is the general partner of Lyons Village, Ltd;

**WHEREAS**, Bridgette Steele, Wiley Henry, Harvey Clemons Jr, and Anthony Wilcots, have been board members for Fifth Ward since at least February 6, 2012 (along with Fifth Ward, collectively known as “Respondent” or “Responsible Party”);

**WHEREAS**, the Property scored a 48 out of 100 during a Physical Condition Standards (UPCS) inspection performed by the Department on February 6, 2012;

**WHEREAS**, the Property scored a 46 out of 100 during a UPCS inspection performed by the Department on January 23, 2018;

**WHEREAS**, acceptable corrective documentation relating to all UPCS findings identified in 2012 and 2018 was received and both inspections were closed with full corrections made;

**WHEREAS**, Tex. Gov’t. Code §2306.0504(c)(1) addresses debarment and indicates that the Department shall debar a person from participation in a Department program if the person materially or repeatedly violates any condition imposed by the Department in connection with the administration of a Department program;

**WHEREAS**, 10 TAC §2.401 also addresses debarment, and defines a material violation of a LURA to include controlling a property that has, on more than one occasion, scored 50 or less on a UPCS inspection;

**WHEREAS**, Respondent was referred for debarment for scoring 50 or less on the 2012 and 2018 UPCS inspections;

**WHEREAS**, an informal conference regarding the debarment referral was held on January 11, 2019, with the Enforcement Committee recommending a debarment term ending December 30, 2019;

**WHEREAS**, staff based its debarment recommendation for a term of one year on the Department's rules for debarment and an assessment of each and all of the material factors identified at 10 TAC §2.401(j) that are to be considered in determining a recommended period of debarment, applied specifically to the facts and circumstances present in this case;

**WHEREAS**, in accordance with 10 TAC 2.401(j), the Acting Director modified the recommended debarment term to end June 30, 2019; and

**WHEREAS**, Respondent has accepted the recommended term.

**NOW, therefore, it is hereby**

**RESOLVED**, that an Agreed Final Order of Debarment for a term ending June 30, 2019, against Fifth Ward Community Redevelopment Corporation, along with its board members Bridgette Steele, Wiley Henry, Harvey Clemons Jr, and Anthony Wilcots, substantially in the form presented at this meeting, and authorizing any non-substantive technical corrections, is hereby adopted as an order of this Board.

## **BACKGROUND**

Lyons Village Ltd. is the owner of Lyons Village Townhomes (Property) (HTC 96171 / CMTS 1630), a low income apartment complex composed of 24 units, located in Houston, Harris County. The Property is subject to a Land Use Restriction Agreement (LURA) signed in 1999 in consideration for a housing tax credit allocation in the annual amount of \$189,805 to build and operate the Property. Responsible Parties for the purpose of this board item are Fifth Ward Community Redevelopment Corporation, the general partner for Lyons Village Ltd, along with its board members Bridgette Steele, Wiley Henry, Harvey Clemons Jr, and Anthony Wilcots, who have been on the board of Fifth Ward Community Redevelopment Corporation since at least February 6, 2012 (collectively known as Respondent or Responsible Party)

Uniform Physical Condition Standards (UPCS) inspections are performed periodically by the Department in accordance with 10 TAC §10.621, and the Property scored below 50 on two UPCS inspections, scoring 48 on February 6, 2012, and scoring 46 on January 23, 2018. Although the Department has accepted corrective documentation indicating that all findings of noncompliance from both inspections have been resolved, scoring 50 or less on more than one occasion is considered a material violation of the Land Use Restriction Agreement per 10 TAC §2.401(d). Tex. Gov't. Code §2306.0504(c)(1) addresses debarment and indicates that the Department shall debar a person from participation in a Department program if the person materially or repeatedly violates any condition imposed by the Department in connection with the administration of a Department program. Respondent is therefore subject to mandatory debarment under the statute.

Pursuant to 10 Tex. Admin. Code §2.401(j), recommended periods of debarment are to be based upon material factors such as the following: repeated occurrences, seriousness of underlying issues, presence or absence of corrective action, including corrective action to install new responsible persons and ensure they are qualified and properly trained, and other material factors. The Enforcement Committee held an informal conference on January 11, 2019, and recommended a debarment period for a term ending December 30, 2019. The Acting Director considered the recommendation and modified the recommended debarment term to end June 30, 2019, a reduction of six months from the term recommended by the Enforcement Committee. A Notice of Debarment Determination was issued by the Acting Director on February 13, 2019, and included an appeal period of 20 days. Respondent has accepted the recommended term.

A debarment term ending June 30, 2019, is appropriate under the debarment factors outlined above. Accordingly, after consideration of all appropriate factors, including those set out in TEX. GOV'T CODE §2306.0504 and 10 TAC §2.401, and consistent with direction from the Department's Enforcement Committee, as modified by the Acting Director, a debarment term through June 30, 2019, is recommended. This will be a reportable item of consideration under previous participation for any new award involving Respondent during this period of debarment.





TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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**To:** TDHCA Governing Board  
**From:** David Cervantes, Acting Director  
**Date:** March 6, 2019  
**Subject:** Report to the Board

The Enforcement Committee has recommended a debarment term ending December 30, 2019, Fifth Ward Community Redevelopment Corporation, along with its board members Bridgette Steele, Wiley Henry, Harvey Clemons Jr, and Anthony Wilcots, Responsible Parties for Lyons Village Ltd, owner of Lyons Village Apartments (HTC 96171 / CMTS 1630) for scoring 50 or less on more than one Uniform Physical Condition Standards (UPCS) inspection. I have considered the recommendation and modified the recommended term of debarment to end June 30, 2019. This recommendation is based upon the following:

**I. JURISDICTION:**

1. During 1996, Lyons Village Ltd., a Texas limited partnership (Owner) was awarded an allocation of Low Income Housing Tax Credits by the Governing Board (Board) of the Texas Department of Housing and Community Affairs (TDHCA or the Department), in the annual amount of \$189,805 to build and operate Lyons Village Townhomes (Property) (HTC file No. 96171 / CMTS No. 1630).
2. Owner signed a land use restriction agreement (LURA) regarding the Property. The LURA was effective December 21, 1999, and filed of record at Document Number U151462 of the Official Public Records of Real Property of Harris County, Texas.
3. Lyons Village Ltd. is an organization that is qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development that is subject to the regulatory authority of TDHCA.
4. Fifth Ward Community Redevelopment Corporation, a Texas nonprofit corporation (Fifth Ward), is the general partner for Lyons Village Ltd.
5. Bridgette Steele, Wiley Henry, Harvey Clemons Jr, and Anthony Wilcots (Fifth Ward Board) are current board members for Fifth Ward, and have been on the board since at least February 6, 2012.
6. Fifth Ward and the Fifth Ward Board (collectively Respondent) are considered Responsible Parties for the Property during the term in question for this debarment recommendation, and therefore subject to the regulatory authority of TDHCA. There are



additional current board members, but they were not members of the board in 2012, and are therefore not considered Responsible Parties for purposes of this debarment recommendation.

**II. MATERIAL VIOLATIONS SUBJECT TO DEBARMENT<sup>1</sup>:**

1. TDHCA performed a Uniform Physical Condition Standards (UPCS) inspection at the Property on February 6, 2012. The Property scored 48 out of 100.
2. TDHCA performed a UPCS inspection at the Property on January 23, 2018. The Property scored 46 out of 100.
3. Scoring 50 or less on a UPCS inspection on more than one occasion is a material violation that is grounds for mandatory debarment.

**III. LAW/RULE VIOLATIONS:**

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §2306.0504 and 10 TAC §2.401.
2. Respondent is a "Responsible Party" as that term is defined in 10 TAC §2.102(1).
3. Pursuant to IRC §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance.
4. Pursuant to TEX. GOV'T CODE Chapter 2306, Subchapter DD and TEX. GOV'T CODE §2306.185, TDHCA is authorized to make Housing Tax Credit Allocations for the State of Texas and is required to monitor to ensure compliance.
5. Pursuant to 10 TAC §10.621(a), TDHCA has adopted HUD's Uniform Physical Condition Standards as the standards for its physical inspections.
6. Fifth Ward Community Redevelopment Corporation, Bridgette Steele, Wiley Henry, Harvey Clemons Jr, and Anthony Wilcots violated 10 TAC §10.621 on February 6, 2012 and January 23, 2018, by failing to provide housing that meets UPCS standards.
7. Pursuant to Tex. Gov't. Code §2306.0504(c), the Department shall debar a person from participation in a Department program if the person materially or repeatedly violates any condition imposed by the department in connection with the administration of a debarment program, including a material or repeated violation of a LURA.

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<sup>1</sup> Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 Tex. Admin. Code, Chapters 1, 2, AND 10 refer to the versions of the code in effect at the time of the compliance monitoring reviews and/or inspections that resulted in recording each violation. All past violations remain violations under the current code and all interim amendments.

#### IV. RECOMMENDED DEBARMENT TERM:

Pursuant to 10 Tex. Admin. Code §2.401(j), recommended periods of debarment are to be based upon material factors such as the following:

- 1. Repeated occurrences:** The Property has scored below 50 twice, in 2012 and in 2018. The 2015 inspection showed a better condition, with a score of 78. There is no history of prior administrative penalty or debarment informal conferences with the Enforcement Committee (“Committee”).
- 2. Seriousness of underlying issues:** The Committee found that the inspections had identified many Level 3 violations, including health and safety violations that represent unacceptable living conditions. Owner representatives stated that some of the items were caused by tenants, such as beds blocking egress, and removing smoke detector batteries. That was considered by the Committee, but did not account for all Level 3 violations and the weight of the other findings is significant. All findings have been documented as being fully resolved.
- 3. Presence or absence of corrective action, including corrective action to install new responsible persons and ensure they are qualified and properly trained:** The 2012 UPCS inspection was referred for an administrative penalty for failure to timely correct all findings. Findings were ultimately corrected as part of a corrective plan accepted by the Committee, and no informal conference was held. Owner representatives hired a new management company during 2018, and have made changes to their management coordination for work order requests, including using Google Docs to ensure that work orders are properly prioritized and reviewed. Management is also implementing quarterly unit walk-throughs to ensure that problems are identified and resolved earlier going forward. They have provided training for business continuity planning and disaster preparedness
- 4. Other material factors:** The Property scored a 78 during its 2015 UPCS inspection, so it has not necessarily been in poor condition for the entire period since the 2012 inspection. Property representatives presented a capital needs assessment relating to ongoing improvements planned, and indicated that all repairs required by TDHCA inspectors were completed. TDHCA files support that, with all inspections currently closed with full corrections made.

In 2008, Harris County removed the tax exemption for the Property, an annual expenditure that was not part of the original underwriting for the Property. These unexpected bills reportedly impacted the entity’s capital repairs reserve budget for many years, until 2013 when they restructured their mortgage with Chase Bank.

Representatives also cited hurricane damage from Hurricane Harvey as a significant factor for this 2018 UPCS inspection score. They found the arguments about Hurricane Harvey to be plausible, but also found that it did not excuse the 2018 inspection score. Owner representatives indicated that they had already secured funding in early 2017 for planned capital improvements, including roof replacement, and it was possible that delayed repairs had contributed to water damage and mold from the storm. The

upstairs units did not flood, but water infiltration caused damage that was not immediately identified, then there were delays in repairs throughout Houston. Owner representatives indicated that the storm damage was not immediately identified because the units had not flooded, and water infiltration damage was not discovered until later. Owner representatives also indicated that many tenants had not reported water damage, so some damage was not identified until TDHCA inspected. Overall, the Committee members felt that Hurricane Harvey was a factor, but only as to the term of the recommended debarment. It did not negate the 2018 UPCS score since the findings did occur, and had not been addressed at the time of the inspection.

Delayed capital improvements also contributed to the Property condition. Further, staff noted that no casualty loss report had been made to TDHCA; per 10 TAC §10.609, that form should have been submitted to TDHCA within 30 days of a casualty loss. If a casualty loss had been reported, any unoccupied units that were disclosed as being damaged would not have been inspected, and therefore not included in the report; occupied units would still have been included in the inspection, and subject to normal monitoring procedures.

- 5. Additional facts verified after the informal conference:** This section would not normally be part of a debarment recommendation, but after the informal conference, property representatives repeated arguments relating to Hurricane Harvey, asking that the Committee members reconsider their debarment recommendation. The factors raised by the Property representatives are outlined below for consideration. The Compliance Division has verified the following, which supports information upon which the Committee members relied when making their debarment recommendation during the informal conference:
- a. Property representatives argued that TDHCA did not provide notice of how to report damage from Hurricane Harvey:** The Compliance Division did not send notices via CMTS, but did send messages via the email listserv on August 29, 2017, and October 17, 2017, notifying owners of options for relief and procedures for notifying TDHCA of casualty losses.
  - b. Property representatives argued that the January 2018 inspection should have been postponed due to Hurricane Harvey:** An email sent via the email listserv on August 29, 2017, cancelled UPCS inspections scheduled for the week of August 28, 2017 through September 1, 2017. An inspection scheduled for January 2018 would not have been rescheduled.
  - c. Property representatives indicated that TDHCA would not reschedule the January 2018 inspection:** The Compliance Division has been unable to find correspondence relating to a rescheduling request for this inspection, but rescheduling requests are denied as a general procedure and no further changes to that policy were made due to Hurricane Harvey, other than those outlined above.

- d. **Property representatives argue that damage from Hurricane Harvey should have been considered to adjust the inspection results above the debarment threshold score of 50:** Per 10 TAC §10.609(2), properties are required to notify TDHCA of a casualty loss within 30 days of the loss. No casualty loss was reported for Lyons Village Townhomes. Had a casualty loss been reported, TDHCA would not have inspected reported units provided that the damaged units were unoccupied. If a damaged unit was occupied at the time of the inspection, that unit would still be inspected and the normal corrective action period would apply, with potential extensions as permitted by the rule at 10 TAC §10.621. Additionally, 10 TAC §10.621(6) permits database adjustment in certain scenarios if modernization work in progress was contracted before a notice of inspection was issued by the Department. Lyons Village did not submit documentation to support such an adjustment during the corrective action period.

A modified debarment term through June 30, 2019, is appropriate under the debarment factors outlined above. Tex. Gov't. Code §2306.0504(c) requires debarment in the event of a material violation of a LURA, and 10 TAC §2.401(d) defines a material violation to include scoring 50 or below on more than one UPCS inspection. These criteria are met for this debarment referral and the Responsible Parties must be debarred as a result. The UPCS findings are serious, delayed capital improvements are associated with the poor inspections, and although hurricane damage, unexpected property taxes, and tenant damage, may have contributed to some findings, they do not explain all findings or negate the overall UPCS inspection scores from 2012 and 2018. However, owner representatives presented various compelling arguments for the two low UCPS inspection scores, and discussed efforts made to correct the findings and prevent future findings. Overall, a debarment is indicated, but for a modified term.

A Notice of Debarment Determination was issued on February 13, 2019, and included notice of the right to an appeal period of 20 days. A debarment term through June 30, 2019, is appropriate under the debarment factors outlined above. Accordingly, after consideration of all appropriate factors, including those set out in TEX. GOV'T CODE §2306.0504 and 10 TEX. ADMIN. CODE §2.401, I recommend a debarment term through June 30, 2019 for Fifth Ward Community Redevelopment Corporation, Bridgette Steele, Wiley Henry, Harvey Clemons Jr, and Anthony Wilcots.

ENFORCEMENT ACTION AGAINST FIFTH	§	BEFORE THE
WARD COMMUNITY REDEVELOPMENT	§	TEXAS DEPARTMENT OF
CORPORATION, BRIDGETTE STEELE,	§	HOUSING AND COMMUNITY
WILEY HENRY, HARVEY CLEMONS JR,	§	AFFAIRS
AND ANTHONY WILCOTS	§	

**AGREED FINAL ORDER**

**General Remarks and official action taken:**

On this 21<sup>st</sup> day of March, 2019, the Governing Board (Board) of the Texas Department of Housing and Community Affairs (TDHCA or Department) considered the matter of whether enforcement action should be taken against **FIFTH WARD COMMUNITY REDEVELOPMENT CORPORATION, BRIDGETTE STEELE, WILEY HENRY, HARVEY CLEMONS JR, AND ANTHONY WILCOTS** (collectively, Respondent), for controlling a development that has, on more than one occasion, scored 50 or less on a Uniform Physical Condition Standards (UPCS) inspection.

This Agreed Final Order is executed pursuant to the authority granted in the Tex. Gov't Code, Chapter 2306.0504, which requires the Board to adopt a policy providing for the debarment of a person from participation in Department programs because of a person's past failure to comply with conditions imposed by the Department in the administration of its programs. The policy was adopted by the Board and is set forth in 10 TAC §2.401.

Upon recommendation of the Executive Director, the Board makes the following findings of fact and conclusions of law and enters this Order:

**FINDINGS OF FACT**

**Jurisdiction:**

1. During 1996, Lyons Village Ltd., a Texas limited partnership (Owner) was awarded an allocation of Low Income Housing Tax Credits by the Governing Board (Board) of the Texas Department of Housing and Community Affairs (TDHCA or the Department), in the annual amount of \$189,805 to build and operate Lyons Village Townhomes (Property) (HTC file No. 96171 / CMTS No. 1630).
2. Owner signed a land use restriction agreement (LURA) regarding the Property. The LURA was effective December 21, 1999, and filed of record at Document Number U151462 of the Official Public Records of Real Property of Harris County, Texas.

3. Lyons Village Ltd. is an organization that is qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development that is subject to the regulatory authority of TDHCA.
4. Fifth Ward Community Redevelopment Corporation, a Texas nonprofit corporation (Fifth Ward), is the general partner for Lyons Village Ltd.
5. Bridgette Steele, Wiley Henry, Harvey Clemons Jr, and Anthony Wilcots (Fifth Ward Board) are current board members for Fifth Ward, and have been on the board since at least February 6, 2012.
6. Fifth Ward and the Fifth Ward Board (collectively Respondent) are considered Responsible Parties for the Property during the term in question for this debarment recommendation, and therefore subject to the regulatory authority of TDHCA. There are additional current board members, but they were not present on the board in 2012, and are therefore not considered Responsible Parties for purposes of this debarment recommendation.

**Material Violations Subject To Debarment:**

1. A Uniform Physical Condition Standards (UPCS) inspection was performed at the Property on February 6, 2012. The Property scored a 48 out of 100.
2. A UPCS inspection was performed at the Property on January 23, 2018. The Property scored a 46 out of 100.
3. Scoring 50 or less on a UPCS inspection on more than one occasion is a material violation that is grounds for mandatory debarment.

**CONCLUSIONS OF LAW**

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §2306.0504 and 10 TAC §2.401.
2. Respondent is a "Responsible Party" as that term is defined in 10 TAC §2.102(1).
3. Pursuant to IRC §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance.
4. Pursuant to TEX. GOV'T CODE Chapter 2306, Subchapter DD and TEX. GOV'T CODE §2306.185, TDHCA is authorized to make Housing Tax Credit Allocations for the State of Texas and is required to monitor to ensure compliance.
5. Pursuant to 10 TAC §10.621(a), TDHCA has adopted HUD's Uniform Physical Condition Standards as the standards for its physical inspections;

6. Respondent violated 10 TAC §10.621 on February 6, 2012 and January 23, 2018, by failing to provide housing that meets UPCS standards.
7. Pursuant to Tex. Gov't. Code §2306.0504(c), the Department shall debar a person from participation in a Department program if the person materially or repeatedly violates any condition imposed by the department in connection with the administration of a debarment program, including a material or repeated violation of a LURA.

Based upon the foregoing findings of fact and conclusions of law, and an assessment of material factors including those set forth in 10 Tex. Admin. Code §2.401(j) to be considered for a recommended period of debarment, as applied specifically to the facts and circumstances present in this case, the Board of the Texas Department of Housing and Community Affairs orders the following:

**IT IS HEREBY ORDERED** that Respondent is barred from future participation in all programs administered by the Department for a **term ending June 30, 2019**. This debarment does not prohibit Respondent from participating in any existing engagements funded through the Department, nor affect any responsibilities or duties thereunder.

**IT IS FURTHER ORDERED** that the terms of this Agreed Final Order shall be published on the TDHCA website.

*[Remainder of page intentionally blank]*



Approved by the Governing Board of TDHCA on March 21, 2019.

By: \_\_\_\_\_

Name: J.B. Goodwin

Title: Chair of the Board of TDHCA

By: \_\_\_\_\_

Name: James "Beau" Eccles

Title: Secretary of the Board of TDHCA

**THE STATE OF TEXAS §**

**§**

**COUNTY OF TRAVIS §**

Before me, the undersigned notary public, on this 21st day of March, 2019, personally appeared J.B. Goodwin, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

\_\_\_\_\_  
Notary Public, State of Texas

**THE STATE OF TEXAS §**

**§**

**COUNTY OF TRAVIS §**

Before me, the undersigned notary public, on this 21st day of March, 2019, personally appeared James "Beau" Eccles, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS §  
§  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, \_\_\_\_\_ (*notary name*), a notary public in and for the State of \_\_\_\_\_, on this day personally appeared \_\_\_\_\_ (*person signing document*), known to me or proven to me through circle one: personally known / driver's license / passport to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that (he/she) executed the same for the purposes and consideration therein expressed, who being by me duly sworn, deposed as follows:

1. "My name is \_\_\_\_\_, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I hold the office of \_\_\_\_\_ for Fifth Ward Community Redevelopment Corporation ("Fifth Ward"). I am the authorized representative of Fifth Ward and I am duly authorized to execute this document.
3. Fifth Ward Community Redevelopment Corporation knowingly and voluntarily enters into this Agreed Final Order, and agrees with and consents to the issuance and service of the foregoing Agreed Final Order by the Governing Board of the Texas Department of Housing and Community Affairs."

**RESPONDENT:**

**FIFTH WARD COMMUNITY REDEVELOPMENT CORPORATION**, a Texas nonprofit corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

STATE OF TEXAS §  
§  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, \_\_\_\_\_ (*notary name*), a notary public in and for the State of \_\_\_\_\_, on this day personally appeared Bridgette Steele, known to me or proven to me through circle one: personally known / driver's license / passport to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed, who being by me duly sworn, deposed as follows:

1. "My name is Bridgette Steele, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I hold the office of \_\_\_\_\_ for Fifth Ward Community Redevelopment Corporation.
3. I knowingly and voluntarily enter into this Agreed Final Order, and agree with and consent to the issuance and service of the foregoing Agreed Final Order by the Governing Board of the Texas Department of Housing and Community Affairs."

**RESPONDENT:**

By: \_\_\_\_\_

Name: Bridgette Steele

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

STATE OF TEXAS §  
§  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, \_\_\_\_\_ (*notary name*), a notary public in and for the State of \_\_\_\_\_, on this day personally appeared Wiley Henry, known to me or proven to me through circle one: personally known / driver's license / passport to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, who being by me duly sworn, deposed as follows:

1. "My name is Wiley Henry, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I hold the office of \_\_\_\_\_ for Fifth Ward Community Redevelopment Corporation.
3. I knowingly and voluntarily enter into this Agreed Final Order, and agree with and consent to the issuance and service of the foregoing Agreed Final Order by the Governing Board of the Texas Department of Housing and Community Affairs."

**RESPONDENT:**

By: \_\_\_\_\_

Name: Wiley Henry

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

STATE OF TEXAS §  
§  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, \_\_\_\_\_ (*notary name*), a notary public in and for the State of \_\_\_\_\_, on this day personally appeared Harvey Clemons Jr, known to me or proven to me through circle one: personally known / driver's license / passport to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, who being by me duly sworn, deposed as follows:

1. "My name is Harvey Clemons Jr, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I hold the office of \_\_\_\_\_ for Fifth Ward Community Redevelopment Corporation.
3. I knowingly and voluntarily enter into this Agreed Final Order, and agree with and consent to the issuance and service of the foregoing Agreed Final Order by the Governing Board of the Texas Department of Housing and Community Affairs."

**RESPONDENT:**

By: \_\_\_\_\_

Name: Harvey Clemons Jr

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

STATE OF TEXAS §  
§  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, \_\_\_\_\_ (*notary name*), a notary public in and for the State of \_\_\_\_\_, on this day personally appeared Anthony Wilcots, known to me or proven to me through circle one: personally known / driver's license / passport to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, who being by me duly sworn, deposed as follows:

1. "My name is Anthony Wilcots, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I hold the office of \_\_\_\_\_ for Fifth Ward Community Redevelopment Corporation.
3. I knowingly and voluntarily enter into this Agreed Final Order, and agree with and consent to the issuance and service of the foregoing Agreed Final Order by the Governing Board of the Texas Department of Housing and Community Affairs."

**RESPONDENT:**

By: \_\_\_\_\_

Name: Anthony Wilcots

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

1b

**BOARD ACTION REQUEST**

**LEGAL DIVISION**

**MARCH 21, 2019**

Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning West Gate Apartments (HOME 535259 / CMTS 2702)

**RECOMMENDED ACTION**

**WHEREAS**, West Gate Apartments, owned by The Housing Authority of the City of Tahoka, Texas (Owner), had uncorrected compliance findings relating to the applicable land use restriction agreement and the associated statutory and rule requirements;

**WHEREAS**, representatives of West Gate have signed a prior Agreed Final Order in 2016 relating to file monitoring findings identified during a 2015 onsite monitoring review;

**WHEREAS**, because fully acceptable corrections were received, the 2016 Agreed Final Order stipulated that violations had occurred and were not timely corrected, but assessed no administrative penalty;

**WHEREAS**, TDHCA identified new findings of noncompliance during its 2018 onsite monitoring review and referred them for an administrative penalty when they were not timely corrected;

**WHEREAS**, referred findings included: failure to maintain fully compliant written policies and procedures; failure to maintain marketing materials for the Affirmative Marketing Plan; failure to execute a required self-certification for unit 2114; and failure to verify a bank statement for a recertification for unit 2109;

**WHEREAS**, all of the 2018 findings of noncompliance were resolved informally before consideration by the Enforcement Committee;

**WHEREAS**, on February 26, 2019, Owner's representatives participated in an informal conference with the Enforcement Committee and agreed, subject to Board approval, to enter into an Agreed Final Order assessing an administrative penalty of \$250; and

**WHEREAS**, staff has based its recommendations for an Agreed Final Order on the Department's rules for administrative penalties, and an assessment of each and all of the statutory factors to be considered in assessing such penalties, applied specifically to the facts and circumstances present in this case.

**NOW, therefore, it is hereby**

**RESOLVED**, that an Agreed Final Order assessing an administrative penalty of \$250 for noncompliance at West Gate Apartments, substantially in the form presented at this meeting, and authorizing any non-substantive technical corrections, is hereby adopted as the order of this Board.



## BACKGROUND

The Housing Authority of the City of Tahoka, Texas (Owner) is the owner of West Gate Apartments (Property), a low income apartment complex composed of 24 units, located in Tahoka, Lynn County. Bill Miller is the executive director for the Owner. There are no other contacts in CMTS, and the organization is not registered with the Texas Secretary of State because it is a public housing authority. The Property is self-managed by the housing authority, which has three employees, including Mr. Miller and a full-time maintenance person.

The Property is subject to a Land Use Restriction Agreement (LURA) signed in 1999 in consideration for an interest free HOME loan totaling \$360,000 to rehabilitate and operate the Property.

Owner was previously referred for an administrative penalty on multiple occasions for reporting findings and file monitoring findings, but the prior referrals were closed informally when full corrections were received either immediately after referral for an administrative penalty, or in response to an informal conference notice. The referral in 2015 was for file monitoring findings, which were fully resolved in response to an informal conference notice, but the Property had a history of a prior cancelled informal conference, so consideration by the Enforcement Committee was required. The Committee considered the full corrections made and recommended to the Board an Agreed Final Order stipulating that violations had occurred, but recommending no administrative penalty. That Order was signed, then the Property was referred for a penalty in 2018, again for failure to timely submit corrections to the Compliance Division in response to a file monitoring review. Findings that were identified and referred included failure to maintain fully compliant written policies and procedures, failure to maintain recent marketing materials for the Affirmative Marketing Plan that was present in the file, failure to execute a required self-certification for unit 2114, and failure to verify a bank statement for a recertification for unit 2109. As in the past, the Owner submitted fully acceptable corrections in response to an informal conference notice, and all findings were already resolved at the time of the February 26, 2019, informal conference with the Enforcement Committee.

During the conference, the Enforcement Committee considered whether to assess a larger penalty given the prior violation history that includes a previously signed Agreed Final Order. That order did not deter future noncompliance, so a penalty is indicated. However, Committee members did not feel that a large administrative penalty is necessary given the statutory factors relating specifically to this case. They recognized that the Owner is a very small housing authority with a small budget based primarily on project-based Section 8 income, so any amount of a penalty would likely get their attention and act as a deterrent. Mr. Miller also presented some mitigating information; for example, West Gate did not send marketing materials for the Affirmative Marketing Plan because the Property has a waiting list of approximately two years, so when they market it causes frustration for applicants. Staff advised Mr. Miller that TDHCA rules do not require the property to affirmatively market if his waiting list is closed, but we must monitor for this item if they are still accepting applicants. Additional mitigating information is that the file monitoring findings did not relate to over-income households, and the housing authority only has three staff, one of whom focuses solely on physical maintenance. They manage 74 total units that involve restrictions by TDHCA, HUD, and USDA, which has caused confusion. The biggest problem causing the repeated administrative penalty referrals is that Mr. Miller does not regularly check CMTS or calendar deadlines, so he often fails to submit corrections until he receives a certified letter regarding the informal conference. He has committed to improvements going forward, and TDHCA staff has recommended that he check CMTS weekly. Furthermore, the maximum potential administrative penalty is \$2,000 and the Committee would typically recommend a significantly probated and forgivable penalty

as an incentive to make corrections, but those corrections are already complete, rendering a forgivable component to an Agreed Final Order moot. Committee members expressed to Mr. Miller that he must improve responsiveness, and that a future administrative penalty referral and third Agreed Final Order would involve a much larger administrative penalty.

Consistent with direction from the Department's Enforcement Committee, an administrative penalty in the amount of \$250 is recommended. This will be a reportable item of consideration under previous participation for any new award to the principals of the Owner.

ENFORCEMENT ACTION AGAINST THE	§	BEFORE THE
HOUSING AUTHORITY OF THE CITY OF	§	TEXAS DEPARTMENT OF HOUSING
TAHOKA, TEXAS WITH RESPECT TO WEST	§	AND COMMUNITY AFFAIRS
GATE APARTMENTS (HOME FILE # 535259 /	§	
CMTS # 2702)	§	

**AGREED FINAL ORDER**

**General Remarks and official action taken:**

On this 21<sup>st</sup> day of March, 2019, the Governing Board (Board) of the Texas Department of Housing and Community Affairs (TDHCA or Department) considered the matter of whether enforcement action should be taken against **THE HOUSING AUTHORITY OF THE CITY OF TAHOKA, TEXAS**, a public housing authority (Respondent).

This Agreed Order is executed pursuant to the authority of the Administrative Procedure Act (APA), Tex. Gov't Code §2001.056, which authorizes the informal disposition of contested cases. In a desire to conclude this matter without further delay and expense, the Board and Respondent agree to resolve this matter by this Agreed Final Order. The Respondent agrees to this Order for the purpose of resolving this proceeding only and without admitting or denying the findings of fact and conclusions of law set out in this Order.

Upon recommendation of the Enforcement Committee, the Board makes the following findings of fact and conclusions of law and enters this Order:

**WAIVER**

Respondent acknowledges the existence of their right to request a hearing as provided by Tex. Gov't Code §2306.044, and to seek judicial review, in the District Court of Travis County, Texas, of any order as provided by Tex. Gov't Code §2306.047. Pursuant to this compromise and settlement, the Respondent waives those rights and acknowledges the jurisdiction of the Board over Respondent.

**FINDINGS OF FACT (FOF)**

**Jurisdiction:**

1. During 1999, Respondent received HOME funds totaling \$360,000 to rehabilitate and operate West Gate Apartments (Property) (HTC file No. 535259 / CMTS No. 2702 / LDLD No. 237).
2. Respondent signed a land use restriction agreement (LURA) regarding the Property. The LURA was effective January 25, 1999, and filed of record at Volume 237, page 109 of the Official Public Records of Real Property of Lynn County, Texas (Records).

3. Respondent is subject to the regulatory authority of TDHCA.

Compliance Violations<sup>1</sup>:

4. Property has a history of violations and previously signed an Agreed Final Order on May 12, 2016, stipulating that violations had occurred and were not timely corrected, but assessing no administrative penalty.
5. An on-site monitoring review was conducted on April 23, 2018, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and an August 14, 2018, corrective action deadline was set, however, the following violations were not resolved before the corrective action deadline:
  - a. Respondent failed to maintain complete written tenant selection criteria, a violation of 10 TAC §10.610 (Written Policies and Procedures), which requires all developments to establish written tenant selection criteria that meet minimum TDHCA requirements. This finding was resolved on January 29, 2019, after intervention by the Enforcement Committee.
  - b. Respondent failed to provide a compliant affirmative marketing plan, a violation of 10 TAC §10.617 (Affirmative Marketing), which requires developments to maintain an affirmative marketing plan that meets minimum requirements and to distribute marketing materials to selected marketing organizations that reach groups identified as least likely to apply and to the disabled. An affirmative marketing plan was observed during the onsite review, but the plan omitted the required marketing materials to prove that the development was carrying out marketing as planned. This finding was resolved on January 9, 2019, after intervention by the Enforcement Committee.
  - c. Respondent failed to properly recertify unit 2109, a violation of 10 TAC §10.612 (Tenant File Requirements), which requires developments to recertify all HOME assisted units on every sixth year of the affordability period, and to do self-certifications annually in the intervening years. Respondent recertified unit 2109, but failed to verify a bank account disclosed on the application and a pay stub. This finding was resolved on December 9, 2018, after intervention by the Enforcement Committee.
  - d. Respondent failed to collect an annual self-certification for unit 2114, a violation of 10 TAC §10.612 (Tenant File Requirements), which requires developments to recertify all HOME assisted units on every sixth year of the affordability period, and to do self-certifications annually in the intervening years. Respondent did not collect a self-certification for unit 2114. This finding was resolved on December 9, 2018, after intervention by the Enforcement Committee.
6. All violations listed above are considered resolved at the time of this Order.

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<sup>1</sup> Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 TAC Chapter 10 refers to the versions of the code in effect at the time of the compliance monitoring reviews and/or inspections that resulted in recording each violation. All past violations remain violations under the current code and all interim amendments.

## CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503 and 10 TAC Chapter 2.
2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
3. Respondent violated 10 TAC §10.610 in 2018, by not maintaining complete written tenant selection criteria meeting TDHCA requirements;
4. Respondent violated 10 TAC §10.617 in 2018, by failing to provide outreach marketing materials as evidence of affirmative marketing;
5. Respondent violated 10 TAC §10.612 in 2018, by failing to fully recertify unit 2109;
6. Respondent violated 10 TAC §10.612 in 2018, by failing to annually self-certify unit 2114;
7. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules, the Board has personal and subject matter jurisdiction over Respondent pursuant to Tex. Gov't Code §2306.041 and §2306.267.
8. Because Respondent is a housing sponsor, TDHCA may order Respondent to perform or refrain from performing certain acts in order to comply with the law, TDHCA rules, or the terms of a contract or agreement to which Respondent and TDHCA are parties, pursuant to Tex. Gov't Code §2306.267.
9. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code §2306.053 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to Tex. Gov't Code §2306.041.
10. An administrative penalty of \$250 is an appropriate penalty in accordance with 10 TAC Chapter 2.

*[remainder of page intentionally blank]*

Based upon the foregoing findings of fact and conclusions of law, and an assessment of the factors set forth in Tex. Gov't Code §2306.042 to be considered in assessing such penalties as applied specifically to the facts and circumstances present in this case, the Governing Board of the Texas Department of Housing and Community Affairs orders the following:

**IT IS HEREBY ORDERED** that Respondent is assessed an administrative penalty in the amount of \$250.

**IT IS FURTHER ORDERED** that Respondent shall pay and is hereby directed to pay the \$250 administrative penalty by cashier's check payable to the "Texas Department of Housing and Community Affairs" on or before April 22, 2019, to the following address

<b>If via overnight mail (FedEx, UPS):</b>	<b>If via USPS:</b>
TDHCA Attn: Ysella Kaseman 221 E 11 <sup>th</sup> St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711

**IT IS FURTHER ORDERED** that Respondent shall follow the requirements of 10 TAC §10.406, a copy of which is included at Exhibit 1, and obtain approval from the Department prior to consummating a sale of the property, if contemplated.

**IT IS FURTHER ORDERED** that the terms of this Agreed Final Order shall be published on the TDHCA website.

*[Remainder of page intentionally blank]*

Approved by the Governing Board of TDHCA on March 21, 2019.

By: \_\_\_\_\_  
Name: J.B. Goodwin  
Title: Chair of the Board of TDHCA

By: \_\_\_\_\_  
Name: James "Beau" Eccles  
Title: Secretary of the Board of TDHCA

**THE STATE OF TEXAS** §  
§  
**COUNTY OF TRAVIS** §

Before me, the undersigned notary public, on this 21st day of March, 2019, personally appeared J.B. Goodwin, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

\_\_\_\_\_  
Notary Public, State of Texas

**THE STATE OF TEXAS** §  
§  
**COUNTY OF TRAVIS** §

Before me, the undersigned notary public, on this 21st day of March, 2019, personally appeared James "Beau" Eccles, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

\_\_\_\_\_  
Notary Public, State of Texas





**Exhibit 1**  
**Texas Administrative Code**

TITLE 10                    COMMUNITY DEVELOPMENT  
PART 1                    TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
CHAPTER 10                UNIFORM MULTIFAMILY RULES  
SUBCHAPTER E    POST AWARD AND ASSET MANAGEMENT REQUIREMENTS  
RULE §10.406                Ownership Transfers (§2306.6713)

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(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice and a completed Ownership Transfer packet, if applicable, to the Department at least 45 calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Except as otherwise provided herein, the Executive Director's prior written approval of any such transfer is required. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section.

(b) Exceptions. The following exceptions to the ownership transfer process outlined herein apply:

(1) A Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new Principals or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(2) Transfers that are the result of an involuntary removal of the general partner by the investment limited partner do not require advance approval but must be reported to the Department as soon as possible due to the sensitive timing and nature of this decision. In the event the investment limited partner has proposed a new general partner or will permanently replace the general partner, a full Ownership Transfer packet must be submitted.

(3) Changes to the investment limited partner, non-Controlling limited partner, or other non-Controlling partners affiliated with the investment limited partner do not require Executive Director approval. A General Partner's acquisition of the interest of the investment limited partner does not require Executive Director approval, unless some other change in ownership is occurring as part of the same overall transaction.

(4) Changes resulting from foreclosure do not require advance approval but acquiring parties must notify the Department as soon as possible of the revised ownership structure and ownership contact information.

(c) General Requirements.

(1) Any new Principal in the ownership of a Development must be eligible under §11.202 of Subchapter C (relating to Ineligible Applicants and Applications). In addition, Principals will be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee).

(2) Changes in Developers or Guarantors must be addressed as non-material amendments to the application under §10.405 of this subchapter.

(3) To the extent an investment limited partner or its Affiliate assumes a Controlling interest in a Development Owner, such acquisition shall be subject to the Ownership Transfer requirements set forth herein. Principals of the investment limited partner or Affiliate will be considered new Principals and will be reviewed as stated under paragraph (1) of this subsection.

(4) Simultaneous transfer or concurrent offering for sale of the General Partner's and Limited Partner's control and interest will be subject to the Ownership Transfer requirements set forth herein and will trigger a Right of First Refusal, if applicable.

(d) Transfer Actions Warranting Debarment. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure or the Department at risk for financial exposure as a result of non-compliance, staff may make a recommendation to the Board for the debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule. In

addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), prior to recommending any new financing or allocation of credits.

(e) Transfers Prior to 8609 Issuance or Construction Completion. Prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs) an Applicant may request an amendment to its ownership structure to add Principals. The party(ies) reflected in the Application as having Control must remain in the ownership structure and retain Control, unless approved otherwise by the Executive Director. A development sponsor, General Partner or Development Owner may not sell the Development in whole or voluntarily end their Control prior to the issuance of 8609s.

(f) Nonprofit Organizations. If the ownership transfer request is to replace a nonprofit organization within the Development ownership entity, the replacement nonprofit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

(1) If the LURA requires ownership or material participation in ownership by a Qualified Nonprofit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Nonprofit Organization that meets the requirements of §42(h)(5) of the Code and Tex. Gov't Code §2306.6706, if applicable, and can demonstrate planned participation in the operation of the Development on a regular, continuous, and substantial basis.

(2) If the LURA requires ownership or material participation in ownership by a nonprofit organization or CHDO, the Development Owner must show that the transferee is a nonprofit organization or CHDO, as applicable, that complies with the LURA.

(3) Exceptions to the above may be made on a case by case basis if the Development is past its Compliance Period/Federal Affordability Period, was not reported to the IRS as part of the Department's Nonprofit Set Aside in any HTC Award year, and follows the procedures outlined in §10.405(b)(1) - (5) of this chapter (relating to LURA Amendments that require Board Approval). The Board must find that:

(A) The selling nonprofit is acting of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(B) The participation by the nonprofit was substantive and meaningful during the full term of the Compliance Period but is no longer substantive or meaningful to the operations of the Development; and

(C) The proposed purchaser is an affiliate of the current Owner or otherwise meets the Department's standards for ownership transfers.

(g) Historically Underutilized Business (HUB) Organizations. If a HUB is the general partner or special limited partner of a Development Owner and it determines to sell its ownership interest, after the issuance of 8609's, the purchaser of that partnership interest or the general or special limited partner is not required to be a HUB as long as the procedure described in §10.405(b)(1) of this chapter (relating to Non-Material LURA Amendments) has been followed and approved.

(h) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances pertaining to the transfer and the effects of approval or denial. Documentation must be submitted as directed in the Post Award Activities Manual, which includes but is not limited to:

(1) A written explanation outlining the reason for the request;

(2) Ownership transfer information, including but not limited to the type of sale, amount of Development reserves to transfer in the event of a property sale, and the prospective closing date;

(3) Pre and post transfer organizational charts with TINs of each organization down to the level of natural persons in the ownership structure as described in §11.204(13)(A) of Subchapter C;

(4) A list of the names and contact information for transferees and Related Parties;

(5) Previous Participation information for any new Principal as described in §11.204(13)(B) of Subchapter C;

(6) Agreements among parties associated with the transfer;

(7) Owners Certifications with regard to materials submitted further described in the Post Award Activities Manual;

(8) Detailed information describing the organizational structure, experience, and financial capacity of any party holding a controlling interest in any Principal or Controlling entity of the prospective Development Owner;

(9) Evidence and certification that the tenants in the Development have been notified in writing of the proposed transfer at least 30 calendar days prior to the date the transfer is approved by the Department. The ownership transfer approval letter will not be issued until this 30 day period has expired;

(10) Any required exhibits and the list of exhibits related to specific circumstances of transfer or Ownership as detailed in the Post Award Activities Manual.

(i) Once the Department receives all necessary information under this section and as required under the Post Award Activities Manual, staff shall initiate a qualifications review of a transferee, in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter and §11.202 of Subchapter C (relating to Ineligible Applicants and Applications).

(j) Credit Limitation. As it relates to the Housing Tax Credit amount further described in §11.4(a) of this title (relating to Tax Credit Request and Award Limits), the credit amount will not be applied in circumstances described in paragraphs (1) and (2) of this subsection:

(1) In cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or

(2) In cases where the general partner is being replaced if the award of credits was made at least five years prior to the transfer request date.

(k) Penalties, Past Due Fees and Underfunded Reserves. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring). The Development Owner, as on record with the Department, will be liable for any penalties or fees imposed by the Department even if such penalty can be attributable to the new Development Owner unless such ownership transfer is approved by the Department. In the event a transferring Development has a history of uncorrected UPCS violations, ongoing issues related to keeping housing sanitary, safe, and decent, an account balance below the annual reserve deposit amount as specified in §10.404(a) (relating to Replacement Reserve Accounts), or that appears insufficient to meet capital expenditure needs as indicated by the number or cost of repairs included in a PCA, the prospective Development Owner may be required to establish and maintain a replacement reserve account or increase the amount of regular deposits to the replacement reserve account by entering into a Reserve Agreement with the Department. The Department may also request a plan and timeline relating to needed repairs or renovations that will be completed by the departing and/or incoming Owner as a condition to approving the Transfer.

(l) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by the corresponding ownership transfer fee as outlined in §11.901 of this chapter (relating to Fee Schedule, Appeals, and other Provisions).

Source Note: The provisions of this §10.406 adopted to be effective January 5, 2017, 41 TexReg 10569; amended to be effective January 4, 2018, 42 TexReg 7610; amended to be effective December 30, 2018, 43 TexReg 8297

1c

**BOARD ACTION REQUEST**

**LEGAL DIVISION**

**MARCH 21, 2019**

Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Holland House Apartments (HTC 07180 / CMTS 4471)

**RECOMMENDED ACTION**

**WHEREAS**, Holland House Apartments, owned by Holland Apartments, Ltd (Owner), has uncorrected compliance findings relating to the applicable land use restriction agreement and the associated statutory and rule requirements;

**WHEREAS**, representatives of Holland House have attended multiple informal conferences and signed a prior Agreed Final Order in 2014;

**WHEREAS**, the terms of the prior Agreed Final Order were met and the \$1,500 administrative penalty was fully forgiven;

**WHEREAS**, TDHCA identified new findings of noncompliance during its 2018 onsite monitoring review and referred them for an administrative penalty when they were not timely corrected;

**WHEREAS**, a finding for incomplete tenant selection criteria has been resolved, and there are three unresolved household income findings;

**WHEREAS**, on February 26, 2019, Owner's representatives participated in an informal conference with the Enforcement Committee and agreed, subject to Board approval, to enter into an Agreed Final Order assessing an administrative penalty of \$2,500, with \$1,250 to be paid within 30 days of signature and the remaining \$1,250 to be forgiven if all violations are resolved as specified in the Agreed Final Order on or before April 22, 2019; and

**WHEREAS**, staff has based its recommendations for an Agreed Final Order on the Department's rules for administrative penalties and an assessment of each and all of the statutory factors to be considered in assessing such penalties, applied specifically to the facts and circumstances present in this case.

**NOW, therefore, it is hereby**

**RESOLVED**, that an Agreed Final Order assessing an administrative penalty of \$2,500, subject to partial forgiveness as outlined above, for noncompliance at Holland House Apartments, substantially in the form presented at this meeting, and authorizing any non-substantive technical corrections, is hereby adopted as the order of this Board.

## BACKGROUND

Holland Apartments, Ltd (Owner) is the owner of Holland House (Property), a low income apartment complex composed of 68 units, located in Holland, Bell County. Records of the Texas Secretary of State list Holland Apartments Management, L.C. as the general partner for Owner, with the following members and/or officers: Warren L Maupin and Terri L. Maupin. CMTS lists Warren Maupin as the primary contact for Owner. The property is self-managed.

The Property is subject to two Land Use Restriction Agreements:

- a. A HOME Land Use Restriction Agreement (HOME LURA) signed in 2010 in consideration for a HOME loan in the amount of \$550,000.00; and
- b. An HTC Exchange Land Use Restriction Agreement (HTC Exchange LURA) signed in 2010, then amended in 2011 and 2012, in consideration for HTC exchange funds in the amount of \$3,622,969.00.

Owner was previously referred for an administrative penalty for file monitoring violations, and an Agreed Final Order was signed in 2014, including a fully forgivable administrative penalty of \$1,500, to be fully forgiven if all violations were resolved by January 1, 2015. Owner met the terms of the Agreed Final Order and no penalty was required. New findings of noncompliance were then identified during a 2018 onsite file review, and referred to the Enforcement Committee for consideration after the close of the corrective action period. A second informal conference was held on February 26, 2019.

The following compliance violations identified during 2018 were referred for an administrative penalty and have been resolved:

1. Failure to maintain complete written policies and procedures, including tenant selection criteria

The following compliance violations identified during 2018 were referred for an administrative penalty and are unresolved:

1. Household income violation for unit 221;
2. Household income violation for unit 215;
3. Household income violation for unit 416;

Owner participated in an informal conference with the Enforcement Committee on February 26, 2019, and agreed to sign an Agreed Final Order with the following terms:

1. A \$2,500 administrative penalty, subject to partial forgiveness as indicated below;
2. Owner must submit \$1,250 portion of the administrative penalty on or before April 22, 2019;
3. Owner must correct the file monitoring violations as indicated in the Agreed Final Order, and submit full documentation of the corrections to TDHCA on or before April 22, 2019;
4. If Owner complies with all requirements and addresses all violations as required, the remaining administrative penalty in the amount of \$1,250 will be forgiven; and
5. If Owner violates any provision of the Agreed Final Order, the full administrative penalty will immediately come due and payable.

In order to prevent future violations relating to incorrect household income calculations, Owner has signed up for multiple training courses for both the property manager and Warren Maupin.

Consistent with direction from the Department's Enforcement Committee, a partially probated and, upon successful completion of probation, partially forgivable administrative penalty in the amount of

\$2,500 is recommended. This will be a reportable item of consideration under previous participation for any new award to the principals of the Owner.

ENFORCEMENT ACTION AGAINST HOLLAND	§	BEFORE THE
APARTMENTS, LTD WITH RESPECT TO	§	TEXAS DEPARTMENT OF HOUSING
HOLLAND HOUSE (HOME & HTC EXCHANGE	§	AND COMMUNITY AFFAIRS
FILE # 1001139 / CMTS # 4471)	§	
	§	
	§	

**AGREED FINAL ORDER**

**General Remarks and official action taken:**

On this 21<sup>st</sup> day of March, 2019, the Governing Board (Board) of the Texas Department of Housing and Community Affairs (TDHCA or Department) considered the matter of whether enforcement action should be taken against **HOLLAND APARTMENTS, LTD**, a Texas limited partnership (Respondent).

This Agreed Order is executed pursuant to the authority of the Administrative Procedure Act (APA), Tex. Gov't Code §2001.056, which authorizes the informal disposition of contested cases. In a desire to conclude this matter without further delay and expense, the Board and Respondent agree to resolve this matter by this Agreed Final Order. The Respondent agrees to this Order for the purpose of resolving this proceeding only and without admitting or denying the findings of fact and conclusions of law set out in this Order.

Upon recommendation of the Enforcement Committee, the Board makes the following findings of fact and conclusions of law and enters this Order:

**WAIVER**

Respondent acknowledges the existence of their right to request a hearing as provided by Tex. Gov't Code §2306.044, and to seek judicial review, in the District Court of Travis County, Texas, of any order as provided by Tex. Gov't Code §2306.047. Pursuant to this compromise and settlement, the Respondent waives those rights and acknowledges the jurisdiction of the Board over Respondent.

**FINDINGS OF FACT (FOF)**

**Jurisdiction:**

2. Respondent was awarded an allocation of HOME funds by the Board during 2009, in the total amount of \$550,000.00 to acquire, rehabilitate, and operate Holland House Apartments (Property) (HTC Exchange No. 15090009994 / HOME No. 1001139 / CMTS No. 4471 / LDLD No. 463).
  
3. In addition to the HOME funds described above, Respondent was also awarded an allocation of Low Income Housing Tax Credits by the Board during 2009, which were returned in exchange for a cash grant under the Texas Tax Credit Exchange Program, awarding Exchange funds in the aggregate amount of \$3,622,969.00 to acquire, rehabilitate, and operate the Property.



4. Respondent signed two land use restriction agreements (collectively the LURAs) regarding the Property:
  - a. The HOME LURA was effective June 21, 2010, and filed of record at Document Number 2010-22123 of the Official Public Records of Real Property of Bell County, Texas (Records); and
  - b. The HTC Exchange LURA was effective June 21, 2010, and filed of record at Document Number 2010-00022253 of the Records, as amended by a First Amendment executed on November 28, 2011, and filed in the Records at Document Number 2011-00040897, as further amended by a Second Amendment executed on August 29, 2012, and filed in the Records at Document Number 2012-00035874.
5. Respondent is subject to the regulatory authority of TDHCA.

Compliance Violations<sup>1</sup>:

6. Property has a history of violations and previously signed an Agreed Final Order on December 23, 2014, agreeing to a \$1,500 Administrative Penalty which was to be fully forgivable provided that Respondent submitted fully acceptable corrections as required in the order.
7. An on-site monitoring review was conducted on February 20, 2018, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and an August 8, 2018, corrective action deadline was set, however, the following violations were not resolved before the corrective action deadline:
  - a. Respondent failed to maintain written tenant selection criteria, a violation of 10 TAC §10.610 (Written Policies and Procedures), which requires all developments to establish written tenant selection criteria that meet minimum TDHCA requirements. This finding was resolved on January 15, 2019, 160 days past the deadline, after intervention by the Enforcement Committee,
  - b. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 215 and 221, a violation of 10 TAC §10.611 (Determination, Documentation and Certification of Annual Income), Section 2.4 of the HOME LURA, and Section 4 of the HTC Exchange LURA, which require screening of tenants to ensure qualification for the program. During the onsite review, pay stubs showed that the household in unit 221 was above the income limit. The affected household moved out and a household subsequently transferred to unit 221 from unit 215. Transferring a household does not resolve a finding of noncompliance, it instead transfers the finding to the other unit, in this case unit 215. Furthermore, Respondent did not collect a full tenant file for the household originating in unit 215, so

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<sup>1</sup> Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 TAC Chapter 10 refers to the versions of the code in effect at the time of the compliance monitoring reviews and/or inspections that resulted in recording each violation. All past violations remain violations under the current code and all interim amendments.

eligibility could not be verified for them either. This resulted in two findings, one for unit 215 and one for unit 221. Respondent indicates that the household in unit 221 now qualifies for occupancy due to a reduction in household members, and a new qualified household moved into unit 215 in February of 2019. Corrective documentation has not yet been submitted as of the date of this Order.

- c. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for unit 416, a violation of 10 TAC §10.611 (Determination, Documentation and Certification of Annual Income), Section 2.4 of the HOME LURA, and Section 4 of the HTC Exchange LURA, which require screening of tenants to ensure qualification for the program. At the time of the onsite review, showed an income above the limit. This appears to have occurred because the Development did not include income for a minor child. The head of household was a noncustodial parent, but the child lived with him part-time and the income should have been included in his income calculation. This unit is now vacant and ready for occupancy. The finding will remain unresolved until a qualified household moves in and a full tenant file is submitted.
8. The following violations remain outstanding at the time of this order:
- a. Household income violations described in FOF #7b and 7c;

#### **CONCLUSIONS OF LAW**

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503 and 10 TAC Chapter 2.
2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
3. Pursuant to IRC §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance.
4. Respondent violated 10 TAC §10.610 in 2018, by not maintaining written tenant selection criteria meeting TDHCA requirements;
5. Respondent violated 10 TAC §10.611, Section 2.4 of the HOME LURA, and Section 4 of the HTC Exchange LURA in 2018, by failing to provide documentation that household income was within prescribed limits upon initial occupancy for units: 215, 221, and 416;
6. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules, the Board has personal and subject matter jurisdiction over Respondent pursuant to Tex. Gov't Code §2306.041 and §2306.267.
7. Because Respondent is a housing sponsor, TDHCA may order Respondent to perform or refrain from performing certain acts in order to comply with the law, TDHCA rules, or the terms of a contract or agreement to which Respondent and TDHCA are parties, pursuant to Tex. Gov't Code §2306.267.

8. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code §2306.053 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to Tex. Gov't Code §2306.041.
9. An administrative penalty of \$2,500 is an appropriate penalty in accordance with 10 TAC Chapter 2.

Based upon the foregoing findings of fact and conclusions of law, and an assessment of the factors set forth in Tex. Gov't Code §2306.042 to be considered in assessing such penalties as applied specifically to the facts and circumstances present in this case, the Governing Board of the Texas Department of Housing and Community Affairs orders the following:

**IT IS HEREBY ORDERED** that Respondent is assessed an administrative penalty in the amount of \$2,500, subject to partial deferral as further ordered below.

**IT IS FURTHER ORDERED** that Respondent shall pay and is hereby directed to pay a \$1,250 portion of the assessed administrative penalty by cashier's check payable to the "Texas Department of Housing and Community Affairs" within thirty days of the date this Agreed Final Order is approved by the Board.

**IT IS FURTHER ORDERED** that Respondent shall fully correct the file monitoring violations as indicated in the exhibits and submit full documentation of the corrections to TDHCA on or before April 22, 2019.

**IT IS FURTHER ORDERED** that if Respondent timely and fully complies with the terms and conditions of this Agreed Final Order, correcting all violations as required, the satisfactory performance under this order will be accepted in lieu of the remaining assessed administrative penalty of \$1,250, and that remaining amount of the administrative penalty will be deferred and forgiven.

**IT IS FURTHER ORDERED** that if Respondent fails to satisfy any conditions or otherwise violates any provision of this order, or the property is sold before the terms and conditions of this Agreed Final Order have been fully satisfied, then the remaining administrative penalty in the amount of \$1,250 shall be immediately due and payable to the Department. Such payment shall be made by cashier's check payable to the "Texas Department of Housing and Community Affairs" upon the earlier of (1) within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this Order, or (2) the property closing date if sold before the terms and conditions of this Agreed Final Order have been fully satisfied.

**IT IS FURTHER ORDERED** that corrective documentation must be uploaded to the Compliance Monitoring and Tracking System ("CMTS") by following the instructions at this link: <http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>. After the upload is complete, an email must be sent to Ysella Kaseman at [ysella.kaseman@tdhca.state.tx.us](mailto:ysella.kaseman@tdhca.state.tx.us) to inform her that the documentation is ready for review. If it comes due and payable, the penalty payment must be submitted to the following address:

If via overnight mail (FedEx, UPS):	If via USPS:
TDHCA Attn: Ysella Kaseman 221 E 11 <sup>th</sup> St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711

**IT IS FURTHER ORDERED** that Respondent shall follow the requirements of 10 TAC §10.406, a copy of which is included at Exhibit 3, and obtain approval from the Department prior to consummating a sale of the property, if contemplated.

**IT IS FURTHER ORDERED** that the terms of this Agreed Final Order shall be published on the TDHCA website.

*[Remainder of page intentionally blank]*

Approved by the Governing Board of TDHCA on March 21, \_\_\_\_\_, 2019.

By: \_\_\_\_\_  
Name: J.B. Goodwin  
Title: Chair of the Board of TDHCA

By: \_\_\_\_\_  
Name: James "Beau" Eccles  
Title: Secretary of the Board of TDHCA

**THE STATE OF TEXAS** §  
§  
**COUNTY OF TRAVIS** §

Before me, the undersigned notary public, on this 21st day of March, 2019, personally appeared J.B. Goodwin, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

\_\_\_\_\_  
Notary Public, State of Texas

**THE STATE OF TEXAS** §  
§  
**COUNTY OF TRAVIS** §

Before me, the undersigned notary public, on this 21st day of March, 2019, personally appeared James "Beau" Eccles, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

\_\_\_\_\_  
Notary Public, State of Texas



## Exhibit 1

### File Monitoring Violation Resources and Instructions

#### Resources:

1. Refer to the following link for all references to the rules at 10 TAC §10 that are referenced below:  
[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y)
2. Refer to the following link for copies of forms that are referenced below:  
<http://www.tdhca.state.tx.us/pmcomp/forms.htm>
3. Technical support and training presentations are available at the following links:  
Income and Rent Limits: <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>  
Utility Allowance: <http://www.tdhca.state.tx.us/pmcomp/utility-allowance.htm>  
FAQ's: <http://www.tdhca.state.tx.us/pmcomp/compFaq.s.htm>
4. **All corrections must be submitted via CMTS:** See link for steps to upload documents  
<http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>.
5. **Important notes -**
  - i. Do not backdate any documents listed below.
  - ii. A transfer of a qualified household from another unit is not sufficient to correct any findings. If there is a tenant income certification or household income above limit violation, a transfer from another unit will simply cause the finding to transfer to that unit.

#### **Instructions:**

6. **Household income above limit upon initial occupancy for units 215, 221 and 416:**
  - i. **Unit 215:** Respondent has indicated that there is a new household in this unit. To correct, the household must qualify for occupancy; submit the following documentation: application (ensure that it screens for income and assets), verifications of all sources of income and assets, verification of student status, Tenant Income Certification, Lease, Lease addenda, and Tenant Rights and Resources Guide Acknowledgment. Remember that the application, all verifications, and the Tenant Income Certification must be dated within 120 days of one another. If the household does not qualify for occupancy, this will be considered a violation of the Agreed Final Order.
  - ii. **Unit 221:** Respondent has indicated that the current household qualifies for occupancy because of a reduction in the number of tenants.  
  
Problems with prior submissions: The application dated 6/17/2015 disclosed five household members and two sources of income; however, the Income Certification listed three members and no income. In addition, the application disclosed two unverified checking accounts. On 2/26/2019, Respondent told TDHCA that not all members listed in the original application actually moved in, due to various circumstances. Respondent also indicated that there is now only a single occupant for this household.

To correct, the household must qualify for occupancy. Qualify the household in unit 221 under its current circumstances and submit the following documentation: written explanation for the reduction in from household members five to one, application (ensure that it screens for income and assets), verifications of all sources of income and assets, verification of student status, Tenant Income Certification, Lease, Lease addenda, and Tenant Rights and Resources Guide Acknowledgment. Remember that the application, all verifications, and the Tenant Income Certification must be dated within 120 days of one another in order to be valid. If the household does not qualify for occupancy, this will be considered a violation of the Agreed Final Order.

iii. **Unit 416:** As of February 26, 2019, Respondent indicated that the unit was vacant, but ready for occupancy. Follow the instructions in the table below, depending on the appropriate current circumstance.

Circumstance with respect to units listed above	Instruction
I. If unit is occupied	Submit the application (ensure that it screens for income and assets), verifications of all sources of income and assets, verification of student status, Tenant Income Certification, Lease, Lease addenda, and Tenant Rights and Resources Guide Acknowledgment. Remember that the application, all verifications, and the Tenant Income Certification must be dated within 120 days of one another. If the household does not qualify for occupancy, this will be considered a violation of the Agreed Final Order.
II. If unit is vacant	<p>A. Unit must be made ready for occupancy and a letter certifying to that effect must be submitted to TDHCA. If the letter is not submitted by 4/22/2019, this will be considered a violation of the Agreed Final Order.</p> <p>B. Occupy the unit by a qualified household, and submit the full new tenant file within 30 days of occupancy*. Receipt of the full tenant file after 4/22/2019 is acceptable for this circumstance provided that Requirement A above is fulfilled by that deadline.</p>

*\*A full tenant file must include:*

- A. *Tenant application;*
- B. *Verifications of all sources of income and assets;*
- C. *Tenant income certification;*
- D. *Lease and lease addendum; and*
- E. *Tenant Rights and Resources Guide Acknowledgment.*

*Remember that items A-C above must be dated within 120 days of one another.*



## Exhibit 2

### Tenant File Guidelines

The following technical support does not represent a complete list of all file requirements and is intended only as a guide. TDHCA staff recommends that all onsite staff responsible for accepting and processing applications sign up for First Thursday Training in order to get a full overview of the process. Sign up at <http://www.tdhca.state.tx.us/pmcomp/COMPtrain.html>. Forms discussed below are available at: <http://www.tdhca.state.tx.us/pmcomp/forms.htm>.

*\*Important Note\* The application, verifications of income and assets, and Tenant Income Certification (1 – 5 below) must be signed within 120 days of one another. If one component is outside of that time frame, you must recertify.*

1. **Intake Application:** Each adult household member must complete their own application in order to be properly screened at initial certification. A married couple can complete a joint application. The Department does not have a required form to screen households, but we make a sample form available for that purpose. All households must be screened for household composition, income and assets. Applicants must complete all blanks on the application and answer all questions. Any lines left intentionally blank should be marked with “none” or “n/a.” The application must be signed and dated by all adult household members, using the date that the form is actually completed. If you use the Texas Apartment Association (TAA) Rental Application, be aware that it does not include all requirements, but they have a “Supplemental Rental Application for Units Under Government Regulated Affordable Housing Programs” that includes the additional requirements. TDHCA also has an application form that you can use; using our form is not required for the application, but it does screen for all requirements.
2. **Release and Consent:** Have tenant sign TDHCA’s Release and Consent form so that verifications may be collected by the property.
3. **Verify Income:** Each source of income and asset must be documented for every adult household member based upon the information disclosed on the application. There are multiple methods:
  - a. **First hand verifications (required for HOME):** Paystubs or payroll print-outs that show gross income. If you choose this method, ensure that you consistently collect a specified number of consecutive check stubs as defined in your management plan;
  - b. **Verification of non-employment income:** You must obtain verifications for all other income sources, such as child support, social security, and/or unemployment benefits. Self-certification by the household is not acceptable. Examples: benefit verification letter(s) would be acceptable for social security and/or employment benefits. Acceptable verifications for child support could include documents such as divorce decree(s), court order(s), or a written statement from the court or attorney general regarding the monthly awarded amount;
  - c. **Telephone Verifications:** These are acceptable *only* for clarifying discrepancies and cannot be used as primary form of verification. Include your name, the date, the name of the person with whom you spoke, and your signature. These are appropriate if there is an unusual circumstance relating to the tenant file;
  - d. **Certification of Zero Income:** If an adult household member does not report any sources of income on the application, this form can be used to document thorough screening and to document the source of funds used to pay for rent, utilities, and/or other necessities.

4. **Verify Assets:** Regardless of their balances, applicants must report all assets owned, including assets such as checking or savings accounts. The accounts are typically disclosed on the application form, but you must review all documentation from the tenant to ensure proper documentation of the household's income and assets. For instance, review the credit report (if you pull one), application, pay stubs, and other documents to ensure that all information is consistent. Examples of ways to find assets that are frequently overlooked: Review pay stubs for assets such as checking and retirement accounts that the household may have forgotten to include in the application. These accounts must also be verified. Format of verifications:
  - a. **First hand verifications (required for HOME)** such as bank statements to verify a checking account. Ensure that you use a consistent number of consecutive statements, as identified in your management plan.
5. **Tenant Income Certification Form:** Upon verification of all income and asset sources disclosed on the application and any additional information found in the documentation submitted by the tenant, the next step is to annualize the sources on the Income Certification Form, add them together, and compare to the applicable income limit for household size which can be found at <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>. Be sure to include any income derived from assets. The form must include all household members, and be signed by each adult household member.
6. **Lease:** Must conform with your LURA and TDHCA requirements and indicate a rent below the maximum rent limits, which can be found at <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>. When determining the rent, ensure that the tenant's rent, plus the utility allowance, plus any housing subsidies, plus any mandatory fees, are below the maximum limits set by TDHCA. 10 TAC §10.613(a) prohibits the eviction or termination of tenancy of low income households for reasons other than good cause throughout the affordability period in accordance with Revenue Ruling 2004-82. In addition, 10 TAC §10.613(e) prohibits HTC developments from locking out or threatening to lock out any development resident, or seizing or threatening to seize personal property of a resident, except by judicial process, for purposes of performing necessary repairs or construction work, or in case of emergency. The prohibitions must be included in the lease or lease addendum. Additionally, certain programs must include a Lead Warning Statement and the TDHCA VAWA lease addendum, per 10 TAC 10.613(f) and (h). TAA has an affordable lease addendum that has incorporated this required language. If you are not a TAA member, you can draft a lease addendum using the requirements outlined above. For Section 811 units, you must use the HUD Model Lease, HUD form 92236-PRA.
7. **Tenant Selection Criteria:** In accordance with 10 TAC §10.610(b), you must maintain written Tenant Selection Criteria and a copy of those written criteria under which an applicant was screened must be included in the household's file.



for financial exposure as a result of non-compliance, staff may make a recommendation to the Board for the debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule. In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), prior to recommending any new financing or allocation of credits.

(e) Transfers Prior to 8609 Issuance or Construction Completion. Prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs) an Applicant may request an amendment to its ownership structure to add Principals. The party(ies) reflected in the Application as having Control must remain in the ownership structure and retain Control, unless approved otherwise by the Executive Director. A development sponsor, General Partner or Development Owner may not sell the Development in whole or voluntarily end their Control prior to the issuance of 8609s.

(f) Nonprofit Organizations. If the ownership transfer request is to replace a nonprofit organization within the Development ownership entity, the replacement nonprofit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

(1) If the LURA requires ownership or material participation in ownership by a Qualified Nonprofit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Nonprofit Organization that meets the requirements of §42(h)(5) of the Code and Tex. Gov't Code §2306.6706, if applicable, and can demonstrate planned participation in the operation of the Development on a regular, continuous, and substantial basis.

(2) If the LURA requires ownership or material participation in ownership by a nonprofit organization or CHDO, the Development Owner must show that the transferee is a nonprofit organization or CHDO, as applicable, that complies with the LURA.

(3) Exceptions to the above may be made on a case by case basis if the Development is past its Compliance Period/Federal Affordability Period, was not reported to the IRS as part of the Department's Nonprofit Set Aside in any HTC Award year, and follows the procedures outlined in §10.405(b)(1) - (5) of this chapter (relating to LURA Amendments that require Board Approval). The Board must find that:

(A) The selling nonprofit is acting of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(B) The participation by the nonprofit was substantive and meaningful during the full term of the Compliance Period but is no longer substantive or meaningful to the operations of the Development; and

(C) The proposed purchaser is an affiliate of the current Owner or otherwise meets the Department's standards for ownership transfers.

(g) Historically Underutilized Business (HUB) Organizations. If a HUB is the general partner or special limited partner of a Development Owner and it determines to sell its ownership interest, after the issuance of 8609's, the purchaser of that partnership interest or the general or special limited partner is not required to be a HUB as long as the procedure described in §10.405(b)(1) of this chapter (relating to Non-Material LURA Amendments) has been followed and approved.

(h) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances pertaining to the transfer and the effects of approval or denial. Documentation must be submitted as directed in the Post Award Activities Manual, which includes but is not limited to:

(1) A written explanation outlining the reason for the request;

(2) Ownership transfer information, including but not limited to the type of sale, amount of Development reserves to transfer in the event of a property sale, and the prospective closing date;

(3) Pre and post transfer organizational charts with TINs of each organization down to the level of natural persons in the ownership structure as described in §11.204(13)(A) of Subchapter C;

(4) A list of the names and contact information for transferees and Related Parties;

(5) Previous Participation information for any new Principal as described in §11.204(13)(B) of Subchapter C;

- (6) Agreements among parties associated with the transfer;
- (7) Owners Certifications with regard to materials submitted further described in the Post Award Activities Manual;
- (8) Detailed information describing the organizational structure, experience, and financial capacity of any party holding a controlling interest in any Principal or Controlling entity of the prospective Development Owner;
- (9) Evidence and certification that the tenants in the Development have been notified in writing of the proposed transfer at least 30 calendar days prior to the date the transfer is approved by the Department. The ownership transfer approval letter will not be issued until this 30 day period has expired;
- (10) Any required exhibits and the list of exhibits related to specific circumstances of transfer or Ownership as detailed in the Post Award Activities Manual.
- (i) Once the Department receives all necessary information under this section and as required under the Post Award Activities Manual, staff shall initiate a qualifications review of a transferee, in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter and §11.202 of Subchapter C (relating to Ineligible Applicants and Applications).
- (j) Credit Limitation. As it relates to the Housing Tax Credit amount further described in §11.4(a) of this title (relating to Tax Credit Request and Award Limits), the credit amount will not be applied in circumstances described in paragraphs (1) and (2) of this subsection:
  - (1) In cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or
  - (2) In cases where the general partner is being replaced if the award of credits was made at least five years prior to the transfer request date.
- (k) Penalties, Past Due Fees and Underfunded Reserves. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring). The Development Owner, as on record with the Department, will be liable for any penalties or fees imposed by the Department even if such penalty can be attributable to the new Development Owner unless such ownership transfer is approved by the Department. In the event a transferring Development has a history of uncorrected UPCS violations, ongoing issues related to keeping housing sanitary, safe, and decent, an account balance below the annual reserve deposit amount as specified in §10.404(a) (relating to Replacement Reserve Accounts), or that appears insufficient to meet capital expenditure needs as indicated by the number or cost of repairs included in a PCA, the prospective Development Owner may be required to establish and maintain a replacement reserve account or increase the amount of regular deposits to the replacement reserve account by entering into a Reserve Agreement with the Department. The Department may also request a plan and timeline relating to needed repairs or renovations that will be completed by the departing and/or incoming Owner as a condition to approving the Transfer.
- (l) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by the corresponding ownership transfer fee as outlined in §11.901 of this chapter (relating to Fee Schedule, Appeals, and other Provisions).

Source Note: The provisions of this §10.406 adopted to be effective January 5, 2017, 41 TexReg 10569; amended to be effective January 4, 2018, 42 TexReg 7610; amended to be effective December 30, 2018, 43 TexReg 8297

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**BOARD ACTION REQUEST**

**LEGAL DIVISION**

**MARCH 21, 2019**

Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Cottonwood and Westway Apartments (HTC 70111 / CMTS 2298)

**RECOMMENDED ACTION**

**WHEREAS**, Cottonwood and Westway Apartments (fka Annex), owned by 5700 Canyon Drive, LLC and 4710 57th Street, LLC (collectively, Owner), has uncorrected compliance findings relating to the applicable land use restriction agreement and the associated statutory and rule requirements;

**WHEREAS**, representatives of Owner have attended multiple informal conferences, but previously worked out findings of noncompliance with no Agreed Final Order;

**WHEREAS**, TDHCA identified findings of noncompliance during its 2018 onsite monitoring review and referred them for an administrative penalty when they were not timely corrected;

**WHEREAS**, unresolved compliance findings include failure to provide complete written policies and procedures; failure to include a copy of said tenant selection criteria in five tenant files; failure to publish the Tenant Rights and Resources Guide as required; failure to update the utility allowance; failure to submit an Affirmative Marketing Plan; failure to correct lease language for five units; four household income findings; and failure to collect an Annual Eligibility Certification for one unit;

**WHEREAS**, on January 29, 2019, Owner's representatives participated in an informal conference with the Enforcement Committee and agreed, subject to Board approval, to enter into an Agreed Final Order assessing an administrative penalty of \$10,000, with \$2,500 to be paid within 30 days of signature and the remaining \$7,500 to be forgiven if all violations are resolved as specified in the Agreed Final Order on or before May 20, 2019; and

**WHEREAS**, staff has based its recommendations for an Agreed Final Order on the Department's rules for administrative penalties and an assessment of each and all of the statutory factors to be considered in assessing such penalties, applied specifically to the facts and circumstances present in this case.

**NOW, therefore, it is hereby**

**RESOLVED**, that an Agreed Final Order assessing an administrative penalty of \$10,000, subject to partial forgiveness as outlined above, for noncompliance as presented at this meeting, but authorizing staff to make any necessary non-substantive technical corrections, is hereby adopted as the order of this Board.

## BACKGROUND

5700 Canyon Drive, LLC and 4710 57th Street, LLC (collectively Owner) are the owners of Cottonwood and Westway Apartments (fka Annex) (Property), a low income apartment complex composed of 53 units, located in Amarillo, Randall County. Records of the Texas Secretary of State list Llano Estacado Management Company, Inc. as the manager for both owning entities, and list Daniel Rogers as the President and Director of that entity. CMTS lists Daniel Rogers as the primary contact for Owner. The property is self-managed via Llano Estacado Management Company, Inc., with Donnie Kellogg listed in CMTS as the property manager.

The Property is subject to a single Land Use Restriction Agreement (LURA) signed by a prior owner in 1991 in consideration for a housing tax credit allocation totaling \$172,350 over ten years to acquire, rehabilitate and operate the Property. The property was sold multiple times, first in 1992 to Southwood-Driftwood Apartments, Ltd., and again in 1997 to Conny R. Monk, Judy M. Monk, and Steven Craig Monk. In 1998, the Monks notified TDHCA that they did not want to participate in the housing tax credit program, and refused to allow monitoring. Daniel L. Rogers acquired the Property personally in 2005 without prior Department approval, but the LURA remained in effect per Section 2 of the LURA, which stipulates that its restrictions run with the land. Mr. Rogers later transferred the Property to the current owning entities in 2012.

Although the LURA remained a valid encumbrance on the land, the owners from 1998 forward refused to allow monitoring and TDHCA was unable to enforce LURA requirements until it received statutory authority to pursue administrative penalties. It received such authority in 2007, and first attempted monitoring with Mr. Rogers on June 5, 2008. Mr. Rogers first attended an informal conference with his attorney in 2009 for refusing to allow monitoring. He disputed the validity of the LURA because it did not appear on the title policy at the time that he purchased the property. He eventually agreed to comply and the Enforcement Committee agreed to allow informal resolution, requiring training, access to conduct a UPCS inspection, and file corrections to be submitted by August 1, 2010. Compliance then opted to conduct an onsite file monitoring review rather than review the mailed submissions because they were so extensive. All findings were eventually resolved, with significant technical support from the Compliance and Legal Divisions.

The Owner was referred for an administrative penalty again in 2013 for reporting and file monitoring findings. He corrected all findings that were subject to correction and submitted a plan for resolution of the uncorrectable findings, so the referral was closed with a warning letter. Uncorrectable findings related to Fair Housing Disclosure Notices, which were uncorrectable because the affected households had moved without signing, and two household income findings relating to households with unexpired leases. Owner sent notices of nonrenewal to both nonqualified households, and occupied the units with qualified households when they became available. Another administrative penalty referral was received for physical condition findings in 2017, but full corrections were submitted before an informal conference notice was issued and no further action was required.

The current administrative penalty referral relates to a file monitoring review conducted during 2018. Unresolved findings include:

1. Failure to maintain complete written policies and procedures, including tenant selection criteria;
2. Failure to include tenant selection criteria in the tenant files for five units;
3. Failure to publish the Tenant Rights and Resources Guide;



4. Failure to implement the updated utility allowance;
5. Failure to provide an Affirmative Marketing Plan and evidence of associated marketing efforts;
6. Failure to provide required lease language for five units;
7. Household income violations for four units, each of which is currently vacant while waiting for an insurance settlement for required roof repairs; and
8. Failure to collect an Annual Eligibility Certification for one unit.

Owner attended an informal conference on January 29, 2019, and stated that the LURA had expired, which is why he did not respond to the 2018 review or subsequent correspondence from the Enforcement Committee. He was not represented by counsel. He indicated that the term of the LURA was 25 years rather than 30 years, including a 10-year Credit Period and a 15-year Extended Use Period. A review by TDHCA staff did not support his conclusion that the LURA had expired. While he was correct about the length of both of those periods, the LURA states that the Extended Use Period will end *"15 years from the close of the Compliance Period"* not 15 years from the close of the Credit Period. The Compliance Period is not defined in this LURA, which may explain part of the confusion, but the term is defined by 26 USC §42 as, *"...the period of 15 taxable years beginning with the 1<sup>st</sup> taxable year of the credit period with respect thereto."* Therefore, the actual term of the LURA is 30 years rather than 25, expiring December 31, 2020.

Owner has agreed to sign an Agreed Final Order with the following terms:

1. A \$10,000 administrative penalty, subject to partial forgiveness as indicated below;
2. Owner must submit \$2,500 portion of the administrative penalty on or before April 22, 2019;
3. Owner must correct the file monitoring violations as indicated in the Agreed Final Order, and submit full documentation of the corrections to TDHCA on or before May 20, 2019;
4. If Owner complies with all requirements and addresses all violations as required, the remaining administrative penalty in the amount of \$7,500 will be forgiven; and
5. If Owner violates any provision of the Agreed Final Order, the full administrative penalty will immediately come due and payable.

Consistent with direction from the Department's Enforcement Committee, a probated and, upon successful completion of probation, partially forgivable administrative penalty in the amount of \$10,000 is recommended. This will be a reportable item of consideration under previous participation for any new award to the principals of the Owner.

ENFORCEMENT ACTION AGAINST 5700	§	BEFORE THE
CANYON DRIVE, LLC AND 4710 57TH STREET,	§	TEXAS DEPARTMENT OF HOUSING
LLC WITH RESPECT TO COTTONWOOD AND	§	AND COMMUNITY AFFAIRS
WESTWAY APARTMENTS (FKA ANNEX)	§	
(LIHTC FILE # 70111 / CMTS # 2298)	§	
	§	

**AGREED FINAL ORDER**

**General Remarks and official action taken:**

On this 21st day of March, 2019, the Governing Board (Board) of the Texas Department of Housing and Community Affairs (TDHCA or Department) considered the matter of whether enforcement action should be taken against **5700 CANYON DRIVE, LLC AND 4710 57TH STREET, LLC**, both Texas limited liability companies (Respondent).

This Agreed Order is executed pursuant to the authority of the Administrative Procedure Act (APA), Tex. Gov't Code §2001.056, which authorizes the informal disposition of contested cases. In a desire to conclude this matter without further delay and expense, the Board and Respondent agree to resolve this matter by this Agreed Final Order. The Respondent agrees to this Order for the purpose of resolving this proceeding only and without admitting or denying the findings of fact and conclusions of law set out in this Order.

Upon recommendation of the Enforcement Committee, the Board makes the following findings of fact and conclusions of law and enters this Order:

**WAIVER**

Respondent acknowledges the existence of their right to request a hearing as provided by Tex. Gov't Code §2306.044, and to seek judicial review, in the District Court of Travis County, Texas, of any order as provided by Tex. Gov't Code §2306.047. Pursuant to this compromise and settlement, the Respondent waives those rights and acknowledges the jurisdiction of the Board over Respondent.

**FINDINGS OF FACT ("FOF")**

**Jurisdiction:**

1. During 1991, D and F Investments, Inc. (Prior Owner) was awarded an allocation of Low Income Housing Tax Credits by the Board, in the aggregate amount of \$172,350 over ten years to rehabilitate and operate Cottonwood and Westway Apartments (fka Annex) (Property) (HTC file No. 70111 / CMTS No. 2298 / LDLD No. 39).
2. Prior Owner signed a land use restriction agreement (LURA) regarding the Property. The LURA was effective December 16, 1991, and filed of record at Volume 1362, Page 130 of the Official Public Records of Real Property of Randall County, Texas (Records).

3. The Property was sold multiple times since 1991 without permission by the Department. In accordance with Section 2 of the LURA, the LURA is a restrictive covenant/deed restriction encumbering the Property and binding on all successors and assigns for the full term of the LURA.
4. Daniel L. Rogers purchased the Property in his personal capacity on July 27, 2005 and transferred it to Respondent on December 7, 2012. Although an Agreement to Comply was not signed, Respondent is bound to the terms of the LURA in accordance with Section 2 thereof.
5. Respondent is subject to the regulatory authority of TDHCA.

Compliance Violations<sup>1</sup>:

6. An on-site monitoring review was conducted on March 27, 2018, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and a July 2, 2018, corrective action deadline was set, however, the following violations were not resolved before the corrective action deadline:
  - a. Respondent failed to maintain complete written tenant selection criteria, a violation of 10 TAC §10.610 (Written Policies and Procedures), which requires all developments to establish written tenant selection criteria that meet minimum TDHCA requirements.
  - b. Respondent failed to include copies of tenant selection criteria under which the households in units 13, 34, 37, 41, and 48 were screened, a violation of 10 TAC §10.610 (Written Policies and Procedures), which requires all developments to keep a copy of the criteria under which an applicant was screened in the household's file.
  - c. Respondent failed to post a laminated copy of the Tenant Rights and Resources Guide in a common area of the leasing office, a violation of 10 TAC §10.613 (Lease Requirements), which requires owners to post a laminated copy of the Guide in a common area of the leasing office and provide a copy to each household during the application process and upon any subsequent change to common amenities, unit amenities, or services.
  - d. Respondent failed to properly implement a utility allowance for the Property, a violation of 10 TAC §10.614 (Utility Allowances), which requires all developments to establish a utility allowance.
  - e. Respondent failed to provide an Affirmative Marketing Plan, a violation of 10 TAC §10.617 (Affirmative Marketing), which requires developments to maintain an Affirmative Marketing Plan that meets minimum requirements and to distribute marketing materials to selected marketing organizations that reach groups identified as least likely to apply and to the disabled.

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<sup>1</sup> Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 TAC Chapter 10 refers to the versions of the code in effect at the time of the compliance monitoring reviews and/or inspections that resulted in recording each violation. All past violations remain violations under the current code and all interim amendments.

- f. Respondent failed to execute required lease provisions or exclude prohibited lease language for units 13, 28, 34, 41, and 48, a violation of 10 TAC §10.613 (Lease Requirements), which requires leases to include specific language protecting tenants from eviction without good cause and prohibiting owners from taking certain actions such as locking out or seizing property, or threatening to do so, except by judicial process.
  - g. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 34, 35, 37, and 41, a violation of 10 TAC §10.611 (Determination, Documentation and Certification of Annual Income) and Section 4 of the LURA, which require screening of tenants to ensure qualification for the program.
  - h. Respondent failed to provide an Annual Eligibility Certifications for unit 35, a violation of 10 TAC §10.612 (Tenant File Requirements), which requires developments to annually collect an Annual Eligibility Certification form from each household.
7. The following violations remain outstanding at the time of this order:
- a. Written tenant selection criteria violations described in FOF #6a and 6b;
  - b. Tenant Rights and Resources Guide violation described in FOF #6c;
  - c. Utility allowance violation described in FOF #6d;
  - d. Affirmative Marketing Plan violation described in FOF #6e;
  - e. Lease language violations described in FOF #6f;
  - f. Household income violations described in FOF #6g; and
  - g. Annual Eligibility Certification described in FOF #6h.

### **CONCLUSIONS OF LAW**

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503 and 10 TAC Chapter 2.
2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
3. Pursuant to IRC §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance.
4. Respondent violated 10 TAC §10.610 in 2018, by not maintaining written tenant selection criteria meeting TDHCA requirements.
5. Respondent violated 10 TAC §10.610 in 2018, by not including copies of written tenant selection criteria in tenant files for five units.
6. Respondent violated leasing requirements in 10 TAC §10.613 in 2018, by failing to post a laminated copy of the Tenant Rights and Resources Guide in a common area of the leasing office.

7. Respondent violated 10 TAC §10.614 in 2018 by failing to properly implement a utility allowance;
8. Respondent violated 10 TAC §10.617 in 2018, by failing to provide a complete affirmative marketing plan and evidence of outreach marketing efforts.
9. Respondent violated 10 TAC §10.613 in 2018, by failing to execute required lease language for five units.
10. Respondent violated 10 TAC §10.611 and Section 4 of the LURA in 2018, by failing to provide documentation that household income was within prescribed limits upon initial occupancy for four units.
11. Respondent violated 10 TAC §10.609 in 2013 by failing to collect an Annual Eligibility Certification for one unit.
12. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules, the Board has personal and subject matter jurisdiction over Respondent pursuant to Tex. Gov't Code §2306.041 and §2306.267.
13. Because Respondent is a housing sponsor, TDHCA may order Respondent to perform or refrain from performing certain acts in order to comply with the law, TDHCA rules, or the terms of a contract or agreement to which Respondent and TDHCA are parties, pursuant to Tex. Gov't Code §2306.267.
14. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code §2306.053 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to Tex. Gov't Code §2306.041.
15. An administrative penalty of \$10,000 is an appropriate penalty 10 TAC Chapter 2.

Based upon the foregoing findings of fact and conclusions of law, and an assessment of the factors set forth in Tex. Gov't Code §2306.042 to be considered in assessing such penalties as applied specifically to the facts and circumstances present in this case, the Governing Board of the Texas Department of Housing and Community Affairs orders the following:

**IT IS HEREBY ORDERED** that Respondent is assessed an administrative penalty in the amount of \$10,000, subject to partial deferral as further ordered below.

**IT IS FURTHER ORDERED** that Respondent shall pay and is hereby directed to pay a \$2,500 portion of the assessed administrative penalty by cashier's check payable to the "Texas Department of Housing and Community Affairs" within thirty days of the date this Agreed Final Order is approved by the Board.

**IT IS FURTHER ORDERED** that Respondent shall fully correct the file monitoring violations as indicated in the exhibits and submit full documentation of the corrections to TDHCA on or before May 20, 2019.

**IT IS FURTHER ORDERED** that if Respondent timely and fully complies with the terms and conditions of this Agreed Final Order, correcting all violations as required, the satisfactory performance under this

order will be accepted in lieu of the remaining assessed administrative penalty in the amount of \$7,500, and that remaining amount of the administrative penalty will be deferred and forgiven.

**IT IS FURTHER ORDERED** that if Respondent fails to satisfy any conditions or otherwise violates any provision of this order, or the property is sold before the terms and conditions of this Agreed Final Order have been fully satisfied, then the remaining administrative penalty in the amount of \$7,500 shall be immediately due and payable to the Department. Such payment shall be made by cashier's check payable to the "Texas Department of Housing and Community Affairs" upon the earlier of (1) within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this Order, or (2) the property closing date if sold before the terms and conditions of this Agreed Final Order have been fully satisfied.

**IT IS FURTHER ORDERED** that corrective documentation must be uploaded to the Compliance Monitoring and Tracking System ("CMTS") by following the instructions at this link: <http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>. After the upload is complete, an email must be sent to Ysella Kaseman at [ysella.kaseman@tdhca.state.tx.us](mailto:ysella.kaseman@tdhca.state.tx.us) to inform her that the documentation is ready for review. If it comes due and payable, the penalty payment must be submitted to the following address:

<b>If via overnight mail (FedEx, UPS):</b>	<b>If via USPS:</b>
TDHCA Attn: Ysella Kaseman 221 E 11 <sup>th</sup> St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711

**IT IS FURTHER ORDERED** that Respondent shall follow the requirements of 10 TAC §10.406, a copy of which is included at Exhibit 3, and obtain approval from the Department prior to consummating a sale of the property, if contemplated.

**IT IS FURTHER ORDERED** that the terms of this Agreed Final Order shall be published on the TDHCA website.

*[Remainder of page intentionally blank]*

Approved by the Governing Board of TDHCA on March 21, \_\_\_\_\_, 2019.

By: \_\_\_\_\_  
Name: J.B. Goodwin  
Title: Chair of the Board of TDHCA

By: \_\_\_\_\_  
Name: James "Beau" Eccles  
Title: Secretary of the Board of TDHCA

**THE STATE OF TEXAS §**  
**§**  
**COUNTY OF TRAVIS §**

Before me, the undersigned notary public, on this 21<sup>st</sup> day of March, 2019, personally appeared J.B. Goodwin, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

\_\_\_\_\_  
Notary Public, State of Texas

**THE STATE OF TEXAS §**  
**§**  
**COUNTY OF TRAVIS §**

Before me, the undersigned notary public, on this 21<sup>st</sup> day of March, 2019, personally appeared James "Beau" Eccles, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS §  
§  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, \_\_\_\_\_ (*notary name*), a notary public in and for the State of \_\_\_\_\_, on this day personally appeared Daniel Rogers, known to me or proven to me through circle one: personally known / driver's license / passport to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that (he/she) executed the same for the purposes and consideration therein expressed, who being by me duly sworn, deposed as follows:

1. "My name is Daniel Rogers, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I hold the offices of President and Director for Respondent, collectively 5700 Canyon Drive, LLC and 4710 57<sup>th</sup> Street, LLC. I am the authorized representative for both organizations, owners of the Property, which is subject to a Land Use Restriction Agreement monitored by the TDHCA in the State of Texas, and I am duly authorized to execute this document.
3. Respondent knowingly and voluntarily enters into this Agreed Final Order, and agrees with and consents to the issuance and service of the foregoing Agreed Order by the Governing Board of the Texas Department of Housing and Community Affairs."

**RESPONDENT:**

**5700 CANYON DRIVE, LLC**, Texas limited liability company

**LLANO ESTACADO MANAGEMENT COMPANY, INC.**,  
a Texas Limited Liability Company, its manager

By: \_\_\_\_\_

Name: Daniel Rogers

Title: Director and President

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF \_\_\_\_\_

My Commission Expires: \_\_\_\_\_





## Exhibit 1

### File Monitoring Violation Resources and Instructions

#### Resources:

1. Refer to the following link for all references to the rules at 10 TAC §10 that are referenced below:  
[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y)
2. Refer to the following link for copies of forms that are referenced below:  
<http://www.tdhca.state.tx.us/pmcomp/forms.htm>
3. Technical support and training presentations are available at the following links:  
Income and Rent Limits: <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>  
Utility Allowance: <http://www.tdhca.state.tx.us/pmcomp/utility-allowance.htm>  
Affirmative Marketing Webinar: <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>  
Tenant Selection Criteria Webinar: <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>  
FAQ's: <http://www.tdhca.state.tx.us/pmcomp/compFaqs.htm>
4. **All corrections must be submitted via CMTS:** See link for steps to upload documents  
<http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>.
5. **Important notes -**
  - i. Do not backdate any documents listed below.
  - ii. A transfer of a qualified household from another unit is not sufficient to correct any findings. If there is a tenant income certification or household income above limit violation, a transfer from another unit will simply cause the finding to transfer to that unit.

**Instructions:** You must submit fully compliant corrective documentation as follows:

6. **Written policies and procedures, including tenant selection criteria** – The version on site during the review was incomplete, missing items included: the effective date; income and rent limits; student requirements and exceptions; what scores or findings would result in ineligibility; occupancy standards were missing multiple required statements; a section regarding the Violence Against Women Reauthorization Act of 2013; a Reasonable Accommodation Policy; a Wait List Policy; a Denied Application Policy; a Non-renewal/Termination Policy; and a Unit Transfer Policy.

How to prepare compliant criteria: First watch the webinar presentation is available at: <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>. Then prepare updated written policies and procedures addressing all requirements at [10 TAC §10.610](#). Staff recommends using that rule as a checklist. Ensure that you include an effective date for the policy. The “10.610 (policy & procedures)” tab of this spreadsheet provides details regarding how TDHCA monitors for this item so that you can check over your work before submission:

<http://www.tdhca.state.tx.us/pmcdocs/OnsiteMonitoringForms.xlsx>

What to submit to comply with this Order: Submit your updated written policies and procedures. They must meet all requirements of the rule at [10 TAC §10.610](#).

**7. Tenant Selection Criteria – units 13, 34, 37, 41, and 48.**

How to prepare corrections: Add a copy of the tenant selection criteria under which each household was screened in their tenant files.

What to submit to comply with this Order: Complete the Owner Certification of Corrected Noncompliance at Attachment 2 and submit via CMTS. No further documentation is required.

**8. Utility Allowance** – This is not an amount that you will charge to tenants, nor is it the precise amount that they are paying for utilities; it is an estimate of how much the households pay toward utilities, to ensure that their total housing expenses are appropriately restricted below maximum TDHCA rent limits.

How to prepare corrections: The Department received a copy of the current Utility Allowance schedule provided by the Amarillo Housing Authority. The cover letter stated that the new utility allowance has been implemented as of the date of the monitoring review. The current Unit Status Report (“USR”) reviewed does not show that the new utility allowance has been updated; therefore this issue cannot be corrected. The Department calculated the utility allowance, and the 1 Bedroom is \$154, 2 Bedroom is \$182 and the 4 Bedroom is \$256. When determining the rent, ensure that the tenant paid rent, plus the utility allowance, plus any housing subsidies, plus any mandatory fees, are below the maximum rent limits set by TDHCA for the unit size.

What to submit to comply with this Order: Update the Unit Status Report in CMTS with the new utility allowances to demonstrate that it has been implemented. Submit the report via CMTS for review. Rent will be tested development-wide once the proper allowance is implemented, and any resulting noncompliance will be cited at that time and provided a separate corrective action period of 90 days. For more information, see <http://www.tdhca.state.tx.us/pmcomp/utility-allowance.htm>

**9. Tenant Rights and Resources Guide violation:**

How to prepare corrections: Implement Tenants Rights and Resource Guide (“Guide”) as indicated at [10 TAC §10.613\(l\)](#). Customize the Guide available on the Forms webpage to reflect the development’s common amenities, unit amenities, and any provided services. Post customized and laminated Guide in a common area of the leasing office. Going forward, provide a copy of the Guide to each household during the application process and upon any subsequent change to the amenities or services and have the households sign Acknowledgments.

What to submit to comply with this Order: Submit a copy of the revised/updated Guide, customized for your property, along with a photo of the Guide as posted in the office.

*[remainder of page intentionally blank]*

## 10. Affirmative marketing plan:

Technical Support: First read the rule at [10 TAC §10.617](#) and watch the webinar at <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>, to gain a general understanding regarding affirmative marketing.

### Steps to complete affirmative marketing plan:

- a. Get a copy of the plan form from <http://www.tdhca.state.tx.us/pmcomp/forms.htm>. You can use any version of HUD Form 935.2A. Beginning in 2019, if you have a plan that has been approved by HUD or USDA, TDHCA will also accept that plan provided that copies of outreach marketing materials are included that comply with section “f” below.
- b. Identify the appropriate housing market area in which outreach efforts will be made. A housing market area is the area from which you may reasonably expect to draw a substantial number of your tenants. As an example, the city in which your development is located may be an appropriate housing market area.
- c. Determine the groups that are least likely to apply and mark them in your plan.  
To determine the groups, you must perform and document a reasonable analysis by which those groups were identified, and you must always include persons with disabilities. Some LURAs may also require marketing to veterans. This analysis must be included with the plan. If you use the current version of the HUD 935.2A, you will do this analysis by using Worksheet 1 to analyze your data versus the data for the census tract, housing market area, and (optional) expanded housing market area. See <https://factfinder.census.gov> for demographic data. When selecting groups, keep in mind that you typically would not market to groups that represent less than 1% of the population because they are not present in the marketing area.
- d. Identify and mark in your plan specific organizations, media, and community contacts in the housing market to send marketing outreach materials. The organizations must specifically reach those groups that you have designated as least likely to apply. Specific examples:
  - i. Least likely to apply population - People with disabilities:
    - A. Local Center for Independent Living (“CIL”) – serve persons with all disability types. Not all counties are covered [http://www.txsilc.org/page\\_CILs.html](http://www.txsilc.org/page_CILs.html)
    - B. Aging and Disability Resource Center (“ADRC”) – intake and referral for persons with physical, intellectual, or developmental disabilities - all counties are covered: <https://www.dads.state.tx.us/contact/search.cfm>
    - C. Local Intellectual and Developmental Disability Authority (LIDDA) – serves persons with intellectual, or developmental disabilities - all counties are covered: <https://www.dads.state.tx.us/contact/search.cfm>
    - D. Local Mental Health Authority (LMHA) – serves persons with Mental Illness and Substance Use disorders - all counties are covered: <https://www.dshs.texas.gov/mhservices-search/>
    - E. Local non-profits in your area serving people with disabilities
    - F. Call 211 and ask about resources for people with disabilities in your area, reach out to groups serving people with disabilities in your community.

- ii. Least likely to apply population - White:
  - A. Examples of acceptable community contacts might include community centers, places of worship, libraries, grocery stores in census tracts with a high concentration of the racial group.
- iii. Least likely to apply population - Asian:
  - A. Local Asian real estate association
  - B. Local Asian Chamber of Commerce
  - C. Local Asian American Resource Center
  - D. Local organizations serving the Asian community
  - E. Community centers, places of worship, libraries, grocery stores in census tracts with a high concentration of the racial group.
- iv. Least likely to apply population - Black/African American:
  - A. Local Black/African American Chamber of Commerce
  - B. Local Black/African American Professionals Social Network
  - C. Weekly Black/African American newspaper / website for a city
  - D. Local community center or YMCA in a historically black/African American neighborhood;
  - E. Community centers, places of worship, libraries, grocery stores in census tracts with a high concentration of the racial group.
- v. Least likely to apply population - Hispanic:
  - A. Local Hispanic Chamber of Commerce
  - B. Local Young Hispanic Professional Association
  - C. The Hispanic Alliance
  - D. Mexican American Cultural Center
  - E. Local Spanish language publications
  - F. Community centers, places of worship, libraries, grocery stores in census tracts with a high concentration of the racial group.
- vi. Least likely to apply population – Not Hispanic:
  - A. When this group is identified, no additional marketing is required, but the Development must refrain from targeting affirmative marketing efforts to Hispanic related groups.
- e. Comply with all requirements of 10 TAC §10.617, which we recommend using as a checklist;
- f. The bottom section of the form regarding HUD approval can be ignored; you do not need their approval;
- g. Send marketing outreach materials to the identified organizations, ensuring that said marketing materials comply with all requirements of 10 TAC §10.617. Ensure that the addresses and send dates are included so that TDHCA can verify that you have performed the required marketing. Remember that 10 TAC §10.617(c)(2) requires marketing materials to include the Fair Housing Logo and the contact information for the individual who can assist if reasonable accommodations are needed in order to complete the application process. This contact information sentence must include the terms “reasonable accommodation” and must be in English and Spanish. Here is a sample of an acceptable

sentence recently included in marketing materials from another property: *“Individuals who need to request a reasonable accommodation to complete the application process should contact the apartment manager at XXX-XXX-XXXX. Personas con discapacidad que necesitan solicitar un acomodacion razonable para completar el proceso de aplicacion deben comunicarse con el Administrador del apartment al XXX-XXX-XXXX.”*

- h. Look over the “10.617 (affirmative marketing)” tab of the spreadsheet at the following link, which provides details regarding how TDHCA monitors for this item so that you can check over your work before submission:

<http://www.tdhca.state.tx.us/pmcdocs/OnsiteMonitoringForms.xlsx>

What to submit to comply with this Order: Once your Affirmative Marketing plan *and* outreach materials are complete, the owner or a supervisor must review them, then you must upload the Plan, documentation regarding how you determined the groups that are least likely to apply, and evidence of outreach marketing efforts.

**11. Lease language violation for units 13, 28, 34, 41, and 48:**

What to submit to comply with this Order: Correspondence submitted to the Department indicates that the prior households vacated these units. Complete the attached “Owner Certification of Corrected Noncompliance” that relates to lease language violations, ensuring that you have taken all actions listed in the Certification, and submit the executed certification. No additional documentation should be submitted with the Certification.

**12. Household income above limit upon initial occupancy for units 34, 35, 37, and 41:**

What to submit to comply with this Order: Follow the instructions below for units 34, 35, 37, and 41. The Department recognizes that some of these units may currently be vacant while a roof repair insurance settlement is pending, but you must also reply for those units by the 5/22/2019 deadline. Technical support about tenant files is at Attachment 3 if needed.

Circumstance for units 34, 35, 37 and 41	What to submit to comply with this Order:
<p>I. If unit is occupied by a qualified household</p>	<p>Either submit the following from the move-in file, or if that is incomplete, recertify the households using current circumstances, and submit the following for each unit:</p> <ul style="list-style-type: none"> <li>A. New application using current circumstances;</li> <li>B. New verifications of each source of income and assets,</li> <li>C. New Income Certification;</li> <li>D. Lease and lease addendum; and</li> <li>E. Tenant Rights and Resources Guide Acknowledgment.</li> </ul> <p>Remember that items A-C above must be dated within 120 days of one another.</p> <p>If the unit is vacant or the tenant does not qualify, follow alternate instructions below.</p>

<p>II. If unit is occupied by a nonqualified household on a month-to-month lease</p>	<p>A. Follow your normal procedures for terminating residency and provide a copy of documentation to TDHCA.*</p> <p>B. Once the unit becomes available, occupy the unit by a qualified household, and submit the full new tenant file within 30 days of occupancy**. Receipt of the full tenant file after 5/22/2019 is acceptable for this circumstance provided that Requirement A above is fulfilled.</p>
<p>IV. If unit is occupied by a nonqualified household with a non-expired lease</p>	<p>A. Issue a nonrenewal notice* to tenant and provide a copy to TDHCA, along with a letter committing to occupying the unit with a new qualified household and submitting a full tenant file** as soon as the unit becomes available.</p> <p>B. As soon as the unit is occupied by a qualified household, you must submit the full tenant file**. Receipt of the full tenant file after 5/22/2019 is acceptable for this circumstance provided that Requirement A above is fulfilled by that deadline.</p>
<p>If unit is vacant while a roof repair insurance settlement is pending</p>	<p>A. Submit a letter certifying that the unit is vacant while a roof repair insurance settlement is pending. Include a copy of the claim paperwork as verification of the loss and claim. Confirm in the letter that you will begin roof repairs within 30 days of receiving the insurance settlement, and that the units will be made available for occupancy within 60 days of completion of the roof repairs.</p> <p>B. Roof repairs must commence within 30 days of the insurance settlement payment, and the unit must be made available for occupancy within 60 days of completion of the roof repairs. Once the unit becomes available, occupy the unit by a qualified household, and submit the full new tenant file within 30 days of occupancy**. Receipt of the full tenant file after 5/22/2019 is acceptable for this circumstance if you comply with Requirement A and the repair timelines after insurance settlement, as outlined above.</p>
<p>V. If unit has been vacant <i>more than 30</i> days and the vacancy does not relate to the roof repair insurance settlement</p>	<p>A. Unit must be made ready for occupancy and a letter certifying to that effect must be submitted to TDHCA.</p> <p>B. Occupy the unit by a qualified household, and submit the full new tenant file within 30 days of occupancy**. Receipt of the full tenant file after 5/22/2019 is acceptable for this circumstance provided that Requirement A above is fulfilled by that deadline.</p>

<p>VI. If unit has been vacant <i>less than 30</i> days and the vacancy does not relate to the roof repair insurance settlement</p>	<p>A. If unit is ready for occupancy, a letter certifying to that effect must be submitted to TDHCA.</p> <p>B. If unit is not ready for occupancy, submit a letter to TDHCA including details regarding work that is required and when the unit will be ready for occupancy (no more than 30 days from the date of vacancy).</p> <p>C. Occupy the unit by a qualified household, and submit the full new tenant file within 30 days of occupancy**. Receipt of the full tenant file after 5/22/2019 is acceptable for this circumstance provided that Requirements A and B above are fulfilled by that deadline.</p>
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*\* If a notice of nonrenewal or notice of termination is sent to tenant, ensure that it complies with requirements of the rule at [10 TAC §10.610\(a\)](#)*

*\*\*A full tenant file must include:*

- A. Tenant application;*
- B. Verifications of all sources of income and assets;*
- C. Tenant income certification;*
- D. Lease and lease addendum;*
- E. Tenant Rights and Resources Guide Acknowledgment; and*
- F. A copy of the tenant selection criteria under which the household was screened.*

*Remember that items A-C above must be dated within 120 days of one another.*



**Exhibit 2**

**Required Owner Certifications of Corrected Noncompliance**

(see attached)

The rules at 10 TAC §10 that are referenced in the attached certifications are available at this link:

[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=5&ti=10&pt=1&ch=10&sch=F&r=Y](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=10&sch=F&r=Y)

## Texas Department of Housing and Community Affairs Owner Certification of Corrected Noncompliance

Development Name: Cottonwood and Westway Apartments CMTS ID: 2298

The above referenced Development was monitored on March 30, 2018 to determine if the Development is in compliance with the requirements of the Housing Tax Credit program. The review resulted in a finding of noncompliance under Title 10, Chapter 10, Subchapter F related to Compliance Monitoring, §10.610, Written Policies and Procedures. Please see attached Findings Report for details as to the specific policy/procedure affected and the reason for which the noncompliance was cited. **Update the policy/procedure as detailed on the Findings Report with a revised effective date.**

Under 10 TAC §2.401(c)(1), *The Department may debar any Responsible Party who has materially or repeatedly violated any condition imposed by the Department in connection with the administration of a Department program, including a material or repeated violation of a land use restriction agreement (LURA) regarding a development supported with a housing tax credit allocation.* Repeated failure to comply with the provisions prescribed in §10.610 may be considered a material violation of the LURA. Owners that repeatedly and materially violate their LURAs will be recommended for debarment from participation in programs administered by the Department. A copy of §10.610 is attached to ensure ongoing compliance.

I, \_\_\_\_\_, on behalf of Daniel L. Rogers, am a duly authorized representative, who is so authorized by reason of my position as \_\_\_\_\_ to hereby certify, as true and correct, that the above referenced noncompliance related to §10.610 has been corrected in the manner described and that all required written policies and procedures under §10.610 are fully compliant with the rule. If at the next onsite review, there has not been an ownership transfer and this event of noncompliance is cited again, I understand that the owner will be recommended for debarment.

\_\_\_\_\_  
Signature of Authorized Owner Representative

\_\_\_\_\_  
Date

Warning: Title 18, Section 1001 of the U.S. Code makes it a criminal offense to make willful false statements or misrepresentations to any Department or Agency in the United States as to any matter within its jurisdiction.

TDHCA  
December 2016

# Texas Department of Housing and Community Affairs

## Owner Certification of Corrected Noncompliance

Development Name: Cottonwood and Westway Apartments CMTS ID: 2298

The above referenced Development was monitored on March 30, 2018 to determine if the Development is in compliance with the requirements of the Housing Tax Credit program. The review resulted in a finding of noncompliance under Title 10, Chapter 10, Subchapter F related to Compliance Monitoring, §10.613(a) which states:

*(a) Eviction and/or termination of a lease. For HTC Developments, IRS Revenue Ruling 2004-82 prohibits the eviction or termination of tenancy of low-income households for other than good cause throughout the entire Affordability Period, and for three (3) years after termination of an extended low-income housing commitment. Owners executing or renewing leases after November 1, 2007, shall specifically state in the lease or in an addendum attached to the lease that evictions or terminations of tenancy for other than good cause are prohibited.*

Through this certification, you hereby certify the following:

1. The required language has been added to the lease or lease addendum;
2. All low-income households have been provided an updated lease or lease addendum containing the required information; and,
3. All future leases with low-income households will contain the required language either within the lease or through the use of a lease addendum.

Under 10 TAC §2.401(e), a person shall be recommended for debarment if they control a Development that during two sequential monitoring visits is found to be out of compliance with the lease requirements described in §10.613. If at the next onsite review, there has been not been an ownership transfer and noncompliance is assessed for failure to execute required lease provisions, the owner will be recommended for debarment from participation in programs administered by the Department. A copy of §10.613 is attached to ensure ongoing compliance.

I, \_\_\_\_\_, on behalf of Daniel L. Rogers, am a duly authorized representative, who is so authorized by reason of my position as \_\_\_\_\_ to hereby certify, as true and correct, that the above referenced noncompliance related to §10.613(a) has been corrected in the manner described and that all required lease language under §10.613 is in the lease and lease addendum. I further certify that I understand that if this event of noncompliance is cited at the next onsite review of \_\_\_\_\_, the owner will be recommended for debarment.

\_\_\_\_\_  
Signature of Authorized Owner Representative

\_\_\_\_\_  
Date

Warning: Title 18, Section 1001 of the U.S. Code makes it a criminal offense to make willful false statements or misrepresentations to any Department or Agency in the United States as to any matter within its jurisdiction.

TDHCA  
December 2016

**Texas Department of Housing and Community Affairs**  
**Owner Certification of Corrected Noncompliance**

Development Name: Cottonwood and Westway Apartments CMTS ID: 2298

The above referenced Development was monitored on March 30, 2018 to determine if the Development is in compliance with the requirements of the Housing Tax Credit program. The review resulted in a finding of noncompliance under Title 10, Chapter 10, Subchapter F related to Compliance Monitoring, §10.613(e) which states:

*(f) Owners of HTC Developments are prohibited from locking out or threatening to lock out any Development resident, except by judicial process, unless the exclusion is necessary for the purpose of performing repairs or construction work, or in cases of emergency. Owners are further prohibited from seizing or threatening to seize the personal property of a resident except by judicial process unless the resident has abandoned the premises. These prohibitions must be included in the lease or lease addendum*

Through this certification, you hereby certify the following:

1. The required language has been added to the lease or lease addendum;
2. All low-income households have been provided an updated lease or lease addendum containing the required information; and,
3. All future leases with low-income households will contain the required language either within the lease or through the use of a lease addendum.

Under 10 TAC §2.401(e), a person shall be recommended for debarment if they control a Development that during two sequential monitoring visits is found to be out of compliance with the lease requirements described in §10.613. If at the next onsite review, there has been not been an ownership transfer and noncompliance is assessed for failure to execute required lease provisions, the owner will be recommended for debarment from participation in programs administered by the Department. A copy of §10.613 is attached to ensure ongoing compliance.

I, \_\_\_\_\_, on behalf of Daniel L. Rogers, am a duly authorized representative, who is so authorized by reason of my position as \_\_\_\_\_ to hereby certify, as true and correct, that the above referenced noncompliance related to §10.613(e) has been corrected in the manner described and that all required lease language under §10.613 is in the lease and lease addendum. I further certify that I understand that if this event of noncompliance is cited at the next onsite review of \_\_\_\_\_, the owner will be recommended for debarment.

\_\_\_\_\_  
Signature of Authorized Owner Representative

\_\_\_\_\_  
Date

Warning: Title 18, Section 1001 of the U.S. Code makes it a criminal offense to make willful false statements or misrepresentations to any Department or Agency in the United States as to any matter within its jurisdiction.

TDHCA  
December 2016

## Exhibit 2

### Tenant File Guidelines

The following technical support does not represent a complete list of all file requirements and is intended only as a guide. TDHCA staff recommends that all onsite staff responsible for accepting and processing applications sign up for First Thursday Training in order to get a full overview of the process. Sign up at <http://www.tdhca.state.tx.us/pmcomp/COMPtrain.html>. Forms discussed below are available at: <http://www.tdhca.state.tx.us/pmcomp/forms.htm>.

*\*Important Note\* The application, verifications of income and assets, and Tenant Income Certification (1 – 5 below) must be signed within 120 days of one another. If one component is outside of that time frame, you must recertify.*

1. **Intake Application:** Each adult household member must complete their own application in order to be properly screened at initial certification. A married couple can complete a joint application. The Department does not have a required form to screen households, but we make a sample form available for that purpose. All households must be screened for household composition, income and assets. Applicants must complete all blanks on the application and answer all questions. Any lines left intentionally blank should be marked with “none” or “n/a.” The application must be signed and dated by all adult household members, using the date that the form is actually completed. If you use the Texas Apartment Association (TAA) Rental Application, be aware that it does not include all requirements, but they have a “Supplemental Rental Application for Units Under Government Regulated Affordable Housing Programs” that includes the additional requirements. TDHCA also has an application form that you can use; using our form is not required for the application, but it does screen for all requirements.
2. **Release and Consent:** Have tenant sign TDHCA’s Release and Consent form so that verifications may be collected by the property.
3. **Verify Income:** Each source of income and asset must be documented for every adult household member based upon the information disclosed on the application. There are multiple methods:
  - a. **Income Verification for Households with Section 8 Certificates (HTC only):** If you use this form, you do not need to further verify income or assets, but you do need to collect all other components of the tenant file. This form is signed by the Public Housing Authority, verifying that the household is eligible at initial occupancy or at recertification. Since the necessary income and asset verifications were performed by the housing authority and were effective as of a specific date, this form must be signed within 120 days of that effective date, either at initial move-in or at recertification. This form must also be dated within 120 days of the application and Income Certification that you collect. If outside of that period, you must verify income and assets yourself.
  - b. **First hand verifications (required for HOME):** Paystubs or payroll print-outs that show gross income. If you choose this method, ensure that you consistently collect a specified number of consecutive check stubs as defined in your management plan;
  - c. **Employment Verification Form:** Part 1 must be completed by you and signed by the tenant. Part 2 must be completed by the employer. To prevent fraud, you must submit the form directly to the employer and must not allow the tenant to handle it. You should ensure that the person completing the employer portion has authority to do so and has access to all applicable information in order to verify the employment income. If

you receive the verification via mail, retain the envelope. If you receive it via fax, ensure that the fax stamp is on it;

- d. **Verification of non-employment income:** You must obtain verifications for all other income sources, such as child support, social security, and/or unemployment benefits. Self-certification by the household is not acceptable. Examples: benefit verification letter(s) would be acceptable for social security and/or employment benefits. Acceptable verifications for child support could include documents such as divorce decree(s), court order(s), or a written statement from the court or attorney general regarding the monthly awarded amount;
  - e. **Telephone Verifications:** These are acceptable *only* for clarifying discrepancies and cannot be used as primary form of verification. Include your name, the date, the name of the person with whom you spoke, and your signature. These are appropriate if there is an unusual circumstance relating to the tenant file;
  - f. **Certification of Zero Income:** If an adult household member does not report any sources of income on the application, this form can be used to document thorough screening and to document the source of funds used to pay for rent, utilities, and/or other necessities.
4. **Verify Assets:** Regardless of their balances, applicants must report all assets owned, including assets such as checking or savings accounts. The accounts are typically disclosed on the application form, but you must review all documentation from the tenant to ensure proper documentation of the household's income and assets. For instance, review the credit report (if you pull one), application, pay stubs, and other documents to ensure that all information is consistent. Examples of ways to find assets that are frequently overlooked: Review pay stubs for assets such as checking and retirement accounts that the household may have forgotten to include in the application. These accounts must also be verified. Format of verifications:
- a. **Under \$5000 Asset Certification Form (HTC only):** If the total cash value of the assets owned by members of the household is less than \$5,000, as reported on the Intake Application, the TDHCA Under \$5,000 Asset Certification form may be used to verify assets. If applicable, follow the instructions to complete one form per household that includes everyone's assets, even minors, and have all adults sign and date using the date that the form is actually completed.
  - b. **First hand verifications (required for HOME)** such as bank statements to verify a checking account. Ensure that you use a consistent number of consecutive statements, as identified in your management plan.
  - c. **3<sup>rd</sup> party verifications** using the TDHCA Asset Verification form. As with the "Employment Verification Form" discussed above, Part 1 must be completed by you and signed by the tenant. Part 2 must be completed by the financial institution. To prevent fraud, you must submit the form directly to the employer and must not allow the tenant to handle it. You should ensure that the person completing the financial institution's portion has authority to do so and has access to all applicable information in order to verify the asset(s). If you receive the verification via mail, retain the envelope. If you receive it via fax, ensure that the fax stamp is on it.
5. **Tenant Income Certification Form:** Upon verification of all income and asset sources disclosed on the application and any additional information found in the documentation submitted by the tenant, the next step is to annualize the sources on the Income Certification Form, add them together, and compare to the applicable income limit for household size which can be found at



<http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>. Be sure to include any income derived from assets. The form must include all household members, and be signed by each adult household member.

6. **Lease:** Must conform with your LURA and TDHCA requirements and indicate a rent below the maximum rent limits, which can be found at <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>. When determining the rent, ensure that the tenant's rent, plus the utility allowance, plus any housing subsidies, plus any mandatory fees, are below the maximum limits set by TDHCA. 10 TAC §10.613(a) prohibits the eviction or termination of tenancy of low income households for reasons other than good cause throughout the affordability period in accordance with Revenue Ruling 2004-82. In addition, 10 TAC §10.613(e) prohibits HTC developments from locking out or threatening to lock out any development resident, or seizing or threatening to seize personal property of a resident, except by judicial process, for purposes of performing necessary repairs or construction work, or in case of emergency. The prohibitions must be included in the lease or lease addendum. Additionally, certain programs must include a Lead Warning Statement and the TDHCA VAWA lease addendum, per 10 TAC 10.613(f) and (h). TAA has an affordable lease addendum that has incorporated this required language. If you are not a TAA member, you can draft a lease addendum using the requirements outlined above. For Section 811 units, you must use the HUD Model Lease, HUD form 92236-PRA.
7. **Tenant Selection Criteria:** In accordance with 10 TAC §10.610(b), you must maintain written Tenant Selection Criteria and a copy of those written criteria under which an applicant was screened must be included in the household's file.
8. **Tenant Rights and Resources Guide:** As of 1/8/2015, the Fair Housing Disclosure Notice and Tenant Amenities and Services Notice have been replaced by the Tenant Rights and Resources Guide and its acknowledgment form, copies of which are available online at: <http://www.tdhca.state.tx.us/pmcomp/forms.htm>

In accordance with 10 TAC §10.613(l), you must customize the guide for your property and post a laminated copy in a common area of the leasing office. Development must also provide a copy of the guide to each household during the application process and upon any subsequent changes to the items described at paragraph b) below. The guide includes:

- a) Information about Fair Housing and tenant choice; and
- b) Information regarding common amenities, unit amenities, and services.

Additionally, a representative of the household must receive a copy of the guide and sign an acknowledgment of receipt of the brochure prior to, but no more than 120 days prior to, the initial lease execution date.

In the event that there is a prior finding for a Fair Housing Disclosure Notice, Tenant Amenities and Services Notice, the Tenant Rights and Resources Guide was not provided timely, or the household does not certify to receipt of the Tenant Rights and Resources Guide, resolution will be achieved by providing the household with the Tenant Rights and Resources Guide and receiving a signed acknowledgment.

**Exhibit 4:**

**Texas Administrative Code**

TITLE 10                    COMMUNITY DEVELOPMENT  
PART 1                    TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
CHAPTER 10                UNIFORM MULTIFAMILY RULES  
SUBCHAPTER E    POST AWARD AND ASSET MANAGEMENT REQUIREMENTS  
RULE §10.406                Ownership Transfers (§2306.6713)

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(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice and a completed Ownership Transfer packet, if applicable, to the Department at least 45 calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Except as otherwise provided herein, the Executive Director's prior written approval of any such transfer is required. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section.

(b) Exceptions. The following exceptions to the ownership transfer process outlined herein apply:

(1) A Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new Principals or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(2) Transfers that are the result of an involuntary removal of the general partner by the investment limited partner do not require advance approval but must be reported to the Department as soon as possible due to the sensitive timing and nature of this decision. In the event the investment limited partner has proposed a new general partner or will permanently replace the general partner, a full Ownership Transfer packet must be submitted.

(3) Changes to the investment limited partner, non-Controlling limited partner, or other non-Controlling partners affiliated with the investment limited partner do not require Executive Director approval. A General Partner's acquisition of the interest of the investment limited partner does not require Executive Director approval, unless some other change in ownership is occurring as part of the same overall transaction.

(4) Changes resulting from foreclosure do not require advance approval but acquiring parties must notify the Department as soon as possible of the revised ownership structure and ownership contact information.

(c) General Requirements.

(1) Any new Principal in the ownership of a Development must be eligible under §11.202 of Subchapter C (relating to Ineligible Applicants and Applications). In addition, Principals will be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee).

(2) Changes in Developers or Guarantors must be addressed as non-material amendments to the application under §10.405 of this subchapter.

(3) To the extent an investment limited partner or its Affiliate assumes a Controlling interest in a Development Owner, such acquisition shall be subject to the Ownership Transfer requirements set forth herein. Principals of the investment limited partner or Affiliate will be considered new Principals and will be reviewed as stated under paragraph (1) of this subsection.

(4) Simultaneous transfer or concurrent offering for sale of the General Partner's and Limited Partner's control and interest will be subject to the Ownership Transfer requirements set forth herein and will trigger a Right of First Refusal, if applicable.

(d) Transfer Actions Warranting Debarment. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure or the Department at risk for financial exposure as a result of non-compliance, staff may make a recommendation to the Board for the



debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule. In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), prior to recommending any new financing or allocation of credits.

(e) Transfers Prior to 8609 Issuance or Construction Completion. Prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs) an Applicant may request an amendment to its ownership structure to add Principals. The party(ies) reflected in the Application as having Control must remain in the ownership structure and retain Control, unless approved otherwise by the Executive Director. A development sponsor, General Partner or Development Owner may not sell the Development in whole or voluntarily end their Control prior to the issuance of 8609s.

(f) Nonprofit Organizations. If the ownership transfer request is to replace a nonprofit organization within the Development ownership entity, the replacement nonprofit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

(1) If the LURA requires ownership or material participation in ownership by a Qualified Nonprofit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Nonprofit Organization that meets the requirements of §42(h)(5) of the Code and Tex. Gov't Code §2306.6706, if applicable, and can demonstrate planned participation in the operation of the Development on a regular, continuous, and substantial basis.

(2) If the LURA requires ownership or material participation in ownership by a nonprofit organization or CHDO, the Development Owner must show that the transferee is a nonprofit organization or CHDO, as applicable, that complies with the LURA.

(3) Exceptions to the above may be made on a case by case basis if the Development is past its Compliance Period/Federal Affordability Period, was not reported to the IRS as part of the Department's Nonprofit Set Aside in any HTC Award year, and follows the procedures outlined in §10.405(b)(1) - (5) of this chapter (relating to LURA Amendments that require Board Approval). The Board must find that:

(A) The selling nonprofit is acting of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(B) The participation by the nonprofit was substantive and meaningful during the full term of the Compliance Period but is no longer substantive or meaningful to the operations of the Development; and

(C) The proposed purchaser is an affiliate of the current Owner or otherwise meets the Department's standards for ownership transfers.

(g) Historically Underutilized Business (HUB) Organizations. If a HUB is the general partner or special limited partner of a Development Owner and it determines to sell its ownership interest, after the issuance of 8609's, the purchaser of that partnership interest or the general or special limited partner is not required to be a HUB as long as the procedure described in §10.405(b)(1) of this chapter (relating to Non-Material LURA Amendments) has been followed and approved.

(h) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances pertaining to the transfer and the effects of approval or denial. Documentation must be submitted as directed in the Post Award Activities Manual, which includes but is not limited to:

(1) A written explanation outlining the reason for the request;

(2) Ownership transfer information, including but not limited to the type of sale, amount of Development reserves to transfer in the event of a property sale, and the prospective closing date;

(3) Pre and post transfer organizational charts with TINs of each organization down to the level of natural persons in the ownership structure as described in §11.204(13)(A) of Subchapter C;

(4) A list of the names and contact information for transferees and Related Parties;

(5) Previous Participation information for any new Principal as described in §11.204(13)(B) of Subchapter C;

(6) Agreements among parties associated with the transfer;

(7) Owners Certifications with regard to materials submitted further described in the Post Award Activities Manual;

(8) Detailed information describing the organizational structure, experience, and financial capacity of any party holding a controlling interest in any Principal or Controlling entity of the prospective Development Owner;

(9) Evidence and certification that the tenants in the Development have been notified in writing of the proposed transfer at least 30 calendar days prior to the date the transfer is approved by the Department. The ownership transfer approval letter will not be issued until this 30 day period has expired;

(10) Any required exhibits and the list of exhibits related to specific circumstances of transfer or Ownership as detailed in the Post Award Activities Manual.

(i) Once the Department receives all necessary information under this section and as required under the Post Award Activities Manual, staff shall initiate a qualifications review of a transferee, in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter and §11.202 of Subchapter C (relating to Ineligible Applicants and Applications).

(j) Credit Limitation. As it relates to the Housing Tax Credit amount further described in §11.4(a) of this title (relating to Tax Credit Request and Award Limits), the credit amount will not be applied in circumstances described in paragraphs (1) and (2) of this subsection:

(1) In cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or

(2) In cases where the general partner is being replaced if the award of credits was made at least five years prior to the transfer request date.

(k) Penalties, Past Due Fees and Underfunded Reserves. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring). The Development Owner, as on record with the Department, will be liable for any penalties or fees imposed by the Department even if such penalty can be attributable to the new Development Owner unless such ownership transfer is approved by the Department. In the event a transferring Development has a history of uncorrected UPCS violations, ongoing issues related to keeping housing sanitary, safe, and decent, an account balance below the annual reserve deposit amount as specified in §10.404(a) (relating to Replacement Reserve Accounts), or that appears insufficient to meet capital expenditure needs as indicated by the number or cost of repairs included in a PCA, the prospective Development Owner may be required to establish and maintain a replacement reserve account or increase the amount of regular deposits to the replacement reserve account by entering into a Reserve Agreement with the Department. The Department may also request a plan and timeline relating to needed repairs or renovations that will be completed by the departing and/or incoming Owner as a condition to approving the Transfer.

(l) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by the corresponding ownership transfer fee as outlined in §11.901 of this chapter (relating to Fee Schedule, Appeals, and other Provisions).

Source Note: The provisions of this §10.406 adopted to be effective January 5, 2017, 41 TexReg 10569; amended to be effective January 4, 2018, 42 TexReg 7610; amended to be effective December 30, 2018, 43 TexReg 8297

1e

**BOARD ACTION REQUEST**  
**COMMUNITY AFFAIRS DIVISION**  
**MARCH 21, 2019**

Presentation, discussion, and possible action on awards for 2019 Community Services Block Grant Discretionary Direct Client Assistance and Network Operational Investments

**RECOMMENDED ACTION**

**WHEREAS**, Community Services Block Grant (CSBG) funds are awarded annually to the Texas Department of Housing and Community Affairs (the Department) by the U.S. Department of Health and Human Services (USHHS);

**WHEREAS**, the Department reserves 90% of the allotment for CSBG eligible entities to provide services/assistance to the low-income population in all 254 counties; up to 5% for state administration expenses; and the remaining amount for discretionary use;

**WHEREAS**, at the Board meeting of June 29, 2017, the Department established a set aside of \$1,600,000 for CSBG discretionary projects in 2019, of which up to \$590,000 was programmed for Direct Client Assistance and Network Operational Investments;

**WHEREAS**, a Request for Applications (RFA) was released on November 28, 2018, for Direct Client Assistance and Network Operational Investments and 25 eligible entities completed and returned applications;

**WHEREAS**, staff reviewed all applications and terminated eight of them due to a threshold requirement within the RFA that “only CSBG eligible entities who have expended at least 80% of their 2018 CSBG discretionary awards according to the November 2018 monthly report will be eligible to be recommended for an award”;

**WHEREAS**, six of the eight entities with terminated applications appealed staff’s decision to terminate; the Acting Director granted two of those appeals and denied four appeals, and those four denied entities did not elect to appeal to the Board;

**WHEREAS**, staff recommends Board approval of awards totaling \$290,184 for Direct Client Assistance and \$155,990 for Network Operational Investments to 19 of the 25 applicants that applied, met the requirements for funding, and have received a recommendation for an award from the Executive Award Review Advisory Committee (EARAC); and

**WHEREAS**, EARAC met on February 11, 2019, and March 11, 2019, and recommends the approval of the 19 awards;

**NOW, therefore, it is hereby**

**RESOLVED**, that the Acting Director and his designees, be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to take any and all such actions as they or any of them may deem necessary or advisable to effectuate the awards, as represented herein, of \$290,184 for Direct Client Assistance and \$155,990 for Network Operational Investments.

### **BACKGROUND**

The Department set aside a total of \$590,000 in 2019 state CSBG discretionary funds for Direct Client Assistance and Network Operational Investments as approved in the CSBG Plan, a two-year planning document, at the Board meeting of June 29, 2017. Staff subsequently released an RFA for the 2019 CSBG Discretionary funds, with the threshold requirement that “only CSBG eligible entities who have expended at least 80% of their 2018 CSBG discretionary awards according to the November 2018 monthly report will be eligible to be recommended for an award of these 2019 CSBG discretionary funds.” Staff reviewed the 25 submittals and terminated eight of them because they did not meet the expenditure requirement. The eight entities whose applications were terminated were given an opportunity to appeal staff’s decision to the Acting Director of the Department; six of the eight entities chose to do so. Of the six appeals, the Acting Director granted two appeals. The remaining four entities did not submit an appeal to be presented to the Board.

The successful entities will have access to the funds upon execution of a contract, limited to Direct Client Assistance and Network Operational Investments, excluding staff salaries, fringe, or other operational costs. Examples of how funds may be used for Direct Client Assistance include assisting eligible clients with obtaining job-associated uniforms and training; assisting eligible clients with direct educational expenses (*e.g.*, tuition, textbooks, etc.); assisting clients with the cost of transportation to and from work and other necessary functions; and assisting eligible clients in the cost of certain health care needs. Examples of how funds may be used for Network Operational Investments include, but are not limited to, efforts related to the planning and development of a Community Needs Assessment and the subsequent planning and development of a Strategic Plan.

The Previous Participation Rule (10 TAC §1.302) includes a review of CSBG discretionary awards prior to contract execution. These discretionary awards are subject to this review. The review has been performed and all 19 applicants have been recommended by EARAC for award as listed in Attachment A.

Attachment A reflects all 19 applicants recommended for funding and the funding recommendation amounts. Because not all 40 eligible entities within the CSBG network applied for 2019 CSBG discretionary funds for Direct Client Assistance and Network Operational Investments, there remains \$143,826 in uncommitted funds. The Department will reprogram these funds among the eligible uses for CSBG-Discretionary funds previously approved by the Board consistent with the CSBG Plan.

**Attachment A**

**Funding Recommendations for Program Year 2019 Community Services Block Grant Discretionary Funds  
for Direct Client Assistance (DCA) and Network Operational Investments (NOI)  
(April 1, 2019-March 31, 2020)**

	<b>Subrecipient</b>	<b>Direct Client Assistance Request (DCA)</b>	<b>Network Operational Investment Request (NOI)</b>	<b>Total Funds Requested</b>	<b>Description</b>
1	Brazos Valley Community Action Programs	14,568	9,400	23,968	DCA - Transportation and temporary shelter. NOI – Software for case manager, New Gen Programmatic Software and annual license fee.
2	Central Texas Opportunities, Inc.	9,375	14,593	23,968	DCA - Assist clients with expenses related to obtaining education and employment. NOI - Staff and board development and organization communication plan. Phone system & computer monitor.
3	City of San Antonio, The Department of Human Services	23,968	0	23,968	DCA--Assist clients with rent, utilities, transportation, and educational expenses.
4	Combined Community Action, Inc.	23,968	0	23,968	DCA--Expenses such as rent, utility deposits, gas, temporary shelter, food, clothing, id documents, and other necessary assistance.
5	Community Action Committee of Victoria Texas	13,918	10,050	23,968	DCA - Housing assistance. NOI - Purchase computers, programmatic software, and costs related to Excel training for staff.
6	Community Action Corporation of South Texas	7,068	16,900	23,968	DCA- Direct client assistance with food, utilities, and housing. NOI - Analysis of community needs assessment results, conduct organizational risk assessment and related policies and procedures, ROMA training.
7	Community Council of South Central Texas, Inc.	14,750	0	14,750	DCA--Rental assistance
8	Community Services, Inc.	23,968	0	23,968	DCA--Client assistance for persons working to transition out of poverty. Assist with expenses related to clothing for work and other personal items.

9	Concho Valley Community Action Agency	23,968	0	23,968	DCA--Assist clients with education expenses.
10	El Paso Community Action Program, Project Bravo, Inc.	23,968	0	23,968	DCA--Assist clients working to transition out of poverty with education and employment related expenses.
11	Greater East Texas Community Action Program (GETCAP)	0	23,968	23,968	NOI--Software and hardware costs related to data collection. Costs related to setting up new facility (setting up phones and computers, possibly furniture and equipment) to provide services and also include area to train staff.
12	Hidalgo County Community Service Agency	0	23,968	23,968	NOI - Training (related to CSBG Org Standard requirements) at WIPFLI, CAPLAW, CAP, and TACAA conferences related to financial management, legal, and programmatic.
13	Hill Country Community Action Association, Inc.	2,750	21,218	23,968	DCA - Education and employment related assistance for persons working to transition out of poverty and emergency assistance for other low-income clients. NOI - Fiscal consulting, staff training including fiscal, MIP, human resources, ROMA, strategic planning, programmatic areas.
14	Nueces County Community Action Agency	0	23,968	23,968	NOI-ROMA Implementer training, license fees for DATASAY Monitoring Tool, staff training on workplace competencies. Partner with local community college to offer leadership courses for staff related to workplace competencies.
15	Rolling Plains Management Corporation	23,968	0	23,968	DCA - Assist clients with rent, gas cards, and assistance with costs related to obtaining identification and birth certificates and identification cards needed to qualify for services.
16	South Plains Community Action Association, Inc.	23,968	0	23,968	DCA - Assist low income clients with rent and utility costs and deposits. Assist persons working to transition out of poverty with expenses related to employment and education.

17	Texas Neighborhood Services	18,968	5,000	23,968	DCA - Provide direct client assistance related to obtaining and maintaining employment and continuing education. NOI - Consultant to assist in Strategic Plan and to train board of directors on strategic planning and duties and responsibilities.
18	West Texas Opportunities, Inc.	22,493	1,475	23,968	DCA - Rental assistance. NOI - Costs related to staff attending ROMA training.
19	Opportunities for Williamson-Burnet Counties	18,518	5,450	23,968	DCA - Provide assistance to clients working to transition out of poverty. Assistance related to education, employment, and transportation, and other necessary assistance. NOI - Programmatic and financial reporting software and fees.
	<b>TOTAL</b>	<b>\$290,184</b>	<b>\$155,990</b>	<b>\$446,174</b>	

**Note:** For funds that remain uncommitted, the Department will reprogram the funds among the eligible uses for CSBG-Discretionary funds previously approved by the Board.



1f

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**MARCH 21, 2019**

Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits with another Issuer (#19416 Alsbury Apartments, San Antonio)

**RECOMMENDED ACTION**

**WHEREAS**, a 4% Housing Tax Credit application for Alsbury Apartments, sponsored by San Antonio Housing Trust Public Facility Corporation and Versa Development, was submitted to the Department on September 21, 2018;

**WHEREAS**, the Certification of Reservation from the Texas Bond Review Board was issued on February 22, 2019, and will expire on July 22, 2019; and

**WHEREAS**, the proposed issuer of the bonds is San Antonio Housing Trust Public Facility Corporation;

**NOW, therefore, it is hereby**

**RESOLVED**, that the issuance of a Determination Notice of \$1,392,094 in 4% Housing Tax Credits, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department's website for Alsbury Apartments is hereby approved as presented to this meeting.

**BACKGROUND**

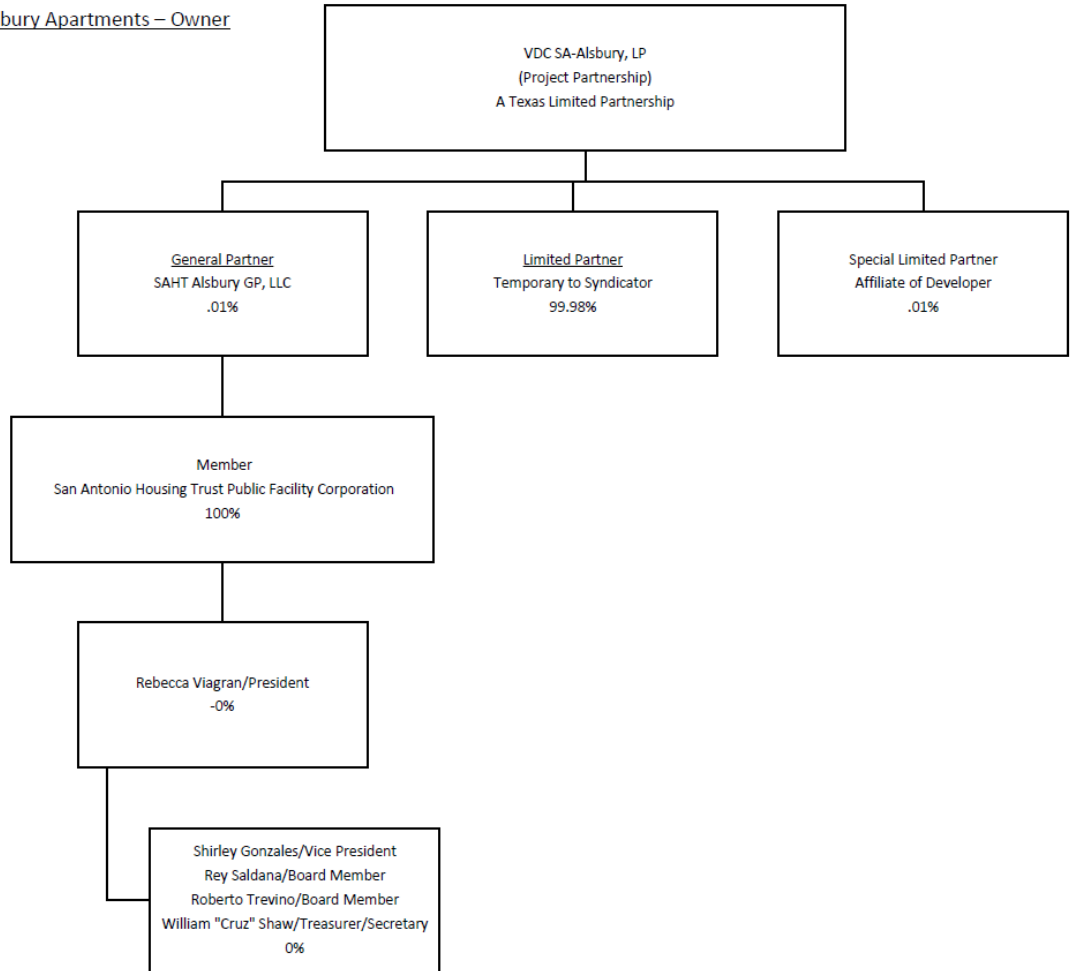
*General Information:* Alsbury Apartments is proposing new construction of 240 units to be located at the southeast quadrant of IH10 and Houston Street in San Antonio, Bexar County. The development will serve the general population and the site conforms to the current zoning. The Certificate of Reservation from the Bond Review Board was issued under the Priority 3 designation, which does not have a prescribed restriction on the percentage of Area Median Family Income (AMFI) that must be served; however, all of the units will be rent and income restricted at 60% of AMFI.

*Organizational Structure and Previous Participation:* The Borrower is VDC SA-Alsbury, LP, and includes the entities and principals as indicated in Exhibit A. The applicant's portfolio is considered a Category 2 and the previous participation was deemed acceptable by the EARAC without further review or discussion.

*Public Comment:* There were no letters of support or opposition received by the Department.

# EXHIBIT A

Alsbury Apartments – Owner



# 19416 Alsbury Park - Application Summary

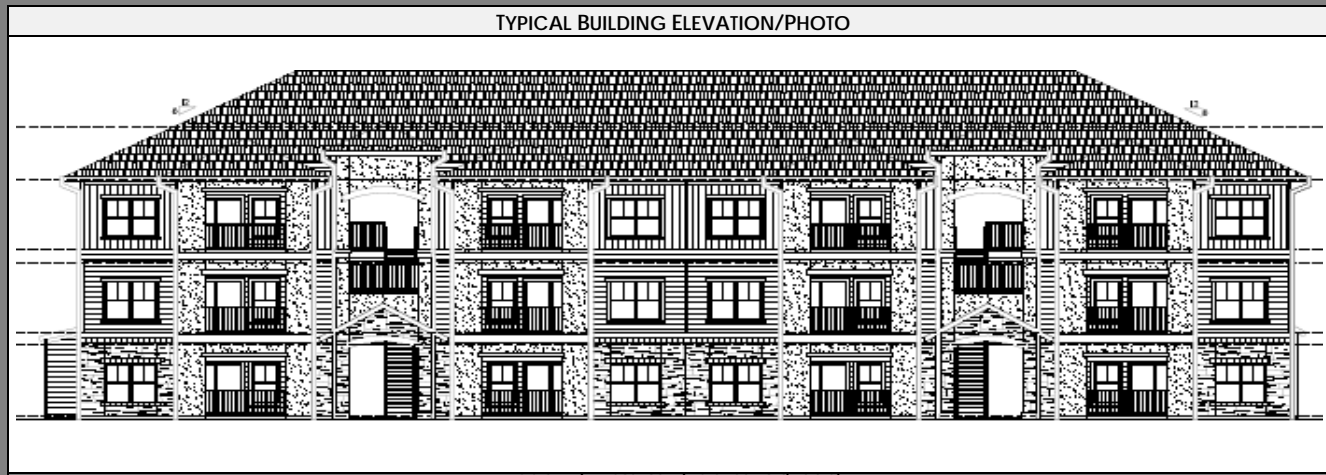
REAL ESTATE ANALYSIS DIVISION

March 14, 2019

PROPERTY IDENTIFICATION	
Application #	19416
Development	Alsbury Park
City / County	San Antonio / Bexar
Region/Area	9 / Urban
Population	General
Set-Aside	General
Activity	New Construction

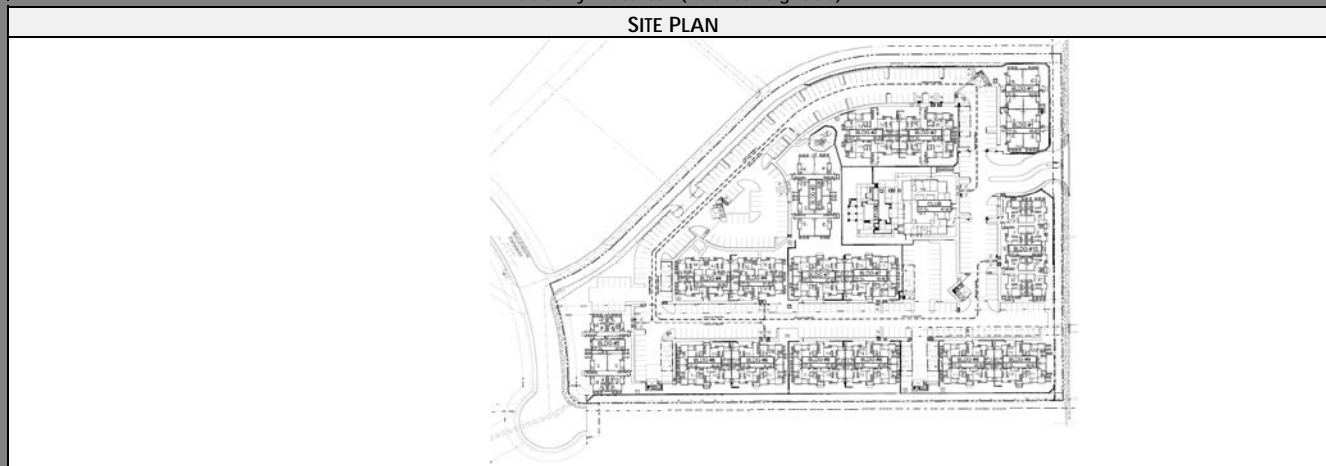
RECOMMENDATION					
TDHCA Program	Request	Recommended			
LIHTC (4% Credit)	\$1,392,094	\$1,392,094	\$5,800/Unit	\$0.88	

KEY PRINCIPAL / SPONSOR		
Versa Development - Manish Verma (Developer)		
Galaxy Builders - Ramiro Contreas (Contractor)		
San Antonio Housing Trust PFC (Related-Party Issuer)		
Related Parties	Contractor - Yes	Seller - No



UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	12	5%	30%	-	0%
1	68	28%	40%	-	0%
2	120	50%	50%	-	0%
3	32	13%	60%	240	100%
4	8	3%	MR	-	✓
<b>TOTAL</b>	<b>240</b>	<b>100%</b>	<b>TOTAL</b>	<b>240</b>	<b>100%</b>

PRO FORMA FEASIBILITY INDICATORS					
Pro Forma Underwritten			Applicant's Pro Forma		
Debt Coverage	1.16	Expense Ratio	44.2%		
Breakeven Occ.	85.4%	Breakeven Rent	\$730		
Average Rent	\$792	B/E Rent Margin	\$63		
Property Taxes	Exempt	Exemption/PILOT	100%		
Total Expense	\$3,979/unit	Controllable	\$2,954/unit		



MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (10% Maximum)	9.2%		
Highest Unit Capture Rate	23%	2 BR/60%	120
Dominant Unit Cap. Rate	23%	2 BR/60%	120
Premiums (↑60% Rents)	N/A	N/A	
Rent Assisted Units	N/A		

DEVELOPMENT COST SUMMARY			
Costs Underwritten		Applicant's Costs	
Avg. Unit Size	949 SF	Density	24.9/acre
Acquisition		\$08K/unit	\$2,000K
Building Cost	\$71.73/SF	\$68K/unit	\$16,338K
Hard Cost		\$85K/unit	\$20,511K
Total Cost		\$145K/unit	\$34,889K
Developer Fee	\$4,084K	(35% Deferred)	Paid Year: 7
Contractor Fee	\$2,851K	30% Boost	Yes

DEBT (Must Pay)					CASH FLOW DEBT / GRANT FUNDS					EQUITY / DEFERRED FEES	
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount
Mason Joseph Company	40/40	4.35%	\$18,800,000	1.16	City of San Antonio	40/40	1.00%	\$1,250,000	1.16	CREA	\$12,318,000
					City of San Antonio	40/40	1.00%	\$1,100,000	1.16	VDC Alsbury, LLC	\$1,421,250
<b>TOTAL DEBT (Must Pay)</b>			<b>\$18,800,000</b>		<b>CASH FLOW DEBT / GRANTS</b>			<b>\$2,350,000</b>		<b>TOTAL EQUITY SOURCES</b>	<b>\$13,739,250</b>
										<b>TOTAL DEBT SOURCES</b>	<b>\$21,150,000</b>
										<b>TOTAL CAPITALIZATION</b>	<b>\$34,889,250</b>

#### CONDITIONS

- Receipt and acceptance before Determination Notice:
  - Firm commitment including all terms for the \$2.35M in HOME/CDBG funds.
  - Firm commitment from HUD including all terms not to exceed annual debt service of \$1,039,564.
  - Documentation that recommended HUD Sound Transmission Classification Assessment Tool (STraCAT) has been completed, and certification from the Architect that all recommendations from the noise study and STraCAT are incorporated into the development plans.
- Receipt and acceptance by Cost Certification:
  - Architect certification that all noise assessment recommendations were implemented and the Development is compliant with HUD noise guidelines.

Should any terms of the proposed capital structure change or if there are material changes to the overall development plan or costs, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

#### BOND RESERVATION / ISSUER

Issuer	San Antonio Housing Trust Finance Corp
Expiration Date	7/22/2019
Bond Amount	\$20,000,000
BRB Priority	Priority 3
Close Date	TBD
Bond Structure	FHA 221 (d)4
% Financed with Tax-Exempt Bonds	64.0%

#### RISK PROFILE

##### STRENGTHS/MITIGATING FACTORS

- Partnership with San Antonio Housing Trust PFC
- Low expense ratio
- Breakeven at 35 units vacant

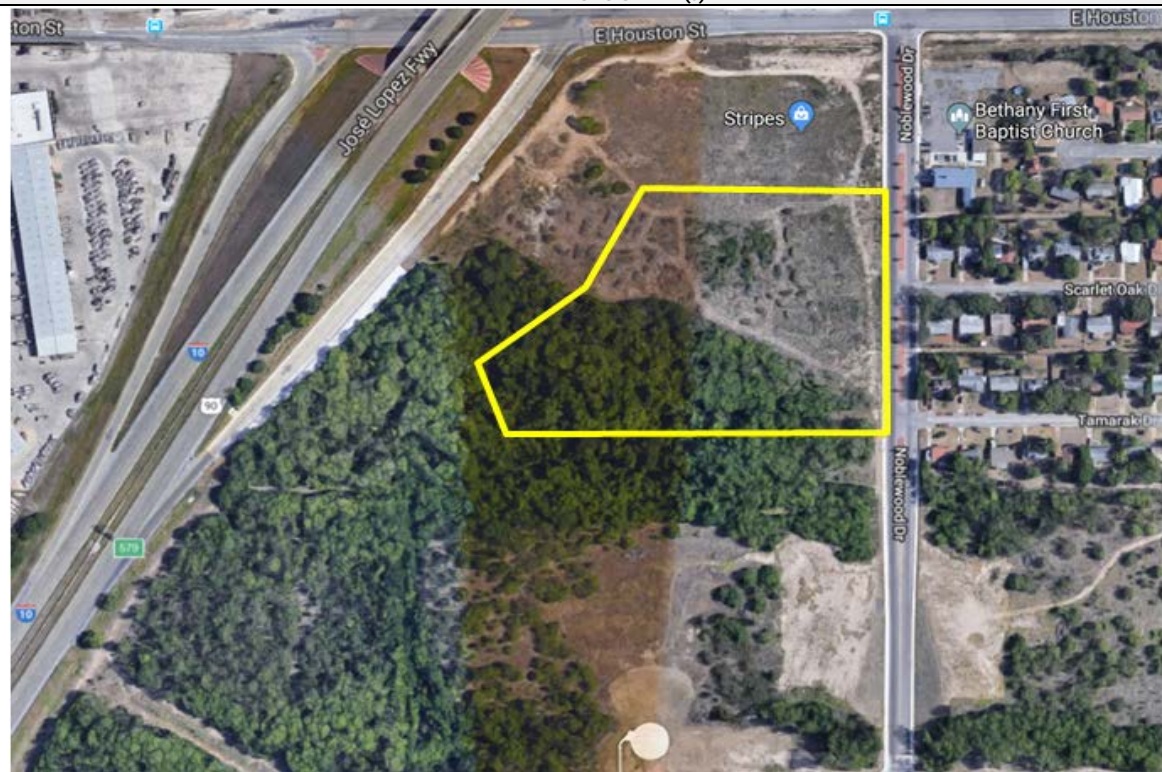
##### WEAKNESSES/RISKS

- Feasibility dependent on 100% tax exemption
- DCR

#### AREA MAP



#### AERIAL PHOTOGRAPH(S)



**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**MARCH 21, 2019**

Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits with another Issuer (#18459 Manchaca Commons, Austin ETJ)

**RECOMMENDED ACTION**

**WHEREAS**, a 4% Housing Tax Credit application for Manchaca Commons, sponsored by the Strategic Housing Finance Corporation and LDG Development was submitted to the Department on November 20, 2018;

**WHEREAS**, the Certification of Reservation from the Texas Bond Review Board was issued on November 8, 2018, and will expire on April 7, 2019;

**WHEREAS**, the proposed issuer of the bonds is the Strategic Housing Finance Corporation; and

**WHEREAS**, in accordance with 10 TAC §1.301(d)(1), the compliance history is designated as a Category 3 and deemed acceptable by Executive Award and Review Advisory Committee (“EARAC”) after review and discussion;

**NOW, therefore, it is hereby**

**RESOLVED**, that the issuance of a Determination Notice of \$1,287,551 in 4% Housing Tax Credits, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department’s website for Manchaca Commons is hereby approved as presented to this meeting.

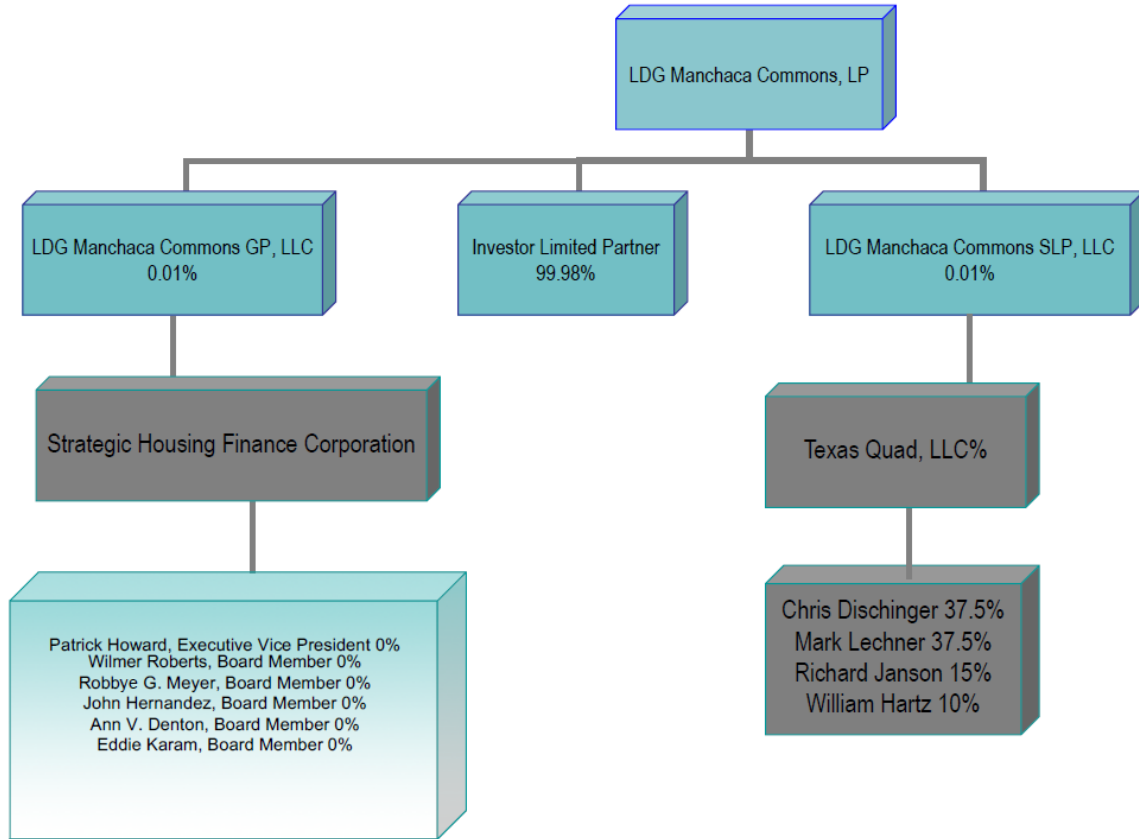
**BACKGROUND**

*General Information:* The property is located at 12010/12040 Manchaca Road, in the extraterritorial jurisdiction of Austin, Travis County, and involves the new construction of 240 units serving the general population. All of the units will be rent and income restricted at 60% of the Area Median Family Income.

*Organizational Structure:* The Borrower is, LDG Manchaca Commons, LP and includes the entities and principals as indicated in the organization chart in Exhibit A. The applicant’s portfolio is considered an extra large Category 3 and the previous participation was deemed acceptable by EARAC.

*Public Comment:* There were no letters of support or opposition received by the Department.

# EXHIBIT A

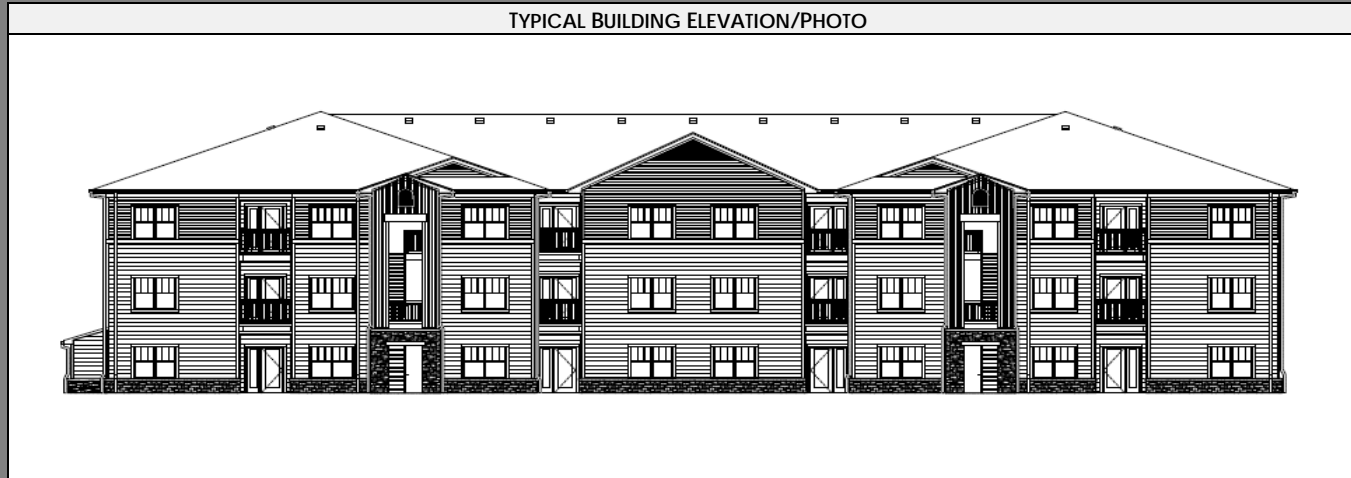




# 18459 Manchaca Commons - Application Summary

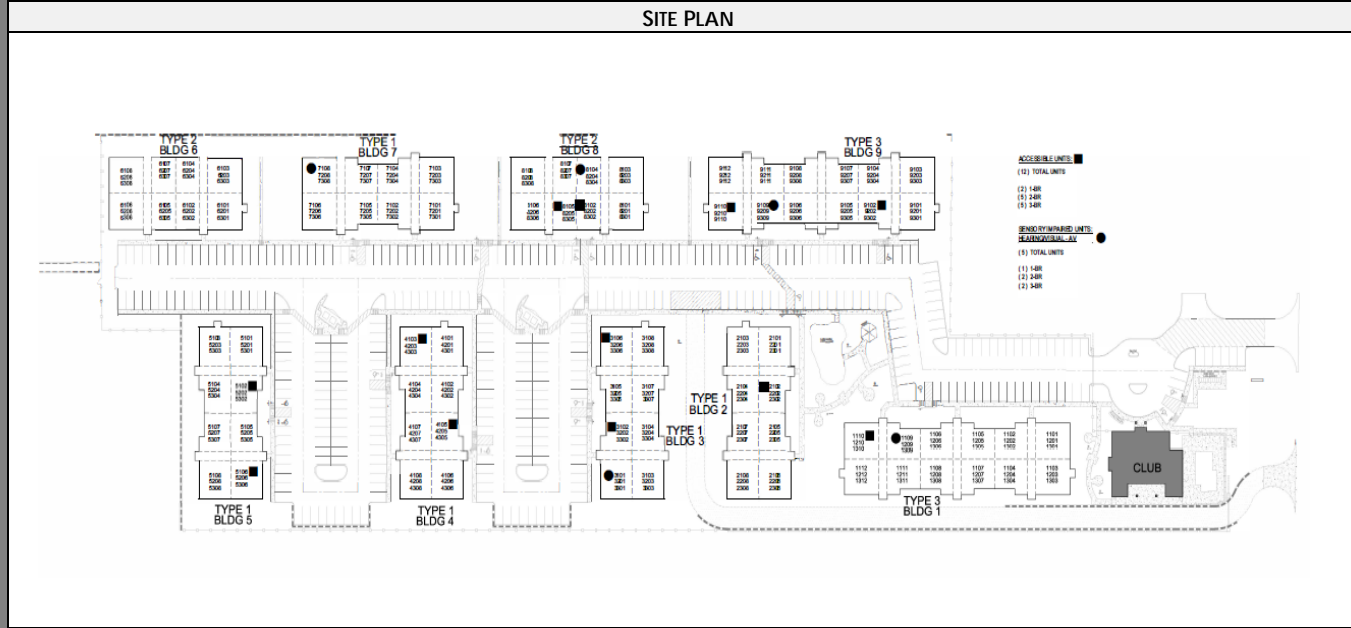
PROPERTY IDENTIFICATION		RECOMMENDATION			
Application #	18459	TDHCA Program	Request	Recommended	
Development	Manchaca Commons	LIHTC (4% Credit)	\$1,287,551	\$1,287,551	\$5,365/Unit \$0.93
City / County	Austin / Travis				
Region/Area	7 / Urban				
Population	General				
Set-Aside	General				
Activity	New Construction				

KEY PRINCIPAL / SPONSOR		
LDG Multifamily Jason Trevino Chris Dischinger Strategic Housing Finance Corp (Robbye Meyer)		
Related Parties	Contractor - Yes	Seller - No



UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	-	0%	30%	-	0%
1	24	10%	40%	-	0%
2	108	45%	50%	-	0%
3	108	45%	60%	240	100%
4	-	0%	MR	-	0%
<b>TOTAL</b>	<b>240</b>	<b>100%</b>	<b>TOTAL</b>	<b>240</b>	<b>100%</b>

PRO FORMA FEASIBILITY INDICATORS			
Pro Forma Underwritten		TDHCA's Pro Forma	
Debt Coverage	1.15	Expense Ratio	37.0%
Breakeven Occ.	84.9%	Breakeven Rent	\$1,044
Average Rent	\$1,140	B/E Rent Margin	\$95
Property Taxes	Exempt	Exemption/PILOT	100%
Total Expense	\$4,765/unit	Controllable	\$3,732/unit



MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (10% Maximum)			3.9%
Highest Unit Capture Rate	29%	3 BR/60%	108
Dominant Unit Cap. Rate	13%	2 BR/60%	108
Premiums (↑60% Rents)	# DIV/0!	# DIV/0!	
Rent Assisted Units	N/A		

DEVELOPMENT COST SUMMARY			
Costs Underwritten		Applicant's Costs	
Avg. Unit Size	1,032 SF	Density	21.0/acre
Acquisition		\$10K/unit	\$2,506K
Building Cost	\$79.45/SF	\$82K/unit	\$19,680K
Hard Cost		\$105K/unit	\$25,275K
Total Cost		\$186K/unit	\$44,699K
Developer Fee	\$5,089K	(69% Deferred)	Paid Year: 10
Contractor Fee	\$3,503K	30% Boost	No



DEBT (Must Pay)					CASH FLOW DEBT / GRANT FUNDS					EQUITY / DEFERRED FEES		
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount	
R4 Capital	16/40	5.00%	\$30,338,000	1.11						Citi	\$11,971,831	
Adjustment to Debt Per §10.302(c)	16/40	5.00%	(\$1,100,000)	1.15						LDG Multifamily, LLC	\$3,489,201	
										<b>TOTAL EQUITY SOURCES</b>	\$15,461,032	
										<b>TOTAL DEBT SOURCES</b>	\$29,238,000	
<b>TOTAL DEBT (Must Pay)</b>			<b>\$29,238,000</b>		<b>CASH FLOW DEBT / GRANTS</b>				<b>\$0</b>		<b>TOTAL CAPITALIZATION</b>	<b>\$44,699,032</b>

**CONDITIONS**

1 Receipt and acceptance by Cost Certification:

- a: Certification that testing for asbestos and lead-based paint was performed on the existing structures prior to demolition, and if necessary, a certification that any appropriate abatement procedures were implemented by a qualified abatement company.
- b: Documentation that mitigation was implemented to address the impact of the two 250-gallon aboveground storage tanks on the south and northeast adjacent properties.

Should any terms of the proposed capital structure change or if there are material changes to the overall development plan or costs, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

**BOND RESERVATION / ISSUER**

Issuer	Strategic HFC of Travis County
Expiration Date	4/7/2019
Bond Amount	\$35,000,000
BRB Priority	Priority 3
Close Date	4/1/2019
Bond Structure	Private Placement - Direct Purchase
% Financed with Tax-Exempt Bonds	81.8%

**RISK PROFILE**

STRENGTHS/MITIGATING FACTORS

- Experienced Developer
- Strong feasibility indicators (expense ratio, break-even)
- DCR stays above 1.18 for life of loan

WEAKNESSES/RISKS

- High controllable expenses

**AREA MAP**



**AERIAL PHOTOGRAPH(s)**



**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**MARCH 21, 2019**

Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits with another Issuer (#19401 Stallion Ridge, Fort Worth)

**RECOMMENDED ACTION**

**WHEREAS**, a 4% Housing Tax Credit application for Stallion Ridge, sponsored by Fort Worth Affordability, Inc. and LDG Development, was submitted to the Department on December 7, 2018;

**WHEREAS**, the Certification of Reservation from the Texas Bond Review Board was issued on January 10, 2019, and will expire on June 9, 2019; and

**WHEREAS**, the proposed issuer of the bonds is Trinity River Public Facility Corporation;

**NOW, therefore, it is hereby**

**RESOLVED**, that the issuance of a Determination Notice of \$1,292,387 in 4% Housing Tax Credits, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department's website for Stallion Ridge is hereby approved as presented to this meeting.

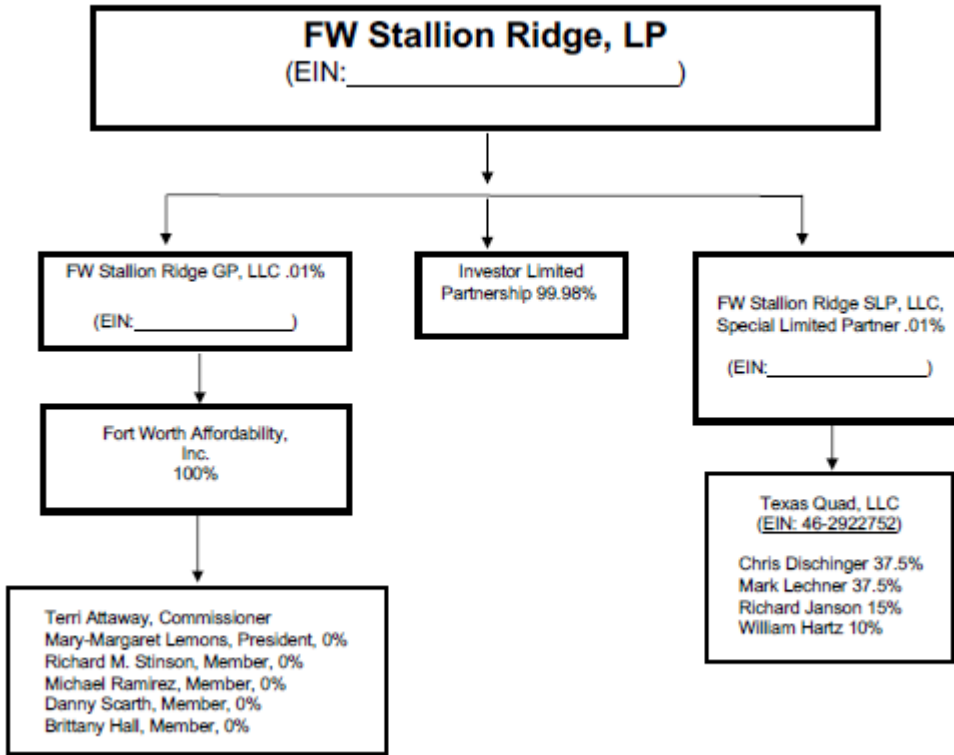
**BACKGROUND**

*General Information:* Stallion Ridge is proposing new construction of 204 units to be located at South Race Street and Shelby Lane (proposed Wichita Street) in Fort Worth, Tarrant County. The development will serve the general population and the site conforms to the current zoning. The Certificate of Reservation from the Bond Review Board was issued under the Priority 3 designation, which does not have a prescribed restriction on the percentage of Area Median Family Income (AMFI) that must be served. Of the 204 units, 193 will be rent and income restricted at 60% of AMFI, with the remaining 11 units at market rate with no rent or income restrictions.

*Organizational Structure and Previous Participation:* The Borrower is FW Stallion Ridge, LP, and includes the entities and principals as indicated in Exhibit A. The applicant's portfolio is considered a Category 2 and the previous participation was deemed acceptable by the EARAC without further review or discussion.

*Public Comment:* There were no letters of support or opposition received by the Department.

EXHIBIT A



# 19401 Stallion Ridge - Application Summary

REAL ESTATE ANALYSIS DIVISION

March 14, 2019

PROPERTY IDENTIFICATION		RECOMMENDATION				KEY PRINCIPAL / SPONSOR		
Application #	19401	TDHCA Program	Request	Recommended		LDG Multifamily		
Development	Stallion Ridge	LIHTC (4% Credit)	\$1,292,387	\$1,292,387	\$6,335/Unit	\$0.94	Chris Dischinger	
City / County	Fort Worth / Tarrant							Jason Trevino
Region/Area	3 / Urban							Chase Darst
Population	General							Fort Worth Housing Solutions, Inc
Set-Aside	General							(Affiliate of Fort Worth Housing Authority)
Activity	New Construction							Related Parties

TYPICAL BUILDING ELEVATION/PHOTO

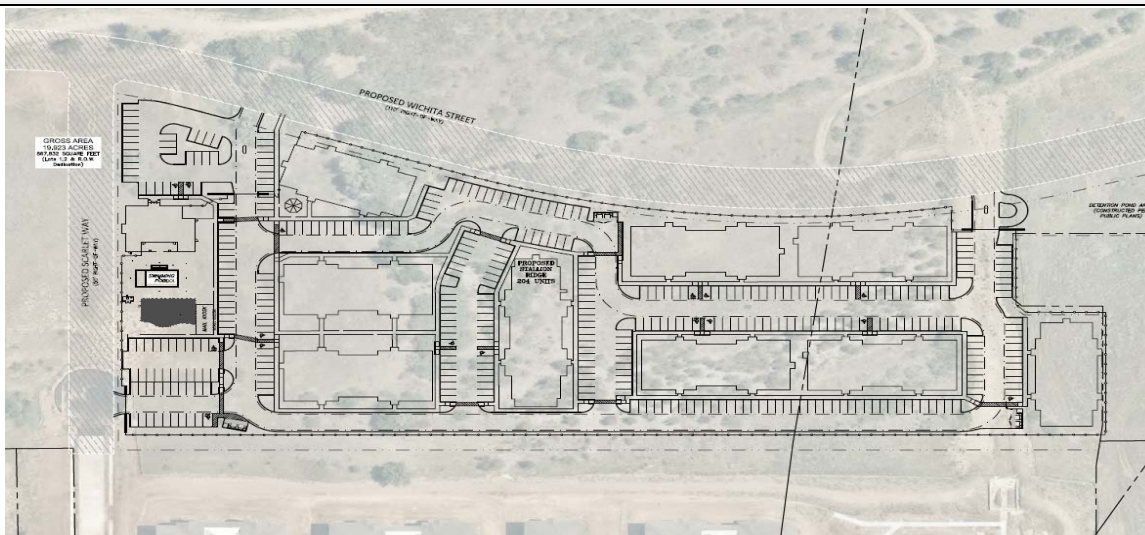


UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	-	0%	30%	-	0%
1	24	12%	40%	-	0%
2	108	53%	50%	-	0%
3	60	29%	60%	193	95%
4	12	6%	MR	11	5%
<b>TOTAL</b>	<b>204</b>	<b>100%</b>	<b>TOTAL</b>	<b>204</b>	<b>100%</b>

PRO FORMA FEASIBILITY INDICATORS

Pro Forma Underwritten		Applicant's Pro Forma	
Debt Coverage	1.15	Expense Ratio	37.7%
Breakeven Occ.	85.2%	Breakeven Rent	\$918
Average Rent	\$999	B/E Rent Margin	\$81
Property Taxes	Exempt	Exemption/PILOT	100%
Total Expense	\$4,261/unit	Controllable	\$3,231/unit

SITE PLAN



MARKET FEASIBILITY INDICATORS

Gross Capture Rate (15% Maximum)			9.4%
Highest Unit Capture Rate	31%	2 BR/60%	93
Dominant Unit Cap. Rate	31%	2 BR/60%	93
Premiums (↑60% Rents)	#N/A	#N/A	
Rent Assisted Units	40	20% Total Units	

DEVELOPMENT COST SUMMARY

Costs Underwritten		Applicant's Costs	
Avg. Unit Size	1,151 SF	Density	11.8/acre
Acquisition		\$09K/unit	\$1,898K
Building Cost	\$70.35/SF	\$81K/unit	\$16,524K
Hard Cost		\$110K/unit	\$22,380K
Total Cost		\$183K/unit	\$37,284K
Developer Fee	\$4,138K	(89% Deferred)	Paid Year: 12
Contractor Fee	\$3,133K	30% Boost	Yes



DEBT (Must Pay)					CASH FLOW DEBT / GRANT FUNDS					EQUITY / DEFERRED FEES	
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount
Red Stone	17/40	5.22%	\$20,000,000	1.19	Fort Worth Housing Solutions	30/0	3.00%	\$750,000	1.15	Enterprise	\$12,146,004
Adjustment to Debt Per §10.302(c)	17/40	5.22%	(\$300,000)	1.20						LDG Multifamily, LLC	\$3,687,926
Red Stone	17/40	5.22%	\$1,000,000	1.15						<b>TOTAL EQUITY SOURCES</b>	<b>\$15,833,930</b>
										<b>TOTAL DEBT SOURCES</b>	<b>\$21,450,000</b>
<b>TOTAL DEBT (Must Pay)</b>			<b>\$20,700,000</b>		<b>CASH FLOW DEBT / GRANTS</b>			<b>\$750,000</b>		<b>TOTAL CAPITALIZATION</b>	<b>\$37,283,930</b>

#### CONDITIONS

1 Receipt and acceptance before Determination Notice:

- a: Approval for the 20 RAD units from HUD along with the HUD approved rents which are consistent with this underwriting.
- b: Firm commitment letter from Fort Worth Housing Solutions for \$750,000 loan clearly stating all terms and conditions.
- c: A statement from Enterprise Community Investment, Inc acknowledging that the construction budget does not include any cash reserves, and the only reserve identified for the project is a Letter of Credit to fund the Operating Reserve.

Should any terms of the proposed capital structure change or if there are material changes to the overall development plan or costs, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

#### BOND RESERVATION / ISSUER

Issuer	Trinity River PFC
Expiration Date	6/9/2019
Bond Amount	\$20,000,000
BRB Priority	Priority 3
Close Date	TBD
Bond Structure	Private Placement with Red Stone
% Financed with Tax-Exempt Bonds	66.2%

#### RISK PROFILE

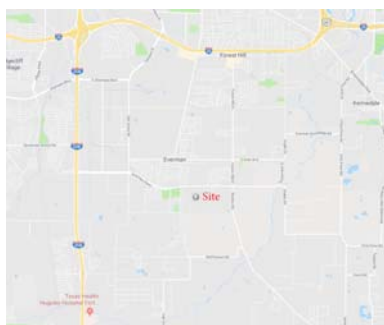
##### STRENGTHS/MITIGATING FACTORS

- First phase is currently 98% occupied
- Experienced Developer
- An affiliate of the Housing Authority owns GP

##### WEAKNESSES/RISKS

- 9.4% Gross Capture Rate
- 1.15 first year debt coverage

#### AREA MAP



#### AERIAL PHOTOGRAPH(S)



**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**MARCH 21, 2019**

Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits with another Issuer (#19402 Culebra Creek Apartments, San Antonio)

**RECOMMENDED ACTION**

**WHEREAS**, a 4% Housing Tax Credit application for Culebra Creek Apartments, sponsored by Pedcor Investments, was submitted to the Department on December 7, 2018;

**WHEREAS**, in lieu of a Certification of Reservation, a Carryforward Designation Certificate was issued by the Texas Bond Review Board on January 4, 2019, and will expire on December 31, 2021;

**WHEREAS**, the proposed issuer of the bonds is San Antonio Housing Trust Public Facility Corporation; and

**WHEREAS**, due to the Carryforward Designation Certificate, Executive Award and Review Advisory Committee (EARAC) recommends the issuance of the Determination Notice with the condition that the closing occur within 120 days (on or before July 19, 2019);

**NOW, therefore, it is hereby**

**RESOLVED**, that the issuance of a Determination Notice of \$2,320,033 in 4% Housing Tax Credits, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department's website for Culebra Creek Apartments is hereby approved as presented to this meeting; and

**FURTHER RESOLVED**, that provided the Applicant has not closed on the bond financing on or before July 19, 2019, the Board authorizes the Director of Multifamily Finance or the Acting Director to approve or deny an extension of the Determination Notice date, subject to an updated previous participation review, if necessary.

**BACKGROUND**

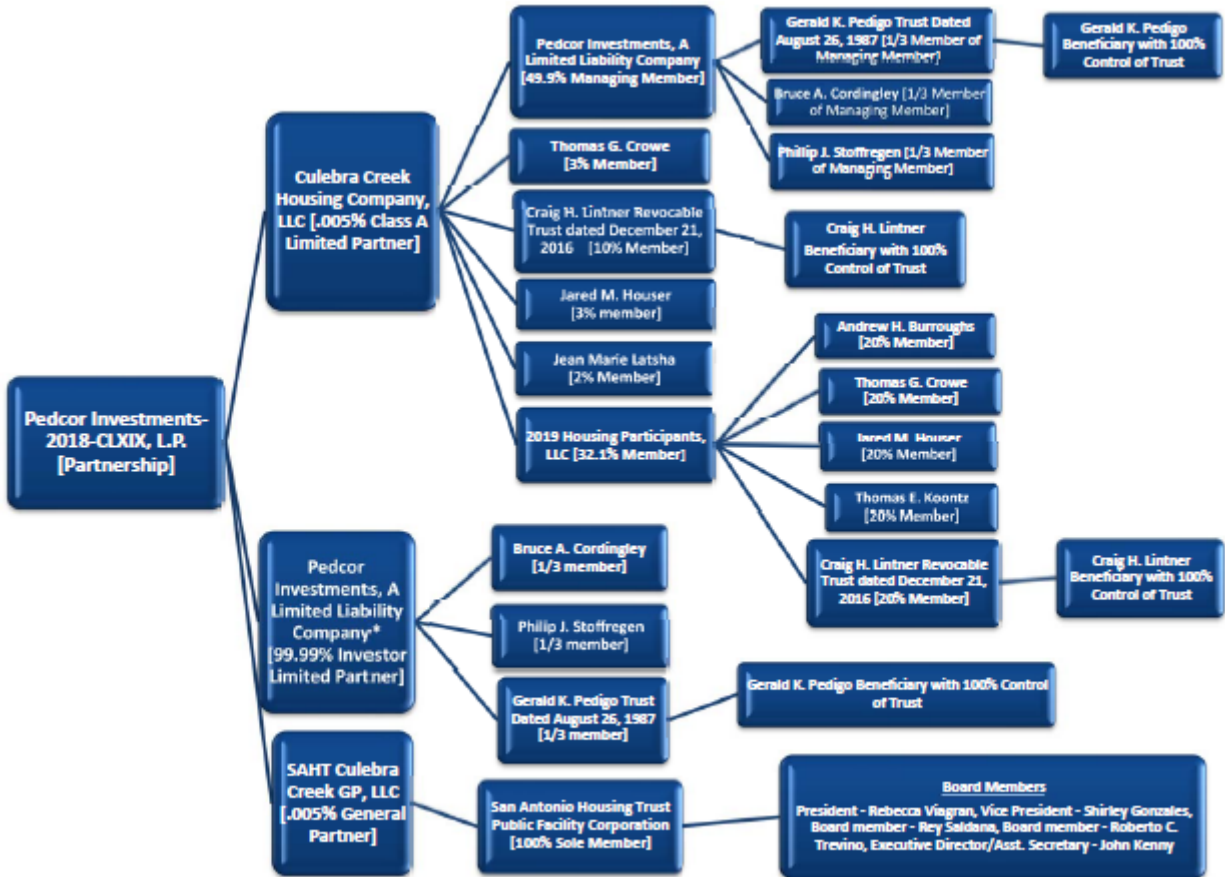
*General Information:* Culebra Creek Apartments proposes the new construction of 312 units to be located at approximately 12100 Culebra Road (NWQ of FM 1560 and FM 741) in San Antonio, Bexar

County. The development will serve the general population and all of the units will be rent and income restricted at 60% of Area Median Family Income (AMFI). The site conforms to the current zoning.

*Organizational Structure and Previous Participation:* The Borrower is Pedcor Investments-2018-CLXIX, L.P., and includes the entities and principals as indicated in Exhibit A. The applicant's portfolio is considered a Category 1 and the previous participation was deemed acceptable by the EARAC without further review or discussion.

*Public Comment:* There were no letters of support or opposition received by the Department.

EXHIBIT A





# 19402 Culebra Creek Apartments - Application Summary

PROPERTY IDENTIFICATION	
Application #	19402
Development	Culebra Creek Apartments
City / County	San Antonio / Bexar
Region/Area	11 / Urban
Population	General
Set-Aside	General
Activity	New Construction

RECOMMENDATION					
TDHCA Program	Request	Recommended			
LIHTC (4% Credit)	\$2,320,033	\$2,320,033	\$7,436/Unit	\$0.92	

KEY PRINCIPAL / SPONSOR		
<ul style="list-style-type: none"> <li>Jean Latsha &amp; Craig Lintner / Pedcor Investments, LLC</li> <li>San Antonio Housing Trust Public Facility Corporation / Partnership GP</li> </ul>		
Related Parties	Contractor - Yes	Seller - No

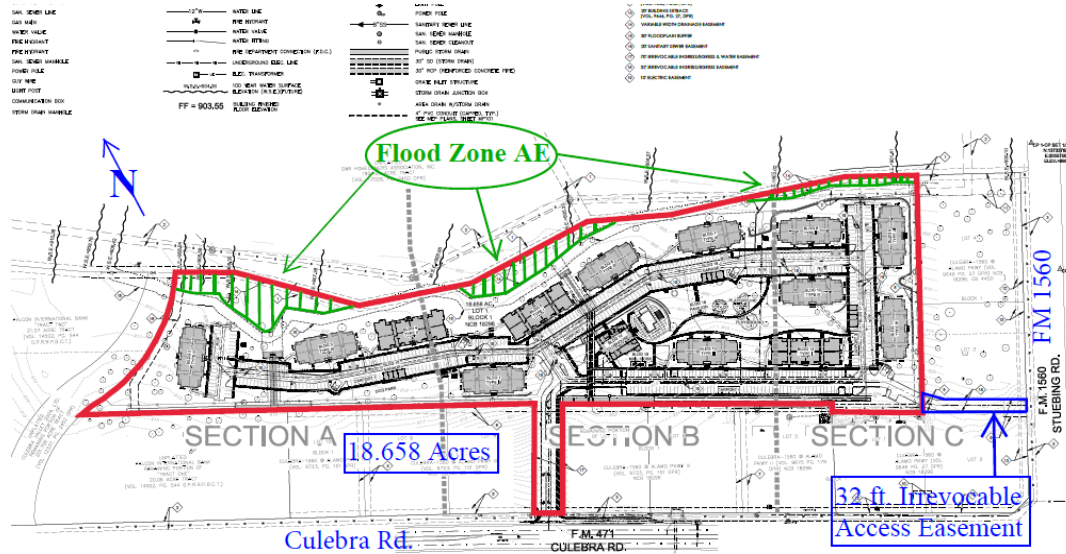
TYPICAL BUILDING ELEVATION/PHOTO



UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	-	0%	30%	-	0%
1	120	38%	40%	-	0%
2	156	50%	50%	-	0%
3	30	10%	60%	312	100%
4	6	2%	MR	-	0%
<b>TOTAL</b>	<b>312</b>	<b>100%</b>	<b>TOTAL</b>	<b>312</b>	<b>100%</b>

PRO FORMA FEASIBILITY INDICATORS					
Pro Forma Underwritten			Applicant's Pro Forma		
Debt Coverage	1.15	Expense Ratio	35.8%		
Breakeven Occ.	84.8%	Breakeven Rent	\$732		
Average Rent	\$801	B/E Rent Margin	\$69		
Property Taxes	Exempt	Exemption/PILOT	100%		
Total Expense	\$3,260/unit	Controllable	\$2,520/unit		

SITE PLAN



MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (15% Maximum)	11.5%		
Highest Unit Capture Rate	46%	1 BR/60%	120
Dominant Unit Cap. Rate	44%	2 BR/60%	156
Premiums (+60% Rents)	N/A	N/A	
Rent Assisted Units	N/A	N/A	

DEVELOPMENT COST SUMMARY			
Costs Underwritten		Applicant's Costs	
Avg. Unit Size	934 SF	Density	16.7/acre
Acquisition		\$10K/unit	\$3,166K
Building Cost	\$85.11/SF	\$80K/unit	\$24,809K
Hard Cost		\$110K/unit	\$34,472K
Total Cost		\$188K/unit	\$58,563K
Developer Fee	\$6,964K	(34% Deferred)	Paid Year: 8
Contractor Fee	\$4,826K	30% Boost	Yes

DEBT (Must Pay)					CASH FLOW DEBT / GRANT FUNDS					EQUITY / DEFERRED FEES	
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount
Merchants Capital - 221(d)4	40/40	3.00%	\$34,884,459	1.15						Pedcor Funding Corp.	\$21,333,630
										Pedcor Development Associates	\$2,344,648
<b>TOTAL DEBT (Must Pay)</b>			<b>\$34,884,459</b>		<b>CASH FLOW DEBT / GRANTS</b>			<b>\$0</b>		<b>TOTAL EQUITY SOURCES</b>	<b>\$23,678,278</b>
										<b>TOTAL DEBT SOURCES</b>	<b>\$34,884,459</b>
										<b>TOTAL CAPITALIZATION</b>	<b>\$58,562,737</b>

**CONDITIONS**

- 1 Receipt and acceptance by Cost Certification:
- Evidence that the property qualifies for 100% property tax exemption.

Should any terms of the proposed capital structure change or if there are material changes to the overall development plan or costs, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

BOND RESERVATION / ISSUER	
Issuer	San Antonio Housing Trust Finance Corporation
Expiration Date	12/31/2021
Bond Amount	\$41,000,000
BRB Priority	Carry-forward
Close Date	TBD
Bond Structure	FHA 221(d)(4)
% Financed with Tax-Exempt Bonds	70.3%

**RISK PROFILE**

STRENGTHS/MITIGATING FACTORS

- Stabilized tax credit projects within a 20 minute drive time are 98.2% occupied (11 properties/2,138 units)
- Breakeven occupancy occurs with 48 units vacant (underwritten at 23)
- In-fill location at the intersection of 2 major thoroughfares
- Attractively designed new construction should enhance marketability

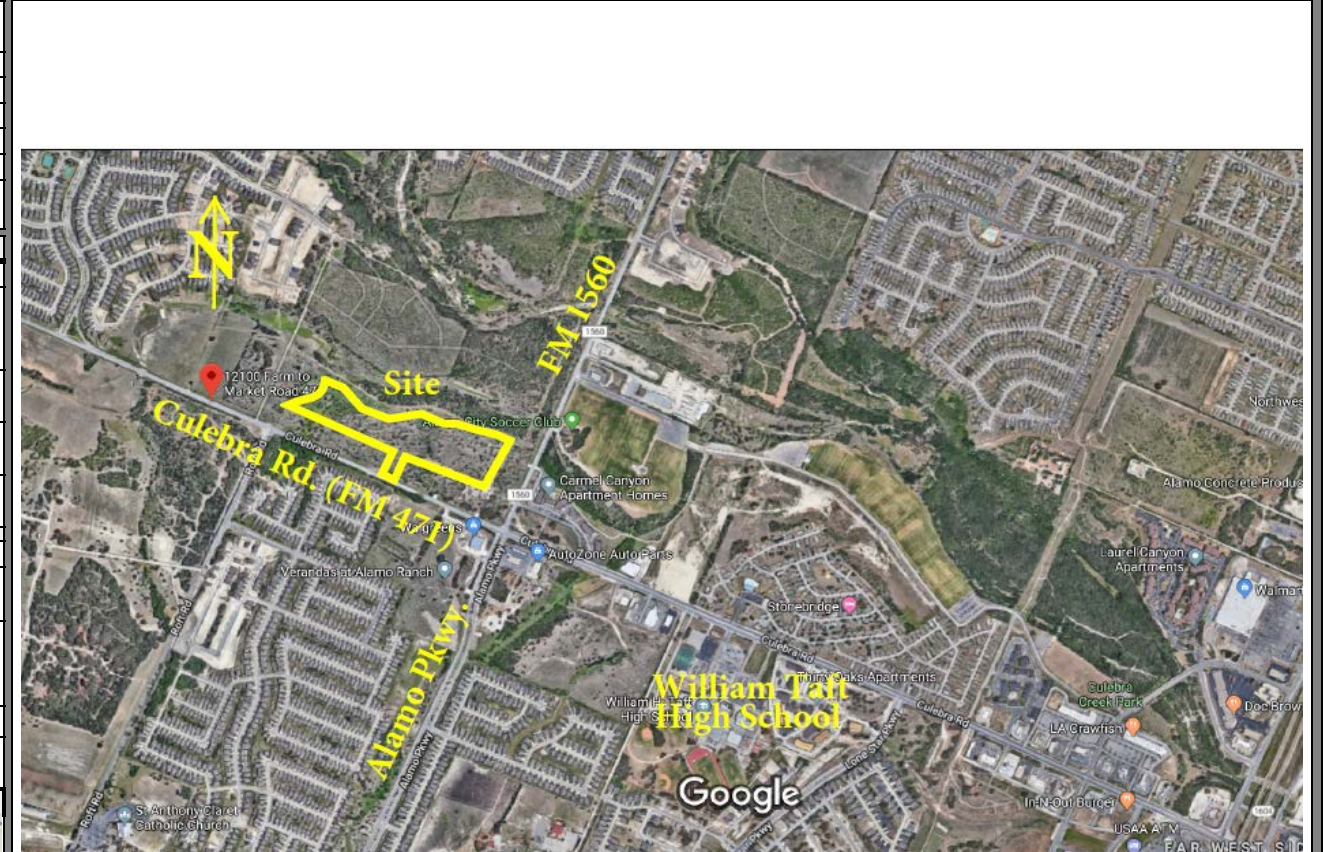
WEAKNESSES/RISKS

- High 1 & 2 bedroom unit capture rates (46% & 44% respectively)
- Feasibility relies on 100% property tax exemption, achieving maximum 60% rents and a 3% Management Fee
- Interest rate sensitivity
- Potential noise nuisance from nearby sporting clays and skeet shooting complex (shotguns only)

**AREA MAP**



**AERIAL PHOTOGRAPH(S)**



**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**MARCH 21, 2019**

Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits with another Issuer (#19413 Wurzbach Manor, San Antonio)

**RECOMMENDED ACTION**

**WHEREAS**, a 4% Housing Tax Credit application for Wurzbach Manor, sponsored by Levy Affiliated was submitted to the Department on November 2, 2018;

**WHEREAS**, the Certification of Reservation from the Texas Bond Review Board was issued on February 15, 2019, and will expire on July 15, 2019;

**WHEREAS**, the proposed issuer of the bonds is the Las Varas Public Facilities Corporation;

**WHEREAS**, pursuant to 10 TAC §11.101(a)(2) of the 2019 Qualified Allocation Plan related to Undesirable Site Features, applicants are required to disclose to the Department the existence of certain characteristics of a proposed development site;

**WHEREAS**, the applicant has disclosed the presence of an undesirable site feature, which includes the proximity of the development to a sexually orientated business; and

**WHEREAS**, staff has conducted a further review of the proposed development site and surrounding neighborhood and based on the documentation provided and discussed herein relating to the undesirable site feature, recommends the proposed site be found eligible under 10 TAC §11.101(a)(2) of the 2019 Qualified Allocation Plan;

**NOW, therefore, it is hereby**

**RESOLVED**, that the site for Wurzbach Manor is hereby found to be eligible; and

**FURTHER RESOLVED**, that the issuance of a Determination Notice of \$837,177 in 4% Housing Tax Credits, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department's website for Wurzbach Manor is hereby approved as presented to this meeting.

## **BACKGROUND**

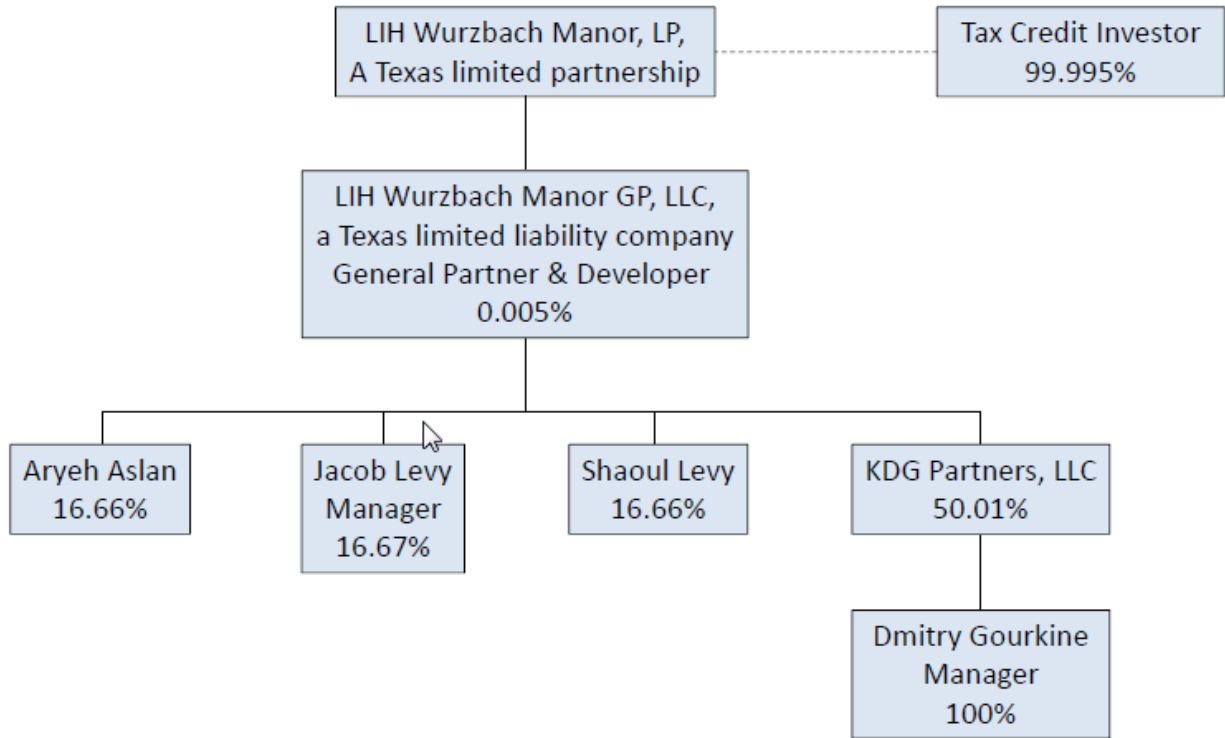
*General Information:* The property is located at 8730 Wurzbach Road, San Antonio, Bexar County, and involves the acquisition and rehabilitation of 161 units serving the general population. All but one of the units will be rent and income restricted at 60% of the Area Median Family Income, with the remaining unit being employee occupied. Wurzbach Manor was originally constructed in 1978 and after receiving an award of 4% Housing Tax Credits in 2002 underwent rehabilitation. Because it was a 4% HTC award and no scoring incentives were committed to the property, the Right of First Refusal was not elected, and therefore was not reflected in the original LURA for this development as a requirement.

*Site Analysis:* The presence of an undesirable site feature under 10 TAC §11.101(a)(2) requires additional site analysis and the site feature attributable to Wurzbach Manor involves proximity to a sexually oriented business that is within 300 feet of the development. Pursuant to the rule, rehabilitation developments with ongoing and existing federal assistance from HUD may be granted an exemption by the Board. Of the 161 total units, 145 units are covered by a Housing Assistance Payment contract with HUD. Based on the aforementioned information and in conformance with the rule, staff believes the development site should be considered eligible pursuant to 10 TAC §11.101(a)(2).

*Organizational Structure:* The Borrower is LIH Wurzbach Manor, LP and includes the entities and principals as indicated in the organization chart in Exhibit A. The applicant's portfolio is considered a Category 1 and the previous participation was deemed acceptable by EARAC.

*Public Comment:* There were no letters of support or opposition received by the Department.

**EXHIBIT A**





# 18445 Wurzbach Manor - Application Summary

REAL ESTATE ANALYSIS DIVISION

February 11, 2019

PROPERTY IDENTIFICATION	
Application #	18445
Development	Wurzbach Manor
City / County	San Antonio / Bexar
Region/Area	9 / Urban
Population	General
Set-Aside	General
Activity	Acquisition/Rehab (Built in 1978)

RECOMMENDATION					
TDHCA Program	Request	Recommended			
LIHTC (4% Credit)	\$837,177	\$837,177	\$5,200/Unit	\$0.88	

KEY PRINCIPAL / SPONSOR		
Levy Affiliated Jacob Levy (Developer) Sarah Andre (Consultant)		
Related Parties	Contractor - Yes	Seller - No

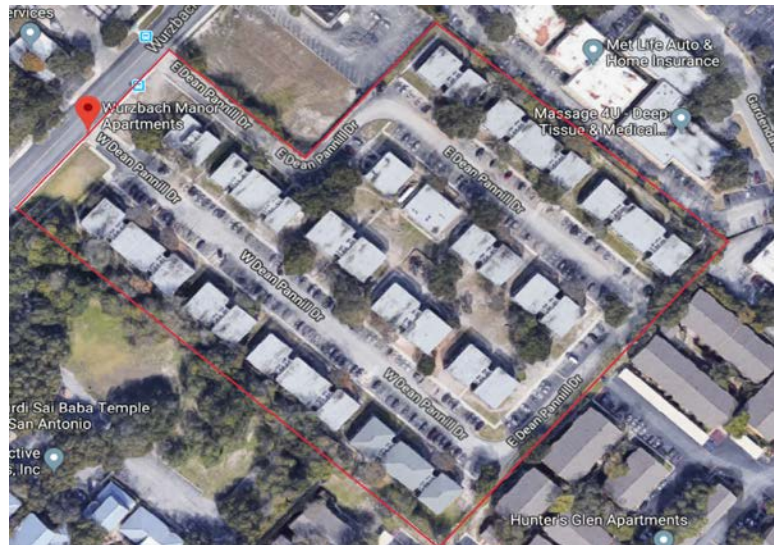
## TYPICAL BUILDING ELEVATION/PHOTO



UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	-	0%	30%	-	0%
1	21	13%	40%	-	0%
2	40	25%	50%	-	0%
3	80	50%	60%	160	99%
4	20	12%	MR	1	1%
<b>TOTAL</b>	<b>161</b>	<b>100%</b>	<b>TOTAL</b>	<b>161</b>	<b>100%</b>

PRO FORMA FEASIBILITY INDICATORS			
Pro Forma Underwritten		Applicant's Pro Forma	
Debt Coverage	1.15	Expense Ratio	43.9%
Breakeven Occ.	85.7%	Breakeven Rent	\$1,198
Average Rent	\$1,294	B/E Rent Margin	\$96
Property Taxes	\$1,340/unit	Exemption/PILOT	0%
Total Expense	\$6,404/unit	Controllable	\$3,697/unit

## SITE PLAN



MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (10% Maximum)	0.1%		
Highest Unit Capture Rate	2%	4 BR/60%	2%
Dominant Unit Cap. Rate	0%	2 BR/60%	5
Premiums (↑60% Rents)	N/A	N/A	
Rent Assisted Units	145	90% Total Units	

DEVELOPMENT COST SUMMARY			
Costs Underwritten		TDHCA's Costs - Based on PCA	
Avg. Unit Size	833 SF	Density	17.9/acre
Acquisition		\$81K/unit	\$13,075K
Building Cost	\$47.39/SF	\$39K/unit	\$6,352K
Hard Cost		\$54K/unit	\$8,677K
Total Cost		\$186K/unit	\$29,910K
Developer Fee	\$3,237K	(38% Deferred)	Paid Year: 6
Contractor Fee	\$1,109K	30% Boost	No

REHABILITATION COSTS / UNIT					
Site Work	\$7K	14%	Finishes/Fixtures \$25K	46%	
Building Shell	\$6K	12%	Amenities	\$2K	4%
HVAC	\$6K	11%	Total Exterior	\$16K	32%
Appliances	\$2K	4%	Total Interior	\$33K	68%

DEBT (Must Pay)					CASH FLOW DEBT / GRANT FUNDS					EQUITY / DEFERRED FEES	
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount
Red Capital (FHA Loan)	40/40	4.75%	\$20,817,800	1.08	Cash Flow from Operation	0/0	0.00%	\$755,552	1.15	CREA	\$7,366,347
Adjustment to Debt Per §10.302(c)(2)	40/40	4.75%	(\$1,250,000)	1.15	WB Affordable Housing, LP (Seller)	41/0	5.00%	\$1,000,000	1.15	LIH Wurzbach Manor, LP	\$1,220,256
<b>TOTAL DEBT (Must Pay)</b>			<b>\$19,567,800</b>		<b>CASH FLOW DEBT / GRANTS</b>			<b>\$1,755,552</b>		<b>TOTAL DEBT SOURCES</b>	<b>\$21,323,352</b>
<b>TOTAL CAPITALIZATION</b>											<b>\$29,909,955</b>

**CONDITIONS**

- 1 Receipt and acceptance before Determination Notice:
  - a: Approval of FHA Application from HUD with all terms and conditions showing approval of rents comparable to that of the Rent Comparable Study.
  - b: Updated Property Condition Assessment confirming the \$133K in grading costs and \$227K in additional building costs.
- 2 Receipt and acceptance by Cost Certification:
  - a: Certification of comprehensive testing for asbestos; that any appropriate abatement procedures were implemented by a qualified abatement company; and that any remaining asbestos containing materials are being managed in accordance with an acceptable Operations and Maintenance (O&M) program.
  - b: Architect certification that all noise assessment recommendations were implemented and the Development is compliant with HUD noise guidelines.

Should any terms of the proposed capital structure change or if there are material changes to the overall development plan or costs, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

**BOND RESERVATION / ISSUER**

Issuer	Las Varas PFC
Expiration Date	3/11/2019
Bond Amount	\$20,000,000
BRB Priority	Priority 3
Close Date	TBD
Bond Structure	FHA 221(d)(4) Loan/Short Term Bonds
% Financed with Tax-Exempt Bonds	82.8%

**RISK PROFILE**

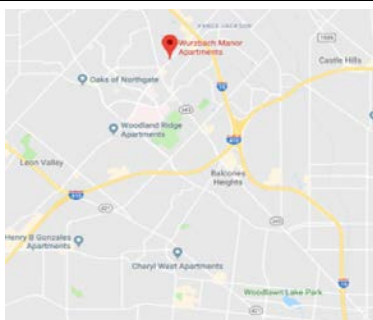
**STRENGTHS/MITIGATING FACTORS**

- HAP contract on 145 of the 161 units
- Developer Experience within Affordable Industry
- Market Occupancy at 97%

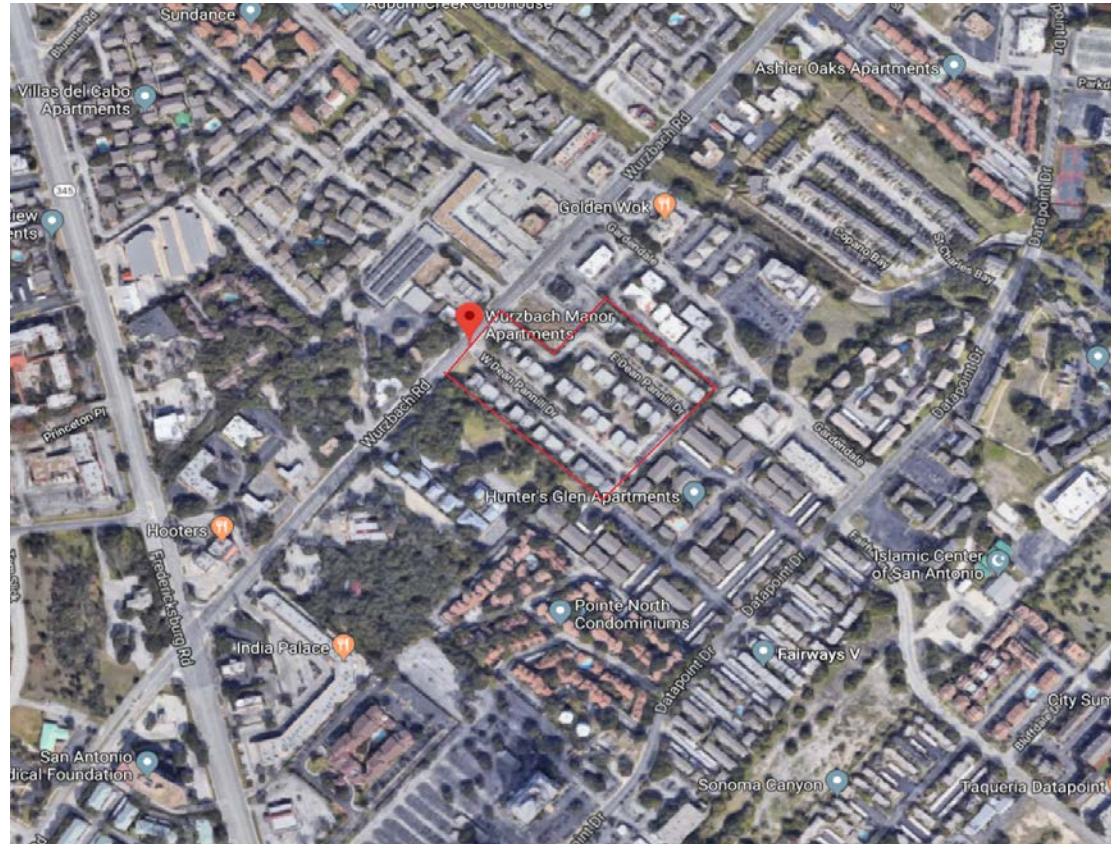
**WEAKNESSES/RISKS**

- Submitted with DCR of 1.15

**AREA MAP**



**AERIAL PHOTOGRAPH(S)**



1g



**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**MARCH 21, 2019**

Presentation, discussion, and possible action on an Amendment to the 2019-2 Multifamily Special Purpose Notice of Funding Availability

**RECOMMENDED ACTION**

**WHEREAS**, the Board previously approved the 2019-2 Multifamily Special Purpose Notice of Funding Availability (2019-2 NOFA), which included \$200,000 in Tax Credit Assistance Program loan repayments (TCAP Repayment Funds or TCAP RF);

**WHEREAS**, funds under the 2019-2 NOFA are available for applications in which Development Sites have been identified for proposed affordable multifamily rental housing and in which applicants have site control;

**WHEREAS**, costs eligible for reimbursement with funds granted under the 2019-2 NOFA include predevelopment costs such as costs for Third-Party Reports, accounting fees, architectural and engineering fees, zoning change fees, land surveys, legal fees unrelated to Application preparation, and fees related to obtaining site control;

**WHEREAS**, section 4(c) of the 2019-2 NOFA currently makes costs related to a Development Site that is ineligible under 10 TAC §11.101 related to Site and Development Requirements and Restrictions ineligible costs unless the Department's Governing Board has made a determination of eligibility; and

**WHEREAS**, staff recommends that section 4(c) of the 2019-2 NOFA be amended to allow Applicants to be reimbursed for already expended eligible costs in the event that work completed as a result of 2019-2 NOFA funding reveals that the Development Site may be ineligible under 10 TAC §11.101;

**NOW, therefore, it is hereby**

**RESOLVED**, that section 4(c) of the 2019-2 NOFA be changed by adopting the First Amendment to the 2019-2 NOFA; and

**FURTHER RESOLVED**, the Executive Director and staff as designated by the Executive Director are authorized, empowered, and directed, for and on behalf of the Department to execute such documents, instruments, and writings and perform such acts and deeds as may be necessary to effectuate the foregoing.

## BACKGROUND

On February 21, 2019, the Department's Governing Board approved the 2019-2 Multifamily Special Purpose (Predevelopment) Notice of Funding Availability, which was subsequently published in the *Texas Register* on March 8, 2019, announcing the availability of up to \$200,000 in TCAP RF, for predevelopment activities related to the development of affordable multifamily rental housing. Since that time, staff realized the 2019-2 NOFA contained problematic language regarding an applicant's Development Site, and how ineligible costs would be determined. Currently, section 4(c) of the 2019-2 NOFA states the following as potential eligible costs:

"Costs related to a Development Site that is ineligible under 10 TAC §11.101 related to Site and Development Requirements and Restrictions are ineligible costs, unless the Department's Governing Board has made a determination of eligibility. An Applicant must submit a request for pre-determination prior to or with its Application under this NOFA."

Staff believes this language is problematic since an Applicant may not be able to know whether or not their Development Site would be considered ineligible under 10 TAC §11.101, with a potential undesirable site feature unknown, until Third Party Reports (which could be paid for by funds under the 2019-2 NOFA) are completed. As a result, staff recommends changing section 4(c) of the 2019-2 NOFA to state:

Costs related to a Development Site that is ineligible under 10 TAC §11.101 related to Site and Development Requirements and Restrictions are ineligible costs, unless the Department's Governing Board has made a determination of eligibility , or ineligibility is the result of information gained from Third-Party Reports or other work completed under this NOFA. For Neighborhood Risk Factors (10 TAC 11.101(a)(3)) and any other site requirement or restriction impacting eligibility that an Applicant knows at Application, an Applicant must submit a request for pre-determination prior to or with its Application under this NOFA. If a site requirement or restriction that would make the site or development ineligible is discovered as a result of information gained from Third-Party Reports or other work completed under this NOFA, an Applicant must submit a request for determination before incurring other costs under its award.

All other parts of the 2019-2 NOFA will remain unchanged.



**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**  
**MULTIFAMILY**  
**2019-2 SPECIAL PURPOSE NOTICE OF FUNDING AVAILABILITY (NOFA):**  
**PREDEVELOPMENT**  
**FIRST AMENDMENT**

**THIS AMENDMENT CLARIFIES THAT COSTS RELATED TO A DEVELOPMENT SITE THAT ARE DISCOVERED TO BE INELIGIBLE UNDER 10 TAC §11.101 MAY BE CONSIDERED ELIGIBLE COSTS UNDER CERTAIN CIRCUMSTANCES. THIS AMENDMENT REPLACES IN ITS ENTIRETY SECTION 4(c). ALL OTHER SECTIONS OF THE 2019-2 NOFA REMAIN AS ORIGINALLY PUBLISHED.**

- 4)c. Costs related to a Development Site that is ineligible under 10 TAC §11.101 related to Site and Development Requirements and Restrictions are ineligible costs, unless the Department's Governing Board has made a determination of eligibility , or ineligibility is the result of information gained from Third-Party Reports or other work completed under this NOFA. For Neighborhood Risk Factors (10 TAC 11.101(a)(3)) and any other site requirement or restriction impacting eligibility that an Applicant knows at Application, an Applicant must submit a request for pre-determination prior to or with its Application under this NOFA. If a site requirement or restriction that would make the site or development ineligible is discovered as a result of information gained from Third-Party Reports or other work completed under this NOFA, an Applicant must submit a request for determination before incurring other costs under its award.



**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**  
**MULTIFAMILY**  
**2019-2 SPECIAL PURPOSE NOTICE OF FUNDING AVAILABILITY (NOFA):**  
**PREDEVELOPMENT**

- 1) Summary.** The Texas Department of Housing and Community Affairs (the Department) announces the availability of \$200,000 in Multifamily Tax Credit Assistance Program Repayment Funds (TCAP-RF) funding for eligible predevelopment activities for Applications to finance affordable multifamily rental housing for low-income Texans through the Department. Additional funds may be added in order to completely fund awards. Applications under this Special Purpose NOFA will be accepted starting at 8:00 a.m. Austin local time on March 11, 2019, through November 26, 2019, at 5:00 p.m. Austin local time (unless ended sooner by Board Action).
- 2) Eligible Applicants.** Each eligible Applicant (a private 501(c)3 or 501(c)4 nonprofit organization), including any staff or Board members of the organization, Affiliate entity, or any individual with control of the proposed Development, that has not received an award of funds from the Department for a multifamily development after January 1, 2009) may apply for a predevelopment grant in an amount of up to \$50,000. A nonprofit organization (inclusive of any Affiliate organization) may receive only one award under this NOFA.
- 3) Availability and Use of Funds.** Except as noted herein, if any provisions of this NOFA are in conflict with provisions of the following rules, as applicable, for which the use of these TCAP-RF grant funds are subject to, the applicable rule will control, as further described in Addendum A:

  - a. Texas Administrative Code.**  
10 TAC Chapter 1 (Administration)  
10 TAC Chapter 2 (Enforcement)  
10 TAC Chapter 10 (Uniform Multifamily Rules)  
10 TAC Chapter 11 (Qualified Allocation Plan)  
10 TAC Chapter 13 (Multifamily Direct Loan Rule)  
[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=3&ti=10&pt=1](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=3&ti=10&pt=1)

**b. Texas Government Code.**

Tex. Gov't. Code Chapter 2306

<http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2306.htm>

**c. Fair Housing.**

Federal Fair Housing Act, 42 U.S.C. 3601-19

**4) Eligible Costs.**

- a. Costs eligible for reimbursement under this NOFA are limited to those which are necessary in order to ultimately submit an Application for Development Funding in accordance with 10 TAC Chapter 11 and/or Chapter 13. Examples of eligible costs include, but are not limited to: costs for Third-Party Reports, accounting fees, architectural and engineering fees, zoning change fees, land surveys, legal fees unrelated to Application preparation, fees related to obtaining site control (e.g. earnest money fees, extension fees), etc.
- b. All costs must be supported by a contract or similar agreement with the third party, the Applicant's internal costs of operation are not eligible. Costs for consultants and similar entities to prepare an Application are not eligible. Costs incurred prior to Application Acceptance Period are not eligible.
- c. Costs related to a Development Site that is ineligible under 10 TAC §11.101 related to Site and Development Requirements and Restrictions are ineligible costs, unless the Department's Governing Board has made a determination of eligibility. An Applicant must submit a request for pre-determination prior to or with its Application under this NOFA.
- d. Costs related to an Existing Development that is not able to meet the minimum Development size identified in 10 TAC §11.101(b)(2) are ineligible costs, unless the Department's Governing Board has made a determination of eligibility. An Applicant must submit a waiver request outlining conformance with the Development's Underwriting Rules and Guidelines as described in 10 TAC Chapter 11, Subchapter D.

**4) Restrictions on Third Party Reports.** Awardees under this NOFA will be required to receive the Department's explicit written consent to allow Third Party Reports paid for with funds awarded under this NOFA to be shared with any other public or private financing entities.

**5) Priorities under this Special Purpose NOFA.**

- a. **Date Received Priority.** All Applications under this NOFA will be prioritized based on the business day of receipt unless as specified otherwise herein until 5:00 pm, Austin local time on November 26, 2019 (unless earlier closed by Board action). Unless an Application qualifies for the Disaster Recovery or CHDO Priority, the earliest date of receipt will be March 13, 2019.
- b. **Disaster Recovery Priority.** Applications received under this NOFA with a Development Site in a county declared by the Federal Emergency Management Agency as of March 11, 2019, to be eligible for Individual Assistance (IA) in 2017, 2018, or 2019, will take priority over Applications with Development Sites in non-IA counties

from between March 11, 2019, and April 30, 2019. An Application that qualifies for this Priority will have a date of receipt of March 11, 2019.

- c. **CHDO Priority.** Secondary to the Disaster Recovery priority, Applications received under this 2019-2 Special Purpose NOFA from nonprofit organizations that can be certified as CHDOs 24 CFR §92.2 and the Department's rules will be prioritized over nonprofit organizations that cannot be certified as CHDOs between March 12, 2019, and April 30, 2019. An Application that qualifies for this Priority, but does not also qualify for the Disaster Recovery Priority will have a date of receipt of March 12, 2019.
- d. **All Applications.** All Applications with a date of receipt within the same Priority, will be ranked based on the greatest linear distance from the nearest Housing Tax Credit assisted Development that was awarded less than 15 years ago according to the Department's property inventory tab of the Site Demographic Characteristics Report.

#### 6) Application Submission Requirements.

- a. **Summary.** Applications under this Special Purpose NOFA will be accepted starting at 8:00 a.m. Austin local time on March 11, 2019, through November 26, 2019, at 5:00 p.m. Austin local time (unless ended sooner by Board Action).
- b. **Fees.** Applicants are not required to remit a Predevelopment Application fee.
- c. **Required Materials for all Applications under this Special Purpose NOFA.** All Application materials including manuals, NOFAs, program guidelines, and rules will be available on the Department's website at <https://www.tdhca.state.tx.us/multifamily/nofas-rules.htm> and <https://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm>. An Application must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department. Applicant must submit the Application materials as detailed in the Multifamily Predevelopment Procedures Manual (Manual) in effect at the time the Application is submitted. An Application must be uploaded to the Department's secure web transfer server in accordance with 10 TAC §11.201(1)(C). Access to the ServU system is available with this request: <https://www.tdhca.state.tx.us/multifamily/docs/19-ElectronicFilingAgreement.xls>.
- d. **Required Materials for Priority Consideration under this Special Purpose NOFA.**
  - i. **Disaster Recovery Priority.** An Applicant must request consideration in the 2019 Predevelopment Application should it wish to be prioritized under the Disaster Recovery Priority of this Special Purpose NOFA.
  - ii. **Community Housing Development Organization (CHDO) Certification.** An Applicant must submit the 2019 CHDO Certification Packet with the 2019 Predevelopment Application if it wishes to be prioritized as a CHDO under this Special Purpose NOFA.

**7) Post Award Requirements.** Applicants are strongly encouraged to review the applicable Post Award Requirements in 10 TAC Chapter 13, as well as the Compliance Monitoring requirements in 10 TAC Chapter 10, Subchapter F.

- a. An Applicant awarded under this Special Purpose NOFA will be required to fully execute and adhere to any and all requirements under the 2019 Multifamily Predevelopment Contract and related Certifications.
- b. Awarded Applicants may be required to meet additional documentation requirements in order to draw funds, in accordance with Previous Participation results and Contractual conditions.

**8) Grant Agreement.** An Applicant will be required to enter into a 2019 Multifamily Predevelopment Contract with the Department. The Contract will have up to an eighteen month period to pay for eligible predevelopment costs, and up to an additional six month period to submit draw requests for reimbursement of eligible predevelopment costs. The Contract performance period will five years (unless extended). If the Applicant (or any Affiliate or assignee) receives an award of credits, bonds, grants, or loan funds for the Site is identified in the Contract before the end of the performance period, Applicant will agree to put one TCAP-RF unit on the Development. That TCAP-RF Unit must meet the requirements for HOME-Match, as identified 24 CFR Part 92 and the Department's rules.

**9) Miscellaneous.**

- a. This NOFA does not include text of the various applicable regulatory provisions pertinent to the TCAP-RF Program. For proper completion of the Application, the Department strongly encourages potential Applicants to review all State and Federal regulations.
- b. An award under this NOFA does not constitute a finding of eligibility with regard to Site and Development Requirements and Restrictions under future Department rules.
- c. The Board may on a case by case basis, or in whole, waive procedural provisions of this NOFA where such waiver or exception to the provision(s) are warranted and documented, and where such exception is not in violation with any state or federal requirement(s) and the NOFA is open.
- d. For questions regarding this Special Purpose NOFA, please contact Andrew Sinnott, Multifamily Loan Program Administrator, at [andrew.sinnott@tdhca.state.tx.us](mailto:andrew.sinnott@tdhca.state.tx.us).

## **ADDENDUM A**

Unless otherwise specified, the following is a list of relevant provisions of the Texas Administrative Code applicable to Applications proposing Predevelopment under this Special Purpose NOFA, as cited and enforceable upon approval of the TDHCA Governing Board:

### **Texas Administrative Code:**

#### **10 TAC Chapter 1 (Administration)**

#### **10 TAC Chapter 2 (Enforcement)**

#### **10 TAC Chapter 11 (Housing Tax Credit Program Qualified Allocation Plan)**

##### **Subchapter A – Pre-Application, Definitions, Threshold Requirements, and Competitive Scoring**

§11.1 (General)

##### **Subchapter B – Site and Development Requirements and Restrictions**

§11.101(a) Site and Development Requirements and Restrictions

##### **Subchapter C – Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules**

§11.201(1)(General Requirements)

§11.202(1)(Ineligible Applicants)

§11.202(2) (Ineligible Applications)

§11.204(10)(Site Control)

§11.204(14)(Nonprofit Ownership)

§11.206 (Board Decisions)

§11.207 (Waiver of Rules)

##### **Subchapter D – Underwriting and Loan Policy**

§11.303 Market Analysis Rules and Guidelines

§11.304 Appraisal Rules and Guidelines

§11.305 Environmental Site Assessment Rules and Guidelines

§11.306 Property Condition Assessment Guidelines

##### **Subchapter E – Fee Schedule, Appeals, and Other Provisions**

§11.902 (Appeals Process)

§11.903 (Adherence to Obligations)

§11.904 (Alternative Dispute Resolution Policy)

#### **10 TAC Chapter 13 (Multifamily Direct Loan Rule)**

§13.1(Purpose)

§13.2(Definitions)

§13.3(Loan Requirements)

§13.4(Priorities)

§13.5(Award Process)

§13.11(n)(7) (Direct Loan Contract execution)

§13.11(p)(1), (5), (8), (9), and (11) (Disbursement and Draw Requests)



1h

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**MARCH 21, 2019**

Presentation, discussion and possible action on disclosure under 10 TAC §11.101(a)(3) related to Neighborhood Risk Factors for 19146 New Hope Housing Avenue J

**RECOMMENDED ACTION**

**WHEREAS**, pursuant to 10 TAC §11.101(a)(3) of the 2019 QAP related to Neighborhood Risk Factors, if a Development Site has any of the characteristics described in subparagraph B of the subsection, the Applicant must disclose the presence of each such characteristic to the Department;

**WHEREAS**, the Applicant for New Hope Housing Avenue J (19146) disclosed that the Development Site is in a census tract in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on Neighborhoodscout.com, and that the Development Site is located within 1,000 feet of multiple vacant structures that have fallen into such significant disrepair, overgrowth, and/or vandalism that they would commonly be regarded as blighted or abandoned; and

**WHEREAS**, pursuant to 10 TAC §11.101(a), staff has conducted a further review of the proposed Development Site and the surrounding neighborhoods and prepared a summary for the Board with recommendations with respect to the eligibility of the Development Site;

**NOW, therefore, it is hereby,**

**RESOLVED**, that the Board accepts staff recommendation, and finds the Development Site for 19146 New Hope Housing Avenue J eligible in satisfaction of the requirements of 10 TAC §11.101(a)(3) related to Neighborhood Risk Factors.

**BACKGROUND**

Pursuant to 10 TAC §10.101(a)(3) of the Qualified Allocation Plan, disclosure of Neighborhood Risk Factors is required if one or more of the factors exists where the proposed Development Site is located. Applicants are required to provide a Neighborhood Risk Factors Report which includes information regarding mitigating factors and general description of the site and surrounding area.

The Applicant for New Hope Housing Avenue J (19146) disclosed that Development Site is in a census tract in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on Neighborhoodscout.com. Subsequently, the Applicant reported that the Development Site is located within 1,000 feet of multiple vacant structures that have fallen into such significant disrepair, overgrowth, and/or vandalism that they would commonly be regarded as blighted or abandoned.

The Applicant submitted documentation regarding the Part I violent crime for the census tract as reported on Neighborhoodscout.com as of January 2, 2019. Per the Applicant,

“It bears mentioning that the same census tract in August 2018 had a reported Part I violent crime of 9.8 and it leapt by more than double in a matter of months; even by aggressive overcalculations, it is simply not possible for an area like the Second Ward of Houston to have sustained a doubling of violent crime without any other statistical markers to support this shift.”

Staff notes that, per 10 TAC §11.1(e) related to Data, “where other data sources are specifically required, such as Neighborhoodscout, the data available *after October 1*, but before Pre-Application Final Delivery Date, will be permissible.” While the Applicant is not seeking to use the August 2018 data as part of the pre-application, data from August 2018 (prior to October 1) has been provided for comparison to the data to be used in the pre-application.

Staff reviewed the submitted documentation, and it appears that, per Neighborhoodscout.com, as of August 30, 2018, 39 violent crimes occurred in census tract #48201310500, resulting in a violent crime rate of 9.5 per 1,000 residents. This calculation would assume a population of 3,789 for the census tract. Per the January 9, 2019 report, there were 83 violent crimes in the census tract for a rate of 20.26 per 1,000 residents, which assumes a population of 4,096 for the census tract. Review of the last three American Community Survey 5-year estimates, the census tract population has varied from 4,835 in the 2014 dataset, to 5,024 in the 2015 dataset, to 4,726 in the 2016 (current) dataset. Staff has ascertained that the population figure used by Neighborhoodscout may be somewhat low by comparison.

Further, staff reviewed City of Houston Police Department crime statistics for the patrol beat that includes census tract #48201310500 and isolated those violent crimes reported within the census tract. Staff counted approximately 27 violent crimes reported in the census tract in calendar year 2014, 21 in 2015, and 47 in 2016. Based on Houston Police data, violent crime in the census tract is up. However, based on population data, the associated violent crime rates are as follows:

2014: 27 violent crimes reported / 4.835 = 5.58  
2015: 21 violent crimes reported / 5.024 = 4.17  
2016: 47 violent crimes reported / 4.726 = 9.94

Even if one assumed that the 83 violent crimes reported in the census tract on the January 9, 2019, Neighborhoodscout report was correct, the rate would be 83 violent crimes reported / 4.726 = 17.56%, which is still less than the threshold. Staff has long advised that the data provided by Neighborhoodscout.com does not prove that a Neighborhood Risk Factor exists, but it shows areas where more investigation is required. In this case, it does appear that crime in the census tract has risen significantly, but review of local data indicates that the rate remains below the threshold of 18 per 1,000 persons.

As it relates to the vacant structures in disrepair, the 2<sup>nd</sup> Ward neighborhood is typical of urban neighborhoods in major cities: there are many older, unkempt homes interspersed with new and remodeled homes on densely populated streets. Of the residential structures within 1,000 feet of the Development Site that might be considered blight identified by the Applicant, only one was found to be possibly abandoned. While the rest of the structures are certainly poorly maintained, most are currently occupied, and the others are not in such a state that they would be considered “structures that have fallen into such significant disrepair, overgrowth, and/or vandalism that they would commonly be regarded as blighted or abandoned.” Staff recommends that the Board find the Development Site eligible under 10 TAC §11.101(a)(3) related to Neighborhood Risk Factors, as it relates to crime or blight.

The Department's Governing Board has final decision making authority in making an affirmative determination or finding a Development Site ineligible. Pursuant to 10 TAC §11.101(a)(3), should the Board make the determination that a Development Site is ineligible based on this information, the termination of the Application resulting from such Board action is not subject to appeal.

1i

**BOARD ACTION REQUEST**  
**OCI, HTF, and NSP DIVISION**  
**MARCH 21, 2019**

Presentation, discussion, and possible action to authorize the programming of Neighborhood Stabilization Program One Program Income to support continued land bank program activity

**RECOMMENDED ACTION**

**WHEREAS**, on January 17, 2013, the Board approved the use of Neighborhood Stabilization Program One Program Income (NSP1 PI) by Subrecipients conducting land bank program activities for foreclosed properties;

**WHEREAS**, NSP1 Subrecipients have continued to incur costs for maintenance and redevelopment of land bank properties after the August 16, 2013, expenditure deadline to close Single Family rental activities; and

**WHEREAS**, the NSP will continue to receive Program Income that may be utilized to support land bank program activities;

**NOW, therefore, it is hereby**

**RESOLVED**, that the Board grants the Acting Director or his authorized designee authority to amend existing contracts with NSP1 Subrecipients to reimburse eligible land bank program holding costs;

**RESOLVED**, that the Board grants the Acting Director or his authorized designee authority to enter into new contracts/loans with existing NSP1 Subrecipients and directly with homebuyers as necessary to have an enforceable NSP affordability period; and

**FURTHER RESOLVED**, the Acting Director and staff as designated by the Acting Director are authorized, empowered, and directed, for and on behalf of the Department to execute such documents, instruments and writings and perform such acts and deeds as may be necessary to effectuate the foregoing.

## BACKGROUND

The Neighborhood Stabilization Program is a HUD-funded program authorized by HR3221, the Housing and Economic Recovery Act of 2008, as a supplemental allocation to the Community Development Block Grant (CDBG) Program through an amendment to the existing State of Texas 2008 CDBG Action Plan. The purpose of the program is to redevelop into affordable housing, or acquire and hold abandoned and foreclosed properties in areas that are documented to have the greatest need for arresting declining property values as a result of excessive foreclosures.

The NSP Closeout Notice published by HUD on November 27, 2012, along with subsequent guidance, has clarified the ability to continue certain activities after the extended Expenditure Deadline of August 16, 2013. HUD stated in the Notice that occupancy of all properties is not a requirement for expenditure, and that disposition is an activity they expect to continue until properties reach their final eligible use.

Texas NSP Subrecipients working to complete redevelopment on their NSP land bank properties have ongoing holding costs such as taxes, insurance, mowing and similar maintenance charges that were not reflected in the original contracts with some Subrecipients. These organizations are:

1. Affordable Homes South Texas, Inc. (Contracts 77090000108 and 77090000204)
2. Community Development Corporation of Brownsville, Inc. (Contract 77090000150)
3. The City of Port Arthur (Contract 77090000154)

Holding costs during the development period may be able to be reimbursed through the transaction with the homebuyer. Other costs may be limited to a two-year look back period. This action would allow the Department to reimburse the Subrecipient for eligible land bank program holding costs that cannot be otherwise recovered. No additional administrative funds will be awarded through this action.

In addition, certain homebuyers require an additional investment of NSP funds for downpayment and closing costs. This action would allow the Department to contract directly with homebuyers for purchase of real estate that was originally acquired or improved with NSP funds.

Staff recommends that available NSP PI funds be budgeted for land bank holding costs and homebuyer downpayment/closing costs, and made available to the aforementioned Subrecipients (recommended by the Department's Executive Award and Review Advisory Committee), and to homebuyers on a first-come, first-served basis. The amount budgeted will be based on the availability of NSP1 PI received and federal requirements, but will not exceed \$500,000 without further Board Action. Due to the need to reach timely completion, it is proposed that the agreement be tied to production levels, and have an end date of December 31, 2019.

1j



**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**MARCH 21, 2019**

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement for Commonwealth Phase II (HTC #99142)

**RECOMMENDED ACTION**

**WHEREAS**, Commonwealth Phase II (the Development) received a 9% Housing Tax Credit (HTC) award in 1999 to construct 54 multifamily units in Nacogdoches, Nacogdoches County;

**WHEREAS**, the HTC application for the Development received points and/or other preferences for agreeing to provide a Right of First Refusal (ROFR) to purchase the Development over a two-year ROFR period;

**WHEREAS**, in Spring 2015, the Texas Legislature amended Tex. Gov't Code §2306.6725 and §2306.6726 to allow, among other things, for a 180-day ROFR period and to permit a Qualified Entity to purchase a property under ROFR, and defined a Qualified Entity to mean an entity described by, or as amended, an entity controlled by an entity described by, §42(i)(7)(A), Internal Revenue Code of 1986;

**WHEREAS**, Commonwealth Phase II, LTD., the Development Owner, requests to amend the Land Use Restriction Agreement (LURA) for the Development to incorporate changes made to Tex. Gov't Code §2306.6725 and §2306.6726 in 2015; and

**WHEREAS**, amendment to the ROFR period in the LURA is a material change requiring Board approval under 10 TAC §10.405(b)(2)(E), and the Development Owner has complied with the procedural amendment requirements in 10 TAC §10.405(b) to place this request before the Board, including holding a public hearing;

**NOW, therefore, it is hereby**

**RESOLVED**, that the material LURA amendment for Commonwealth Phase II is approved as presented to this meeting, and the Acting Director and his designees are hereby authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

## **BACKGROUND**

Commonwealth Phase II received a 9% HTC award in 1999 for the new construction of 54 multifamily units in Nacogdoches, Nacogdoches County. In a letter dated February 11, 2019, the Development Owner, Commonwealth Phase II, LTD. (Elaina D. Glockzin), requested approval to amend the HTC LURA related to the ROFR provision.

In 1999, the Housing Tax Credit application allotted five points to the Owner in exchange for a two-year ROFR period. Upon completion of the Development, the Owner entered into a Declaration of Land Use Restrictive Covenants/Land Use Restriction Agreement for Low-Income Housing Tax Credits dated as of October 5, 2000, and recorded in Nacogdoches County on November 17, 2000.

As approved in 1999, the additional use restrictions in the current HTC LURA would require, among other things, a two-year ROFR to sell the Development based on a set order of priority to a community housing development organization (as defined for purposes of the federal HOME Investment Partnership Program at 24 CFR Part 92), to a qualified nonprofit organization (as defined in Internal Revenue Code §42(h)(5)(C)), or to a tenant organization, if at any time after the 15<sup>th</sup> year of the Compliance Period the owner decides to sell the property. The property is currently in the 19<sup>th</sup> year of the 30-year Extended Use Period specified in the LURA. However, the Owner desires to exercise its rights under Tex. Gov't Code §2306.6726 to amend the LURA to allow for a 180-day ROFR period.

In 2015, the Texas Legislature passed HB 3576, which amended Tex. Gov't Code §2306.6725 to allow for a 180-day ROFR period and Tex. Gov't Code §2306.6726 to allow for a Qualified Entity to purchase a development under a ROFR provision of the LURA and satisfy the ROFR requirement. Additionally, Tex. Gov't Code §2306.6726, as amended by HB 3576, defines Qualified Entity to mean an entity described by, or an entity controlled by an entity described by, §42(i)(7)(A) of the Internal Revenue Code of 1986. The Department's 2019 Uniform Multifamily Rules, Subchapter E, include administrative procedures to allow a Development Owner to conform to the new ROFR provisions described in the amended statute.

The Development Owner has complied with the amendment and notification requirements under Tex. Gov't Code §2306.6712 and 10 TAC §10.405(b). The Development Owner held a public hearing on the matter on February 20, 2019, at the Development's onsite community clubhouse. No negative public comment was received regarding the requested amendment.

Staff recommends approval of the material LURA amendment as presented herein.

**COMMONWEALTH PHASE II, LTD.**  
4500 Carter Creek Parkway, Suite 101  
Bryan, Texas 77802

February 11, 2019

**VIA HAND DELIVERY**

Ms. Kent Bedell  
Texas Department of Housing and Community Affairs  
221 East 11th Street  
Austin, Texas 78701-2410

Re: TDHCA File No. 99142; Commonwealth Phase II (the "**Property**")

Dear Kent:

The undersigned, being the General Partner (herein so called) of Commonwealth Phase II, Ltd., a Texas limited partnership (the "**Partnership**") and the current owner of the Property. This letter constitutes request for a material LURA amendment in order to modify the two-year Right of First Refusal ("**ROFR**") period.

**Request to Amend ROFR Period**

In 2015, Texas Government Code Section 2306.6726 was amended to allow for a 180-day Right of First Refusal ("**ROFR**") period. Currently, the LURA for this Property requires a two-year ROFR period. Section 10.405(b)(2)(E) of the Rules allows for a LURA amendment in order to conform a ROFR to the provisions in Section 2306.6726. Therefore the General Partner, acting on behalf of the Partnership, requests a LURA amendment to eliminate the two-year ROFR period and replace it with the 180-day ROFR period.

**LURA Amendment**

In accordance with Section 10.405(b) of the Rules, the Partnership, is delivering a fee in the amount of \$2500. In addition, the Partnership commits to hold a public hearing, as required by the Rules, and to notify all residents, investors, lenders, and appropriate elected officials as to these proposed amendments. The Partnership will proceed to set a date and time for the public hearing and will provide TDHCA with evidence that the notice has been delivered and the hearing has been conducted. With that, the Partnership requests staff recommendation in support of this request to be considered at the next available TDHCA Board meeting.

Thank you very much for your assistance. Please do not hesitate to contact us if you require any additional information.

Sincerely,

**THE COMMONWEALTH PHASE II, LTD.,**  
a Texas limited partnership

By: Commonwealth Development, Inc.,  
a Texas corporation,  
its general partner

By:   
Elaina D. Glockzin, President

**COMMONWEALTH PHASE II, LTD.**  
4500 Carter Creek Parkway, Suite 101  
Bryan, Texas 77802

February 11, 2019

Dear Resident:

Commonwealth Phase II (the “**Community**”) is owned by Commonwealth Phase II, Ltd. (the “**Owner**”). In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the “**Department**”) (Phone: 512-475-3800; Website: [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)).

A contractual restriction imposed by the Department mandates that if the Owner decides to sell the Community at a certain time, the Owner will offer the Community for sale to a non-profit organization or a tenant organization for a period of up to two years and permitting the Owner to transfer the Community to certain kinds of entities in the right of first refusal process. To be consistent with a change in Texas law, the Owner is requesting Department approval to change the two-year period to a 180-day period. TDHCA Uniform Multifamily Rules require that notice of this request be provided to all residents of the Property.

In making its decision whether to approve Owner’s request, the Department considers the opinions and views of the members of the Community. Accordingly, there will be a public meeting to discuss this matter and we invite you to attend. The public hearing is your opportunity to discuss the amendment request and voice your concerns. The public hearing will take place at the Community’s management office/clubhouse on **February 20, 2019, at 1:00 p.m.** Information from this meeting will be submitted for consideration by the Department’s governing board at its next available meeting.

Please note that this proposal will **not** affect your current lease agreement, your rent payment, or your security deposit. You will **not** be required to move out of your home or take any other action because of this change. If the Department approves the Owner’s request, the Community will not change at all from its current form.

If you are unable to attend the public hearing and would like to submit your concerns in writing to the Department, please send your comments via email to [asset.management@tdhca.state.tx.us](mailto:asset.management@tdhca.state.tx.us) or you may mail them to:

Texas Department of Housing and Community Affairs  
Asset Management Division  
221 East 11th Street  
Austin, Texas 78701

We appreciate that Commonwealth Phase II is your home and we invite you to attend and give your input on this proposal.

Thank you for choosing Commonwealth Phase II as your home.

Sincerely,

**THE COMMONWEALTH PHASE II, LTD.,**  
a Texas limited partnership

By: Commonwealth Development, Inc.,  
a Texas corporation,  
its general partner

By:   
\_\_\_\_\_  
Elaina D. Glockzin, President

**COMMONWEALTH PHASE II, LTD.**  
4500 Carter Creek Parkway, Suite 101  
Bryan, Texas 77802

February 11, 2019

Mr. Matthew Woods  
President, Bryan East Banking Center  
Prosperity Bank  
3333 University Drive East  
Bryan, Texas 77802

Dear Mr. Woods:

Commonwealth Phase II, Ltd. (the “**Owner**”) is the owner of Commonwealth Phase II, (the “**Community**”) which is located at 5319 Northway Drive, Nacogdoches, Texas 75961. In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the “**Department**”).

A contractual restriction imposed by the Department mandates that if the Owner decides to sell the Community at a certain time, a right of first refusal requires the Owner to offer the Community for sale to a non-profit organization or a tenant organization for a period of up to two years. Recent changes in Texas law allow for changes to the right of first refusal requirement, including reducing the two-year period to a 180-day period and permitting the Owner to transfer the Community to certain kinds of entities in the right of first refusal process. The Owner is asking TDHCA to modify its contract so that these changes permitted by Texas law will apply.

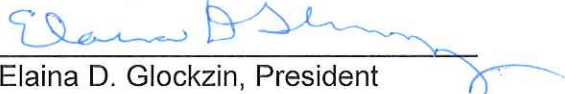
In making its decision whether to approve Owner’s request, the Department considers the opinions and views of the members of the Community and its elected representatives. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community’s management office/clubhouse on **February 20, 2019 at 1:00 p.m.** Information from this meeting will be submitted for consideration by the Texas Department of Housing and Community Affairs Governing Board at their next available meeting.

We invite you or one of your staff to attend and give your input on this proposal.

Sincerely,

**THE COMMONWEALTH PHASE II, LTD.,**  
a Texas limited partnership

By: Commonwealth Development, Inc.,  
a Texas corporation,  
its general partner

By:   
Elaina D. Glockzin, President



**COMMONWEALTH PHASE II, LTD.**  
4500 Carter Creek Parkway, Suite 101  
Bryan, Texas 77802

February 12, 2019

**Via Federal Express**

Ms. Shelley Brophy, Mayor  
City of Nacogdoches  
202 East Pilar Street  
Nacogdoches, Texas 75961

Dear Mayor Brophy:

Commonwealth Phase II, Ltd. (the "**Owner**") is the owner of Commonwealth Phase II, (the "**Community**") which is located at 5319 Northway Drive, Nacogdoches, Texas 75961. In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the "**Department**").

A contractual restriction imposed by the Department mandates that if the Owner decides to sell the Community at a certain time, a right of first refusal requires the Owner to offer the Community for sale to a non-profit organization or a tenant organization for a period of up to two years. Recent changes in Texas law allow for changes to the right of first refusal requirement, including reducing the two-year period to a 180-day period and permitting the Owner to transfer the Community to certain kinds of entities in the right of first refusal process. The Owner is asking TDHCA to modify its contract so that these changes permitted by Texas law will apply.

In making its decision whether to approve Owner's request, the Department considers the opinions and views of the members of the Community and its elected representatives. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community's management office/clubhouse on **February 20, 2019 at 1:00 p.m.** Information from this meeting will be submitted for consideration by the Texas Department of Housing and Community Affairs Governing Board at their next available meeting.

We invite you or one of your staff to attend and give your input on this proposal.

Sincerely,

**THE COMMONWEALTH PHASE II, LTD.**,  
a Texas limited partnership

By: Commonwealth Development, Inc.,  
a Texas corporation,  
its general partner

By:   
Elaina D. Glockzin, President

**COMMONWEALTH PHASE II, LTD.**  
4500 Carter Creek Parkway, Suite 101  
Bryan, Texas 77802

February 12, 2019

Senator Robert Nichols  
Texas State Senate District 3  
329 Neches Street  
Jacksonville, Texas 75766

Dear Senator Nichols:

Commonwealth Phase II, Ltd. (the “**Owner**”) is the owner of Commonwealth Phase II, (the “**Community**”) which is located at 5319 Northway Drive, Nacogdoches, Texas 75961. In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the “**Department**”).

A contractual restriction imposed by the Department mandates that if the Owner decides to sell the Community at a certain time, a right of first refusal requires the Owner to offer the Community for sale to a non-profit organization or a tenant organization for a period of up to two years. Recent changes in Texas law allow for changes to the right of first refusal requirement, including reducing the two-year period to a 180-day period and permitting the Owner to transfer the Community to certain kinds of entities in the right of first refusal process. The Owner is asking TDHCA to modify its contract so that these changes permitted by Texas law will apply.

In making its decision whether to approve Owner’s request, the Department considers the opinions and views of the members of the Community and its elected representatives. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community’s management office/clubhouse on **February 20, 2019 at 1:00 p.m.** Information from this meeting will be submitted for consideration by the Texas Department of Housing and Community Affairs Governing Board at their next available meeting.

We invite you or one of your staff to attend and give your input on this proposal.

Sincerely,

**THE COMMONWEALTH PHASE II, LTD.,**  
a Texas limited partnership

By: Commonwealth Development, Inc.,  
a Texas corporation,  
its general partner

By:   
Elaina D. Glockzin, President

**COMMONWEALTH PHASE II, LTD.**  
4500 Carter Creek Parkway, Suite 101  
Bryan, Texas 77802

February 12, 2019

Representative Travis Clardy  
Texas State House District 11  
202 E. Pilar St., Room 310  
Nacogdoches, Texas 75961

Dear Representative Clardy:

Commonwealth Phase II, Ltd. (the “**Owner**”) is the owner of Commonwealth Phase II, (the “**Community**”) which is located at 5319 Northway Drive, Nacogdoches, Texas 75961. In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the “**Department**”).

A contractual restriction imposed by the Department mandates that if the Owner decides to sell the Community at a certain time, a right of first refusal requires the Owner to offer the Community for sale to a non-profit organization or a tenant organization for a period of up to two years. Recent changes in Texas law allow for changes to the right of first refusal requirement, including reducing the two-year period to a 180-day period and permitting the Owner to transfer the Community to certain kinds of entities in the right of first refusal process. The Owner is asking TDHCA to modify its contract so that these changes permitted by Texas law will apply.

In making its decision whether to approve Owner’s request, the Department considers the opinions and views of the members of the Community and its elected representatives. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community’s management office/clubhouse on **February 20, 2019 at 1:00 p.m.** Information from this meeting will be submitted for consideration by the Texas Department of Housing and Community Affairs Governing Board at their next available meeting.

We invite you or one of your staff to attend and give your input on this proposal.

Sincerely,

**THE COMMONWEALTH PHASE II, LTD.,**  
a Texas limited partnership

By: Commonwealth Development, Inc.,  
a Texas corporation,  
its general partner

By:   
Elaina D. Glockzin, President

## LURA Amendment Hearing Minutes

## Commonwealth Apartments Phase II

February 20, 2019

1:00PM

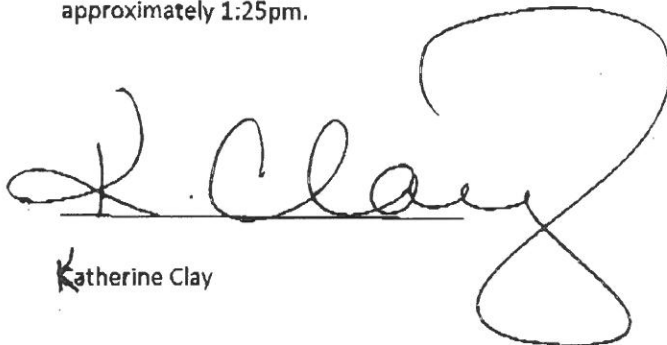
Attendees

Jon Mark Shirley, Harmony Housing

Katherine Clay, Onsite Manager

5 residents

Jon Mark Shirley, of Harmony Housing, conducted the meeting. Mr. Shirley introduced himself and discussed Harmony Housing's intent to purchase the property. Mr. Shirley gave a brief summary of Harmony Housing's past acquisitions in the Waco, Austin, Lubbock and Nacogdoches markets. Mr. Shirley explained to the residents that the property operates under a Land Use Restriction Agreement and within that Agreement are two restrictions that must be modified for the transaction to take place. Mr. Shirley went into detail about the Historically Underutilized Business restriction, explaining what it was and why it was being modified. Mr. Shirley also explained to the residents the Right of First Refusal restriction and why it was being modified. Mr. Shirley asked the residents if they had any questions or concerns about the implications of the modification or the sale of the asset. Sharon Mcpherson, one of the residents, asked Mr. Shirley if the property would remain "affordable" after the transfer of ownership. Mr. Shirley explained that the residents could expect the property to remain affordable and went into detail about Harmony Housing's plans to rehabilitate the property with more than \$500,000 set aside for property improvements. No further questions were asked, and the meeting concluded at approximately 1:25pm.

A handwritten signature in black ink, appearing to read "K. Clay", written over a horizontal line. The signature is highly stylized with large loops and flourishes.

Katherine Clay

\*List of attendees noted on the following page





1k

BOARD ACTION REQUEST

811 PROGRAM

MARCH 21, 2019

Presentation, discussion, and possible action on an order adopting the amendment of 10 TAC §8.7 Program Regulations and Requirements, and directing publication for adoption in the Texas Register

RECOMMENDED ACTION

WHEREAS, pursuant to Tex. Gov't Code §2306.053, the Texas Department of Housing and Community Affairs (the Department) is authorized to adopt rules governing the administration of the Department and its programs;

WHEREAS, the Department has identified the need to revise 10 TAC §8.7, Program Regulations and Requirements, relating to the 811 Project Rental Assistance Program, to clarify the process the Department will utilize when providing notice to an Owner as to whether or not the Department will accept a unit that is becoming vacant so that it can provide a referral to that unit;

WHEREAS, Department staff met with the Disability Advisory Workgroup on October 10, 2018, to garner feedback on this rule, such feedback having been taken into consideration in the draft proposed amendment;

WHEREAS, the amendment will allow for greater assurance to Owners of eligible multifamily properties in what to expect as it relates to whether a unit will be filled by an eligible 811 Program tenant; and

WHEREAS, at the Board meeting of December 6, 2018, the Board approved the draft amendment of this rule for public comment, comment has been received, and the Department has taken into consideration the comment and provided a reasoned response in the rule now being presented for adoption;

NOW, therefore, it is hereby

RESOLVED, that the order adopting the amendment to 10 TAC §8.7, Program Regulations and Requirements, is approved for adoption and publication in the Texas Register; and

FURTHER RESOLVED, that the Acting Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the adopted amendment to 10 TAC §8.7, Program Regulations and Requirements, in the form presented to this meeting, to be published in the Texas Register and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of the chapter specific preambles and any requested changes to the preambles.

## BACKGROUND

Tex. Gov't Code §2306.053, authorizes the Department to adopt rules governing the administration of the Department and its programs. While Tex. Gov't Code §2306.053 does not explicitly require that the Department have rules for this subject area, the statute does allow for such rules. Further, this rule provides clarity to Development Owners relating to the timely referrals of assisted applicants.

Staff has identified a necessary revision within 10 TAC §8.7, Program Regulations and Requirements, that will provide clarity to Owners of eligible multifamily properties that are participating in the Section 811 Project Rental Assistance (PRA) Program. The current rule reflects that Owners, in accordance with 10 TAC §8.7(l)(4), must notify TDHCA of the vacancy of any unit, including those that have not previously been occupied by an 811 Program tenant, as soon as possible, not to exceed seven calendar days from when the Owner learns that an Assisted Unit will become available. The current rule provides no indication of how, or how promptly, the Department will respond to that notification.

In the interest of providing assurances to property owners, the rule amendment reflects that in response to receiving such a notification of vacancy of any Unit, the Department will notify the property owner in writing within three business days of receiving the notification whether the Department will or will not "accept" the available unit to make a referral from the Section 811 PRA Program to fill the vacated unit. Units must be affirmatively released by the Department in writing before a Unit will be offered to a household that is not being referred through the Section 811 PRA Program.

The adoption of this rule only applies to notices made under 10 TAC §8.7(l)(4), relating to vacancies that become available, and does not apply to the notice required under 10 TAC §8.7(l)(3), relating to the vacancies that are available at the initial lease-up of a property.

Behind the preamble the rule is provided in blackline form reflecting the changes being recommended since the time of publication for public comment. The only changes made since that time are administrative and grammatical.

Attachment 1: Preamble, including required analysis, for the adoption of the amendment of 10 TAC §8.7 Program Regulations and Requirements

The Texas Department of Housing and Community Affairs (the Department) adopts the amendment of 10 TAC §8.7 Program Regulations and Requirements. The purpose of amendment is to provide greater clarity to property owners participating in the 811 Program Rental Assistance Program on the Department's response process when notified of a vacant unit by the property.

Tex. Gov't Code §2001.0045(b), does apply to the rule being adopted and no exceptions are applicable. However, the rule already exists and the only amendment to the rule provides greater specificity for how the Department will respond when a participating property owner notifies the Department of an available unit. There are no costs associated with this rule, therefore no costs or impacts warrant a need to be offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

- a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.
  1. Mr. David Cervantes, Acting Director, has determined that, for the first five years the proposed amendment would be in effect, the amendment does not create or eliminate a government program, but relates to a limited revision providing improved clarity in the administration of the Section 811 Project Rental Assistance Program (Section 811 PRA).
  2. The amendment does not require a change in work that would require the creation of new employee positions, nor is the amendment significant enough to reduce work load to a degree that any existing employee positions are eliminated.
  3. The amendment does not require additional future legislative appropriations.
  4. The amendment does not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
  5. The amendment is not creating a new regulation.
  6. The action will amend an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, of the rules governing the administration of the Section 811 PRA Program.
  7. The amendment will not increase nor decrease the number of individuals subject to the rule's applicability.
  8. The amendment will not negatively nor positively affect this state's economy.
  
- b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department has evaluated this amendment and determined that the amendment will not create an economic effect on small or micro-businesses or rural communities.
  1. The Department has evaluated this rule and determined that none of the adverse affect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.
  2. This rule relates to the Department ensuring that Owners of Eligible Multifamily Properties have assurance that they are able to maintain occupancy of their Developments while participating in the Section 811 PRA Program. Other than an Owner who may be considered to be a small or micro-business, which would not generally be the case, no small or micro-businesses are subject to the

rule. However, if an Owner considers itself a small or micro-business, this rule provides greater assurance that their Development's occupancy will not be disrupted by their participation in the Section 811 PRA Program.

3. The Department has determined that because the rule applies only to Owners that have made a commitment to the Department under other Multifamily Programs, there will be no economic effect on small or micro-businesses or rural communities.

- c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The amendment does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.
- d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the amendment will be in effect there would be no economic effect on local employment because the rule relates only to how the Department will respond to existing requirements of Owners participating in the Section 811 PRA Program; therefore no local employment impact statement is required to be prepared for the rule.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that this rule provides assurance about an existing practice by the Department, there are no "probable" effects of the new rule on particular geographic regions.

- e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Cervantes has determined that, for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of the amended section would be greater communication between the Department and Owners. There will not be economic costs to individuals required to comply with the amended section.
- f. FISCAL NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the amendment is in effect, enforcing or administering the amendment does not have any foreseeable implications related to costs or revenues of the state or local governments.
- g. PUBLIC COMMENT AND REASONED RESPONSE. The public comment period was held December 21, 2018, through January 21, 2019, to receive input on the amended section. Public comment and reasoned response are provided below. Two public comments were received from one commenter: Doni Green, North Central Council of Governments and HHSC Promoting Independence Advisory Committee representative to the Housing and Health Services Coordination Council (#1).

1. General Comment One – (Commenter (1))

COMMENT SUMMARY: The commenter states that: "The proposed amendment presents a reasonable approach to improving communication between 811 properties and TDHCA and allowing property owners to timely fill vacancies."

STAFF RESPONSE: TDHCA appreciates the feedback provided. No change is being made in response to this feedback.

## 2. General Comment Two – (Commenter (1))

COMMENT SUMMARY: The commenter states that the proposed amendment that was posted contained a sentence fragment that was repeated.

STAFF RESPONSE: TDHCA appreciates the commenter pointing out the typographical error. This has been corrected in the final rule.

Except as described herein the amendment affects no other code, article, or statute.

STATUTORY AUTHORITY. The amendment is adopted pursuant to TEX GOV'T CODE, §2306.053, which authorizes the Department to adopt rules.

### §8.7 Program Regulations and Requirements

(a) Participation in the 811 PRA Program is encouraged and incentivized through the Department's Multifamily Rules. Once committed in the Multifamily Application, a Development must not accept a fund source that would prevent it from participating in the 811 PRA Program.

(b) An Existing Development that is already participating in the 811 PRA Program is eligible to have an additional commitment of 811 PRA Units as long as the integrated housing requirements as noted in §8.3(c) of this chapter (relating to Participation as a Proposed Development) are not violated.

(c) The types (e.g., accessible, one bedroom, first floor, etc.) and the specific number of Assisted Units (e.g., units 101, 201, etc.) will be "floating" (flexible) and dependent on the needs of the Department and the availability of the Assisted Units on the Eligible Multifamily Property.

(d) Occupancy Requirements. Owner is required to follow all applicable Program Requirements including but not limited to the following occupancy requirements found in HUD Handbook 4350.3 REV-1 and Housing Notices:

- (1) H 2012-06, Enterprise Income Verification (EIV) System;
- (2) H 2012-26, Extension of Housing Notice 2011-25, Enterprise Income Verification (EIV) & You Brochure-Requirements for Distribution and Use;
- (3) H 2012-22, Further Encouragement for O/As to Adopt Optional Smoke-Free Housing Policies;
- (4) H 2012-11, State Registered Lifetime Sex Offenders in Federally Assisted Housing;
- (5) H 2012-09, Supplemental Information to Application for Assistance Regarding Identification of Family Member, Friend or Other Persons or Organization Supportive of a Tenant for Occupancy in HUD Assisted Housing; or
- (6) H 2017-05, Violence Against Women Act (VAWA) Reauthorization Act of 2013, Additional Guidance for Multifamily Owners and Management Agents.

(e) Use Agreements. The Owner must execute the Use Agreement, as found in Exhibit 10 of the Cooperative Agreement, before the execution of the RAC and comply with the following:

(1) Use Agreement should be properly recorded according to local laws in the official public records on the Eligible Multifamily Property. The Owner shall provide to TDHCA within 30 days of its receipt of the recorded Use Agreement, a copy of the executed, recorded Use Agreement.

(2) From the date the Property Agreement is entered into, the Owner shall not enter into any future use agreements or other subsidy programs that would diminish the number of Assisted Units that can be placed on the Eligible Multifamily Property.

(3) TDHCA will enforce the provisions of the Use Agreement and RAC consistent with HUD's internal control and fraud monitoring requirements.

(f) Tenant Certifications, Reporting and Compliance.

(1) TRACS & EIV Systems. The Owner shall have appropriate software to access the Tenant Rental Assistance Certification System (TRACS) and the ~~Enterprise Income Verification (EIV)~~ System. The Owner shall be responsible for ensuring Program information is entered into these systems. TRACS is the only system by which an Eligible Multifamily Property can request Project Rental Assistance payments.

(2) Outside Vendors. The Owner has the right to refuse assistance from outside vendors hired by TDHCA, but is still required to satisfy the Program Requirements.

(3) Tenant Certification. The Owner shall transmit Eligible Tenant's certification and recertification data, transmit voucher data, and communicate errors electronically in a form consistent with HUD reporting requirements for HUD Secure Systems.

(g) Tenant Selection and Screening.

(1) Target Population. TDHCA will screen Eligible Applicants for compliance with TDHCA's Program Target Population criteria and do an initial screening for Program Requirements. The Inter-Agency Partnership Agreement describes the specific Target Population eligible for TDHCA's Program. The Target Population may be revised, with HUD approval.

(2) Tenant Selection Plan. Upon the execution of the Participation Agreement, the Owner will submit the Eligible Multifamily Property's Tenant Selection Criteria, as defined by and in accordance with 10 TAC §10.610 (relating to Compliance Monitoring) ~~(as amended)~~, to TDHCA for approval. TDHCA will review the Tenant Selection Plan for compliance with existing Tenant Selection Criteria requirements, and consistent with TDHCA's Section 811 PRA Participant Selection Plan.

(3) Tenant Eligibility and Selection. The Owner is responsible for ultimate eligibility and selection of an Eligible Tenant and will comply with the following:

(A) The Owner must accept referrals of an Eligible Tenant from TDHCA and retain copies of all applications received. The Owner is responsible for notifying the prospective Eligible Tenant and TDHCA in writing regarding any denial of a prospective Eligible Tenant's application to an Eligible Multifamily Property and the reason for said denial. In the notice of denial, the Owner is responsible for notifying the Eligible Tenant of the right to dispute a denial, as outlined in HUD Handbook 4350.3. The results of the dispute must be sent to the Eligible Tenant and TDHCA in writing.

(B) The Owner is responsible for determining age of the qualifying member of the Eligible Families. Eligible Family member must be at least 18 years of age and under the age of 62.

(C) The Owner is responsible for criminal background screening as required by HUD Handbook 4350.3.

(D) Verification of Income. The Owner is responsible for determining income of Eligible Families. The Owner shall verify income through the Enterprise Income Verification (EIV) System. The Owner must certify an Eligible Tenant and Eligible Families at least annually and verify their income. If the household is also designated under the Housing Tax Credit or other Department administered program, the Owner must obtain third party, or first hand, verification of income in addition to using the EIV system.

(h) Rental Assistance Contracts.

(1) Applicability. If requested by TDHCA, the Owner shall enter into a RAC. Not all properties with an Owner Participation Agreement will have a RAC, but when notified by TDHCA, the Eligible Multifamily Property must enter into a RAC(s) and begin serving Eligible Applicants.

(2) Notice. TDHCA will provide written notice to the Owner if and when it intends to enter into a RAC with the Owner.

(3) Assisted Units. TDHCA will determine the number of Units (up to the maximum listed in the Property Agreement) to place in the RAC(s) which may be fewer than the number of Units identified in the Property Agreement.

(4) TDHCA will designate the bedroom composition of the Assisted Units, as required by the RAC. However, based on an actual Eligible Tenant, this may fluctuate. It is possible that an Eligible Multifamily Property will have a RAC for fewer units than the number committed in the Participation Agreement.

(5) If no additional applicants are referred to the property, the RAC may be amended to reduce the number of Assisted Units. Owners who have an executed RAC must continue to notify TDHCA of any vacancies for units not under a RAC if additional units were committed under the Agreement. For instance, if the Owner has committed 10 units under the Agreement and only has a RAC for five Assisted Units, the Owner must continue to notify TDHCA of all vacancies until there is a RAC for 10 Assisted Units.

(6) Amendments. The Owner agrees to amend the RAC(s) upon request of TDHCA. Some examples are amendments that may either increase or decrease the total number of Assisted Units or increase or decrease the associated bedroom sizes; multiple amendments to the RAC may occur over time. The total number of Assisted Units in the RAC will not exceed the number of Assisted Units committed in the Participation Agreement, unless by request of the Owner.

(7) Contract Term. TDHCA will specify the effective date of the RAC. During the first year of the RAC and with approval from HUD, the Owner may request to align the anniversary date of the RAC with existing federal or state housing programs layered on the Eligible Multifamily Property.

(8) Rent Increase. Owners must submit a written request to TDHCA 30 days prior to the anniversary date of the RAC to request an annual increase.

(9) Utility Allowance. The RAC will identify the TDHCA approved Utility Allowance being used for the Assisted Units for the Eligible Multifamily Property. The Owner must notify TDHCA if there are changes to the Utility Allowance calculation methodology being used.

(10) Termination. Although TDHCA has discretion to terminate a RAC due to good cause, an Owner cannot opt-out of a RAC. The RAC survives a foreclosure, assignment, sale in lieu of foreclosure, or sale of the Eligible Multifamily Property, to the extent allowed by law.

(11) Foreclosure of Eligible Multifamily Property. Upon foreclosure, assignment, sale in lieu of foreclosure, or sale of the Eligible Multifamily Property, to the extent allowed by law:

(A) The RAC shall be transferred to new owner by contractual agreement or by the new owner's consent to comply with the RAC, as applicable;

(B) Rental Assistance Payments will continue uninterrupted in accordance with the terms of the RAC; and

(C) Voluntary and involuntary transfers or conveyances of property must adhere to the ownership transfer process in 10 TAC §10.406, (as amended), regarding Ownership Transfer requests.

(i) Advertising and Affirmative Marketing.

(1) Advertising Materials. Upon the execution of the Property Agreement, the Owner must provide materials for the purpose of advertising the Eligible Multifamily Property, including but not limited to:

(A) ~~Depictions~~ depictions of the units including floor plans;

(B) ~~Brochures~~ brochures;

(C) ~~Tenant~~ tenant selection criteria;



- (D) ~~House~~ house rules;
  - (E) ~~Number~~ number and size of available units;
  - (F) ~~Number~~ number of units with accessible features (including, but not limited to units designed to meet Uniform Federal Accessibility Standards, the Fair Housing Act, or the Americans with Disabilities Act);
  - (G) ~~Documentation~~ documentation on access to transportation and commercial facilities; and
  - (H) ~~A~~ description of onsite amenities.
- (2) Affirmative Marketing. TDHCA and its service partners will be responsible for affirmatively marketing the Program to Eligible Applicants.
  - (3) At any time, TDHCA may choose to advertise the Eligible Multifamily Property, even if the Eligible Multifamily Property has not yet entered into a RAC.

(j) Leasing Activities.

- (1) Segregation of Assisted Units. The Owner must take actions or adopt procedures to ensure that the Assisted Units are not segregated to one area of a building (such as on a particular floor or part of a floor in a building) or in certain sections within the Eligible Multifamily Property.
- (2) Form of Lease. The Owner will use the HUD Section 811 PRA Model Lease (HUD-92236-PRA), Exhibit 11 of the Cooperative Agreement and any Department approved Addendums, for all Eligible Families once a RAC is signed. The initial lease will be for not less than one year.
- (3) Communication. Owners are required to document in writing all communication between the Eligible Tenant and the Owner, or Owner-designated agent regarding applications, notifications, evictions, complaints, non-renewals and move outs.
- (4) Lease Renewals and Changes. The Owner must notify TDHCA of renewals of leases with Eligible Families and any changes to the terms of the lease.

(k) Rent.

- (1) Tenant Rent Payment. The Owner is responsible for remitting any Tenant Rent payment due to the Eligible Tenant if the Utility Allowance exceeds the Total Tenant Payment. The Owner will determine the Tenant Rent payment of the Eligible Tenant, based on HUD Handbook 4350.3, and is responsible for collecting the Tenant Rent payment.
- (2) Rent Increase. Owner must provide the Eligible Tenant with at least thirty ~~(30)~~ days notice before increasing rent.
- (3) Rent Restrictions. Owner will comply with the following rent restrictions:
  - (A) If the Development has a TDHCA enforced rent restriction that is equal to or lower than Fair Market Rent ("FMR"), the initial rent is the maximum TDHCA enforced rent restriction at the Development.
  - (B) If there is no existing TDHCA enforced rent restriction on the Unit, or the existing TDHCA enforced rent restriction is higher than FMR, TDHCA will work with the Owner to conduct a market analysis of the Eligible Multifamily Property to support that a rent higher than FMR is attainable.
  - (C) After the signing of the original RAC with TDHCA, the Owner may request a new anniversary date to be consistent with other rent restrictions on the Eligible Multifamily Property allowed by TDHCA.
  - (D) After the signing of the original RAC, upon request from the Owner to TDHCA, Rents may be adjusted on the anniversary date of the RAC.
  - (E) Adjustments may not result in higher rents charged for an Assisted Unit as compared to a non-assisted unit. The calculation or methodology used for the annual increase amount will be identified in the Eligible Multifamily Property's RAC.
  - (F) Owner can submit a request for a rent increase or to change the contract anniversary date using HUD Form 92458.

(l) Vacancy; Transfers; Eviction; Household Changes.

(1) Holding Assisted Units. Once an Owner signs a RAC, the Eligible Multifamily Property must hold an available Assisted Unit for 60 days while a qualified Eligible Applicant applies for and moves into the Assisted Unit.

(2) Notification. Owner will notify TDHCA of determination of ineligibility or the termination of any participating Eligible Families or any member of a participating Eligible Family.

(3) Initial Lease-up. Owners of newly constructed, acquired and/or rehabilitated Eligible Multifamily Property must notify TDHCA no later than 180 days before the Eligible Multifamily Property will be available for initial move-in.

(4) Vacancy. Once a RAC is executed, the Owner must notify TDHCA of the vacancy of any Unit, including those that have not previously been occupied by an Eligible Tenant, as soon as possible, not to exceed seven ~~(7)~~ calendar days from when the Owner learns that an Assisted Unit will become available. TDHCA will acknowledge receipt of the notice by responding to the Owner in writing within three business days from when the notice is received by the Department stating whether or not TDHCA will be accepting the available Unit, and making a subsequent referral for the Unit. If the qualifying Eligible Tenant vacates the Assisted Unit, TDHCA will determine if the remaining family members are eligible for continued assistance from the Program.

(5) Vacancy Payment. An Owner of an Eligible Multifamily Property that is not under a RAC may not receive a vacancy payment. TDHCA may make vacancy payments not to exceed 80% of the Contract Rent, during this time to the Eligible Multifamily Property, potentially for up to 60 days. After 60 days, the Owner may lease that Assisted Unit to a non-Eligible Tenant.

(6) Household Changes; Transfers. Owners must notify TDHCA if the Eligible Tenant requests an Assisted Unit transfer. Owner will notify TDHCA of any household changes in an Assisted Unit within three ~~(3)~~ business days. If the Owner determines that, because of a change in household size, an Assisted Unit is smaller than appropriate for the Eligible Tenant to which it is leased or that the Assisted Unit is larger than appropriate, the Owner shall refer to TDHCA's written policies regarding family size, unit transfers, and waitlist management. If the household is determined by TDHCA to no longer be eligible, TDHCA will notify the Owner. Rental Assistance Payments with respect to the Assisted Unit will not be reduced or terminated until the eligible household has been transferred to an appropriate size Assisted Unit.

(7) Eviction and Nonrenewal. Owners are required to notify the Department by sending a copy of the applicable notice via email to the 811 TDHCA Point of Contact, as identified in the Owner Participation Agreement, at least three calendar days before providing a Notice to Vacate or a Notice of Nonrenewal to the Tenant.

(m) Construction Standards, Accessibility, Inspections and Monitoring.

(1) Construction Standards. Upon execution of a RAC, the Eligible Multifamily Property shall be required to conform to Uniform Physical Conditions Standards (UPCS) which is a uniform national standards established by HUD for housing that is decent, safe, sanitary, and in good repair. The site, building exterior, building systems, dwelling units and common areas of the Eligible Multifamily Property, as more specifically described in 24 CFR §5.703, must be inspected in any physical inspection of the property.

(2) Inspection. Prior to occupancy, the Eligible Tenant must be given the opportunity to be present for the move-in unit inspection.

(3) Repair and Maintenance. Owner will perform all repair and maintenance functions, including ordinary and extraordinary maintenance; will replace capital items; and will maintain the premises and equipment, appurtenant thereto, in good repair, safe and sanitary condition consistent with HUD and TDHCA requirements.

(4) Accessibility. Owner must ensure that the Eligible Multifamily Property will meet or exceed the accessibility requirements under 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973; the Fair Housing Act Design Manual; Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§12131-12189), as implemented by the U. S. Department of Justice regulations at 28 CFR Parts 35 and 36; and the Federal Fair Housing Act as implemented by HUD at 24 CFR Part 100. However, Assisted Units can consist of a mix of accessible units for those persons with physical disabilities and non-accessible units for those persons without physical disabilities.

(n) Owner Training. The Owner is obligated to train all property management staff on the requirements of the Program. The Owner will ensure that any new property management staff who is involved in serving Eligible Families review training materials found on the Program's webpage including webinars, manuals and checklists.

(o) Reporting Requirements. Owner shall submit to TDHCA such reports on the operation and performance of the Program as required by the Participation Agreement and as may be required by TDHCA. Owner shall provide TDHCA with all reports necessary for TDHCA's compliance with 24 CFR Part 5, or any other federal or state law or regulation.

(p) Environmental Laws and Regulations.

(1) Compliance with Laws and Regulations. Owner must comply with, as applicable, any federal, state, or local law, statute, ordinance, or regulation, whether now or hereafter in effect, pertaining to health, industrial hygiene, or the environmental conditions on, under, or about the Land or the Improvements, including without limitation, the following, as now or hereafter amended:

- (A) Hazardous Materials Transportation Act (49 U.S.C.A. §1801 et seq.-);
- (B) Insecticide Fungicide and Rodenticide Act (7 U.S.C.A. §136 et seq.-);
- (C) National Environmental Policy Act (42 U.S.C. §4321 et seq.-) ("NEPA");
- (D) Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C.A. §9601 et seq.-) ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. No. 99-499, 100 Stat. 1613, as amended Pub. L. No. 107-377) ("Superfund" or "SARA");
- (E) Resource, Conservation and Recovery Act (24 U.S.C.A. §6901 et seq.-) ("RCRA");
- (F) Toxic Substances Control Act, 15 U.S.C.A. §2601 et seq.-;
- (G) Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C.A. §1101 et seq.-);
- (H) Clean Air Act (42 U.S.C.A. §7401 et seq.-) ("CAA");
- (I) Federal Water Pollution Control Act and amendments (33 U.S.C.A. §1251 et seq.-) ("Clean Water Act" or "CWA");
- (J) Any corresponding state laws or ordinances including but not limited to Chapter 26 of the Texas Water Code regarding Water Quality Control;
- (K) Texas Solid Waste Disposal Act (Chapter 361 of the Texas Health & Safety Code, formerly Tex. Rev. Civ. Stat. Ann. Art. 4477-7);
- (L) Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act (Chapter 363 of the Texas Health & Safety Code);
- (M) County Solid Waste Control Act (Chapter 364 of the Texas Health & Safety Code);
- (N) Texas Clean Air Act (Chapter 382 of the Texas Health & Safety Code);
- (O) Hazardous Communication Act (Chapter 502 of the Texas Health & Safety Code); and
- (P) Regulations, rules, guidelines, or standards promulgated pursuant to such laws, statute and regulations, as such statutes, regulations, rules, guidelines, and standards, as amended from time to time.

(2) Environmental Review. The environmental effects of each activity carried out with funds provided under this Agreement must be assessed in accordance with the provisions of the Program Requirements, National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. §432 et seq. ). Each such activity must have an environmental review completed and support documentation prepared in

accordance with 10 TAC §10.305 complying with the NEPA, including screening for vapor encroachment following American Society for Testing and Materials ("ASTM") 2600-10.

(q) Labor Standards.

–(1) Owner understands and acknowledges that every contract for the construction (rehabilitation, adaptive reuse, or new construction) of housing that includes twelve ~~(12)~~ or more units assisted with Program funds must contain provisions in accordance with Davis-Bacon Regulations.

–(2) Owner understands and acknowledges that every contract involving the employment of mechanics and laborers of said construction shall be subject to the provisions, as applicable, of the Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. ~~§§~~Sec. 3701 to 3708), Copeland (Anti-Kickback) Act (40 U.S.C. ~~Sec. §~~3145), the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201, et seq.) and Davis-Bacon and Related Acts (40 U.S.C. 3141-3148).

–(3) Owner further acknowledges that if more housing units are constructed than the anticipated eleven ~~(11)~~ or fewer housing units, it is the Owner's responsibility to ensure that all the housing units will comply with these federal labor standards and requirements under the Davis-Bacon Act as supplemented by the U. S. Department of Labor regulations ("Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction" at 29 CFR Part 5).

–(4) Owner also understands that structuring the proposed assistance for the rehabilitation or construction of housing under this Agreement to avoid the applicability of the Davis-Bacon Act is prohibited.

–(5) Construction contractors and subcontractors must comply with regulations issued under these federal acts described herein, with other federal laws, regulations pertaining to labor standards, including but not limited to "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction" at 29 CFR Part 5, HUD Federal Labor Provisions (HUD form 4010).

(r) Lead-Based Paint. Housing assisted with Program funds is subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. ~~§§~~4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. ~~§§~~4851-4856), and implementing regulations Title X of the 1992 Housing and Community Development Act at 24 CFR Part 35, (including subparts A, B, J, K, M and R). Owner shall also comply with the Lead: Renovation, Repair, and Painting Program Final Rule, 40 CFR Part 745 and Response to Children with Environmental Intervention Blood Lead Levels. Failure to comply with the lead-based paint requirements may be subject to sanctions and penalties pursuant to 24 CFR §35.170.

(s) Limited English Proficiency. Owner shall comply with the requirements in Executive Order 13166 of August 11, 2000, reprinted at 65 FR 50121, August 16, 2000 Improving Access to Services for Persons with Limited English Proficiency and 67 FR 41455. To ensure compliance the Owner must take reasonable steps to insure that LEP persons have meaningful access to the program and activities. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary.

(t) Procurement of Recovered Materials. Owner, its subrecipients, and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(u) Drug-Free Workplace. Owner will follow the Drug-Free Workplace Act of 1988 (41 U.S.C 701, et seq.) and HUD's implementing regulations at 2 CFR Part 2429. Owner affirms by executing the Certification

Regarding Drug-Free Workplace Requirements attached hereto as Addendum B, that it is implementing the Drug-Free Workplace Act of 1988.

(v) Nondiscrimination, Fair Housing, Equal Access and Equal Opportunity.

(1) Equal Opportunity. The Owner agrees to carry out an Equal Employment Opportunity Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1965, as amended, and its implementing regulations at 41 CFR Part 60.

(2) Fair Housing Poster. The Owner is required to place a fair housing poster (HUD-928.1 and HUD-9281.A) provided by TDHCA in the leasing office, online, or anywhere else rental activities occur pursuant to 24 CFR §200.620(e). A copy of the poster in Spanish and in English can be found at <http://www.tdhca.state.tx.us/section-811-pra/participating-agents.htm>.

(3) Nondiscrimination Laws. Owner shall ensure that no person shall, on the grounds of race, color, religion, sex, disability, familial status, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any Program or activity funded in whole or in part with funds provided under this Agreement. Owner shall follow Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000d et seq. ), the Age Discrimination Act of 1975 (42 U.S.C. §6101 et seq. ) and its implementing regulations at 24 CFR Part 146, Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§12131-12189; 47 U.S.C. §§155, 201, 218 and 255) as implemented by U. S. Department of Justice at 28 CFR Parts 35 and 36, Section 527 of the National Housing Act (12 U.S.C. §1701z-22), the Equal Credit Opportunity Act (15 U.S.C. §1691 et seq. ), the Equal Opportunity in Housing (Executive Order 11063 as amended by Executive Order 12259) and its implementing regulations at 24 CFR Part 107 and The Fair Housing Act (42 U.S.C. §3601 et seq. ), as implemented by HUD at 24 CFR Part 100-115.

(4) Affirmatively Furthering Fair Housing. By Owner's execution of the Agreement and pursuant to Section 808(e)(5) of the Fair Housing Act, Owner agrees to use funds in a manner that follows the State of Texas' "Analysis of Impediments" or "Assessment of Fair Housing", as applicable and as amended, and will maintain records in this regard.

(5) Protections for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking. Subpart L of 24 CFR part 5 shall apply to the Assisted Units in Eligible Multifamily Properties.

(w) Security of Confidential Information.

(1) Systems Confidentiality Protocols. Owner must undertake customary and industry standard efforts to ensure that the systems developed and utilized under this Agreement protect the confidentiality of every Eligible Applicant's and Eligible Tenant's personal and financial information, both electronic and paper, including credit reports, whether the information is received from the Eligible Applicants, Tenants or from another source. Owner must undertake customary and industry standard efforts so that neither they nor their systems vendors disclose any Eligible Applicant's or Tenant's personal or financial information to any third party, except for authorized personnel in accordance with this Agreement.

–(2) Protected Health Information. If Owner collects or receives documentation for disability, medical records or any other medical information in the course of administering the Program, Owner shall comply with the Protected Health Information state and federal laws and regulations, as applicable, under 10 TAC §1.24, (relating to Protected Health Information), Chapter 181 of the Texas Health and Safety Code, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. 104-191, 110 Stat. 1936, enacted August 21, 1996), and the HIPAA Privacy Rules (45 CFR Part 160 and Subparts A and E of 45 CFR Part 164). When accessing confidential information under this Program, Owner hereby acknowledges and further agrees to comply with the requirements under the Interagency Data Use Agreement between TDHCA and the Texas Health and Human Services Agencies dated October 1, 2015, as amended.

(x) Real Property Acquisition and Relocation. Except as otherwise provided by federal statute, HUD-assisted programs or projects are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act or URA) (42 U.S.C. 4601), and the government wide implementing regulations issued by the U.S. Department of Transportation at 49 CFR Part 24. The Uniform Act's protections and assistance apply to acquisitions of real property and displacements resulting from the acquisition, rehabilitation, or demolition of real property for federal or federally assisted programs or projects. With certain limited exceptions, real property acquisitions for a HUD-assisted program or project must comply with 49 CFR Part 24, Subpart B. To be exempt from the URA's acquisition policies, real property acquisitions conducted without the threat or use of eminent domain, commonly referred to as voluntary acquisitions, the Owner must satisfy the applicable requirements of 49 CFR §24.101(b)(1) - (5). Evidence of compliance with these requirements must be maintained by the recipient. The URA's relocation requirements remain applicable to any tenant who is displaced by an acquisition that meets the requirements of 49 CFR §24.101(b)(1) - (5). The relocation requirements of the Uniform Act, and its implementing regulations at 49 CFR Part 24, cover any person who moves permanently from real property or moves personal property from real property as a direct result of acquisition, rehabilitation, or demolition for a program or project receiving HUD assistance. While there are no statutory provisions for temporary relocation under the URA, the URA regulations recognize that there are circumstances where a person will not be permanently displaced but may need to be moved from a project for a short period of time. Appendix A of the URA regulation (49 CFR §24.2(a)(9)(ii)(D)) explains that any tenant who has been temporarily relocated for a period beyond one year must be contacted by the displacing agency and offered URA relocation assistance.

(y) Dispute Resolution; Conflict Management.

(1) Eligible Tenant Disputes. The Owner or Owner's representative is required to participate in a Dispute Resolution process, as required by HUD, to resolve an appeal of an Eligible Tenant dispute with the Owner.

(2) Agreement Disputes. In accordance with Tex. Gov't Code 2306.082, it is TDHCA's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act and the Negotiated Rulemaking Act (Chapters 2009 and 2006 respectively, Tex. Gov't Code), to assist in the fair and expeditious resolution of internal and external disputes involving the TDHCA and the use of negotiated rulemaking procedures for the adoption of TDHCA rules. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by TDHCA's ex parte communications policy, TDHCA encourages informal communications between TDHCA staff and the Owner, to exchange information and informally resolve disputes. TDHCA also has administrative appeals processes to fairly and expeditiously resolve disputes. If at any time the Owner would like to engage TDHCA in an ADR procedure, the Owner may send a proposal to TDHCA's Dispute Resolution Coordinator. For additional information on TDHCA's ADR policy, see TDHCA's Alternative Dispute Resolution and Negotiated Rulemaking at 10 TAC §1.17.

(3) Conflict Management. The purpose of the Conflict Management process is to address any concerns that Owner or Owner's agent or representative may have with an Eligible Family. At any time, an Eligible Family may choose to give consent to their Section 811 service coordinator to work directly with the property manager of the Eligible Multifamily Property. However, such consent cannot be made a condition of tenancy.

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## TDHCA Outreach Activities, February - March

A compilation of outreach and educational activities designed to enhance the awareness of TDHCA programs and services among key stakeholder groups and the general public.

Activity	Event	Date	Location	Division
REALTOR® class	Texas Affordable Housing Specialist Course – Housing Initiatives that Work	March 7	Houston, TX	Texas Homeownership Program
Public Hearing	2019 Department of Energy Weatherization Assistance Program Draft State Plan	March 20	Austin, TX	Community Affairs

### Internet Postings of Note

*A list of new or noteworthy postings to the Department’s website.*

#### Asset Management

- Added Material Amendments to be presented to the TDHCA Board, a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement (Commonwealth Phase II)
- Updated versions of Qualified Contract Preliminary Request Procedures Manual, Qualified Contract Request Procedures Manual
- Added CHDO Self-Certification Packet and Form on Right of First Refusal page
- Updated version of the Post Award Activities Manual and related pages (10% Test, Ownership Transfers, Minority Owned Business Report Form, HOME Rent Approval Tool)

#### Bootstrap Loan Program

- Posted updated Request for Legal Document Preparation NOHP I

#### Communications:

- Added Ending Homelessness Fund information (funding, eligibility activities and applicant information, availability) to TDHCA Overview
- Revised information on Disaster Resources information page
- Posted homepage article, “Claim the Credit” (related to Mortgage Credit Certificate, Mortgage Interest Tax Credit)

#### Community Affairs

- Added Meeting and Exceeding Organizational Standards in Texas webinar to CSBG Standards
- Added Weatherization Assistant Online Training
- Added Candidate Considerations for Nationally Certified ROMA Implementer (Results Oriented Management and Accountability)
- Added 2019 LIHEAP State Plan with amendment
- Added 2019 DOE Weatherization Assistance Program Draft State Plan
- Replaced link for DOE Health and Safety Guidance (WPN 17-7)
- Replaced CSBG Strategic Planning Guide (2019)



- Replaced SAVE Training Webinar presentation slides

### **Compliance**

- Added new Federal Housing Tax Credit Regulations (Internal Revenue Code, Additional Treasury Regulations)
- Added instructions on submission of Form 8703 through Compliance Monitoring and Tracking System
- Updated Compliance Monitoring Rule – Texas Administrative Code Title 10 Chapter 10 Subchapter F
- Added update to TDHCA Housing Accessibility Checklist Dwelling Units
- Updated checklist for 2017 Mid-Inspection Construction Request
- Updated Uniform Previous Participation Form for Single family and Community Affairs

### **HOME and Homeless:**

- Added new Reservation Summary information with Administrative Forms (Homebuyer and Contract for Deed)
- Updated FY2018 Monthly Performance Report Guide
- Updated total contributions to the Ending Homelessness Fund

### **Homeownership**

- Added Bond Allocation FAQs

### **Housing Resource Center**

- Added 2019 State of Texas Low Income Housing Plan and Annual Report

### **Migrant Labor Housing Facilities**

- Updated list of licensed housing facilities (number of licensed facilities totals 135)
- Posted updated applications for new or renewal of housing licenses

### **Multifamily:**

- Added 2019 9% Competitive Housing Tax Credit Full Application subsection, Imaged Full Applications, Tie-Breaker Information Worksheet, Multifamily Parking Worksheet
- Added 2019 4% 3<sup>rd</sup> Party Reports (Appraisals, Environmental Site Assessments, Market Studies, Property Condition Assessments, Site Design Feasibility Reports)
- Updated 2018 4% HTC Bond Status Log (Feb. 26, 2019)
- Added 2019 4% HTC Bond Status Log
- Added 2018-1 Multifamily Direct Loan NOFA Application Log, 2019-1 Multifamily Direct Loan NOFA Application Log
- Added 2019 CHDO Certification Packet

### **NOFA**

- 2019-2 Multifamily Special Purpose (Predevelopment NOFA)

### **Program Services**

- Updated Contract Work Hours and Safety Standards Act liquidated damages penalty increase

### **Public Comment**

- 2019 Housing Tax Credit Applications
- 2019 Department of Energy Weatherization Assistance Program Draft State Plan
- Proposed Amendment to 10 TAC Section 1.15, Integrated Housing Rule
- Proposed Amendment to 10 TAC Section 1.405, Bonding Requirements
- Proposed Repeal of 10 TAC Section 5.802, Local Operators for the Section 8 Housing Choice Voucher Program

### **Purchasing**

- Updated list of No-Bid contracts as required by state

### Real Estate Analysis

- Posted updated 2019 Regional and Statewide Operating Expense Database
- Updated HTC Applicable Percentages and Calculation of Underwriting Rates to be Used
- Posted 2019 Real Estate Analysis Rules and Guidelines

### Frequently Used Acronyms

AMFI	Area Median Family Income	LURA	Land Use Restriction Agreement
AYBR	Amy Young Barrier Removal Program	MF	Multifamily
CEAP	Comprehensive Energy Assistance Program	MFTH	My First Texas Home Program
CFD	Contract for Deed Program	MRB	Mortgage Revenue Bond Program
CFDC	Contract for Deed Conversion Assistance Grants	NHTF	National Housing Trust Fund
CHDO	Community Housing Development Organization	NOFA	Notice of Funding Availability
CMTS	Compliance Monitoring and Tracking System	NSP	Neighborhood Stabilization Program
CSBG	Community Services Block Grant Program	OIG	Office of Inspector General
ESG	Emergency Solutions Grants Program	QAP	Qualified Allocation Plan
FAQ	Frequently Asked Questions	QCP	Quantifiable Community Participation
HBA	Homebuyer Assistance Program	REA	Real Estate Analysis
HHSCC	Housing and Health Services Coordination Council	RFA	Request for Applications
HHSP	Homeless Housing and Services Program	RFO	Request for Offer
HRA	Homeowner Rehabilitation Assistance Program	RFP	Request for Proposals
HRC	Housing Resource Center	RFQ	Request for Qualifications
HTC	Housing Tax Credit	ROFR	Right of First Refusal
HTF	Housing Trust Fund	SLIHP	State of Texas Low Income Housing Plan
HUD	U.S. Department of Housing and Urban Development	TA	Technical Assistance
IFB	Invitation for Bid	TBRA	Tenant Based Rental Assistance Program
		TICH	Texas Interagency Council for the Homeless
		TSHEP	Texas Statewide Homebuyer Education Program
		TXMCC	Texas Mortgage Credit Certificate
		VAWA	Violence Against Women Act
		WAP	Weatherization Assistance Program

3

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**MARCH 21, 2019**

Presentation, discussion and possible action regarding an Award of Direct Loan funds from the 2018-1 Multifamily Direct Loan Notice of Funding Availability

**RECOMMENDED ACTION**

**WHEREAS**, the Board previously authorized release of the 2018-1 Multifamily Direct Loan Notice of Funding Availability (NOFA) for up to \$28,862,745 with the application acceptance period beginning on January 4, 2018;

**WHEREAS**, the NOFA has since been amended several times to increase the amount available to \$62,304,276, subsequently closing on November 30, 2018, with funds in excess of remaining requests yet to be considered for award rolling over to the 2019-1 Multifamily Direct Loan NOFA;

**WHEREAS**, Application #18505, which requested \$1,500,000 in Direct Loan funds for Mistletoe Station, is a Priority 3 application under the 2018-1 NOFA that has received complete reviews for compliance with program and underwriting requirements and was previously awarded 9% housing tax credits (9% HTC) in July 2017;

**WHEREAS**, in accordance with 10 TAC §1.301(d)(1), the compliance history is designated as a Medium Portfolio Category 1 and deemed acceptable without conditions by the Executive Award and Review Advisory Committee (EARAC) after review and discussion;

**WHEREAS**, 10 TAC §13.5(h)(2) requires Applications for Developments previously awarded funds by the Department (regardless of fund source and are not proposing acquisition and rehabilitation) to be found eligible by the Board;

**WHEREAS**, this Application has provided evidence of adverse factors, including increased costs related to increased regional storm water infrastructure improvements and a significant drop in equity pricing, beyond the applicant's control that could materially impair their ability to provide affordable housing as a criteria for the Board to consider in affirming their eligibility;

**WHEREAS**, 10 TAC §13.3(e)(14) and (15) lists "costs that have been allocated to or paid by another fund source" and "deferred developer fee" as ineligible costs for reimbursement with Direct Loan funds, and section 1 of the NOFA states "Awards

to refinance or of supplemental financing will not exceed an amount necessary to replace lost funding or maintain original anticipated levels of feasibility as determined by staff;”

**WHEREAS**, staff has found that \$911,087 in Direct Loan funds is the amount necessary to maintain original anticipated levels of feasibility, and to ensure that Direct Loan funds do not pay for costs allocated to another fund source, such as deferred developer fee;

**WHEREAS**, staff recommends that the Board find this Application eligible due to increased project costs as a result of the City of Fort Worth’s increase in required infrastructure improvements and decreased equity proceeds as a result of a substantial drop in equity pricing post-award; and

**WHEREAS**, this Application has layered Direct Loan rent restrictions on nine of the 110 units as a result of this addition of Direct Loan funds;

**WHEREAS**, these nine Direct Loan units cannot be the same units restricted by the City of Fort Worth’s HOME funds;

**NOW, therefore, it is hereby**

**RESOLVED**, that an award of \$911,087 in Tax Credit Assistance Program Repayment Funds (TCAP RF) from the 2018-1 NOFA for Mistletoe Station is hereby approved in the form presented at this meeting; and

**FURTHER RESOLVED**, that the Board’s approval is conditioned upon satisfaction of all conditions of underwriting, and completion of any other reviews required to assure compliance with the applicable HOME rules and requirements.

### **BACKGROUND**

On December 14, 2017, the Board approved issuance of a NOFA for up to \$28,862,745, which has subsequently been amended to increase the amount available to \$62,304,276 within three set-asides:

- \$22,324,041 in Supportive Housing/ Soft Repayment set-aside, composed of \$3.3 million in TCAP RF and \$19,024,041 in National Housing Trust Fund,
- \$8,215,058 of HOME funds under the CHDO set-aside,
- \$31,765,177 in the General set-aside, composed of \$17,318,946 in HOME, \$5 million in NSP1 Program Income and \$9,446,231 in TCAP RF.

Mistletoe Station was awarded an allocation of 9% HTC on July 27, 2017, which proposed new construction of 110 one-, two-, and three-bedroom units for a General population in Fort Worth. The Applicant subsequently encountered circumstances beyond their control that could not have

been prevented or foreseen, including a drop in equity pricing from \$0.915 to \$0.86, yielding \$1,349,866 (9.5%) less equity proceeds. Additionally, the City of Fort Worth increased the regional storm water infrastructure improvements required during the permitting process, resulting in over \$2 million in additional costs. The preliminary engineering report included in the 9% HTC application in 2017, as well as an existing drainage study commission by the Near Southside District in the City of Fort Worth examined the area (Leslie Creek drainage area) immediately surrounding the development site. However, once additional contributing drainage basins to the system that were being relocated by the development were included, it was determined that the storm sewer design would need to extend to an area – some of which was on private land – previously not included in the infrastructure improvements. As a result, easements and right-of-ways needed to be secured, leading to increased costs. Other factors that contributed to increased infrastructure costs included inaccurate City utility drawings, the City requiring improved sanitary lines post-9% HTC award, and increased inspection and testing fees by the City as a result of the increased infrastructure costs.

Staff is recommending the Board’s approval of Mistletoe Station’s application (18505) for TCAP RF totaling \$911,087 as a loan at 1.0% interest rate with a 30-year amortization and 15.5-year term under the General Set-Aside. The \$911,087 TCAP RF loan will be used to fund increased hard, soft, and financing costs. Despite total loan proceeds increasing, deferred developer fee (\$1,304,788) will remain the same as the last time staff evaluated this transaction with respect to an application amendment request in July 2018. As a result of the increased loan proceeds and lower effective interest rate on all permanent debt, deferred fee is now expected to be repaid in year 9 instead of year 11. Developer fee has decreased from \$3,016,819 in July 2018 to \$2,727,585.

	Permanent Debt Total	1 <sup>st</sup> Lien Loan	Permanent Debt Total Effective Interest Rate	Deferred Developer Fee	Year Deferred Fee Fully Paid
9% Application	\$4,450,000	\$4,450,00	4.25%	\$897,027	15
Application Amendment	\$9,656,000	\$7,850,000	4.76%	\$1,304,778	11
Current Request	\$11,017,087	\$8,300,000	4.16%	\$1,304,778	9

As a result of the \$911,087 TCAP RF investment, nine units of the 110 units will be restricted to households at or below 50% Area Median Income under a TCAP RF Land Use Restriction Agreement. These nine Direct Loan units cannot be the same units restricted by the City of Fort Worth’s HOME funds. Additionally, TDHCA has submitted a question to HUD about how to treat utility allowances for HOME (and HOME match) units when the unit is also assisted by vouchers allocated under 24 CFR Part 983. Depending on the response the Department receives, it is possible that the TCAP RF units may not be the same units assisted with the project-based vouchers.

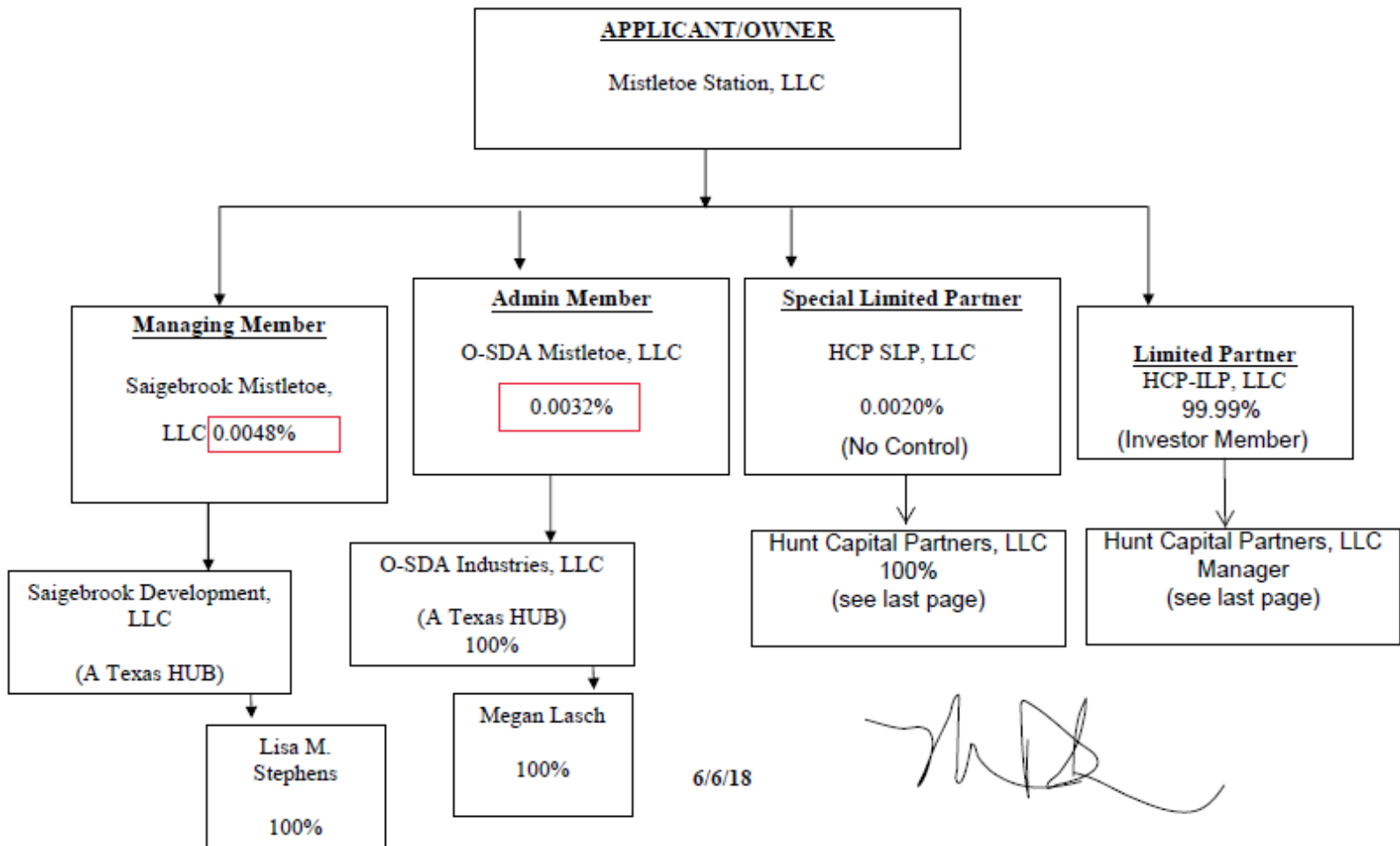
The TCAP RF loan will be subordinate to the Hunt Mortgage loan and will maintain second lien position during the permanent period as a result. The recommended application and award amounts are outlined in the attached award recommendations log behind this Board item.

This application has been underwritten and determined to meet the Real Estate Analysis rules and requirements and has received a previous participation review.

Should the recommended award be approved, \$15,479,913 will remain available under the NOFA, of which eight applications requesting \$10,891,000 are still under review. Subsequent award recommendations for applications undergoing staff reviews may appear on future Board agendas.

*Organizational Structure and Previous Participation:* The borrower is Mistletoe Station, LLC and includes entities and principals as indicated in the organization chart below. At the time of the Previous Participation Review, the applicant was a Medium Portfolio Category 1; EARAC recommends approval without conditions.

*Public Comment:* There have been no letters of support or opposition received by the Department in connection with this current application.



6/6/18





October 25, 2018

Andrew Sinnott  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, TX 78701

RE: Mistletoe Station - TDHCA #17259

Dear Andrew:

Per 10 TAC 13.5(d)(2), please accept this letter as a request for a finding of eligibility, required for projects that have previously been awarded Department funds. Mistletoe Station received an award of \$1,500,000 in 9% Housing Tax Credits (HTC) in 2017. The project has just begun construction in the City of Fort Worth.

Saigebrook Development, LLC respectfully requests that the TDHCA Board find Mistletoe Station eligible for additional Departmental funding in the form of MFDL TCAP funds, pursuant to our MFDL application submitted on October 25, 2018. If approved, this would bring the total MFDL funding for Mistletoe Station to \$1,500,000, allowable under the Multifamily Direct Loan NOFA.

Circumstances beyond our control which could not have been prevented or foreseen have led us to seek additional Departmental funding. During permitting, the City of Fort Worth increased the regional stormwater infrastructure improvements required from an estimated cost of \$2M to more than \$4M at final contract value. In addition, equity pricing dropped at closing from \$0.915 down to \$0.86 which created a large need for additional funds. To help fill the gap left by the reduced equity proceeds, we pursued and received soft debt financing from the City of Fort Worth in the form of HOME funds, as well as additional reimbursement of infrastructure costs from the TIF. Based on the application for MFDL TCAP funds, we would still be deferring over \$715,000 in developer fees.

If approved, we will commit to designating eight MFDL units to serve those at 30% AMI. In total, the development will bring 74 affordable units to a market which is in need of affordable housing, a high opportunity census tract that has not received any affordable housing in the last 15 years. We ask the Board to consider the substantial benefit to the project of the risk mitigation resulting from an award of \$1,500,000 in MFDL funds.

Sincerely,

Lisa Stephens  
President



February 8, 2019

Texas Department of Community Affairs (TDHCA)  
Multifamily Loan Programs Administrator  
Attn: Mr. Andrew Sinnott  
221 E. 11<sup>th</sup> Street  
Austin, Texas 78701

**RE: Multifamily Direct Loan Application - #18505 Mistletoe Station**

Mr. Sinnott:

JPMorgan Chase (JPMC) is the construction debt partner in the Mistletoe Station project reference number 18505. The construction loan was executed and closed August 31, 2018. Mistletoe Station's debt closure occurred under extraordinary circumstances and duress. The capital stack of the transaction experienced pressures from the lack of the Upper Tier placement in the equity portion of the project. Additional sources are required for the project to be feasible. The following are examples of the circumstances that occurred during the closure of this transaction:

- The intended Upper Tier Investor for the Low Income Tax Credits informed the Syndication team the week of closing the investment was cancelled. At the time of closing, Chase, The Syndicator, and Project Owners had substantially invested funds into different aspects of the transaction.
- The late notice from the Upper Tier Investor's decision to recall the investment commitment created an issue for the Syndication team; thereby, executing a different strategy in the placement of the transaction in a different type of fund, which was a multi-investor fund, which has a negative impact on the pricing of the Low Income Housing Tax Credits. Due to the lower equity amount, the Developers were paid \$0 developer fees. The reduction in sources forced the Syndication and Debt teams to concede lower contingency amount for the life of the project.
- Lower contingency amounts, created an issue with JPMorgan Chase's credit standards, which we required the Syndicator to place \$500,000 cash escrow from the Partners to increase the liquidity strength of the transaction.
- JPMC is aware the Syndication team required for the Development team to apply for TCAP and TIF funds to add additional sources. Chase is aware the Development team applied for TIF and TCAP funds.
- JPMC did concede to use Hard Cost Contingency of less than 6% in order to close the transaction on time. Currently, the project has incurred approximately one third of the original contingency. Additional costs are projected to occur in the next few weeks; for example, encasement of piers due to water on site will take place.
- In addition to cost overruns, several other uncertainties do represent real risks the project can experience. Several of the other risks are as follows: market conditions, which can affect the lease-up period as well as conversion from the construction loan to the permanent loan; rising interest rates, which will affect the amount of interest reserve JPMC will feel comfortably holding back in a reserve account; and tax credit delivery, which will have a direct impact on the tax credit equity amount. JPMC normally mitigates these risks with developer fee that is projected to be paid during the construction, lease-up and conversion phase. Given the circumstances, the transaction has increased the risk slightly above the regulatory underwriting standards.
- All Partners involved in the project have been experienced unfavorable circumstances and pressures that are outside of the control of the Partners. However, all of the teams decided to



proceed with the transaction due to the need of housing units in this market. JPMC recognizes the demand for affordable housing in this location and further acknowledges the various partnership that have participated including the TIF, the City and TDHCA.

We request that you sincerely consider granting TCAP funds to create financially stable project and return the risk level of this transaction to one within regulatory underwriting standards. Should you need to discuss this request in more detail, please feel free to contact me at (214) 965-2678 or via email at [olivio.c.ochoa@chase.com](mailto:olivio.c.ochoa@chase.com)

Sincerely,

A handwritten signature in blue ink that reads "Olivio C. Ochoa". The signature is fluid and cursive, with a prominent flourish at the end.

Olivio Ochoa  
Authorized Officer

**MEMORANDUM**

February 11, 2019

Andrew Sinnott  
Texas Department of Community Affairs (TDHCA)  
Multifamily Loan Programs Administrator  
221 E. 11th Street  
Austin, TX 78701

**RE: Multifamily Direct Loan Application – #17259 Mistletoe Station**

Mr. Sinnott:

Hunt Capital Partners (HCP) is the tax credit partner in the Mistletoe Station project referenced above. HCP's investment in Mistletoe Station, LLC closed on August 31, 2018 under extraordinary circumstances without a tax credit investor being identified and without a clear exit strategy in place for syndication of the credits. HCP did so because it felt this project was an important investment into the affordable housing market. Mistletoe Station is a development located in a high opportunity location in an extremely sought-after area in the urban core of Fort Worth. It is one of the most exciting locations we have had the opportunity to help facilitate the creation of affordable housing. That being said, as the project progressed through design and development, it encountered many hurdles including environmental issues common for urban core developments, increased city infrastructure requirements, and more importantly lack of CRA need for Tarrant County investments. This was a limiting factor in the amount of credit pricing ultimately available for the development. Under these circumstances, the structure of the transaction was such that additional funds needed to be sourced in order for the project to be viably financed and syndicated. A summary of these circumstances is provided below for your review:

- The intended end purchaser of the tax credits – one of the few investors available in Tarrant County – advised the week of closing that it would not proceed with the transaction. At the time of closing, HCP and the project owner (collectively 'Partners') had invested approximately \$1.1MM into plans, permits, engineering, environmental and legal expenses.
- Due to the late notice by the investor, there was no time to secure another investor and source additional funds. HCP was forced to reprice the transaction for a multi-investor fund but that re-pricing resulted in a substantial loss of funds and \$0 paid developer fee in the deal. As a result, the project is essentially financially non-viable given the lack of contingencies required by most lenders and investors.
- Given the Partners sizeable investment in the project and the 16-month construction timeline, the Partners determined that closing the transaction and proceeding with construction was the best course of action for this transaction in order to meet its placed in service deadline. As a condition of closing, the Partners agreed that additional funds were needed to be infused into the project in order for it to be feasible and to attract alternative tax credit investors.
- The construction lender required a \$500,000 cash escrow from the Partners and an additional credit enhancement from HCP in the form of a liquidity guaranty for it to move forward with its construction loan. To follow through with its commitment to the project and protect its investment, HCP posted \$500,000 of its own funds in an escrow account as security for the transaction to cover cost overruns, lease up delays, and permanent loan resizing risk. This requirement is typically uncustomary and prohibitive for any tax credit syndicator under ordinary circumstances.
- As a condition of closing, HCP agreed to continue searching for an alternate investor willing to pay a higher tax credit price and Saigebrook agreed to apply for TCAP and TIF funds and to attempt to source any additional funds it could. To date, Saigebrook has applied for both TIF and TCAP funds and HCP continues

to search for potential investors for the Mistletoe Station project, a challenging task in Tarrant County. Furthermore, the lack of paid developer fee is hindering the ability to secure alternate investors.

- As it currently stands, the Mistletoe project budget includes less than 6% contingency on hard costs and it has already incurred contingency costs of roughly 30% of the budgeted amount (it's currently nearly 20% complete). Moreover, additional contingency costs for encasement of piers due to water on-site will be processed next month, further depleting the budgeted contingency funds. Noteworthy also is that the hard cost contingency budget was limited to 6% due to a lack of funds despite a recommendation for a larger contingency from HCP's third-party engineers.
- Besides construction cost overruns, several other risks pose serious concerns for the task of completion still ahead including rising interest rates, lease up risk and conversion risk, both of which are exacerbated due to the number of market rate units contained in the project. The requirement for a high number of market rate units was a condition of the neighborhood's support and therefore could not be modified prior to closing. Typically, these risks would be mitigated by paid developer fee in the deal which can be captured if necessary to provide a cash reserve to offset these unforeseen circumstances. As explained above, the Mistletoe structure contains no paid developer fee in the deal and, thus, the level of risk in this transaction is extremely high. This level of risk has also made it virtually impossible to source an alternative investor for the tax credits which could provide better pricing but would require a more conventional risk profile.
- In summary, despite the challenges this development faced both Partners elected to stay committed to the project and took on substantial financial risk with no paid fee. As a result of that commitment, a high opportunity neighborhood in the urban core of one of our state's largest cities will receive affordable housing. This project is also helping to facilitate millions of dollars of public infrastructure through the City's participation in the financing structure. This infrastructure will lower the barrier for other infill tracts in the area, spurring further economic development. In addition, Mistletoe Station includes units set aside for permanent supportive housing, 811 residents, even market rate, making it a substantially mixed income community. If successful, this project is a textbook example of how the housing tax credit program can truly benefit a community through its partnerships, not just by providing much needed housing.

There is still a substantial road ahead with construction and conversion for this development to come to fruition. We were put in extremely dire circumstances outside of our control. In order to follow through with the commitments made to the community and to TDHCA we chose to proceed with closing with the understanding that this project should be eligible for additional funds based on our review of the TCAP NOFA and Rules. If delaying closing – or any other alternatives – had been viable at the time, the Partners would have selected that path.

Due to the above described circumstances beyond the control of the Mistletoe Partners, we request that you sincerely consider granting TCAP funds to ensure financial viability for the Mistletoe Station project. Should you need to discuss this request in more detail, please feel free to contact me at (972) 803-3416 or via email at [omar.chaudhry@huntcompanies.com](mailto:omar.chaudhry@huntcompanies.com).

Thank you for your consideration.

Sincerely,



Director, Acquisitions  
Hunt Capital Partners





**Addendum to Underwriting Report**

TDHCA Application #: **18505 / 17259** Program(s): **9% HTC / Multifamily Direct Loan**

**Mistletoe Station**

Address/Location: \_\_\_\_\_ 1916 Mistletoe Blvd.

City: \_\_\_\_\_ Fort Worth \_\_\_\_\_ County: \_\_\_\_\_ Tarrant \_\_\_\_\_ Zip: \_\_\_\_\_ 76104

APPLICATION HISTORY	
Report Date	PURPOSE
03/14/19	MDL Loan Application
07/06/18	Amendment Request
12/15/17	Condition Clearance at Carryover
08/28/17	Original Underwriting Report

**ALLOCATION**

TDHCA Program	Previous Allocation				RECOMMENDATION				
	Amount	Rate	Amort	Term	Amount	Rate	Amort	Term	Lien
MF Direct Loan Const. to Perm. (Repayable)					\$911,087	1.00%	30	15.5	2nd
LIHTC (0% Credit)	\$1,500,000				\$1,500,000				

\* Pursuant to 10 TAC §13.8(a), the term of a Multifamily Direct Loan should match the term of any superior loan (within 6 months).

\* Lien position after conversion to permanent. The Department's lien position during construction may vary.

**CONDITIONS STATUS**

- 1 Receipt and acceptance by Carryover:
  - a: Evidence of approval from Fort Worth's Tax Increment Finance ("TIF") District #4 Southside/Medical District for funding participation in the amount of \$2,000,000 towards public infrastructure.

Comments:

Applicant submitted a copy of Resolution 04-2017-08 dated 8/23/17 authorizing a TIF Development Agreement for the use of tax increment to fund or reimburse costs up to \$2,600,000.

**Status: Condition cleared** (Gregg Kazak, REA - 12/15/17).

- b: Receipt of MAP Invitation Letter for FHA 221(d)(4) loan, or letter from Lender indicating the date that the HUD concept meeting was held, and confirmation that based on that meeting the Lender intends to proceed with processing the application and submitting it to HUD.

Comments:

Applicant provided a MAP Invitation letter from HUD dated 8/02/17. In addition, an 8/31/17 letter from Mason Joseph Company, Inc. (lender) was provided stating that a Concept Meeting was held on 8/01/17 and that they intend to submit a full 221(d)(4) loan application to FHA.

**Status: Condition cleared** (Gregg Kazak, REA - 12/15/17).

2 Receipt and acceptance by 10% test:

a: Confirmation that site plan conforms to the city's parking requirements.

**Status:** BGO Architects provided a 9/24/18 letter stating that the site is governed by the City of Fort Worth's Near Southside Standards and Guidelines ("NSS"). Per NSS, no off-street (onsite) parking is required. Although no off-street parking spaces are required, project has 144 spaces on site (1.28/unit).

**Condition cleared** (GK, REA - 9/27/18).

b: Documentation that a noise study has been completed, and certification from the Architect that all recommendations from the noise study are incorporated into the development plans.

**Status:** Applicant submitted a 9/07/17 Noise Assessment conducted by Terracon that reported an outdoor day-night average sound level ("DNL") of 83.1 decibels ("dB"). In conjunction, a 7/11/18 letter from Miller Slayton Architects indicates that construction materials and design will provide sufficient noise attenuation to conform with HUD guidelines (interior below 45dB/exterior below 65dB).

**Condition cleared** (GK, REA - 9/27/18).

3 Receipt and acceptance before Direct Loan Closing

a: Executed subordination agreements on the Fort Worth loans reflecting that TDHCA's loan will maintain a superior second lien position during the permanent period in accordance with 10 TAC §13.8(c)(5)."

b: Final construction contract with Schedule of Values.

c: Loan documents from all lenders reflecting final terms.

d: Final limited partnership agreement.

e: Senior loan documents (and/or partnership documents) must contain a provision(s) that any stabilization resizing on the senior debt includes the debt service on the TDHCA MDL at a 1.15 DCR.

f: Documentation identifying any required matching funds, and confirming that the source is eligible to be counted as matching funds under HUD and TDHCA requirements.

4 Documentation at Cost Certification clearing environmental issues identified in the ESA report,

a: Certification of a subsurface site investigation evaluating the impact of identified historic uses and that any recommended mitigation measures were implemented.

b: Certification of comprehensive testing for asbestos and lead-based paint prior to demolition of the existing building, and that any recommended mitigation and disposal measures were measures were taken.

c: Architect certification that all noise assessment recommendations were implemented and the Development is compliant with HUD noise guidelines.

**Status:** Pending.

Should any terms of the proposed capital structure change or if there are material changes to the overall development plan or costs, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

**SET-ASIDES**

TDHCA SET-ASIDES for HTC LURA		
Income Limit	Rent Limit	Number of Units
30% of AMI	30% of AMI	8
40% of AMI	40% of AMI	0
50% of AMI	50% of AMI	30
60% of AMI	60% of AMI	36

TDHCA SET-ASIDES for DIRECT LOAN LURA		
Income Limit	Rent Limit	Number of Units
30% of AMFI	30% of AMFI	0
50% of AMFI	Low HOME	9
60% of AMFI	High HOME	0
80% of AMFI	High HOME	0

## OVERVIEW

Project is currently under construction. However, during permitting, the City of Fort Worth increased required regional storm water infrastructure improvements from an estimated cost of \$2M to more than \$4M at final contract value. In addition, equity pricing dropped at closing from \$0.91 down to \$0.86, thereby creating a need for additional funds. To help fill the gap left by increased costs and reduced equity proceeds, Applicant was able to increase their permanent loan. They also obtained soft debt financing from the City of Fort Worth (HOME funds), soft debt financing from the Fort Worth Housing Finance Corporation ("FWHFC") and additional reimbursement of infrastructure costs from Fort Worth Tax Increment Financing (the "TIF").

To further alleviate the increase in development costs, they have applied for a Multifamily Direct Loan ("MDL") under the 2018 NOFA (TCAP funds).

With the unforeseen increase in costs imposed by the City of Fort Worth, both the interim construction lender, JP Morgan Chase, and the equity provider, Hunt Capital Partners, submitted letters in February 2019 imploring TDHCA to consider granting the requested TCAP funds as a means to help ensure the financial viability of the project. The Direct Loan funds would not be used to pay deferred fee or any other ineligible costs.

The MDL Application submitted is for \$1,500,000. However, factoring that amount into the capital structure results in a deferred developer fee of \$715,855. Since proceeds of the MDL cannot be used to "repay" deferred fee, TDHCA is limiting the MDL amount to \$911,087, thereby requiring a deferred fee of \$1,304,778, which is consistent with the amount approved at Amendment in July 2018.

## ANALYSIS

### Operating Pro Forma

SUMMARY- AS UNDERWRITTEN (Applicant's Pro Forma)					
NOI:	\$659,940	Avg. Rent:	\$1,003	Expense Ratio:	47.2%
Debt Service:	\$544,843	B/E Rent:	\$909	Controllable Expenses:	\$2,959
Net Cash Flow:	\$115,098	UW Occupancy:	92.5%	Property Taxes/Unit:	\$1,070
Aggregate DCR:	1.21	B/E Occupancy:	84.0%	Program Rent Year:	2018

Using the most recent 2018 rent limits, LH/50%, 50% and 60% units are projected to achieve maximum program rents while 30% units are now covered by project based vouchers under Tarrant County's Housing Choice Voucher Program.

TDHCA's rent assumptions for market rate units were kept the same as they were at Amendment in 2018. At that time, consideration was also given to the original 2017 Market Study. As part of their MDL application, Applicant provided a 2018 Market Study, but it was done at the request of the equity provider and does not address TDHCA rules.



The following is a comparison of the estimated market rents:

	TDHCA		Applicant		Variance
1BR	\$943	\$1.45/sf	\$950	\$1.46/sf	\$7
2BR	\$1,233	\$1.45/sf	\$1,250	\$1.47/sf	\$17
3BR	\$1,583	\$1.45/sf	\$1,485	\$1.36/sf	(\$98)
Avg.	\$1,248	\$1.45/sf	\$1,240	\$1.44/sf	(\$8)
	Original 2017 Market Study		Applicant		Variance
1BR	\$1,110	\$1.71/sf	\$950	\$1.46/sf	(\$160)
2BR	\$1,150	\$1.35/sf	\$1,250	\$1.47/sf	\$100
3BR	\$1,610	\$1.47/sf	\$1,485	\$1.36/sf	(\$125)
Avg.	\$1,234	\$1.43/sf	\$1,240	\$1.44/sf	\$6
	2018 Novogradac Market Study		Applicant		Variance
1BR	\$1,200	\$1.85/sf	\$950	\$1.46/sf	(\$250)
2BR	\$1,500	\$1.76/sf	\$1,250	\$1.47/sf	(\$250)
3BR	\$1,650	\$1.51/sf	\$1,485	\$1.36/sf	(\$165)
Avg.	\$1,473	\$1.71/sf	\$1,240	\$1.44/sf	(\$233)

Applicant's proposed market rents are consistent with those currently attained at 14407 Hunter Plaza, an historic adaptive reuse development located about two miles to the north, in which about 30% of the units are unrestricted.

All else equal, projecting the higher 2018 Market Study rents would increase the DCR to 1.43. However, by commencing full payments on the soft debt, the DCR would be 1.28, which would not affect the feasibility conclusion.

Average rent with 1 month concession on 60% and market units is \$35 above break-even, but the need for concessions is diminished with subject offering a combined 20% discount to market rents.

Breakeven occupancy occurs with 18 units vacant (underwritten at 8).

Pro Forma feasibility indicators are good with a 47% expense ratio, \$2,959/unit in controllable expenses and a first year DCR of 1.21.

As underwritten, Pro Forma exhibits feasibility for 35 years with primary permanent loan rate locked at 5.11% fixed.

Projected 15 year residual cash flow is \$1.2M after repayment of deferred developer fee.

**Development Cost**

SUMMARY- AS UNDERWRITTEN (Applicant's Costs)					
Acquisition	\$965,808/ac	\$23,424/unit	\$2,576,632	Contractor Fee	\$1,893,200
Off-site + Site Work		\$43,219/unit	\$4,754,039	Soft Cost + Financing	\$4,509,831
Building Cost	\$109.26/sf	\$93,987/unit	\$10,338,600	Developer Fee	\$2,727,585
Contingency	6.06%	\$8,319/unit	\$915,042	Reserves	\$540,000
<b>Total Development Cost</b>	\$392,430/unit	\$28,254,929		<b>Rehabilitation Cost</b>	N/A

As directed by the Fort Worth TIF, the July 2018 Amendment added 32 units to the development (from 78 at original application to 110), thereby increasing total development cost by \$5.7M (from \$21.6M to \$27.3M). Construction began in 2018. However, during permitting, the City increased required regional storm water infrastructure improvements, adding approximately \$2M more to the cost budget.

The most recent copy submitted of the AIA G702 Application and Certificate for Payment (for the period to 10/31/2018) includes an updated schedule of values consistent with Applicant's revised Development Cost Schedule.

The following highlights the cost changes made over what was submitted at Amendment:

<u>Category</u>	<u>At Amendment</u>		<u>Current Budget</u>		<u>Variance</u>	<u>% Change</u>
Acquisition	\$2,385,550		\$2,576,632		\$191,082	8.01%
Off-site + Site Work	\$3,906,000		\$4,754,039		\$848,039	21.71%
Building Cost	\$10,339,193		\$10,338,600		(\$593)	-0.01%
Contingency	\$783,486	5.50%	\$915,042	6.06%	\$131,557	16.79%
Contractor Fee	\$2,104,016	14.00%	\$1,893,200	11.83%	(\$210,816)	-10.02%
Soft Cost + Financing	\$4,158,343		\$4,509,831		\$351,488	8.45%
Developer Fee	\$3,016,819	14.00%	\$2,727,585	12.97%	(\$289,234)	-9.59%
Reserves	\$591,000		\$540,000		(\$51,000)	-8.63%
<b>Total Development Cost</b>	<b>\$27,284,406</b>		<b>\$28,254,929</b>		<b>\$970,523</b>	<b>3.56%</b>

Applicant submitted certified Off-Site and Site Work schedules that included costs for General Requirements and General Contractor Fees. Their reason for doing so is that those costs are associated with contracts with the City of Fort Worth for the required public TIF improvements separate from the contract for building and on-site improvements. However, to be consistent with standard underwriting practices, TDHCA has reclassified those costs into overall General Requirements and Contractor Profit as part of Total Contractor Fees on the Development Cost Schedule. This reclassification has no effect on the overall feasibility conclusion.

To offset the increase in cost imposed by the City, there has been a cut to the Contractor Fees for the building and on-site improvements along with a reduction of the Developer Fee. However, Total Development Cost still exhibits a prominent increase.

Vertical Building Cost has remained consistent with what was budgeted at Amendment.

#### Permanent Sources of Funds

<u>Debt (Must Pay)</u>	<u>At Amendment</u>		<u>Current Structure</u>		<u>Variance</u>	<u>% Change</u>
Hunt Mortgage Group	\$7,850,000	5.53%	\$8,300,000	5.11%	\$450,000	5.73%
TDHCA - MDL	\$0		\$911,087	1.00%	\$911,087	100.00%
<b>Cash Flow Debt / Grants</b>						
Fort Worth HFC	\$750,000	2.00%	\$750,000	2.00%	\$0	0.00%
Fort Worth HOME	\$1,056,000	1.00%	\$1,056,000	1.00%	\$0	0.00%
Fort Worth TIF	\$2,600,000		\$2,900,000		\$300,000	11.54%
City Cost Reimbursements	\$0		\$134,355		\$134,355	100.00%
<b>Equity / Deferred Fees</b>						
Hunt Capital Partners	\$13,723,618	\$0.91	\$12,898,709	\$0.86	(\$824,909)	-6.01%
Saigebrook Dev. Fee	\$1,304,788		\$1,304,778		(\$10)	0.00%
<b>Total Capitalization</b>	<b>\$27,284,406</b>		<b>\$28,254,929</b>		<b>\$970,523</b>	<b>3.56%</b>

Aside from the MDL, Applicant has already closed on all of the other sources of capital. With a \$911K MDL in place at a 1.00% rate/30 year amortization, the \$1.3M deferred developer fee is projected to get repaid within 9 years.

If the MDL is not extended, Applicant would have to defer \$2.2M (81%) of the developer fee, which would then take an estimated 12 years to repay.

**Conclusion**

As presented, the changes in development cost and capitalization do not affect the feasibility conclusion. Therefore, the Underwriter recommends approval of an MDL in the amount of \$911,087 at a 1.00% interest rate, amortized over 30 years, with a 15.5 year term, and a second lien collateral position subordinate to Hunt Capital's primary permanent mortgage.

No change is recommended to the original credit allocation awarded in 2017.

Underwriter: Gregg Kazak

Manager of Real Estate Analysis: Thomas Cavanagh

Director of Real Estate Analysis: Brent Stewart

**UNIT MIX/RENT SCHEDULE**  
**Mistletoe Station, Fort Worth, 9% HTC #17259**

LOCATION DATA	
CITY:	Fort Worth
COUNTY:	Tarrant
Area Median Income	\$75,200
PROGRAM REGION:	3

UNIT DISTRIBUTION						
# Beds	# Units	% Total	Assisted	Income	# Units	% Total
Eff	-	0.0%	0	30%	8	7.3%
1	21	19.1%	2	40%	-	0.0%
2	67	60.9%	4	50%	30	27.3%
3	22	20.0%	2	60%	36	32.7%
4	-	0.0%	0	MR	36	32.7%
<b>TOTAL</b>	<b>110</b>	<b>100.0%</b>	<b>8</b>	<b>TOTAL</b>	<b>110</b>	<b>100.0%</b>

Applicable Programs
Direct Loan

Pro Forma ASSUMPTIONS	
Revenue Growth	2.00%
Expense Growth	3.00%
Basis Adjust	130%
Applicable Fraction	67.27%
APP % Acquisition	3.39%
APP % Construction	9.00%
Average Unit Size	860 sf

**UNIT MIX / MONTHLY RENT SCHEDULE**

HTC		TDHCA Direct Loan Program		RENT ASSISTED UNIT		UNIT MIX				APPLICABLE PROGRAM RENT			APPLICANT'S PRO FORMA RENTS				TDHCA PRO FORMA RENTS				MARKET RENTS		
Type	Gross Rent	Type	Gross Rent	Type	Gross Rent	# Units	# Beds	# Baths	NRA	Gross Rent	Utility Allow	Max Net Program Rent	Delta to Max	Rent psf	Net Rent per Unit	Total Monthly Rent	Total Monthly Rent	Rent per Unit	Rent psf	Delta to Max	Underwritten	Original 2017 Market Analysis	
TC 30%	\$423			PBV	\$824	2	1	1	650	\$862	\$38	\$824	\$0	\$1.27	\$824	\$1,648	\$1,648	\$824	\$1.27	\$0	\$943	\$1.45	\$1,110
TC 50%	\$705	LH/50%	\$705	0		2	1	1	650	\$705	\$38	\$667	\$0	\$1.03	\$667	\$1,334	\$1,334	\$667	\$1.03	\$0	\$943	\$1.45	\$1,110
TC 50%	\$705			0		5	1	1	650	\$705	\$38	\$667	\$0	\$1.03	\$667	\$3,335	\$3,335	\$667	\$1.03	\$0	\$943	\$1.45	\$1,110
TC 60%	\$846			0		4	1	1	650	\$846	\$38	\$808	\$0	\$1.24	\$808	\$3,232	\$3,232	\$808	\$1.24	\$0	\$943	\$1.45	\$1,110
MR				0		8	1	1	650	\$0	\$51		NA	\$1.46	\$950	\$7,600	\$7,544	\$943	\$1.45	NA	\$943	\$1.45	\$1,110
TC 30%	\$507			PBV	\$917	4	2	2	850	\$968	\$51	\$917	\$0	\$1.08	\$917	\$3,668	\$3,668	\$917	\$1.08	\$0	\$1,233	\$1.45	\$1,150
TC 50%	\$846	LH/50%	\$846	0		5	2	2	850	\$846	\$51	\$795	\$0	\$0.94	\$795	\$3,975	\$3,975	\$795	\$0.94	\$0	\$1,233	\$1.45	\$1,150
TC 50%	\$846			0		10	2	2	850	\$846	\$51	\$795	\$0	\$0.94	\$795	\$7,950	\$7,950	\$795	\$0.94	\$0	\$1,233	\$1.45	\$1,150
TC 60%	\$1,015			0		22	2	2	850	\$1,015	\$51	\$964	\$0	\$1.13	\$964	\$21,208	\$21,208	\$964	\$1.13	\$0	\$1,233	\$1.45	\$1,150
MR				0		26	2	2	850	\$0	\$65		NA	\$1.47	\$1,250	\$32,500	\$32,058	\$1,233	\$1.45	NA	\$1,233	\$1.45	\$1,150
TC 30%	\$586			PBV	\$1,275	2	3	2	1,092	\$1,340	\$65	\$1,275	\$0	\$1.17	\$1,275	\$2,550	\$2,550	\$1,275	\$1.17	\$0	\$1,583	\$1.45	\$1,610
TC 50%	\$978	LH/50%	\$978	0		2	3	2	1,092	\$978	\$65	\$913	\$0	\$0.84	\$913	\$1,826	\$1,826	\$913	\$0.84	\$0	\$1,583	\$1.45	\$1,610
TC 50%	\$978			0		6	3	2	1,092	\$978	\$65	\$913	\$0	\$0.84	\$913	\$5,478	\$5,478	\$913	\$0.84	\$0	\$1,583	\$1.45	\$1,610
TC 60%	\$1,173			0		10	3	2	1,092	\$1,173	\$64	\$1,109	(\$1)	\$1.01	\$1,108	\$11,080	\$11,089	\$1,109	\$1.02	\$0	\$1,583	\$1.45	\$1,610
MR				0		2	3	2	1,092	\$0	\$64		NA	\$1.36	\$1,485	\$2,970	\$3,166	\$1,583	\$1.45	NA	\$1,583	\$1.45	\$1,610
<b>TOTALS/AVERAGES:</b>						<b>110</b>			<b>94,624</b>				<b>(\$0)</b>	<b>\$1.17</b>	<b>\$1,003</b>	<b>\$110,354</b>	<b>\$110,061</b>	<b>\$1,001</b>	<b>\$1.16</b>	<b>\$0</b>	<b>\$1,248</b>	<b>\$1.45</b>	<b>\$1,234</b>

<b>ANNUAL POTENTIAL GROSS RENT:</b>			<b>\$1,324,248</b>	<b>\$1,320,731</b>	
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**STABILIZED PRO FORMA**

**Mistletoe Station, Fort Worth, 9% HTC #17259**

1324248

**STABILIZED FIRST YEAR PRO FORMA**

	COMPARABLES		APPLICANT				AMENDMENT	ORIGINAL UW		AMENDMENT	TDHCA				VARIANCE	
	Database	Other	% EGI	Per SF	Per Unit	Amount	Applicant	Applicant	TDHCA	TDHCA	Amount	Per Unit	Per SF	% EGI	%	\$
<b>POTENTIAL GROSS RENT</b>				\$1.17	\$1,003	\$1,324,248	\$1,311,444	\$734,544	\$734,544	<b>\$1,311,444</b>	\$1,320,731	\$1,001	\$1.16		0.3%	\$3,517
Retained Security Deposits, Late Fees,					\$0.00	\$0										
App Fees, Pet Fees, Interest Income					\$20.00	\$26,400	\$19,800	\$14,040								
					\$0.00	\$0										
Total Secondary Income					\$20.00			\$14,040	\$19,800	\$26,400	\$20.00				0.0%	\$0
<b>POTENTIAL GROSS INCOME</b>						\$1,350,648	\$1,331,244	\$748,584	\$748,584	\$1,331,244	\$1,347,131				0.3%	\$3,517
Vacancy & Collection Loss				7.5% PGI		(101,299)	(99,843)	(56,144)	(56,144)	(99,843)	(101,035)	7.5% PGI			0.3%	(264)
Rental Concessions						-					-				0.0%	-
<b>EFFECTIVE GROSS INCOME</b>						\$1,249,349	\$1,231,401	\$692,440	\$692,440	\$1,231,401	\$1,246,096				0.3%	\$3,253

General & Administrative	\$44,409	\$404/Unit	\$62,713	\$570	3.05%	\$0.40	\$346	\$38,100	\$38,100	\$35,400	\$32,344	\$44,409	\$44,409	\$404	\$0.47	3.56%	-14.2%	(6,309)
Management	\$41,412	4.4% EGI	\$42,875	\$390	5.00%	\$0.66	\$568	\$62,467	\$61,570	\$34,622	\$34,622	\$61,570	\$62,305	\$566	\$0.66	5.00%	0.3%	162
Payroll & Payroll Tax	\$128,069	\$1,164/Unit	\$139,218	\$1,266	12.61%	\$1.66	\$1,432	\$157,528	\$157,529	\$93,440	\$92,891	\$128,069	\$128,069	\$1,164	\$1.35	10.28%	23.0%	29,459
Repairs & Maintenance	\$71,752	\$652/Unit	\$84,095	\$765	5.55%	\$0.73	\$630	\$69,280	\$69,280	\$53,850	\$50,879	\$66,000	\$66,000	\$600	\$0.70	5.30%	5.0%	3,280
Electric/Gas	\$27,676	\$252/Unit	\$13,264	\$121	1.24%	\$0.16	\$141	\$15,500	\$15,500	\$9,750	\$12,919	\$13,264	\$13,264	\$121	\$0.14	1.06%	16.9%	2,236
Water, Sewer, & Trash	\$70,140	\$638/Unit	\$95,150	\$865	3.61%	\$0.48	\$410	\$45,100	\$45,100	\$31,950	\$45,556	\$70,140	\$70,140	\$638	\$0.74	5.63%	-35.7%	(25,040)
Property Insurance	\$30,577	\$0.32 /sf	\$29,035	\$264	3.68%	\$0.49	\$418	\$46,000	\$35,750	\$26,520	\$21,682	\$30,577	\$30,577	\$278	\$0.32	2.45%	50.4%	15,423
Property Tax (@ 100%) 2.833027	\$76,115	\$692/Unit	\$110,514	\$1,005	9.42%	\$1.24	\$1,070	\$117,700	\$107,000	\$88,000	\$86,185	\$110,514	\$110,514	\$1,005	\$1.17	8.87%	6.5%	7,186
Reserve for Replacements	\$37,918	\$345/Unit	\$29,391	\$267	2.20%	\$0.29	\$250	\$27,500	\$27,500	\$23,400	\$23,400	\$27,500	\$27,500	\$250	\$0.29	2.21%	0.0%	-
Cable TV			\$550	\$5	0.17%	\$0.02	\$19	\$2,100	\$2,100	\$0	\$0	\$2,100	\$2,100	\$19	\$0.02	0.17%	0.0%	-
Supportive Services			\$7,934	\$72	0.38%	\$0.05	\$44	\$4,800	\$4,800	\$0	\$0	\$4,800	\$4,800	\$44	\$0.05	0.39%	0.0%	-
TDHCA LIHTC/HOME Compliance Fees			\$5,251	\$48	0.27%	\$0.04	\$30	\$3,334	\$2,960	\$2,960	\$2,960	\$2,960	\$3,266	\$30	\$0.03	0.26%	2.1%	68
TDHCA Bond Compliance Fee			\$0	\$0	0.00%	\$0.00	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0.00	0.00%	0.0%	-
Security			\$7,757	\$71	0.00%	\$0.00	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0.00	0.00%	0.0%	-
Other			\$4,073	\$37	0.00%	\$0.00	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0.00	0.00%	0.0%	-
<b>TOTAL EXPENSES</b>			<b>\$631,820</b>		<b>47.18%</b>	<b>\$6.23</b>	<b>\$5,358</b>	<b>\$ 589,409</b>	<b>\$567,189</b>	<b>\$399,892</b>	<b>\$403,437</b>	<b>\$561,903</b>	<b>\$ 562,944</b>	<b>\$5,118</b>	<b>\$5.95</b>	<b>45.18%</b>	<b>4.7%</b>	<b>\$ 26,465</b>
<b>NET OPERATING INCOME ("NOI")</b>					<b>52.82%</b>	<b>\$6.97</b>	<b>\$5,999</b>	<b>\$659,940</b>	<b>\$664,212</b>	<b>\$292,548</b>	<b>\$289,003</b>	<b>\$669,498</b>	<b>\$683,152</b>	<b>\$6,210</b>	<b>\$7.22</b>	<b>54.82%</b>	<b>-3.4%</b>	<b>\$ (23,212)</b>

<b>CONTROLLABLE EXPENSES</b>							\$2,959/Unit		\$2,959/Unit	\$2,877/Unit	\$3,008/Unit	\$2,926/Unit		\$2,926/Unit				
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**CAPITALIZATION / TOTAL DEVELOPMENT BUDGET / ITEMIZED BASIS**

*Mistletoe Station, Fort Worth, 9% HTC #17259*

DEBT / GRANT SOURCES																			
APPLICANT'S PROPOSED DEBT/GRANT STRUCTURE										AS UNDERWRITTEN DEBT/GRANT STRUCTURE									
DEBT (Must Pay)	Fee	Cumulative DCR		Pmt	Rate	Amort	Term	Principal	Amendment Applicant	Original Underwriting		Amendment TDHCA	Principal	Term	Amort	Rate	Pmt	Cumulative	
		UW	App							Applicant	TDHCA							DCR	LTC
Hunt Mortgage		1.34	1.29	\$509,678	5.11%	35	15	\$8,300,000	\$7,850,000	\$4,450,000	\$4,450,000	\$7,850,000	\$8,300,000	15	35	5.11%	\$509,678	1.29	29.4%
TDHCA - MDL		1.20	1.16	\$57,895	1.00%	30	15.5	\$1,500,000					\$911,087	15.5	30	1.00%	\$35,165	1.21	3.2%
<b>CASH FLOW DEBT / GRANTS</b>																			
Fort Worth HFC		1.20	1.16	\$1,884	2.00%	35	16	\$750,000	\$750,000			\$750,000	\$750,000	16	35	2.00%	\$0	1.21	2.7%
Fort Worth HOME		1.19	1.15	\$2,260	1.00%	35	16	\$1,056,000	\$1,056,000			\$1,056,000	\$1,056,000	16	35	1.00%	\$0	1.21	3.7%
Fort Worth's Tax Increment Finance ("TIF") District #4 - Cost Reimbursement		1.19	1.15	\$0	0.00%	0	0	\$2,900,000	\$2,600,000	\$2,000,000	\$2,000,000	\$2,600,000	\$2,900,000	0	0	0.00%		1.21	10.3%
City Reimbursement of Costs		1.19	1.15	\$0	0.00%	0	0	\$134,355					\$134,355	0	0	0.00%		1.21	0.5%
<b>TOTAL DEBT / GRANT SOURCES</b>				<b>\$571,717</b>	<b>TOTAL DEBT / GRANT SOURCES</b>	<b>\$14,640,355</b>		<b>\$12,256,000</b>	<b>\$6,450,000</b>	<b>\$6,450,000</b>	<b>\$12,256,000</b>	<b>\$14,051,442</b>	<b>TOTAL DEBT SERVICE</b>		<b>\$544,843</b>		<b>1.21</b>	<b>49.7%</b>	

<b>NET CASH FLOW</b>	\$111,435	\$88,223	<b>APPLICANT</b>			<b>NET OPERATING INCOME</b>			\$659,940	\$115,098	<b>NET CASH FLOW</b>		
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EQUITY SOURCES																
APPLICANT'S PROPOSED EQUITY STRUCTURE							AS UNDERWRITTEN EQUITY STRUCTURE									
EQUITY / DEFERRED FEES	DESCRIPTION	% Cost	Annual Credit	Credit Price	Amount	Amendment Applicant	Original Underwriting		Amendment TDHCA	Amount	Credit Price	Annual Credit	% Cost	Annual Credits per Unit	Allocation Method	
							Applicant	TDHCA								TDHCA
Hunt Capital Partners	LIHTC Equity	45.7%	\$1,500,000	0.86	\$12,898,709	\$13,723,628	\$14,248,575	\$14,248,575	\$13,723,618	\$12,898,709	\$0.86	\$1,500,000	45.7%	\$13,636	Previous Allocation	
Saigebrook Development, LLC	Deferred Developer Fees	2.5%	(26% Deferred)	\$715,865	\$1,304,778	\$897,027	\$897,027	\$1,304,788	\$1,304,778	\$1,304,778	(48% Deferred)		4.6%	Total Developer Fee:	\$2,727,585	
Additional (Excess) Funds Req'd		0.0%					\$0	\$0	\$0	\$0			0.0%			
<b>TOTAL EQUITY SOURCES</b>		<b>48.2%</b>			<b>\$13,614,574</b>	<b>\$15,028,406</b>	<b>\$15,145,601</b>	<b>\$15,145,602</b>	<b>\$15,028,406</b>	<b>\$14,203,487</b>			<b>50.3%</b>			

<b>TOTAL CAPITALIZATION</b>	\$28,254,929	\$27,284,406	\$21,595,601	\$21,595,602	\$27,284,406	\$28,254,929	15-Yr Cash Flow after Deferred Fee:			\$1,247,282
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DEVELOPMENT COST / ITEMIZED BASIS															
APPLICANT COST / BASIS ITEMS					TDHCA COST / BASIS ITEMS					COST VARIANCE					
Eligible Basis	Acquisition	New Const. Rehab	Total Costs	Amendment Applicant	Original Underwriting		Amendment TDHCA	Total Costs	Eligible Basis		%	\$			
					Applicant	TDHCA			New Const. Rehab	Acquisition					
Land Acquisition			\$21,151 / Unit	\$2,326,632	\$2,290,550	\$2,664,550	\$2,664,550	\$2,290,550	\$2,326,632	\$21,151 / Unit		0.0%	\$0		
Building Acquisition	\$0		\$ / Unit	\$0	\$0	\$0	\$0	\$0	\$ / Unit	\$0		0.0%	\$0		
Environmental			\$2,273 / Unit	\$250,000	\$95,000	\$0	\$0	\$95,000	\$250,000				\$0		
Off-Sites		\$0	\$20,016 / Unit	\$2,201,736	\$3,294,000	\$747,926	\$747,926	\$3,294,000	\$2,201,736	\$20,016 / Unit	\$0	0.0%	\$0		
Site Work		\$2,011,939	\$22,749 / Unit	\$2,502,403	\$487,050	\$2,244,279	\$2,244,279	\$487,050	\$2,502,403	\$22,749 / Unit	\$2,011,939	0.0%	\$0		
Site Amenities		\$49,900	\$454 / Unit	\$49,900	\$124,950	\$335,500	\$335,500	\$124,950	\$49,900	\$454 / Unit	\$49,900	0.0%	\$0		
Ground Floor Parking Garage		\$1,350,000	\$12,273 / Unit	\$1,350,000	\$1,350,000	\$1,091,207	\$1,108,895	\$1,108,895	\$10,081 / Unit	\$1,108,895		-0.4%	(\$45,076)		
Building Cost		\$8,988,600	\$94.99/sf	\$81,715/Unit	\$8,988,600	\$8,989,193	\$5,678,904	\$5,730,946	\$9,274,781	\$84,316/Unit	\$98.02/sf	\$9,274,781			
Contingency		\$915,042	7.38%	6.06%	\$915,042	\$783,486	\$517,830	\$517,830	\$783,486	6.04%	7.00%	\$871,186	0.0%	\$0	
Contractor Fees		\$1,426,691	10.71%	11.83%	\$1,893,200	\$2,104,016	\$1,522,422	\$1,493,476	\$2,104,016	11.79%	10.71%	\$1,426,691	0.0%	\$0	
Soft Costs	0	\$2,019,129	\$20,044 / Unit	\$2,204,879	\$2,106,723	\$2,288,967	\$2,288,967	\$2,106,723	\$2,204,879	\$20,044 / Unit	\$2,019,129	\$0	0.0%	\$0	
Financing	0	\$1,579,461	\$20,954 / Unit	\$2,304,952	\$2,051,620	\$1,615,447	\$1,615,447	\$2,051,620	\$2,304,952	\$20,954 / Unit	\$1,579,461	\$0	0.0%	\$0	
Developer Fee	\$0	\$2,727,585	14.87%	12.97%	\$2,727,585	\$3,016,819	\$2,241,294	\$2,233,844	\$3,016,819	12.94%	14.87%	\$2,727,585	\$0	0.0%	\$0
Reserves			\$4,909 / Unit	\$540,000	\$591,000	\$388,482	\$323,058	\$402,291	\$402,811	\$3,662 / Unit		34.1%	\$137,189		
<b>TOTAL HOUSING DEVELOPMENT COST (UNADJUSTE)</b>		<b>\$0</b>	<b>\$21,068,347</b>	\$256.863 / Unit	<b>\$28,254,929</b>	\$27,284,406	\$21,595,602	\$21,287,030	\$27,140,180	<b>\$28,162,816</b>	\$256.026 / Unit	<b>\$21,069,567</b>	<b>\$0</b>	<b>0.3%</b>	<b>\$92,113</b>
Acquisition Cost	\$0			\$0	\$0	\$0									
Contingency		(\$47,011)		\$0	\$0	\$0									
Contractor's Fee		\$0													
Interim Interest		\$0													
Developer Fee	\$0	\$0		\$0	\$0	\$0									
Reserves		\$0		\$0	\$0	\$0									
<b>ADJUSTED BASIS / COST</b>		<b>\$0</b>	<b>\$21,021,336</b>	\$256.863/unit	<b>\$28,254,929</b>	\$27,284,406	\$21,595,602	\$21,287,030	\$27,140,180	<b>\$28,162,816</b>	\$256.026/unit	<b>\$21,069,567</b>	<b>\$0</b>	<b>0.3%</b>	<b>\$92,113</b>

<b>TOTAL HOUSING DEVELOPMENT COSTS (Applicant's Uses are within 5% of TDHCA Estimate):</b>	<b>\$28,254,929</b>													
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**CAPITALIZATION / DEVELOPMENT COST BUDGET / ITEMIZED BASIS ITEMS**

*Mistletoe Station, Fort Worth, 9% HTC #17259*

CREDIT CALCULATION ON QUALIFIED BASIS				
	Applicant		TDHCA	
	Acquisition	Construction Rehabilitation	Acquisition	Construction Rehabilitation
<b>ADJUSTED BASIS</b>	\$0	\$21,021,336	\$0	\$21,069,567
Deduction of Federal Grants	\$0	\$0	\$0	\$0
<b>TOTAL ELIGIBLE BASIS</b>	\$0	\$21,021,336	\$0	\$21,069,567
High Cost Area Adjustment		130%		130%
<b>TOTAL ADJUSTED BASIS</b>	\$0	\$27,327,737	\$0	\$27,390,437
Applicable Fraction	67.27%	67.27%	67.27%	67.27%
<b>TOTAL QUALIFIED BASIS</b>	\$0	\$18,384,114	\$0	\$18,426,294
Applicable Percentage	3.39%	9.00%	3.39%	9.00%
<b>ANNUAL CREDIT ON BASIS</b>	\$0	\$1,654,570	\$0	\$1,658,366
<b>CREDITS ON QUALIFIED BASIS</b>	\$1,654,570		\$1,658,366	

Method	ANNUAL CREDIT CALCULATION BASED ON APPLICANT BASIS		FINAL ANNUAL LIHTC ALLOCATION		
	Annual Credits	Proceeds	Credit Price	Variance to Request	
			\$0.8599	Credit Allocation	Credits
<b>Eligible Basis</b>	\$1,654,570	\$14,227,880	----	---	----
<b>Needed to Fill Gap</b>	\$1,651,734	\$14,203,487	----	---	----
<b>Previous Allocati</b>	\$1,500,000	\$12,898,709	<b>\$1,500,000</b>	<b>\$0</b>	<b>\$0</b>

BUILDING COST ESTIMATE					
BASE COST:	CATEGORY	FACTOR	UNITS/SF	PER SF	
	Combination		94,624 SF	\$85.79	8,117,835
Adjustments					
	Exterior Wall Finish	3.76%		3.22	\$305,044
	Elderly	0.00%		0.00	0
	9-Ft. Ceilings	0.00%		0.00	0
	Roof Adjustment(s)			(0.25)	(23,656)
	Subfloor			(0.15)	(14,509)
	Floor Cover			2.56	242,237
	Breezeways	\$0.00	0	0.00	0
	Balconies	\$0.00	0	0.00	0
	Plumbing Fixtures	\$990	360	3.77	356,400
	Rough-ins	\$485	220	1.13	106,700
	Built-In Appliances	\$1,725	110	2.01	189,750
	Exterior Stairs	\$2,280	15	0.36	34,200
	Heating/Cooling			2.14	202,495
	Enclosed Corridors	\$77.34	24,003	19.62	1,856,403
	Carports	\$11.94	0	0.00	0
	Ground Floor Parking Garage	\$37.40	40,000	15.81	1,496,000
	Comm &/or Aux Bldgs	\$97.48	3,221	3.32	313,999
	Elevators	\$89,550	2	1.89	179,100
	Storage/Maint./ Trash Rm.	\$77.34	4,468	3.65	345,557
	Fire Sprinklers	\$2.47	121,848	3.18	300,965
<b>SUBTOTAL</b>				<b>148.04</b>	<b>14,008,521</b>
	Current Cost Multiplier	1.01		1.48	140,085
	Local Multiplier	0.86		(20.73)	(1,961,193)
<b>TOTAL BUILDING COSTS</b>				<b>128.80</b>	<b>\$12,187,413</b>
	Plans, specs, survey, bldg permits	3.30%		(4.25)	(\$402,185)
	Contractor's OH & Profit	11.50%		(14.81)	(1,401,553)
<b>NET BUILDING COSTS</b>			\$94,397/unit	\$109.74/sf	\$10,383,676

## Long-Term Pro Forma

### Mistletoe Station, Fort Worth, 9% HTC #17259

	Growth Rate	Year 1	Year 2	Year 3	Year 4	Year 5	Year 10	Year 15	Year 20	Year 25	Year 30	Year 35
EFFECTIVE GROSS INCOME	2.00%	\$1,249,349	\$1,274,336	\$1,299,823	\$1,325,820	\$1,352,336	\$1,493,088	\$1,648,490	\$1,820,066	\$2,009,500	\$2,218,650	\$2,449,569
TOTAL EXPENSES	3.00%	\$589,409	\$606,467	\$624,023	\$642,094	\$660,694	\$762,194	\$879,471	\$1,014,999	\$1,171,639	\$1,352,705	\$1,566,907
<b>NET OPERATING INCOME ("NOI")</b>		<b>\$659,940</b>	<b>\$667,870</b>	<b>\$675,800</b>	<b>\$683,725</b>	<b>\$691,642</b>	<b>\$730,895</b>	<b>\$769,019</b>	<b>\$805,068</b>	<b>\$837,861</b>	<b>\$865,945</b>	<b>\$882,662</b>
EXPENSE/INCOME RATIO		47.2%	47.6%	48.0%	48.4%	48.9%	51.0%	53.4%	55.8%	58.3%	61.0%	64.0%
<b>MUST -PAY DEBT SERVICE</b>												
Hunt Mortgage		\$509,678	\$509,678	\$509,678	\$509,678	\$509,678	\$509,678	\$509,678	\$509,678	\$509,678	\$509,678	\$509,678
TDHCA - MDL		\$35,165	\$35,165	\$35,165	\$35,165	\$35,165	\$35,165	\$35,165	\$35,165	\$35,165	\$35,165	\$0
TOTAL DEBT SERVICE		\$544,843	\$544,843	\$544,843	\$544,843	\$544,843	\$544,843	\$544,843	\$544,843	\$544,843	\$544,843	\$509,678
DEBT COVERAGE RATIO		1.21	1.23	1.24	1.25	1.27	1.34	1.41	1.48	1.54	1.59	1.73
<b>ANNUAL CASH FLOW</b>		<b>\$115,098</b>	<b>\$123,027</b>	<b>\$130,957</b>	<b>\$138,882</b>	<b>\$146,799</b>	<b>\$186,052</b>	<b>\$224,176</b>	<b>\$260,225</b>	<b>\$293,018</b>	<b>\$321,103</b>	<b>\$372,984</b>
Deferred Developer Fee Balance		\$1,189,680	\$1,066,654	\$935,697	\$796,814	\$650,015	\$0	\$0	\$0	\$0	\$0	\$0
<b>CUMULATIVE NET CASH FLOW</b>		<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$202,025</b>	<b>\$1,247,282</b>	<b>\$2,477,356</b>	<b>\$3,878,432</b>	<b>\$5,429,991</b>	<b>\$7,267,210</b>





**2018-1 Multifamily Direct Loan Program - Application Log - March 13, 2019**

Per 2018-1 Multifamily Direct Loan Notice of Funding Availability published in the *Texas Register* on 12/29/2017, 1st Amendment to NOFA published in the *Texas Register* on 4/6/2018, 2nd Amendment to NOFA published in the *Texas Register* on 7/27/18, and 3rd Amendment to NOFA

The following data was compiled using information submitted by each applicant. While this data has been reviewed or verified by the Department, errors may still be present. Those reviewing the log are advised to use caution in reaching any definitive conclusions based on this information alone. Where Applications are layered with 9% or 4% Tax credits, the Applications are also subject to evaluation under the Department criteria for those fund sources. Applicants are encouraged to review 10 TAC §§11.1(b) and 10.2(a) concerning Due Diligence and Applicant Responsibility, along with 10 TAC Subchapter C related to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications. This log will be updated periodically as staff completes application reviews and as more applications are received. The Multifamily Direct Loan Program - Application Log is presented for informational use only, and does not represent a conclusion or judgment by TDHCA, its staff or Board. Applicants that identify an error in the log should contact Andrew Simmott at andrew.simmott@tdhca.state.tx.us as soon as possible. Identification of an error early does not guarantee that the error can be addressed administratively.

*Applications sorted by date received within each set-aside.*

													TCAP RF	\$3,140,000
													NHTF	\$9,386,000
													Total Set Aside Funding Level:	\$12,526,000
TDHCA Application #	Property Name	Property City	Property County	Region	Housing Activity <sup>1</sup>	Multifamily Direct Loan Request/Award	Target Population	Total Units	MF Direct Loan Units	Layering <sup>2</sup>	Date Received <sup>3</sup>	Comments		
18502	Arlinda Gardens Supportive Housing	Bryan	Brazos	8	NC	\$ -	Supportive Housing	29	13		3/1/2018	Application withdrawn 8/7/18		
18099	Waters Park Studios	Austin	Travis	7	NC	\$ 1,000,000	Supportive Housing	132	10	9%	4/2/2018	Recommended for NHTF award at 7/26/18 Board meeting		
18099	Waters Park Studios	Austin	Travis	7	NC	\$ 1,000,000	Supportive Housing	132	8	9%	7/27/2018	Recommended for NHTF award at 10/11/18 Board meeting		
18504	Brooks Haven Supportive Housing	Rockdale	Milam	8	NC	\$ 2,000,000		30	9		8/31/2018			
18502	Arlinda Gardens Supportive Housing	Bryan	Brazos	8	NC	\$ 2,000,000	Supportive Housing	29	13		9/12/2018			
18503	Eastern Oaks Apartments	Austin	Travis	7	R	\$ 2,000,000	General	30	18		9/19/2018			
18448	RBJ Phase I	Austin	Travis	7	NC	\$ 2,000,000	Elderly Limitation	279	15	4%	10/29/2018	Recommended for NHTF award at 2/21/19 Board meeting		
18137	New Hope Housing Dale Carnegie	Houston	Harris	6	NC	\$ 1,386,000	Elderly Limitation	170	11	9%	11/26/2018	Previously awarded 9% HTC on 7/26/18		
18509	El Sereno Apartments	Cibolo	Guadalupe	9	NC	\$ 1,140,000	Elderly Limitation	136	8	9%	11/30/2018	Previously awarded 9% HTC under app 16128 on 7/28/16		
<b>Total Amount Requested Under SH/SR Set Aside</b>						<b>\$ 12,526,000</b>	<b>Total Units</b>	<b>938</b>	<b>92</b>					
<b>Total Amount Awarded Under SH/SR Set Aside</b>						<b>\$ 4,000,000</b>	<b>Total Units</b>	<b>30</b>	<b>10</b>					
<b>Total Amount Remaining Under SH/SR Set Aside (NHTF)</b>						<b>\$ 5,386,000</b>								
<b>Total Amount Remaining Under SH/SR Set Aside (TCAP RF)</b>						<b>\$ 3,140,000</b>								

													Total Set Aside Funding Level:	\$1,600,000
TDHCA#	Property Name	Property City	Property County	Region	Housing Activity <sup>1</sup>	Multifamily Direct Loan Request/Award	Target Population	Total Units	MF Direct Loan Units	Layering <sup>2</sup>	Date Received <sup>3</sup>	Comments		
18322	Las Casitas de Azucar	Santa Rosa	Cameron	11	NC	\$ 1,600,000	General	50	14	9%	4/2/2018	Recommended for award at 7/26/18 Board meeting		
18391	Merritt Manor	Manor	Travis	7	NC	\$ -	Elderly Limitation	146	30	9%	4/2/2018			
<b>Total Amount Requested Under CHDO Set Aside</b>						<b>\$ 1,600,000</b>	<b>Total Units</b>	<b>196</b>	<b>44</b>					
<b>Total Amount Awarded Under CHDO Set Aside</b>						<b>\$ 1,600,000</b>	<b>Total Units</b>	<b>50</b>	<b>14</b>					
<b>Total Amount Remaining Under CHDO Set Aside</b>						<b>\$ -</b>								

HOME (limited availability statewide)	\$15,014,248
NSPI PI (available statewide)	\$3,600,000
TCAP RF (available statewide)	\$1,980,000
<b>NSPI PI and TCAP RF Total</b>	<b>\$5,580,000</b>

													Total Set Aside Funding Level:	\$20,594,248
TDHCA#	Property Name	Property City	Property County	Region	Housing Activity <sup>1</sup>	Multifamily Direct Loan Request/Award	Target Population	Total Units	MF Direct Loan Units	Layering <sup>2</sup>	Date Received <sup>3</sup>	Comments		
18500	Rio Lofts	San Antonio	Bexar	9	NC	\$ -	General	81	36	9%	1/11/2018	Application withdrawn 4/11/18		
18501	Secretariat Apartments	Arlington	Tarrant	3	NC	\$ -	Elderly Limitation	74	29	9%	1/11/2018	Application withdrawn 4/30/18		
18412	Lord Road Apartments	San Antonio	Bexar	9	NC	\$ -	General	324	50	4%	1/18/2018	\$2,975,000 Direct Loan award returned after 4/26/18 Board approval		
18417	Sphinx at Throckmorton Villas	McKinney	Collin	3	NC	\$ -	General	220	18	4%	2/15/2018	Application suspended 10/9/18		
18000	Evergreen at Garland Senior Community	Garland	Dallas	3	NC	\$ -	Elderly Limitation	105	25	9%	4/2/2018			
18002	Evergreen at Basswood Senior Community	Garland	Dallas	3	NC	\$ -	Elderly Limitation	116	34	9%	4/2/2018			
18036	Clyde Ranch	Clyde	Callahan	2	NC	\$ 660,000	General	40	11	9%	4/2/2018	Recommended for HOME award at 7/26/18 Board meeting		
18040	Farmhouse Row	Slaton	Lubbock	1	NC	\$ 660,000	General	48	11	9%	4/2/2018	Recommended for HOME award at 7/26/18 Board meeting		
18052	Nacogdoches Lofts	San Antonio	Bexar	9	NC	\$ -	Elderly Limitation	102	35	9%	4/2/2018			
18053	Alazan Lofts	San Antonio	Bexar	9	NC	\$ -	General	88	24	9%	4/2/2018	Application terminated		

18054	Piedmont Lofts	San Antonio	Bexar	9	NC	\$ -	General	55	41	9%	4/2/2018	Requested CHDO set-aside, which is unavailable for this application
18369	The Residences at Canyon Lake	Canyon Lake	Comal	9	NC	\$ 1,060,000	Elderly Limitation	35	11	9%	4/2/2018	Recommended for HOME award at 7/26/18 Board meeting
18421	Travis Flats	Austin	Travis	7	NC	\$ -	General	146	50	4%	4/4/2018	Application withdrawn 7/26/18
18259	Cannon Courts	Bangs	Brown	2	NC	\$ 1,659,248	General	36	11	9%	8/30/2018	Recommended for HOME award at 11/8/18 Board meeting
18407	Sphinx at Sierra Vista Senior Villas	Fort Worth	Tarrant	3	NC	\$ 3,600,000	Elderly Limitation	272	27	4%	8/31/2018	Recommended for HOME award at 11/8/18 Board meeting
18223	Harvest Park Apartments	Pampa	Gray	1	NC	\$ 1,000,000	General	60	10	9%	9/13/2018	Recommended for HOME award at 11/8/18 Board meeting
18274	Hill Court Villas	Granbury	Hood	3	NC	\$ 1,000,000	Elderly Limitation	48	10	9%	9/13/2018	Recommended for HOME award at 11/8/18 Board meeting
18454	Grim Hotel Apartments	Texarkana	Bowie	4	ADR	\$ -	General	93	19	4%	9/21/2018	Application withdrawn
18019	Highlander Senior Village	Comal	Bulverde	9	NC	\$ 3,090,000	Elderly Limitation	66	20	9%	9/25/2018	Recommended for HOME award at 12/6 Board meeting
18036	Clyde Ranch	Clyde	Callahan	2	NC	\$ -	General	40	25	9%	10/1/2018	Application withdrawn 10/12/18
18040	Farmhouse Row	Slaton	Lubbock	1	NC	\$ -	General	48	37	9%	10/1/2018	Application withdrawn 10/12/18
18505	Mistletoe Station	Fort Worth	Tarrant	3	NC	\$ 911,087	General	110	9	9%	10/25/2018	To be recommended for TCAP RF award at 3/21/19 Board meeting
18506	Golden Trails	West	McLennan	8	NC	\$ 445,000	Elderly Limitation	45	6	9%	11/19/2018	Previously awarded 9% HTC and HOME funds on 7/27/17
18507	Legend Oaks	Llano	Llano	7		\$ 480,000	Elderly Limitation	48			11/30/2018	
18369	The Residences at Canyon Lake	Canyon Lake	Comal	9	NC	\$ 1,440,000	Elderly Limitation	35	11	9%	11/30/2018	Previously awarded 9% HTC and HOME funds on 7/26/18
<b>Total Amount Requested Under General Set Aside: Development Sites in non-PJs</b>						\$ 11,494,248	<b>Total Units</b>	426	121			
<b>Total Amount Requested Under General Set Aside: Development Sites in PJs</b>						\$ 4,511,087	<b>Total Units</b>	650	162			
<b>Total Amount Requested Under General Set Aside: TOTAL</b>						\$ 16,005,335	<b>Total Units</b>	1,076	283			
<b>Total Amount Awarded Under General Set Aside (HOME)</b>						\$ 9,129,248	<b>Total Units</b>	123	33			
<b>Total Amount Awarded Under General Set Aside (TCAP RF)</b>						\$ 911,087	<b>Total Units</b>	110	9			
<b>Total Amount Awarded Under General Set Aside (NSPI PI)</b>						\$ 3,600,000	<b>Total Units</b>	272	27			
<b>Total Amount Remaining Under General Set Aside (HOME)</b>						\$ 5,885,000						
<b>Total Amount Remaining Under General Set Aside (TCAP RF)</b>						\$ 1,068,913						
<b>Total Amount Remaining Under General Set Aside (NSPI PI)</b>						\$ -						

1 = Housing Activity: New Construction=NC, Rehabilitation=R, ADR = Adaptive Reuse

2= Layering of Other Department Funds: 9%=9% Competitive Tax Credits, 4%=4% Tax Credit Program

3 = Date Received: The date that the application, all required 3rd Party Reports, Application Fees (if applicable), and Certificate of Reservation (if applicable) were received.

4a

**AUDIT AND FINANCE COMMITTEE ACTION REQUEST**

**INTERNAL AUDIT DIVISION**

**MARCH 21, 2019**

Presentation, discussion, and possible action regarding the Texas State Auditor's Office audit report #19-017 "A Report of the Audit of the Texas Department of Housing and Community Affairs' Fiscal year 2018 Financial Statements"

**RECOMMENDED ACTION**

**WHEREAS**, the Department is required to undergo an annual audit of its books and accounts, an annual audit of the Housing Trust Fund, and to obtain audited financial statements for the Housing Finance Division and the Supplemental Bond Schedules,

**NOW, therefore, it is hereby**

**RESOLVED**, the annual financial audit, audit of the Housing Trust Fund and the audit of the Housing Finance Division and the Supplemental Bond Schedules are hereby accepted.

**BACKGROUND**

Audit requirements:

- 1) The Department's governing statute, Tex. Gov't Code §2306.074, requires an annual audit of the Department's books and accounts.
- 2) Tex. Gov't Code §2306.204 requires an annual audit of the Housing Trust Fund to determine the amount of unencumbered fund balances that is greater than the amount required for the reserve fund.
- 3) The Department's bond indentures required audited financial statements of the Housing Finance Division and the Supplemental Bond Schedules.

Results of the audits conducted by the State Auditor's Office:

SAO Report on the "The Audit of the Department of Housing and Community Affairs Fiscal Year 2018 Financial Statements" Report # 19-017 available at:

<http://www.sao.texas.gov/reports/main/19-017.pdf>

- a) FY 2018 Basic Financial Statements (SAO Report # 19-306)
- b) FY 2018 Revenue Bond Program Audit (SAO Report # 19-308)
- c) FY 2018 Computation of Unencumbered Fund Balances (SAO Report # 19-309)
- d) FY 2018 Report on Compliance with the Public Funds Investment Act (SAO Report # 19-310)
- e) FY 2018 Report on Internal Control Over Financial Reporting and on Compliance and Other Matters (SAO Report # 19-307)

The basic financial statements will be available in their entirety at:  
<http://www.tdhca.state.tx.us/pdf/18-BasicFinancials.pdf>

4b

**BOARD REPORT ITEM**  
**INTERNAL AUDIT DIVISION**  
**MARCH 21, 2019**

Report on the Meeting of the Audit Committee

**REPORT ITEM**

Verbal report.

5



BOARD ACTION REQUEST  
BOND FINANCE DIVISION  
MARCH 21, 2019

Presentation, discussion, and possible action on Resolution No. 19-029 approving an increase in the maximum amount of outstanding advances under the Advances and Security Agreement with Federal Home Loan Bank of Dallas, authorizing use of available funds to repay advances, authorizing the execution of documents and instruments relating thereto, making certain findings and determinations in connection therewith, and containing other provisions relating to the subject

RECOMMENDED ACTION

Adopt attached resolution.

BACKGROUND

At the Board meeting of September 8, 2016, the Board authorized the execution of an Advances and Security Agreement (the Agreement) with the Federal Home Loan Bank of Dallas (FHLB). The purpose of the Agreement is to provide short-term financing for the purchase of mortgage loans originated through the Department's single family loan program. Collateral for advances under the Agreement consists of the purchased mortgage loans plus amounts on deposit in a related escrow fund. Purchased mortgage loans may be posted as collateral the day following purchase, and provide ninety-two cents on the dollar of purchasing power for additional loans; eight cents on the dollar is considered the "haircut" on the whole loan collateral. Purchased mortgage loans remain in the FHLB line until pooled into mortgage-backed securities, typically two to three times per month. Advances are repaid from the sale of mortgage-backed securities created with pools of the purchased loans.

The maximum principal amount of advances under the Agreement at any one time was originally \$75 million, and has been increased over time to its current level of \$175 million. The Department's single family loan volume has continued to increase, and staff is seeking authorization to increase the maximum principal amount of advances under the agreement at any one time to \$250 million, which should provide both immediate relief to pressures on the line, as well as provide a buffer with which to absorb continuing increases to volume.

In order to take advantage of the increase to the maximum principal amount of advances under the Agreement, the Department needs to deposit additional funds to maintain the required collateral levels for the Agreement. The current cash collateral is an escrow account on deposit with FHLB of \$15 million, representing three individual deposits of \$5 million. Each investment or reinvestment in the escrow must be in a minimum amount of \$5 million and be deposited for a minimum term of one year. Rather than deposit additional funds to the escrow, the

Department can achieve the same net effect, but maintain flexibility, by instead applying amounts to pay down existing advances. Staff and the Department's financial advisor are exploring ways to reduce the collateral requirement or to provide alternative collateral for the Agreement; repayment of advances would allow the Department the ability to withdraw deposited amounts in the event of a successful negotiation of more favorable terms.

The Department's loan purchase volume reached an all-time high of \$143 million in February 2019, and purchases are expected to increase significantly in response to the recent release of bond program funds. Due to loan volume and insufficient collateral, the Department is currently unable to purchase all loans available for purchase; the backlog of loans for which there are insufficient available funds has been as high as \$30 million recently, costing the Department interest earnings on those mortgage loans while they are not owned by the Department.

Below is the loan purchase volume history since the Agreement was put into place.



At this time, staff is requesting authorization to apply up to \$10 million to repay existing advances under the Agreement. The source of funds for the repayment will be amounts available for such purpose in the Single Family Mortgage Revenue Bond Indenture, the Residential Mortgage Revenue Bond Indenture, or other amounts that are legally available for this purpose. The attached parity report confirms the financial position of the indentures and available assets as of December 31, 2018. Staff has been working with the Department's bond counsel and financial advisor to determine the most efficient, legally available, funds to apply for this purpose.

## RESOLUTION NO. 19-029

RESOLUTION APPROVING INCREASE IN THE MAXIMUM AMOUNT OF OUTSTANDING ADVANCES UNDER ADVANCES AND SECURITY AGREEMENT WITH FEDERAL HOME LOAN BANK OF DALLAS; AUTHORIZING USE OF AVAILABLE FUNDS TO REPAY ADVANCES; AUTHORIZING THE EXECUTION OF DOCUMENTS AND INSTRUMENTS RELATING THERETO; MAKING CERTAIN FINDINGS AND DETERMINATIONS IN CONNECTION THEREWITH; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT

WHEREAS, the Texas Department of Housing and Community Affairs (the "Department") has been duly created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code (the "Act"), as amended from time to time, for the purpose of providing a means of financing the costs of residential ownership, development and rehabilitation that will provide decent, safe and sanitary housing for individuals and families of low and very low income and families of moderate income (as described in the Act as determined by the Governing Board of the Department (the "Board") from time to time) at prices they can afford; and

WHEREAS, the Act authorizes the Department: (a) to acquire, and to enter into advance commitments to acquire, mortgage loans (including participations therein) secured by mortgages on residential housing in the State of Texas (the "State"); (b) to issue its bonds for the purpose of obtaining funds to make and acquire such mortgage loans or participations therein, to establish necessary reserve funds and to pay administrative and other costs incurred in connection with the issuance of such bonds; and (c) to pledge all or any part of the revenues, receipts or resources of the Department, including the revenues and receipts to be received by the Department from such mortgage loans or participations therein, and to mortgage, pledge or grant security interests in such mortgages, mortgage loans or other property of the Department, to secure the payment of the principal or redemption price of and interest on such bonds; and

WHEREAS, pursuant to Resolution No. 17-004 approved on September 8, 2016 ("Resolution No. 17-004"), the Board authorized the execution and delivery of an Advances and Security Agreement (including the letter agreement thereto, the "Advances Agreement") with the Federal Home Loan Bank of Dallas ("FHLB"), to provide funds to assist the Department's servicer for the single family mortgage purchase program (the "Program") in the purchase of qualifying mortgage loans (including participations therein) through the purchase of mortgage-backed securities ("Mortgage Certificates") issued and guaranteed by Fannie Mae, the Federal Home Loan Mortgage Corporation or the Government National Mortgage Association (referred to herein as "Mortgage Loans"), from the participating lenders in the Program (such funds advanced under the Advances Agreement are referred to herein as "Advances"); and

WHEREAS, pursuant to Resolution No. 17-004, the Board further authorized the deposit of cash and securities in escrow with the Texas Treasury Safekeeping Trust Company (the "Trust Company") in order to provide security for the Department's obligations under the Advances Agreement (the "Escrow Deposit") in the maximum amount of \$5,000,000; and

WHEREAS, pursuant to Resolution No. 17-012, the Board authorized (i) an increase in the maximum principal amount of Advances that may be outstanding under the Advances Agreement at any one time from \$75,000,000 to \$125,000,000, (ii) an increase in the Escrow Deposit to a maximum of \$15,000,000, and (iii) the taking of such other actions as may be necessary or convenient to carry out the purposes of this Resolution;

WHEREAS, pursuant to Resolution No. 18-006, the Board authorized (i) an increase in the maximum principal amount of Advances outstanding at any one time to \$175,000;

WHEREAS, the Board desires to authorize (i) an increase in the maximum principal amount of Advances that may be outstanding at any one time to \$250,000,000, and (ii) the use by the Department of

funds from any legally available source in an amount not to exceed \$10,000,000 to repay Advances, and (iii) the taking of such other actions as may be necessary to carry out the purpose of this Resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS THAT:

## ARTICLE 1

### APPROVAL OF DOCUMENTS AND CERTAIN ACTIONS

Section 1.1 Increase in Maximum Principal Amount of Advances. The increase in the maximum principal amount of Advances that may be outstanding under the Advances Agreement at any one time to \$250,000,000 is hereby authorized and approved.

Section 1.2 Authority to Repay Advances. The Department is authorized to use any legally available Department funds in an amount not to exceed \$10,000,000 to repay Advances.

Section 1.3 Execution and Delivery of Documents. The Authorized Representatives are each hereby authorized to execute and deliver all agreements, certificates, contracts, documents, instruments, releases, financing statements, letters of instruction, notices, written requests and other papers, whether or not mentioned herein, as may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution.

Section 1.4 Power to Revise Form of Documents. Notwithstanding any other provision of this Resolution, the Authorized Representatives are each hereby authorized to make or approve such revisions in documents related to the Advances Agreement and the Escrow Deposit as, in the judgment of such Authorized Representative, may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution, such approval to be evidenced by the delivery of such documents by the Authorized Representatives.

Section 1.5 Authorized Representatives. The following persons are hereby named as authorized representatives of the Department for purposes of executing, attesting, affixing the Department's seal to, and delivering the documents and instruments and taking the other actions referred to in this Article 1: the Chair or Vice Chair of the Board, the Executive director or Actin director of the Department, the Director of Administration of the Department, the Director of Bond Finance and Chief Investment officer of the Department, and the Secretary or Assistant Secretary to the Board. Such persons are referred to herein collectively as the "Authorized Representatives." Any one of the Authorized Representatives is authorized to act individually as set forth in this Resolution.

Section 1.6 Ratifying Other Actions. All other actions taken or to be taken by the Executive Director and the Department's staff in connection with the Advances Agreement and the Escrow Deposit are hereby ratified and confirmed.

## ARTICLE 2

### GENERAL PROVISIONS

Section 2.1 Notice of Meeting. This Resolution was considered and adopted at a meeting of the Board that was noticed, convened, and conducted in full compliance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, and with § 2306.032 of the Texas Government Code, regarding meetings of the Board.

Section 2.2 Effective Date. This Resolution shall be in full force and effect from and upon its adoption.

*[Execution page follows]*

PASSED AND APPROVED this 21st day of March, 2019.

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Chair, Governing Board

ATTEST:

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Secretary to the Governing Board

(SEAL)

**Texas Department of Housing and Community Affairs**  
**Bond Finance Division**  
**Executive Summary**  
As of December 31, 2018

	Single Family Indenture Funds	Residential Mortgage Revenue Bond Indenture Funds	Collateralized Home Mortgage Revenue Bond Indenture Funds	Multi-Family Indenture Funds	Combined Totals
<b>PARITY COMPARISON:</b>					
PARITY ASSETS					
Cash	\$ 132,760	\$ 21,845		\$ 5,970,672	\$ 6,125,277
Investments <sup>(1)</sup>	\$ 118,114,402	\$ 23,333,674	\$ 338,511	\$ 279,308,147	\$ 421,094,735
Mortgage Backed Securities <sup>(1)</sup>	\$ 393,067,172	\$ 128,591,520	\$ 1,683,133	\$ -	\$ 523,341,825
Loans Receivable <sup>(2)</sup>	\$ 25,677			\$ 830,082,197	\$ 830,107,874
Accrued Interest Receivable	\$ 2,223,276	\$ 480,140	\$ 10,747	\$ 6,739,321	\$ 9,453,484
<b>TOTAL PARITY ASSETS</b>	<b>\$ 513,563,287</b>	<b>\$ 152,427,179</b>	<b>\$ 2,032,392</b>	<b>\$ 1,122,100,337</b>	<b>\$ 1,790,123,195</b>
PARITY LIABILITIES					
Notes Payable	\$ 12,000,000	\$ 10,000,000		\$ 87,669,809	\$ 109,669,809
Bonds Payable <sup>(1)</sup>	\$ 455,917,135	\$ 117,555,000	\$ 300,000	\$ 903,427,630	\$ 1,477,199,765
Accrued Interest Payable	\$ 4,307,490	\$ 2,327,416	\$ 1,077	\$ 6,792,685	\$ 13,428,668
Other Non-Current Liabilities <sup>(3)</sup>				\$ 118,019,074	\$ 118,019,074
<b>TOTAL PARITY LIABILITIES</b>	<b>\$ 472,224,625</b>	<b>\$ 129,882,416</b>	<b>\$ 301,077</b>	<b>\$ 1,115,909,198</b>	<b>\$ 1,718,317,316</b>
PARITY DIFFERENCE	\$ 41,338,662	\$ 22,544,763	\$ 1,731,315	\$ 6,191,139	\$ 71,805,879
<b>PARITY</b>	<b>108.75%</b>	<b>117.36%</b>	<b>675.04%</b>	<b>100.55%</b>	<b>104.18%</b>

(1) Investments, Mortgage Backed Securities and Bonds Payable reported at par value not fair value. This adjustment is consistent with indenture cashflows prepared for rating agencies.

(2) Loans Receivable include whole loans only. Special mortgage loans are excluded.

(3) Other Non-Current Liabilities include "Due to Developers" (for insurance, taxes and other operating expenses) and "Earning Due to Developers" (on investments).

Note: Based on preliminary and unaudited financial statements, subject to change in audited financial statements.

**Texas Department of Housing and Community Affairs**  
**Single Family Mortgage Revenue Bond Indenture**  
**As of December 31, 2018**

Indenture Rating	S&P/Moody's	Bonds O/S 12/31/2018
Senior Lien Bonds (Fixed Rate)	AA+/Aa1	373,947,135
Junior Lien Bonds (Variable Rate)	AA+/Aa2	3,855,000
Senior Lien Bonds (Variable Rate)	AA+/VMIG 1	78,115,000

<b>PARITY ASSETS</b>	
Cash	\$ 132,760
Investments	\$ 118,114,402
Mortgage Backed Securities	\$ 393,067,172
Loans Receivable	\$ 25,677
Accrued Interest Receivable	\$ 2,223,276
<b>TOTAL PARITY ASSETS</b>	<b>\$ 513,563,287</b>

<b>PARITY LIABILITIES</b>	
Bonds and Notes Payable (Senior and Subordinate Lien)	\$ 467,917,135
Accrued Interest Payable	\$ 4,307,490
<b>TOTAL PARITY LIABILITIES</b>	<b>\$ 472,224,625</b>
PLUS per definition of Asset Test	\$ 4,000,000
<b>TOTAL ADJUSTED PARITY LIABILITIES</b>	<b>\$ 476,224,625</b>

<b>ASSET TEST</b>	<b>107.84%</b>
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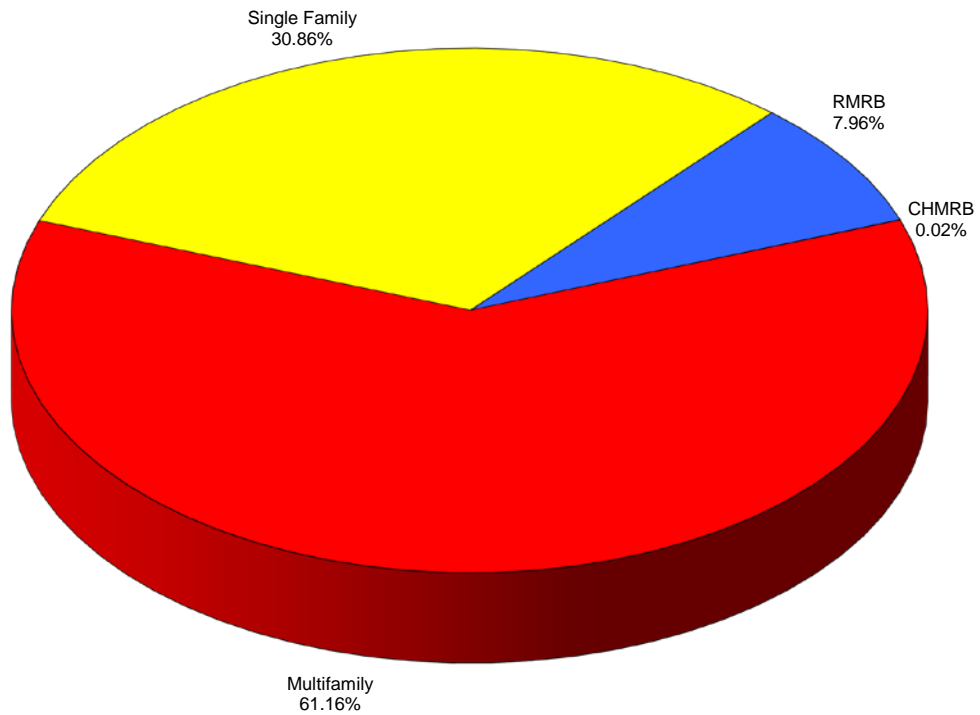
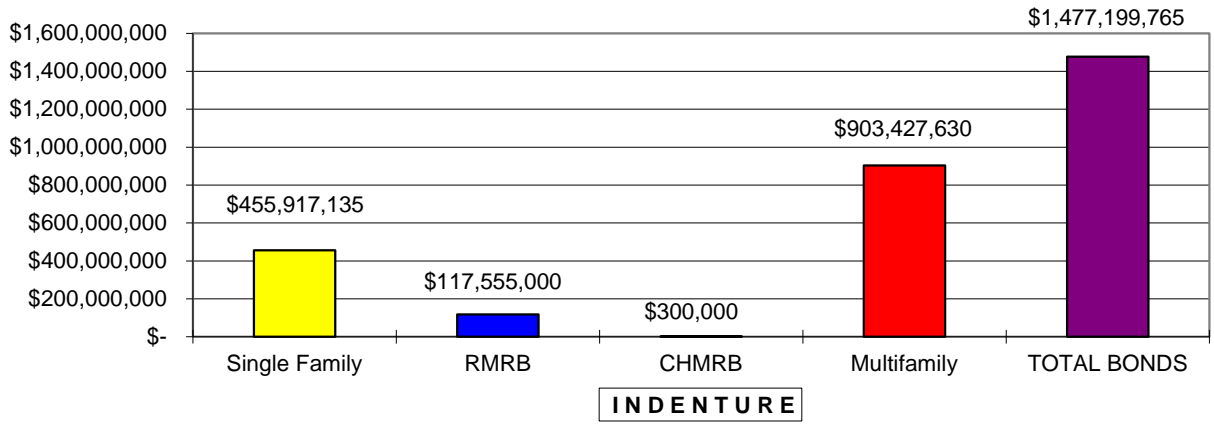


**Texas Department of Housing and Community Affairs**  
**Bond Finance Division**  
**Key Ratio Analysis**  
As of December 31, 2018

<b>Ratio Analysis:</b>	<b>Single Family Program Funds</b>		<b>Residential Mortgage Revenue Bond Funds</b>	<b>Collateralized Home Mortgage Revenue Funds</b>	<b>Multi-Family Program Funds</b>	<b>Combined Totals</b>
	<u>Indenture</u>		<u>Variable Rate Bonds</u>			
Credit Ratings:	Senior <u>Lien</u>	Junior <u>Lien</u>				
Standard and Poor's	AA+	AA+	A-1+	AA+	AA+	Various
Moody's	Aa1	Aa2	VMIG 1	Aaa	Not Rated	Various
Fitch's	N/A	N/A	N/A	N/A	N/A	N/A
Total Parity Assets/Bonds Payable	108.75%			117.36%	675.04%	100.55%
Investments/Total Parity Assets	23.00%			15.31%	16.66%	24.89%
MBS & Loans/Total Parity Assets	76.54%			84.36%	82.82%	73.98%
MBS & Loans/Bonds Payable (Single Family Only)	86.22%			100.81%	561.04%	N/A
						89.65%

**Texas Department of Housing and Community Affairs**  
**Bond Finance Division - Executive Summary**  
 As of December 31, 2018

**Total TDHCA Mortgage Revenue Bonds Outstanding**



Texas Department of Housing and Community Affairs  
Variable Rate Bond Inventory  
As of December 31, 2018

Cusip	Bond Series	Liquidity Provider	Liq. Provider Expiration Date	Total Initial Notional Amt	Total Outstanding Notional Amt	Total VRDB Outstanding Amt	12/31/2018 Swap Mark-to-Market*	Remarketing Agent	Swap Counter-Parties
88275FNN5	2004B	Texas Comptroller	8/31/2019	\$ 53,000,000	\$ 19,405,000	\$ 20,985,000	\$ (867,936)	JP Morgan	BNYM**
88275FNP0	2004D	Texas Comptroller	8/31/2019	\$ 35,000,000	\$ 14,340,000	\$ 14,340,000	\$ (425,189)	Piper Jaffray & Co	GSCM
88275FNQ8	2005A	Texas Comptroller	8/31/2019	\$ 100,000,000	\$ 20,550,000	\$ 20,550,000	\$ (2,598,495)	JP Morgan	JPMCB
88275FLK3	2006H	Texas Comptroller	N/A	\$ 36,000,000	\$ -	\$ -	\$ -	JP Morgan	BNYM**
88275FMF3	2007A	Texas Comptroller	8/31/2019	\$ 143,005,000	\$ 22,240,000	\$ 22,240,000	\$ (2,855,894)	JP Morgan	JPMCB
<b>Total Hedged</b>				<b>\$ 367,005,000</b>	<b>\$ 76,535,000</b>	<b>\$ 78,115,000</b>	<b>\$ (6,747,514)</b>		
88275FNM7	2004A JL Taxable	Texas Comptroller	8/31/2019	\$ 4,140,000	N/A	\$ 3,855,000	N/A	JP Morgan	Unhedged
88275FNR6	2005C Taxable	Texas Comptroller	N/A	\$ 8,970,000	N/A	\$ -	N/A	JP Morgan	Unhedged
<b>Total Unhedged</b>				<b>\$ 13,110,000</b>	<b>\$ -</b>	<b>\$ 3,855,000</b>	<b>\$ -</b>		
<b>Grand Total</b>				<b>\$ 380,115,000</b>	<b>\$ 76,535,000</b>	<b>\$ 81,970,000</b>	<b>\$ (6,747,514)</b>		

\*Latest Mark-to-Market calculations dated 12/31/2018 were prepared using swap provider mark-to-market valuations which include accrued interest

\*\*The Counter-Party for Bond Series 2004B and 2006H was novated from UBS to Bank of New York Mellon effective 4/1/2014

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**BOARD ACTION REQUEST**  
**COMMUNITY AFFAIRS DIVISION**  
**MARCH 21, 2018**

Presentation, discussion, and possible action regarding the possible absorption of the Bay City Housing Authority's Section 8 Housing Choice Voucher Program (HCVP)

**RECOMMENDED ACTION**

**WHEREAS**, the Department is designated as a Public Housing Authority (PHA) by the U. S. Department of Housing and Urban Development (HUD) and administers the Section 8 Housing Choice Voucher Program (the Section 8 Program);

**WHEREAS**, HUD has requested that Bay City Housing Authority (BCHA) relinquish its HCVP and has requested that the Department absorb the BCHA HCVP, and the BCHA has also requested that the Department absorb the program on its behalf;

**WHEREAS**, the Board has previously considered the issue of absorbing vouchers from other Public Housing Authorities, and at the Board meeting of September 12, 2013, staff was authorized to pursue such absorptions and perform further research prior to making a subsequent recommendation to the Board, and in the case of BCHA HCVP that research has occurred; and

**WHEREAS**, the initial research and file review by Department staff of the BCHA HCVP supports a positive recommendation by staff to absorb the vouchers;

**Now, therefore, it is hereby**

**RESOLVED**, that the Department is authorized to proceed with the absorption of BCHA's Section 8 HCVP, thereby assuming approximately 162 active vouchers and accepting and integrating Bay City Housing Authority's HCVP waiting list with the Department's current waiting lists; and

**FURTHER RESOLVED**, that the Department is authorized to collaborate with HUD on the formal and permanent transfer process of accepting the vouchers from the BCHA.

**BACKGROUND**

At the Board meeting of September 13, 2013, the Board authorized staff to pursue the absorption of vouchers from other PHAs when requested by another PHA and/or HUD. From time to time, staff has researched such absorptions and has presented the approval of several such absorptions to the Board. In 2014, the Department absorbed 26 vouchers from the Navasota Housing Authority, and in 2015, the Department absorbed 97 vouchers from the Alamo Area

Council of Governments.

Several months ago, both HUD and BCHA reached out to the Department requesting that the Department absorb BCHA's HCVP. HUD has concerns with the capacity of BCHA to operate the voucher program. The Department has a checklist of specific issues it considers and evaluates when asked to absorb a voucher program. Staff researched and reviewed Bay City Housing Authority's HCVP vouchers at the request of BCHA, and as desired by HUD. Approximately 63% of BCHA's active vouchers are leased in the Department's HCVP jurisdiction. To date, staff does not identify any major concerns, and was pleased with the quality of the files.

One area of evaluation was the payment standards. Payment standards are used when calculating Housing Assistance Payment (HAP). A family's rent is the lower of the payment standard amount for the family unit size or the payment standard for the actual number of bedrooms of the unit leased by the family. It was originally a concern of Department staff that the payment standards in use by BCHA may not have been properly calculated or properly applied to households. However, BCHA has adopted a payment standard of 100% of HUD's Fair Market Rent. The payment standard BCHA adopted is within the 90–110% range as required, and are consistent with the standards in use by the Department.

A future Department on-site technical visit will still be conducted and the following items will also be confirmed.

- 1) Utility Allowances are required by HUD to be reviewed every year. If there is a change of 10% or more, the PHA must update its allowance schedule. Staff will review BCHA's utility allowances, and validate if the utility allowances have been updated as required.
- 2) Third-Party verification must be obtained for household eligibility. Staff will determine if BCHA's third-party verification is within the guidelines set by HUD. Verification must be within sixty days of date of certification.
- 3) Net Restricted Assets (NRA) is the amount of Housing Assistance Payments (HAP) unspent for the HCV program through the PHA's fiscal year end. Staff will verify if BCHA's financial advisor at HUD has accumulated unspent HAP. This NRA would be absorbed by the Department as well.

Staff is recommending that the Board authorize the Department to absorb the BCHA's Housing Choice Voucher Program, conditioned on no major concerns arising during the on-site visit and determining the above items to be satisfactory. Staff believes that the absorption of these vouchers will pose no undue risk to the Department.

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**BOARD ACTION REQUEST**

**FAIR HOUSING, DATA MANAGEMENT, AND REPORTING**

**MARCH 21, 2019**

Presentation, discussion, and possible action authorizing the release of the Draft Analysis of Impediments to Fair Housing Choice for public comment

**RECOMMENDED ACTION**

**WHEREAS**, the U.S. Department of Housing and Urban Development (HUD) requires the development of an Analysis of Impediments to Fair Housing Choice (AI) in accordance with the Affirmatively Furthering Fair Housing (AFFH) rule for HUD Community Planning and Development (CPD) funding recipients;

**WHEREAS**, the AI is required by HUD to be completed as a component of the Consolidated Planning process and serves as a basis for fair housing planning with an aim toward increasing housing choice and identifying any patterns of fair housing complaints;

**WHEREAS**, the AI is required because the Department operates several HUD Community Planning and Development (CPD) funded programs - the HOME Investment Partnerships Program (HOME), the National Housing Trust Fund (NHTF), and the Emergency Solutions Grants (ESG) programs;

**WHEREAS**, three other state agencies, the Texas General Land Office (GLO), Texas Department of State Health Services (DSHS), and Texas Department of Agriculture (TDA), are also recipients of CPD funds from HUD, and TDHCA leads the AI development and HUD Consolidated Planning process on behalf of the all Texas state agencies that receive CPD funds;

**WHEREAS**, in compliance with its Citizen Participation Process, the Department provided the public with an extensive consultation process prior to the development of the draft AI; and

**WHEREAS**, a public comment period will be open from March 25 through May 6, 2019, and 13 public hearings, one in each TDHCA State Service Region, will be held during the public comment period to garner input on the draft AI;

**NOW, therefore, it is hereby**



**RESOLVED**, that the draft AI, in the form presented to this meeting, is hereby approved for release for public comment; and

**FURTHER RESOLVED**, that the Acting Director and his designees are each hereby authorized, empowered and directed, for and on behalf of the Department, to cause notice of the draft AI to be published in the *Texas Register* and, in connection therewith, to make such non-substantive grammatical and technical changes as they deem necessary or advisable.

### **BACKGROUND**

The Analysis of Impediments to Fair Housing Choice (AI) is a process that recipients of U.S. Department of Housing and Urban Development (HUD) Community Planning and Development (CPD) grant funds, such as states, local governments, and public housing agencies, undertake as part of their obligation to affirmatively further fair housing (AFFH) under the Fair Housing Act.

At the state level, the Texas Department of Housing and Community Affairs (Department), the Texas Department of Agriculture (TDA), the Texas General Land Office (GLO), and the Texas Department of State Health Services (DSHS), are responsible for carrying out the work of the AI because these agencies receive and disburse HUD Community Planning and Development (CPD) funds. TDHCA administers the HOME Investment Partnerships Program (HOME), the National Housing Trust Fund (NHTF), and the Emergency Solutions Grants (ESG) programs. TDA administers the Community Development Block Grant (CDBG), GLO administers CDBG Disaster Recovery, and DSHS administers the Housing Opportunities for Persons With AIDS (HOPWA) program. TDHCA leads the AI development and HUD Consolidated Planning process on behalf of the all Texas state agencies which receive CPD funds. The Texas Workforce Commission, Civil Rights Division (TWC-CRD) also participates in the process, providing training, technical assistance, and data on fair housing complaints.

#### *Consultation Process*

In accordance with its Citizen Participation Process identified in its Consolidated Plan, the State conducted more than 40 separate consultations in order to garner input for the initial draft Analysis of Impediments during summer 2018. These consultations took the form of conference calls, webinars, in-person meetings, public hearings, and participation in regularly-scheduled meetings with specific stakeholder groups.

Written input was also accepted during the consultation period by email, mail, and fax. This robust early input and participation period provided great insight in the State of Texas' identification of impediments and in its ability to assess progress made toward previously identified impediments to fair housing choice.

#### *About the draft AI*

This draft AI both assesses where Texas is as a state as it relates to fair housing, and then identifies impediments and possible solutions, where applicable. This assessment is achieved by looking at a statewide overview and regional analysis of demographics and housing considerations, by reviewing

statewide regulations and rules, by discussing and describing actions that have been taken and are currently being undertaken to affirmatively further fair housing by the state, by performing an assisted housing portfolio analysis and a lending analysis, and through an overview of fair housing complaints and cases. All of those topics together, presented chapter by chapter in the draft AI, lay the framework for the identification of statewide impediments. Recommended actions to address those identified impediments are then also provided. A separate chapter provides a review of specific considerations and actions that have been taken specifically as it relates to disaster recovery and response with CPD funds by the GLO.

*Public Comment Period*

To garner input on the draft AI, a public comment period will be open from March 25 through May 6, 2019, and 13 public hearings, one in each TDHCA State Service Region, will be held during the public comment period. Comments received after 5:00 p.m. Austin local time on May 6, 2019, will not be accepted.

Date and Time	City	Public Hearing Location
Wednesday, April 10, 2019 10:30am	San Antonio	Haven for Hope Volunteer Center 1 Haven for Hope Way, San Antonio, TX, 78207
Thursday, April 11, 2019 4:00pm	Killeen	City Hall Council Chambers 101 N. College Street Killeen, TX 76541
Friday, April 12, 2019 10:00am	Austin	Texas Health and Human Services 909 West 45th Street, Room 164, Austin, TX 78751
Monday, April 15, 2019 10:00am	El Paso	City of El Paso Council Chambers 300 N. Campbell El Paso, Texas 79901
Tuesday, April 16, 2019 9:30am	Midland	MLK Center 2300 East Butternut Lane, Midland, TX 79701
Tuesday, April 16, 2019 4:30pm	Lubbock	City of Lubbock Council Chambers 1625 13th Street, Lubbock, TX 79401
Wednesday, April 17, 2019 1:00pm	Wichita Falls	Nortex Regional Planning Commission 4309 Old Jacksboro Hwy, Suite 200, Wichita Falls, TX 76302 (North side of the Galaxy Building)
Thursday, April 18, 2019 10:30am	Dallas	J. Erik Jonsson Central Library, Stone Room (7th floor) 1515 Young Street, Dallas, TX 75201
Thursday, April 18, 2019 4:00pm	Longview	Maude Cobb Convention & Activity Center 100 Grand Blvd, Longview, TX 75604
Tuesday, April 30, 2019 1:00pm	Edinburg	Hidalgo County Commissioners Courtroom Administration Building Annex III 100 East Cano Street, Edinburg, TX 78539
Wednesday, May 01, 2019 9:30am	Victoria	City of Victoria Council Chambers 107 W. Juan Linn Street, Victoria, Texas 77901
Wednesday, May 01, 2019 4:00pm	Houston	BakerRipley, Education Center 3838 Aberdeen Way, Houston, TX 77025
Thursday, May 02, 2019 10:30am	Beaumont	R.C. Miller Memorial Library 1605 Dowlen Road, Beaumont, TX 77706

Anyone may submit comments on the draft AI in written form or oral testimony at the public hearings. In addition, written comments concerning the draft AI may be submitted by mail to the Texas Department of Housing and Community Affairs, Attn: Cate Tracz, P.O. Box 13941, Austin, TX 78711-3941, by email to [cate.tracz@tdhca.state.tx.us](mailto:cate.tracz@tdhca.state.tx.us), or by fax to (512) 475-3935 anytime during the comment period. Those making public comment are encouraged to reference the specific section of the AI related to their comment.

Please be aware that all comments submitted to the Department will be considered public information.

Details on the public comment process and the public hearings will be published in the *Texas Register*, distributed by Listserv emails, posted on TDHCA's various social media sites, and posted on the TDHCA Events Calendar (<https://www.tdhca.state.tx.us/events/index.jsp>) and the TDHCA Public Comment Center (<http://www.tdhca.state.tx.us/public-comment.htm>) webpages. Following the public comment period, staff anticipates presenting a final AI to the Board in summer 2019 for approval.

Staff recommends approval of this action.